From Reified Abstractions to Situated Contexts: Feminist Jurisprudence, Paradigm Shift and Legal Change

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(ABSTRACT)

This study addresses the extent to which feminist jurisprudence literature has developed the potential to initiate a legal paradigm shift leading to legal and consequent social change that would alleviate gender inequality. Drawing upon Kuhn's (1970) and Stacey and Thorne's (1985) arguments, I theorized that for a paradigm shift centered upon women and women's experiences to occur, feminist jurisprudence, particularly second- and third-phase feminist jurisprudence, needs to be incorporated into and accepted by the mainstream.

Through quantitative analysis I evaluated, first, the publication and citation patterns and the diffusion of feminist jurisprudence literature as evidenced in articles published between the years 1983 and 1994 in legal journals assigned impact factors by the Social Science Citation Index. Second, using content analysis, I classified feminist jurisprudence articles published in the subfields of family and penal law –theorized to differ in degree of androcentism-- according to the three phases of feminist jurisprudence theory.

My quantitative analysis showed that the number of feminist jurisprudence articles published in mainstream legal journals is increasing over time. Further, feminist jurisprudence articles published in legal journals with higher impact factors tend to receive larger numbers of citations than articles published in journals with lower impact factors. Finally, although the overall impact factor of journals publishing feminist jurisprudence articles is declining, feminist jurisprudence literature is present among a wide spectrum of legal specializations.

My qualitative analysis showed that there was an equivalent number of family and penal law articles which exhibited second- and third-phase characteristics. However, family law articles tended to cover a wider range of topics than penal law articles. Furthermore, family law scholars were more likely than penal law scholars to address issues of difference among women and feminists, thus, exhibiting third-phase characteristics. In contrast, penal law scholars tended to focus upon differences between feminists and non-feminists and the practical difficulties resulting from the structure, organization and practitioners of the criminal justice.

Overall, my analysis showed that feminist jurisprudence appears to have developed the potential to initiate a paradigm shift within the legal discipline. However, in addition to feminist theorizing, feminist activism is important for the realization of legal and social changes that will alleviate gender inequality.

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CHAPTER 1. STATEMENT OF THE PROBLEM

Feminist scholarship has long been concerned with the social construction of gender and the resulting inequalities experienced by women. From this perspective, feminists have critically examined social institutions, including the legal system and have argued that as an institution of social control, law creates, maintains, and reproduces gender stratification. As a result, women legislators, practitioners, justice system personnel and litigants tend to experience their contact with the law in a negative manner (Kanter, 1978; Rounde, 1988; Hagan et. al., 1991; Rosenberg et. al., 1993). However, some legal scholars, practitioners, and activists assert that while law maintains and reinforces the status quo which assigns women to a secondary position, it can also be used to challenge the existing social order and alleviate the negative consequences of gender stratification because of its potential to affect social change (Eisenstein, 1988; Curran, 1986; DeBenedictus, 1989; Menkel-Meadow and Diamond, 1991; Rosenberg et. al., 1993).

Legal and social scholars have debated the direction of the relationship between law and social change. Functionalist approaches characterize law as external to the social world; a relatively autonomous mechanism of conflict resolution and management whose function is to respond to existing and emerging social needs (Gordon, 1984:60). In contrast, conflict-oriented theorists view law as simultaneously deriving from, and constituting social change (Eisenstein, 1988:46). Thus, according to conflict theorists, law and social change are intertwined and reciprocally related.

Regardless of their understanding of the direction of the relationship between law and social change, theorists from both the functionalist and conflict perspectives acknowledge that the above relationship is mediated by legal interpretation through which

practitioners and theorists assign legal constructs with the specificity necessary for the application and adjudication of laws (Eisenstein, 1988:43). However, theorists, debate over the extent and the sources of legal interpretation (Levi, 1955:5; Posner, 1985:5; Frug, 1986:28; Wasserstrom, 1961:17; Berman, 1958:373).

Functionalist-oriented theorists argue that legal interpretation is necessary for the application and adjudication of laws but it is bound and restricted by *stare decisis* -- precedence (Abadinsky, 1988:15; Douglas, 1977). As a result, according to functionalist-oriented theorists, the impact of legal interpreters' socio-legal theories and ideologies on the interpretation they provide is restricted (Abadinsky, 1988:17; Vago, 1988:118-119). Conflict-oriented theorists, on the other hand, argue that precedence poses only limited constraints on legal interpretation (Schur, 1968:43), while judges, lawyers, and legal theorists engage in extensive legal interpretation on the basis of their socio-legal theories and ideologies (West, 1990:473-476; Black, 1989:95; Kidder, 1983:129-133). To the extent that legal interpretation mediates the relationship between law and social change, it is important to examine legal theory's responsiveness to emerging and changing paradigms. My specific interest is the degree to which non-traditional legal perspectives, particularly feminist approaches namely ‘feminist jurisprudence’, are incorporated into the mainstream and thus increase their potential of affecting social change.

As originally conceptualized by MacKinnon (1983a cited in Wishik, 1985:64), "[f]eminsit jurisprudence is an examination of the relationship between law and society from the point of view of all women." That is, women and their experiences are at the center of feminist jurisprudence inquiry. Further, from a feminist perspective, theory and praxis are inextricably linked and one serves to inform and reinforce the other. As a result, feminist jurisprudence scholars' theorizing is political activity (Wishik, 1985:64-66), aiming to transform the social order and, more specifically, the legal order.

Feminist jurisprudence scholars raise several questions, among which are

challenges to the legal principles of objectivity, neutrality, and equality. These questions are discussed at the theoretical and practical levels and involve both theorizing the implicit and explicit patriarchal bases of law and engaging in transformative practice which will eradicate these bases. In other words, feminist jurisprudence engages in theory and praxis using the law to accomplish social change. One way feminist jurisprudence scholarship can attempt such transformations is through its incorporation into the mainstream of legal theory.

The significance of the incorporation of feminist jurisprudence scholarship into mainstream legal theory and practice can be evaluated in light of Thomas Kuhn's (1970) and Stacey and Thorne's (1985) argument concerning the importance of scientific paradigms and paradigm shifts[1] in different disciplines. Paradigmatic shifts which have centered women's experiences in disciplines such as history, literature, and anthropology have had significant impact on these disciplines by redirecting the scope of their scientific inquiry and by reconceptualizing social structure and its effects on men's and women's lives (Stacey and Thorne, 1985:306; Dye, 1979:28). Given the importance legal theory and ideology have for the interpretation and in turn the adjudication and enforcement of laws, a paradigm shift which will bring the experience of women and other powerless groups to the center of legal inquiry can potentially inform legal theory and interpretation and as a result transform the social order and eradicate structurally imposed oppression

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[1] Thomas Kuhn (1970; originally published in 1962) in his book *The Structure of Scientific Revolutions* provides the general notion of paradigm and paradigmatic shift. Kuhn uses the term *paradigm* in a number of different ways. A summary definition of paradigm provided by Kuhn which I use as a working definition in my study considers that a scientific paradigm "…stands for the entire constellation of beliefs, values, techniques and so on, shared by the members of the community" (Kuhn, 1970:175). Similarly, Stacey and Thorne's definition of the concept of paradigm is also flexible. They "…generally equate paradigm with the basic conceptual framework and orienting assumptions of a body of knowledge" (Stacey and Thorne, 1985:302 foot.#3).

and inequality.

Paralleling Kuhn's arguments (1970:151-152), Stacey and Thorne (1985) note that paradigmatic shifts are often gradual, involving a number of steps, which serve to weaken the resistance, put forth by mainstream. Such resistance, which depends on the subject matter and epistemology of a discipline, is particularly pronounced in androcentric and positivist disciplines, such as law (Stacey and Thorne, 1985:309). Moreover, for a paradigm shift to occur, Stacey and Thorne argue, first, the demographic composition and the structural and occupational organization of a discipline need to change. Then, existing conceptual frameworks of knowledge also must be transformed; in turn, these transformations must be recognized and accepted by others in the disciplinary mainstream (Stacey and Thorne, 1985:302).

In the case of the legal profession and legal theory, many of these required changes and transformations have already occurred and have been documented in the literature. These include increased numbers of women practitioners advancing in the occupational hierarchy; structural occupational changes accommodating pregnancy, childbirth, and parenthood; increased visibility of women practitioners in areas of law other than the 'gender-appropriate' specialization of family law; and the development of theoretical frameworks which challenge the patriarchal structure of law from a feminist perspective (Epstein, 1981; Wishik, 1985; Boyle, 1986; Menkel-Meadow, 1989a; 1992; Smart, 1989; Bartlett, 1990; Hagan, 1990; Rhode, 1990; 1991). What has not been adequately investigated is the extent to which the feminist theoretical frameworks which developed, feminist jurisprudence in particular, have reached mainstream legal thought in a form which encompasses the potential to challenge patriarchal legal principles and conceptually transform legal thought.

Given that legal change to eradicate women's oppression is among the goals of feminist jurisprudence, an important question is: to what extent has feminist

jurisprudence contributed to changes in legal theory and, potentially, practice, aiming to benefit women? More specifically: to what extent has feminist jurisprudence scholarship been incorporated into mainstream legal theory by publishing in widely-read legal journals and has thus contributed to a feminist challenge to established patriarchal legal principles?

To assess the extent to which feminist jurisprudence has contributed to changes in legal theory and, potentially, practice, I need to address two more specific questions implied in the general question: 1. To what extent is feminist jurisprudence scholarship moving further into the mainstream of legal thought? That is, have there been any changes over time in the inclusion of feminist jurisprudence literature into the mainstream of legal scholarship? 2. To what extent do feminist jurisprudence publications in the mainstream constitute a challenge to patriarchy in legal theory?

The goal of my dissertation, then, is twofold. First, I will address the extent to which feminist jurisprudence scholarship is making progress into the mainstream by noting whether there have been any changes over time in the publication and citation patterns of feminist jurisprudence articles. Second, I will address the extent to which feminist jurisprudence articles published in mainstream legal journals challenge the patriarchal bases of law and question structural legal principles of neutrality, objectivity and equality by examining the topics and analyzing the discussions and arguments advanced by feminist jurisprudence scholars in selected articles in two subfields of legal theory.

More specifically, I will document the publication patterns --frequency of publication, level of influence of publishing journal[2]-- of articles, which explicitly refer to the concept of feminist jurisprudence and appear in legal journals. Although explicit

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[2] To access the degree of influence a certain journal exerts on legal scholarship I will use the rankings of legal journals provided by the Journal Citation Reports. The construction and significance of these rankings are analyzed in chapter 5.

reference to feminist jurisprudence does not necessarily constitute acceptance of the issues and the principles of feminist jurisprudence, I will assume that the authors of such articles have been exposed to and are aware of feminist jurisprudence as a conceptual framework and thus, the potential of feminist jurisprudence scholarship to influence legal theory increases. Furthermore, scholars may debate issues relevant to feminist jurisprudence in articles published in legal journals without explicit reference to the theoretical framework. Such articles will not be included in my analysis. However, my specific concern is the extent to which feminist jurisprudence literature is incorporated into the mainstream as such.

The analysis of citation patterns which I will perform next, will address the extent to which legal scholars not only explicitly acknowledge feminist jurisprudence but make further use of the term and its concepts. Furthermore, I will examine the extent to which there have been changes in the publication and citation patterns of feminist jurisprudence articles published in mainstream legal journals over time.

The time period I will be covering begins at 1983, the first year articles with explicit reference to feminist jurisprudence appearing in legal journals existed as available data through WESTLAW, during the period of data collection. The time period ends at 1994, the most recent year for which there were available data during the data collection period. Changes in the publication and citation patterns will address the issues of whether or not feminist jurisprudence scholarship gradually moves further into the mainstream and thus, increases the potential to challenge and revolutionize legal thought.

Finally, through a qualitative reading of selected feminist jurisprudence articles I will explore the extent to which such articles published in mainstream legal journals pose questions and directly challenge legal principles in terms of the topics they address and the arguments they advance in two different areas of law, family and penal law. For the purpose of my analysis, I am assuming that family law constitutes an area of law

potentially less resistant to the feminist challenge since it deals primarily with the stereotypically female domain --the private sphere-- while at the same time presents a high concentration of women legal practitioners (Winter, 1983). Penal law on the other hand, is considered 'public' law and its subject matter --crime-- is considered a 'public wrong' (Vago, 1988:10). The public nature of penal law, the prestige criminal law specialization carries, and the positivist principles of criminal justice would suggest presence of stereotypically 'masculine' attributes (Vago, 1988:10; Massachusetts Supreme Judicial Court, 1992:9; Schulhofer, 1991:85) and consequently render penal law potentially more resistant to the feminist challenge.

The legal issues addressed in the above feminist jurisprudence articles and the arguments articulated in these articles will then be classified as belonging to one of the three phases of feminist jurisprudence scholarship[3] which follow the developmental transitions of feminist scholarship in general (Naffine, 1990:1-3; Wishik, 1985:64-66). Each new phase, while building on the assumptions and the arguments of the previous phase, extends the questioning of the legal order and broadens the scope of legal critique. In that way, feminist jurisprudence literature moves from the 'add-women-and-stir' approach of the first phase to the third phase's deconstruction of the very structure of legal order, namely objectivity, neutrality and equality (Naffine, 1990:1-3). Consequently, for the purposes of my analysis, feminist jurisprudence arguments of the second and third phase articulated in articles published in mainstream legal journals will be an indication that feminist jurisprudence scholarship exists in the mainstream in a form which can challenge the legal order. Furthermore, comparing the kinds of arguments

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[3] My classification is based primarily on Ngaire Naffine's proposed phases of feminist jurisprudence scholarship (Naffine, 1990:3-19). Identical to Naffine's classification is the classification proposed by Carrie Menkel-Meadow (1992:1497-1514). The three phases of feminist jurisprudence scholarship are analyzed in chapter 4.

feminist jurisprudence scholars propose in two subfields of law which I assumed to differ in their degree of positivism and androcentrism, I will be able to postulate on the effect the degree of androcentricism and positivism, present in a discipline (or a subfield), has on the integration of a revolutionary theoretical framework.

By looking at the publication and citation patterns and the content of feminist jurisprudence articles published in mainstream legal journals and possible changes over time, I will not be able to directly address the question of the extent to which feminist jurisprudence has revolutionized legal scholarship. I will, however, be able to address the potential feminist jurisprudence scholarship has to influence legal scholarship and thereby transform legal practice and the legal order.

CHAPTER 2. THE 'TRIALS AND TRIBULATIONS' OF WOMEN IN RELATION TO THE LAW: THE DYNAMICS OF OPPRESSION, RESISTANCE, EMPOWERMENT, AND CHANGE.

Gender stratification and law: mutually reinforced and perpetuated.

Gender stratification and its negative consequences for women have been the focus of much feminist theory and research. Based on the patriarchal control of women, gender stratification is reinforced in all aspects of women's everyday life and results in women's secondary position relative to men, in a number of social institutions such as the family (Hartmann, 1981; Smith, 1987; Berk, 1988), work (Kessler-Harris, 1982; Acker, 1990), and politics (Ackelsberg and Diamond, 1987). Among the social institutions that feminists identify as creating, maintaining, and reinforcing gender stratification and inequality is the law (Baron, 1987:474; Smart, 1989:164; MacKinnon, 1991:1282-1283). Feminists, along with Critical Legal Scholars, argue that although law is purported to eliminate or at least minimize the effects of social stratification, core theoretical legal constructs –namely objectivity, neutrality and equality—and their implementation from mainstream legal theorists and practitioners, establish and maintain the existing stratified social order (MacKinnon, 1987:54-55; Rifkin, 1980:87; Taub and Schneider, 1990:151; Gabel, 1982:265; Poulantzas, 1982:189).

Mainstream, traditional understanding of legal principles

Mainstream traditional legal theorists and practitioners conceptualize the principle of legal objectivity as referring to the way the legal order is constructed. Thus, legal constructs are purportedly established through a distinct, formal, scientifically driven

process which is detached from specific social groups' interests and which further embodies and maintains a form of human association dedicated to democratic principles (MacKinnon, 1987:54-55; Unger, 1989:324-325; Smart, 1989:90-91).

Mainstream understanding of the principle of neutrality, refers, primarily, to the application and administration of justice. In other words, based on mainstream legal theory, legal actors –judges, lawyers, legislatures—are purportedly selecting and applying legal doctrine indifferently to who are the parties involved in each case. Further, the same actors express governing principles in general terms without explicit preferences for any specific social group. Thus, purported neutrality and generality, allegedly guarantee applicability to future legal cases as well (Tushnet, 1989:167-168).

The principle of equality represents the epitome of mainstream traditional understanding of justice. Equality, thus, rests on the alleged ability of the legal system to guarantee that same cases are treated in the same way (Taub and Schneider, 1990:166; Cain, 1990:817-823). In broad sense, according to mainstream, traditional legal theory, objectively defined and neutrally applied legal rules can guarantee equality of treatment under the law.

The critique of mainstream, traditional understanding of legal principles.

Legal scholars, who read legal theory critically, argue that the application of legal principles of objectivity, neutrality and equality necessitates that law is presented as a superior, unified field of knowledge, free of internal contradictions. As such, law is empowered with the authority to provide abstract definitions of principles and concepts such as the 'legal person', and to further act upon the definitions provided (Smart, 1989:4).

In the conventional legal view, the legal person is not a specific individual but rather a human 'norm': a human prototype. This human prototype is decontextualized, abstracted from its environment. However, this human prototype does have aims and concerns and the legal system is designed to anticipate and respond to them. The core legal principles of objectivity, neutrality, and equality are necessary and sufficient to guarantee that the human prototype's needs are met and to ensure, a well-run society in which impartial, blind justice can be secured (Naffine, 1990:ix).

This process of decontextualization and abstraction obscures political, economic and gender power differentials and in so doing constructs the 'real' according to the dominant ideology's social reality and power while at the same time representing it (Poulantzas, 1982:189-190; Sumner, 1982:258; Eisenstein, 1988:52). For example, despite arguments to the contrary, the legal person has quite specific characteristics. Upon critical examination, the legal person--the human prototype-- is revealed to be an able-bodied, autonomous, self-interested, *male* person. It is, then, this specific male person's aims and concerns which the legal system anticipates and to which it responds. Thus, what is real is redefined according to what the dominant ideology --patriarchy in this case—holds as real and the structural differences as well as the power differential between men and women are concealed. Concealment of power differentials through theoretical constructs and practical implementations of legal doctrine facilitates the creation of powerless groups. The single largest subordinate group created by law in Western, industrialized countries and specifically in the United States, is women (Naffine, 1990:x; 53).

As the largest subordinate group, women were and to a large extent continue to be subjected to a multitude of legal regulations and interventions with varying results. For the most part, however, the legal regulations and interventions to which women have been historically subjected aimed specifically at excluding women form the public sphere on

the one hand, while on the other, at keeping them at their 'natural' place, the private. Thus, women were either blocked from entering the public sphere altogether or their full participation in the public was restricted. Characteristic examples of such legal practices can be found in the history of women's struggle to gain full citizenship rights as well as enter the professions. On the other hand, examples of legal ventures to keep women in their 'natural' place can be found in the historical regulations of women's reproductive rights.

Law as an instrument of obstructing women's entrance in the public sphere.

Women and civic rights

Women's struggle to gain full citizenship rights in the United Stated initially created officially recorded legal responses in the late 19th century, a time when the right to vote was recognized by legal and political theory are among the fundamental rights of citizens. However, despite such political and theoretical recognition, a number of women who attempted to vote during elections were prosecuted and tried for having violated federal law regulations. In several such cases, court decisions explicitly assigned women to the status of second-class citizen: a citizen denied the right to vote[4] (Lindgren and

[4] The fact that African-Americans, as well as other 'non-white' persons were denied the right to vote along with the 'non-male' persons –women of all races—despite the legal and theoretical recognition of such right as fundamental for the legal person, is a clear example of what feminist legal scholars mean when they argue that abstracted legal definitions conceal power differentials. Furthermore, denying 'non-whites' and 'non-males' fundamental rights accorded to the 'legal person' exposes the characteristics of this human prototype which according to feminist legal scholars tends to be male, white, heterosexual, able-bodied, middle-to-upper class.

Taub, 1993:30). Although women finally gained the right to vote in 1920 –that is, when the Nineteenth Amendment became law—problems associated with recognition and exercise of full citizenship, lingered until the late seventies when decisions such as *Hoyt v. Florida* (1961) which permitted the exclusion of women from jury duty, were overturned (in *Taylor v. Louisiana* 1975 and *Duren v. Missouri* 1979) and allowed women's extended exercise of civic rights. In contrast, other decisions such as, *U.S. v. St. Clair* (1968) and *Rostket v. Goldberg* (1981) continue to exclude women from aspects of military public life and serve as a reminder that women's socially imposed duty is to "keep the home fire burning" (Lindgren and Taub, 1993:88).

Women and professional life: the case of the legal profession.

In addition to their civic rights and duties women's professional public lives were and still are negatively affected by exclusionary legal regulations and practices. The history of women's entrance into the legal profession is just one example of women's struggles to participate in the professional public life.

In the history of the legal profession –beginning around the 19th century—women participate, albeit unofficially, in the practice of law as assistants to father and husband lawyers. However, despite their *de facto* lawyering, women were not allowed to study in law schools or become members of bar associations. A number of such women lawyers summoned the assistance of courts but with no success (Menkel-Meadow, 1989a; Menkel-Meadow, 1989b; Drachman, 1989; Weisberg, 1977).

In 1869, for example, the Supreme Court of Illinois denied Myra Bradwell[5] permission to practice law despite the fact that she had passed the Illinois Bar exam on the grounds that the state does not allow women's professional engagement. Bradwell argued that by being denied the permission to practice law, she was denied her citizenship privileges based of the Fourteenth Amendment. However, the Supreme Court did not recognize the practice of law as a privilege of citizenship (Lindgren and Taub, 1993:28; Menkel-Meadow, 1989a:202).

In the case *Bradwell v. Illinois* (1873), Justice Bradley, concurring with the Court's opinion, delivered what has come to be recognized as a classic statement of the separate sphere ideology (Lindgren and Taub, 1993:28). Said Justice Bradley:

> "[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, women's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband....**The paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. This is the law of Creator. And the rules of civil society must be adapted to the general constitution of**

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[5] In addition to being an unofficially practicing lawyer, Myra Bradwell was a legal and social activist, and scholar. A feminist active in the suffrage movement, Myra Bradwell was the founder and editor of the important legal publication *Chicago Legal News*. She was actively involved in the transformation of labor legislation and juvenile and family law (Lindgren and Taub, 1993:28; Menkel-Meadow, 1989a:202).

> **things, and cannot be based upon exceptional cases**" (emphasis added) (In *Bradwell v. Illinois*, 1873 cited in Lindgren and Taub, 1993:29).

An almost identical opinion was rendered few years later, in 1875, when Lavinia Goodell attempted, unsuccessfully, to be admitted to the Wisconsin Bar. In his ruling on Goodell's case, Justice Ryan stated:

> "There are many employments in life not unfit for the female character. The profession of law is surely not one of these....Nature has tempered woman as little for the judicial conflict of the court room as for the physical conflicts of the battle field" (***In re*** Goodell, 39 Wis 245 1875 cited in Weisberg, 1977: 490).

Parallel to their battles in the courtrooms, women started lobbying extensively and often successfully, for changes in state laws. Beginning in 1870 in Iowa, state legislation gradually initiated legal changes favoring women's professional engagement (Menkel-Meadow, 1989a:202). A year earlier, law schools began admitting women, although in many places admission was still 'open to the male sex only' (Vago, 1988:261). Gradually, women's presence among legal practitioners became more visible and their numbers started to increase. Presently, there is such an influx of women into the legal profession – it is estimated that women constitute approximately 40% of law school graduates—that several legal scholars talk about the feminization[6] of the legal profession (Curran, 1986:20, 25; Menkel-Meadow, 1989a:208; 1989b:307).

Women legal practitioners' experiences parallel the experiences of other women attempting to enter the public sphere in order to participate in professional, occupational,

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[6] The term feminization of the legal profession refers not only in the increased number of women into the legal profession but also in the impact the increase in the number may have for the profession such as for example decline in prestige or monetary compensation for lawyers' services (Menkel-Meadow, 1989a:197-198).

or vocational public life in general. These experiences largely depended upon a number of legal constructs regulating women's participation in public life. Due to the interdependence between social structure and legal structure, however, legal regulation of women's participation in the public life was the result of the interplay of socio-economic and political facts. During the late 19th century, for example, the goal of legislation and legal decisions was to keep women outside the public sphere as it can be seen in decisions such as *Bradwell* and *Goodell*. The reality of women's participation in the paid labor force, however, negated the spirit of legal decisions blocking women's professional and occupational engagement. Thus, at the beginning of the 20th century, legislatures were faced with the reality of women's participation actual participation in the labor force, a reality which, while irreversible could be constrained and regulated. Consequently, at the beginning of the 20th century several restrictions were imposed on women's employment and occupational engagement in general. While alleged incompatibility between women's paid labor force and 'nature' was the justification for excluding women from the public sphere, protection of women's health and welfare was the proposed grounds for regulating and constraining women's participation in the paid labor force (Lindgren and Taub, 1993:36).

Law as an instrument of restricting women's participation in the public.

At the turn of the century, long working hours, unhealthy and unsafe working places and conditions --for men, women and children--gave rise to a movement to enact protective state legislation shielding workers against exploitation and providing better working conditions. In 1905, however, the Supreme Court in *Lochner v. New York* declared that state regulations of working conditions were illegally interfering with the

right of workers to make contracts since state limitations on the number of hours of work[7] denied workers the opportunity to contract for more hours if that suited their needs. Consequently, state regulations of working conditions were in violation of the Fourteenth Amendment because such limitations were denying workers a liberty without due process (Lindgren and Taub, 1993:36).

The movement towards protective legislation sustained a significant loss in *Lochner* and this led to the shifting of attention. Instead of protecting workers in general, the movement lobbied and succeeded in initiating legislation protecting women workers only. The movement based its argument on real or perceived social support for women's restricted participation in the labor force. In the three years following *Lochner,* nineteen states enacted some kind of regulation limiting working hours and/or prohibiting night work for women (Lindgren and Taub, 1993:36).

This type of protective legislation was challenged in Court by Muller, a laundry operator who was employing women workers and who after violating an Oregon state law was tried, found guilty and charged a ten dollar fine. Muller challenged the court's

[7] The state of New York had restricted the working hours of bakers to sixty per week or ten per day (Lindgren and Taub, 1993:36).

decision unsuccessfully, arguing that it violated *Lochner*. ?n *amicus curiae* brief[8] prepared in the case of *Muller v. Oregon* (1908) argued that Oregon's restriction of women workers' working hours, was not in violation of *Lochner* because there existed reasonable grounds to accept that long working hours presented a hazard to women's health with implications for the welfare of the family (Lindgren and Taub, 1993:36; Andersen, 1993:187).

It was evident thus, that underlying legislative and judicial efforts restricting women's participation in the labor force there were commonly held and structurally reinforced gender stratification pointing to the close and mutually reinforced structural relationship between law and social stratification. Particularly characteristic of the extent to which law and gender stratification are mutually reinforced is the way women's reproductive abilities have been historically controlled and regulated. Legal regulations of reproductive issues are indicative of the manner in which gender biased ideologies (intensified by class and race biases) affect women's participation in the public through the control of the private. Moreover, according to feminists, legal control of women's reproductive abilities reinforces the split between the private and public spheres which in turn reaffirms male control of women's sexuality and keeps women in their structurally

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[8]This *amicus curiae* brief was prepared for the state's argument in defense of the statute by Louis Brandeis, Josephine and Pauline Goldmark, and Florence Kelley on behalf of the National Consumer League (NCL). NCL was a middle and upper-class organization actively fighting for sex-based protective legislation. In the brief, it was argued that the state of Oregon could and should impose restrictions on women's working hours because of the hazard long working hours present to women's health. The evidence presented in the brief was contained in 113 pages of 'facts of common knowledge' as those who prepared the brief called them. These 'facts of common knowledge' were primarily a collection of short quotations, anecdotal reports interwoven with some expert opinion, stressing women's special vulnerabilities and the impact they have for the welfare of the family (Lindgren and Taub, 1993:36).

imposed 'appropriate' place, the private, which is further devalued (Jaggar, 1983:316-317, 336; Trask, 1986:52-53; MacKinnon, 1992:464-465; Stubbs, 1993:464-465).

The specific argumentation articulated on issues of women's reproductive abilities varied over time. Accordingly, the aim, the content and the justification of laws enacted for the regulation of reproduction and the related issues of contraception, abortion and sterilization, varied over time as well.

'Keeping women in their place'; Regulation of reproduction in the intersection of private and public.

Contraception and abortion --prior to quickening-- were both socially acceptable and legal before the 1800s. The widespread practice of abortion among 'respectable' women, contributed to a significant decline in birth rates among whites. During the first four decades of the 19th century, abortion and contraception became highly commercialized, routinely advertised, widespread and profitable enterprises. Legal regulation of contraception and abortion was limited. Initial regulatory attempts initiated in 1821 and 1841 aimed at securing safety of methods used, rather than restricting availability of abortion (Mohr, 1978 cited in Andersen, 1993:198 and Lindgren and Taub, 1993:415).

During the second half of the 19th century, the emerging medical profession -- along with the growing drug industry-- sought control over the abortion market in order to acquire profits as well as power and prestige. In their attempt to promote their professional interests, 'regular physicians' first attempted to eliminate midwives from the practice of abortion. As a second step, physicians initiated and directed intense efforts to restrict and eventually criminalize abortion (Andersen, 1993:198).

Heading the struggle against legal abortions, the American Medical Association

(AMA) exploited on the one hand, the fear of white, native-born Protestants that Catholic immigrants would outbreed them. On the other hand, the AMA capitalized on moralistic concerns of anti-obscenity activists. The 'offspring' of the alliance between the AMA and anti-obscenity activists was "The Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use" which was passed by Congress in 1873. Until 1938, when it was challenged in court, this Act which defined all abortion and contraception material as obscene, was frequently used by the Courts as legitimating source for the prosecution of numerous birth control activists and abortionists for obscenity (Lindgren and Taub, 1993:415).

In addition to articulating moralistic arguments, the AMA advanced arguments linking the women's movement to the availability of abortion. Playing upon popular fears that the suffragist movement and women's liberation and equality were diverting women from their traditional roles, primarily their maternal role, the AMA persuaded male political leaders that availability of abortion presented a threat to the social order and men's authority since it facilitated women's exit from the private sphere and consequent entrance into the public (Smith-Rosenberg, 1985:235; Taub and Schneider, 1990:158-159; Andersen, 1993:198).

Interestingly, the arguments used by the AMA paralleled the arguments used by the American Bar Association (ABA) in its respective struggle to restrict women's entrance in the legal profession. The ABA insisted that by allowing women to practice law, "...the traditional order of the family would be upset" (Vago, 1988:260). Thus, along with the explicit prohibition of women's participation in the professions --the public sphere-- comes the implicit statement that any method that may facilitate women's exit from the private domain should be restricted.

Medical doctors and the pursuit of their professional interests predominated in the anti-abortion movement until the first decades of the 20th century (Luker, 1992:471).

On the other hand, during the first decades of the new century, the emergence of the population control movement, the eugenics movement and the feminist movement for Voluntary Motherhood shifted their attention to issues of contraception and usually forced sterilization. Organizations such as the Planned Parenthood Federation of America[9], one of the leading organizations in the national and global campaign to promote family planning and birth control, engaged in a nation-wide effort for the legalization and availability of contraception and the prohibition of forced sterilization (Lindgren and Taub, 1993:417).

The legality of forced sterilization was first addressed in the Supreme Court decision *Skinner v. Oklahoma* (1942) which invalidated the compulsory sterilization of certain criminals. The significance of *Skinner* is found primarily in the explicit recognition of the right ***to*** reproduce; the connection, in other words, between individual rights and reproduction. Thus, *Skinner* prepares the way for the recognition of the right ***not*** to reproduce, a right with which the Supreme Court dealt almost 30 years later in *Roe v. Wade* (Lindgren and Taub, 1993:417-418).

In 1973, the U.S. Supreme Court's landmark decision in *Roe v. Wade* established what at first appeared to be women's control over their reproduction as an expression of their individual rights. Specifically, in *Roe v. Wade*, the Court acknowledged that in the case of abortion there are three legitimate concerns that need to be accommodated: the constitutional right to individual privacy; the right of the state to protect maternal health; and the right of the state to protect developing life. Each of these rights was given priority in one of the trimesters to which the gestation period was divided. During the

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[9]Planned Parenthood Federation of America is the offspring of Birth Control Federation of America. Birth Control Federation of American was the product of the merging in 1939, of the American Birth Control League and the Birth Control Clinical Research Bureau (Lindgren and Taub, 1993:417).

first trimester a woman's right to privacy prohibited any state interference with her decision to have an abortion. The state's right to protect maternal health was given priority during the second trimester and, thus, state interference to guarantee safety of methods and procedures was permitted. During the third trimester, the state's right to protect developing life could result in restrictions on abortion, although abortions necessary to save the life of the mother should be allowed (Andersen, 1993:196).

Roe v. Wade proved to be among the most highly controversial Supreme Court decisions. On the one hand, it was celebrated as a positive step towards women's liberation since it recognized women's right to make decisions about their reproductive freedom; in other words, the right ***not*** to reproduce. On the other hand, *Roe v. Wade* marks a period in which the debate about abortion, ceases to be a debate among interested professionals and becomes a public forum on the meaning of motherhood,[10] a forum in which issues are debated among people and groups representing widely diverse ideological

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[10]Historically, the debate over abortion was restricted among interested professionals striving to establish a professional position and maintain control and power over medicine. Technological advances in obstetrics led to a decline of abortions in order to save the mother's life while at the same time they allow and force physicians to make nuanced decisions about abortion. Such decisions, eventually bring to the fore the underlying philosophical question about whether the embryo is a life or a potential life form. "By bringing the issue of the moral status of the embryo to the fore, the new round [of abortion debate] focuses on the relative rights of women and embryos. Consequently, the abortion debate has become a debate about women's contrasting obligations to themselves and others....In essence, therefore, this round of the abortion debate is so passionate and hard-fought *because it is a referendum on the place and meaning of motherhood"* (emphasis in the original) (Luker, 1992:471). In light of the present debate on abortion, it is quite interesting to note that the Supreme Court rejected the state's claim that the embryo was a person within the meaning of the 14th Amendment and thus the state has a compelling interest to protect it by forbidding all abortions (Lindgren and Taub, 1993:431).

perspectives and orientations (Luker, 1992:471).

Conservative social groups aiming at restricting women's participation in the public sphere attacked the integrity and purpose of *Roe v. Wade* from the very beginning. Currently, most opponents[11] of abortion rights are found among the membership of the social movement identified as the 'pro-life' movement. Having enlisted people like former President Ronald Reagan who compared abortion to murder, and senator Jesse Helmess arguing for the legal protection of 'unborn human beings', the pro-life movement has undertaken significant efforts to overturn *Roe v. Wade*. Although their efforts have only been partially successful, the 'pro-life' movement has had a significant impact on the debate over abortion. Having invented the rights of the unborn, the 'pro-life' movement managed to shift the public attention from the rights of women to the moral standing of the fetus creating an artificial separation between mother and fetus and then pitted one

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[11]The abolition of abortion is also supported by few feminists, Andrea Dworking being the most well known among them. For Andrea Dworkin, safe and easily accessible abortions instead of liberating women, further contribute to their degradation. Legal and safe abortions secure easy sexual access to women on male terms. Unavailability of abortion -- i.e. the risk of pregnancy-- serves as a woman's 'weapon of survival' in her struggle to force the man to undertake his responsibilities and obligations. To secure this resource, the woman should reject legal and safe abortions and accept illegal abortion and the risk of death or maiming. In Dworkin's own words: "[O]nce a woman can terminate a pregnancy easily and openly and without risk of death, she is bereft of her best way of saying no--of refusing the intercourse the male wants to force her to accept. The consequences of pregnancy to him may stop him, as the consequences of pregnancy to her never will....If in order to keep pregnancy as a weapon of survival she has to accept illegal abortion and risk death, she will do it --alone, in silence, isolated, the only reproach for her rebellion against actual pregnancy being death or maiming. In this mess of illegal abortion, she will have confirmed what she has been taught about her own nature as a woman and about all women. She deserves punishment; illegal abortion is punishment for sex. She feels shame; she may consider it the shame of sex but it is in part the shame of any human in captivity feels in being used -- women being used in sex feel shame inseparable from sex" (Dworkin, 1992:470).

against the other (Eisenstein, 1988:186; Luker, 1992:470).

The antiabortion/antichoice movement[12] has engaged in an effort to grant fetuses personhood. In order to do so, the current leadership of the antiabortion/antichoice movement aiming at winning over the courts, the legislatures and the public has attempted a systematic strategic shift from religious discourses and authorities to medicotechnical ones. Through reference to medicotechnical authorities and extensive use of technology, anti-abortion/anti-choice advocates produced images of moving, free-floating, 'living' human fetuses, distinguished from the mother, separated, abstracted, from their context: the womb which they inhabit (Petchesky, 1992:483, 484, 488). This type of image creation is a strategically chosen move from the anti-abortion/anti-choice movement in order to win over the courts and the legislation in the movement's effort to grant fetuses personhood. Abstract individualism, decontextualization, autonomy applied to the situation of the fetus and 'objective' scientific imagery to support it makes the 'autonomous' fetus a good candidate for inclusion into the scheme of legal principles and granting of legal rights and protection (Smart, 1989:151, 157). What is particularly interesting in this strategy is the extent to which a socially discussed issue, abortion, is advancing arguments couched in legally understood terms –individualism, autonomy, rights etc—in order to be attractive and amenable to legal regulation promoting specific goals. The specific goals of the conservative critique against *Roe v. Wade* is to overturn the decision, prohibit or severely restrict abortion and thus contribute to the maintaining of the status quo which devalues and restricts women.

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[12]I chose to refer to the 'pro-life' movement as antiabortion/antichoice movement. I believe that the term 'pro-life' is used to conceal the real issues implicated in the debate over abortion and further confuse as for the aims and concerns of the movement.

The conservative, is not the only critique deployed against *Roe v. Wade*. Feminists have also criticized *Roe*, although for different reasons. The feminist critique addresses primarily the legal justification of availability of abortion; namely the right to privacy.

According to feminists, the grounding of abortion on the right to privacy has primarily two consequences. On the one hand, it obscures the connection between gender equality and reproductive freedom. On the other hand, the privacy doctrine leaves the patriarchal structure of the social world unchallenged and working within the confines of the private/public split, obfuscates the political aspect of the private realm. In other words, grounding abortion on the right to privacy legitimizes the separate sphere ideology and reaffirms the split between the public and the private (Eisenstein, 1988:187; MacKinnon, 1992:462).

Central in the patriarchal structuring of the social world, the ideology of the public/private split promotes the notion that there is a 'natural' division between the public sphere of work and politics in which historically only men had access and the private sphere inhabited by women and encompassing the home and family life. The private/public dichotomy has served two distinct and identifiable purposes. One was to convince women that the private was the 'natural' place where they should remain, away from the workplace, performing their 'natural' duties of childbearing and childbearing. The second purpose was the use of this ideology as the justification for prohibiting women to enter the public sphere. The legal system exploited this ideology and contributed to the performance of both functions (Rifkin, 1980:83, 85, 95; Olsen, 1983).

The dichotomy between the public and the private was further used by the legal system in another way. The operation of law was clearly placed in the public sphere which was defined --at least rhetorically-- the only appropriate domain of legal and social regulation. Activities taking place in the private domain were purportedly immune to

state intrusions and regulations (Olsen, 1983:1502-1503).

Feminists have consistently argued that male dominance and the subordination of women is sustained by the absence of protective legal regulation pertaining to the private. Ideological constructs contribute to the presumption that the private is a 'safe heaven' in which 'legal persons', autonomous individuals, equal partners, interact freely and equally as long as the state does not interfere. What is intentionally concealed by these ideological constructs is that the autonomous, free-to-act individual 'legal persons' are assumed to be men. Presumptions of equality in relations within the private combined with the selective regulation of family relations lent support to male control over family life and women in particular. Consequently, practices such as marital rape and wife abuse can be systematically ignored and their effects minimized (MacKinnon, 1987:93, 97; Stubbs, 1993:465-466; Rifkin, 1980:86, 95; Taub and Schneider, 1990:158-159).

In this context, connecting abortion to privacy and the private domain, strips women of significant legal resources to protect their reproductive freedom. "The freedom promised by the right to privacy runs up against women's right to security in the home....Any effort to protect women from private oppression by their husbands may expose them to public oppression by the state; efforts to keep the state out of our personal lives will leave us subject to private domination" (Olsen, 1984:393).

The limiting effects of the grounding of abortion on the privacy doctrine reveals its extent in Supreme Court cases that followed *Roe v.Wade.* In the 1980 case of *Harris v. McRae* the Supreme Court upholding the Hyde Amendment --a federal statute barring Medicaid funding for almost all abortions-- ruled that the privacy doctrine does not compel states to provide funding for abortion. In *Webster v. Reproductive Health Services* (1989) the separation between the public and the private sphere, articulated in *Roe* and in *Harris* was extended to let stand Missouri's prohibition of the performance of abortions in public facilities and by public employees. The same decision let stand

Missouri's requirements of viability tests at 20 weeks of pregnancy. The most recent invoking of the separation between the public and the private was in *Rust v. Sallivan* (1991) which prohibits federally funded agencies from even counselling women on abortion (Lindberg and Taub, 1993:433; Frug, 1992a:432). Consequently, in the words of MacKinnon, "...women got abortions as a private privilege, not as a public right" (MacKinnon, 1992:466) and as such is under scrutiny and jeopardy especially in times of increasing conservativism and hostility against women. There are, however, those who argue that grounding abortion on the right to privacy was probably the best way to address women's demands to availability and accessibility of safe abortions. Eisenstein, for example, argues that given the conservative political climate of the 1980's, grounding abortion on the right to privacy was a strategy that worked. Arguing for abortion as a right of privacy is more effective in the confines of a liberal legal system which values and privileges individual rights --the right to privacy in this case-- as universal rights (Eisenstein, 1988:188).

Organized women's groups and their experience with law: law's power and the potential for social change.

Women's significantly negative experiences with the results of legal regulations led to the historical recognition of the power of law in shaping people's lives. Given this realization and despite difficulties and negative experiences, individual women and women's organizations saw legal change as one way of affecting social change which would better their lives (Baron, 1987:474; MacKinnon, 1991:1285). Since 1869 women's rights organizations engaged in a limited at first use of the courts to advocated a number of women's issues. In the mid-1960's the use of the courts and litigation became a significant

political tool while at the same time, the National Women's Organization (NOW) as well as other women's organizations established nonprofit legal corporations dealing primarily with sex discrimination cases. Women's organizations pursuit of women's rights have also had an impact on the direction of the women's movement over the years. Nevertheless, women have seen many hard-won and highly celebrated legal reforms be subjected to undue scrutiny and controversy and at times turning against women and their accomplishments[13] (O'Connor, 1980:6-7; Rifkin, 1980:86-87).

It was not only the mid-60's that enacted legislation[14] critically contributed to progress in women's occupational and employment opportunities. Despite their beneficial impact, however, these legal constructs have not been adequate in addressing the deeply rooted problems associated with gender bias and its implications for women's participation in the public life. Evidence of such problems is found in the interpretation and application of laws purported to establish and advance women's access and equality in the workplace (Rhode, 1988:1208, 1225-1226).

As recently as 1977, the U.S. Supreme Court decided that sex was a reasonable qualification for performance on the job as a maximum-security prison guard.

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[13] One such case would be abortion rights and the controversy surrounding *Roe v. Wade* (Rifkin, 1980:86). Furthermore, the enforcement of enacted legal reforms primarily depends on the justice system and its agents--judges, lawyers, justice system personnel, the police-- who frequently hold the very ideological stance that the legal changes challenge (Chesney-Lind, 1977; 1978; 1987; Daly, 1989a; 1989b; Spohn and Horney, 1991; Steffensmeier et. al., 1993:432).

[14]The legal regulations which have been particularly influential in the progress of women's workplace engagement was the Equal Pay Act of 1963 prohibiting sex-based discrimination in wages. Title VII of the 1964 Civil Rights Act prohibiting sex-based discrimination in hiring, advancement, termination, training and related terms of employment. Finally, the Executive Order 11,375 requiring federal contractors to establish affirmative programs for women (Rhode, 1988:1208).

Consequently, and with the rationale that sexual assaults would be prompted by their mere presence, women were not allowed to be hired as maximum-security prison guards (Taub and Schneider, 1990:151). Until 1991 when the Supreme Court passed judgement in *Automobile Workers v. Johnson Controls* it was legal to prohibit women from working in high-risk but well paid jobs which presented potential harm to a fetus or to women's reproductive system. There were no similar regulations concerning high-risk jobs presenting potential harm to men's reproductive system or equally harmful but low-paid jobs filed by women (Chavkin, 1979; Wright, 1979; Andersen, 1993:187-188).

Title VII of the 1964 Civil Rights Act, for example, although prohibited discrimination on the basis of sex --as well as, race, color, religion and national origin-- it provided for *bona fide* occupational qualifications (BFOQ) which allowed hiring on the basis of sex, should sex be a reasonable qualification for performance on the job. Although a number of court decisions clarified that the BFOQ clause should be used in a restrictive way, the BFOQ clause continues to serve as a justification for impeding women's employment. For example, the BFOQ clause is used as the justification for imposing weight-lifting limitations and excluding women from non-traditionally female occupations (Andersen, 1993:187).

Succeeding in the enactment of a specific law is not sufficient, since the enforcement of enacted legal reforms primarily depends on the justice system and its agents--judges, lawyers, justice system personnel, the police-- who frequently hold the

ery ideological stance that the legal changes challenge[15] (Naffine, 1990:111; Spohn and Horney, 1991:139). Indicative of the extent to which sexist attitudes and practices are abundant among justice system personnel is the significant number of barriers women legal professionals faced and continue to face and block them from fully participating in the legal profession. Even today that the number of women legal practitioners has increased dramatically, gender stratification within the profession persists and women continue to occupy lower status positions, earn less than men, and be less likely to become partners (Weisberg, 1977; Epstein, 1981; Heinz and Laummann, 1982; Fossum, 1983; Winter 1983; Curran, 1986; Menkel-Meadow, 1989a; 1989b; Liefland, 1986; Chambers, 1989; Hagan et al. 1991).

Furthermore, gender biased behavior affects women legal practitioners' professional lives in other ways as well. Gender biased behavior, frequently in the form of overt sexual harassment, demeaning and devaluing comments is found to affect the credibility of women practitioners and, at times, even the outcome of cases. Intimidation

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[15]Spohn and Horney (1991) tested the probability that evidence on victim's past sexual history will be introduced in a rape case in six jurisdiction that had enacted "rape-shield laws". Judges in these jurisdictions were given different scenarios of hypothetical rape cases and were asked whether given the specifics of the rape-shield law enacted in their jurisdiction they believed that evidence on prior sexual history would be admitted. Spohn and Horney (1991) found a relationship between strictness of law and admission of evidence. In jurisdictions with stricter laws, evidence on prior sexual history was more difficult to be admitted. In cases of "acquaintance rape" the rules were more likely to be bent than in cases of "stranger rape." In their article, they conclude that "[a]lthough the law would restrict introduction if the evidence is not relevant, the restrictions are probably meaningless if criminal justice officials believe that any evidence of prior sexual encounters between the victim and the defendant is in fact relevant" (Spohn and Horney, 1991:157). Judges' views that evidence on past sexual history is more relevant in the cases of "acquaintance rape" are likely guided by commonplace ideological assumptions concerning "legitimate" and "illegitimate" victims and women's sexuality (Spohn and Horney, 1991:157).

and harassment in the course of their occupation pose significant obstacles to legal practitioners' full participation in the public sphere (Frug, 1992b:1; Rosenberg et. al., 1993:416; Massachusetts Supreme Judicial Court, 1992:9).

Feminist challenges to law and the legal system

Continuing the struggle for legal change and having realized that legal reforms have not significantly ameliorated women's social position, feminists challenged the sexism of a wide range of substantive laws. Progressively, the feminist critique exposed the maleness –androcentrism of law—as well as the way it structures core legal assumptions and doctrines. This kind of feminist legal critique generated a whole body of literature, identified as 'feminist jurisprudence' literature (Naffine, 1990:1). A large number of scholars such as Catharine MacKinnon, Robin West, Carrie Menkel-Meadow, Ann Scales, Nadine Taub, Deborah Rhode, Christine Littleton, Leslie Bender, Lenore Walker, Elisabeth Schneider, Carol Smart, Ngaire Naffine, Zillah Eisenstein, have come to be associated with feminist jurisprudence and their writings have been instrumental in shaping the form and the direction of the issues, the discussions and the debates within feminist jurisprudence (Goldstein, 1992:14-15).

Central characteristic of feminist jurisprudence is the inseparability of theory and praxis. Consequently, the project of feminist jurisprudence involves the development and establishment of a fully integrated theoretical framework challenging mainstream traditional legal theory as well as engagement in feminist praxis transforming contemporary social reality (Smart, 1989:66).

Given that feminist jurisprudence presents a challenge to traditional legal theory, and that praxis in the form of theory and activism is an essential part of the project of feminist jurisprudence, an important question is whether feminist jurisprudence

scholarship has been successful in affecting changes in legal theory and practice that benefit women. In addressing its goal of legal change, feminist jurisprudence must consider at least three things. First, the issues and the questions addressed by feminist jurisprudence scholars need to be clearly and systematically articulated so that feminist jurisprudence propositions and arguments can be presented to legal theorists, practitioners, and social activists. Second, the debates, issues, questions and suggestions provided by feminist jurisprudence scholars must reach the wide audience –legal practitioners, theorists and social activists-- it seeks to address. It is imperative that theorists, practitioners, social activists aiming at ameliorating women's social position and further restructuring the social organization, be reached. Third, it is important that theorists and practitioners be introduced to a gender centered, in-depth, substantive, feminist critique of law and the legal order. To accomplish these goals, feminist jurisprudence scholarship needs to be introduced and then incorporated into the mainstream of legal theory. Feminist jurisprudence theoretical articles should, for example, be published, read and cited in other scholarly work. Incorporation of feminist jurisprudence scholarship into the mainstream of legal scholarship can then, potentially, contribute to a progressive shift in the dominant paradigm of legal thought in the way that Stacey and Thorne (1985) have observed occurring in other disciplines.

Research questions.

Given my interest in the transformative potential of feminist jurisprudence, my goal in this dissertation is twofold. First, I will address the extent to which feminist jurisprudence scholarship has been incorporated into mainstream legal theory, thus increasing its potential to influence mainstream legal thought. Second, I will consider the types of arguments and the kinds of challenges to mainstream legal thought proposed by

feminist jurisprudence scholars in selected areas of law.

To answer the first question I will assess the degree to which the discourse on feminist jurisprudence has been incorporated into mainstream legal scholarship. To evaluate the degree of incorporation I will look at the number of feminist jurisprudence articles published in influential journals over a period of time. Legal journals' level of influence will be evaluated on the basis of each journal's relative standing within the discipline. Further, the potential of feminist jurisprudence scholarship to affect mainstream legal thought and consequently initiate a paradigm shift in legal theory will be assessed through an evaluation of the use scholars make of published work on feminist jurisprudence. To accomplish this task, I will follow the publication patterns of a number of feminist jurisprudence articles over a period of time.

I will address the second question of the substance of feminist jurisprudence discourse present in mainstream legal thought, by analyzing the content of feminist jurisprudence articles published in the areas of criminal and family law in order to classify them according to the three phases of feminist jurisprudence theory. I have selected these two areas of law as representing a primarily 'male' legal specialization in the sense that it addresses issues more likely to occur in the public and is considered a prestigious specialization –penal law—and a primarily 'female' legal specialization in the sense that it addresses the private sphere and women were more likely to be found in this specialization –family law.

Addressing these two questions will not provide a definitive answer concerning the extent to which feminist jurisprudence scholarship has contributed to a paradigm shift in legal scholarship. I will, however, be able to address the potentiality of such a revolutionary shift; a shift which could affect society at large to the extent legal change and social change interplay, are intertwined and one affects the other.

Addressing my research questions however requires that I deal with two related

issues. First, to the extent the feminist jurisprudence project involves legal change and social change, it is imperative that I look at the way feminist jurisprudence scholars understand the relation between social change and legal change as well as the way feminist jurisprudence scholars arguments and propositions concerning social and legal change compare and contrast with other legal perspectives' understanding of the relation between legal and social change. Second, to the extent development of theoretical frameworks which effectively challenge the patriarchal structure of law is among the focal points of feminist jurisprudence as a perspective, it is also imperative to look at the way these theoretical frameworks have evolved as well as what is the current status of the literature. The purpose of looking at feminist jurisprudence theoretical frameworks in relation to law is not as much descriptive of feminist jurisprudence arguments and propositions as it is indicative of the extent to which feminist jurisprudence literature has progressed in the articulation of arguments critical of the dominant legal paradigm and the extent to which feminist jurisprudence literature has the potential to challenge patriarchal legal principles and conceptually transform legal thought.

In terms of the structure of my presentation, I will address the feminist jurisprudence arguments concerning social and legal change in chapter 3. In chapter 4 I will describe feminist jurisprudence as a perspective, the different phases in which it evolves as well as its relation with the women's movement and feminist theory in general. In chapters 5 through 8 I present my quantitative and qualitative analysis while in chapter 9 I present my conclusions and in general discuss my findings and their implications. In the next chapter thus, I proceed with the presentation of the relationship between law, legal and social change.

CHAPTER 3. THEORETICAL PERSPECTIVES ON LAW AND SOCIAL CHANGE

The relationship between law and society in general, and law and social change more specifically, has been largely debated among legal and social theorists. These theoretical debates are carried on under the rubrics of two general theoretical approaches: structural-functionalist oriented perspectives and conflict oriented perspectives. Based on distinctly different, if not antithetical theoretical positions, structural-functionalism, and conflict perspectives formulate contrasting arguments concerning the relationship between law and society and law and social change. That is, structural-functionalism perceives law as a social mechanism, relatively autonomous to other social systems, which follows and responds to the 'needs' of society as a whole in order to regulate them. To the extent structural functionalists address the relationship between law and social change they argue that legal change represents functional adaptations responsive to changing social needs. Theorists affiliated with conflict-oriented perspectives on the other hand, tend to view law as a social institution based on power relations which constitute an integral part of society, interconnected, interdependent and mutually defined with other social institutions. Consequently, changes in the power structure within any of the social institutions may and do result in changes of power relations in other social institutions. In that sense, legal change can be the effect of social change as well as effectuate social change (Vago, 1994:225-228; Gordon, 1984:60-65). Overall, while structural-functionalist theorists tend to emphasize a rather stable relationship between law and society, specifically law and social change, conflict oriented theorists tend to view the same relationship as fluid, dynamic and reciprocal amenable to social and institutional manipulation.

In this chapter, I will address the basic theoretical arguments articulated within

structural- functionalist and conflict theory as they pertain to the relationship of law and society and the derivative relationship of law and social change. I will specifically focus on two conflict-oriented theoretical approaches particularly relevant to my study, the Critical Legal Studies (CLS) movement and feminist theory. More specifically, I will examine the way CLS and feminist theory understand the role of law in society in relation to social change.

Structural-functionalist perspective.

The importance of social needs.

Based on a biological analogy of society, theorists who employ a structural-functionalist perspective to study social life argue that societies, much like living organisms, are complex, constantly evolving systems with identifiable social needs. According to structural functionalism, social needs have a dual operation within social systems. On the one hand, social needs operate as the driving forces guiding societies in the discovery of the means necessary for their fulfillment. On the other hand, they operate as the constraints within which the exploration of ways to fulfill social needs will be limited. Within social systems, the responsibility for meeting social needs is relegated to social institutions and social structures which are harmoniously co-operating in order to complete their designated tasks. Harmonious co-operation between societal parts is based according to structural functionalists, on consensual agreement by institutions and/or groups of individuals over the meaning of values and norms and secures the desirable for societies state of functional equilibrium and stability (Gordon, 1984:60).

Law as a mechanism of conflict diffusion and management.

The state of equilibrium and stability, according to structural functionalists can and is disturbed by conflict which occasionally occurs between social institutions and/or individuals. Because it threatens the survival of the social unit, conflict, according to structural functionalists, needs to be eliminated or minimized. Thus, the development of mechanisms whose social function is to absorb and diffuse social conflict is essential. One such mechanism to diffuse conflict and maintain stability in society is law. The operation of law as a mechanism of conflict diffusion and maintenance of societal stability defines law's relation to society (Gordon, 1984:70; Kidder, 1983:79; Macionis, 1991:18-19; Vago, 1994:47-48, 56).

Underlying the structural-functionalist understanding of the relationship between law and society, is the notion that there exist two separate spheres, the social and the legal. The social is the sphere where 'real' life –the life of the market, the production, the family and the like—occurs. The legal sphere constitutes a separate from social life realm in which specialized and professional activity takes place. Legal activity in general, and law in particular, are auxiliary to social life in the sense that their purpose is to serve existing and emerging social needs, particularly, the needs of conflict management and maintenance of stability and equilibrium. Structural-functionalists thus, understand law as an autonomous from social life, social system whose function is to respond to social needs (Gordon, 1984: 60).

Law's autonomy from the rest of social life.

According to Roberto Unger, the structural-functionalist understanding of legal autonomy involves four interrelated aspects: substantive, institutional, methodological

and occupational. "Law is autonomous in a substantive sense when the rules formulated and enforced by governments cannot be persuasively analyzed as a mere restatement of any identifiable set of non-legal beliefs or norms, be they economic, political, or religious" (Unger, 1976:52-53). In other words, according to structural functionalists, law addresses the needs and concerns of broadly defined groups of people. As such, law is purported to be general, uninvolved and uninterested in the process of initiating and structuring hierarchical relations. Even further, according to structural functionalists, law's generality and uniformity establish and guarantee an intrinsically neutral and value-free process (Unger, 1976:53-54; Stubbs, 1993:455-457).

Law's substantive autonomy is interlinked with its institutional autonomy. "Law is institutionally autonomous to the extent that its rules are applied by specialized institutions whose main task is adjudication" (Unger, 1976:53). That is, specialized legal institutions –the courts—are understood as being separate and independent from the social institutions which enact laws –the legislature. The legal system's alleged institutional autonomy is purportedly insulating legal practitioners and theorists, lawyers and judges in particular, from the impact of the socio-political processes that lead to the enactment of laws. As a result, according to structural functionalists, legal practitioners can administer justice impartially. In order to safeguard the legal system's institutional autonomy and guarantee application of laws impartially, uniformly, reliably and predictably, the judiciary, according to structural functionalists is further separated from other aspects of social life. That is, courts can render opinion only after their opinion is solicited and only on the issues brought to them by competing adversaries. Moreover, even when legal solution is sought, judges do not express personal opinions but are rather constrained into applying legal rules, norms and procedures (Unger, 1976:54; Black, 1989:92; Kairys, 1990:1; Epstein and Kobylka, 1992:12).

The third aspect of legal autonomy as defined by Unger (1976:53) is

methodological autonomy. "Law is autonomous at the methodological level when the ways in which these specialized institutions justify their acts differ from the kinds of justification used in other disciplines or practices" (Unger, 1976:53). This means that there exists a methodology unique to law and distinct from moral, political, or economic discourses. Such a methodology –legal reasoning—occupies center stage within legal positivism –the legal application of structural functionalism—which is recognized by legal scholars as the dominant perspective in mainstream legal theory. Legal reasoning's impact is manifested in all aspects of legal theory and practice and especially in doctrine guiding legal decision-making, particularly the doctrine of precedent[16] --essential in common law countries—purported to minimize arbitrariness and provide certainty, predictability and continuity within the legal system (Unger, 1976:53; Gordon, 1984:68-69; Black, 1989:92; Epstein and Kobylka, 1992:11, 12; Stubbs, 1993:461; Vago, 1994:114, 116).

A fourth aspect of legal autonomy is defined as occupational autonomy; "[a] special group, the legal profession, defined by its activities, prerogatives, and training, manipulates the rules, staffs and legal institutions, and engages in the practice of legal argument" (Unger, 1976:53). Expressions of occupational autonomy can be found in the process of certification by the Bar, the representation of client's interests by lawyers, the establishment of the legal discipline as an independent scholarly discipline as well as training students in the application of legal reasoning, a purportedly unique, distinct and

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[16] A rather simplified approach to the doctrine of precedent is that similar cases should be treated in a similar way. A judicial or administrative decision becomes precedent when "…a rule ('principle') is discovered (invented) in one case, and then this rule (and not the concrete decision) is applied in later cases" (Timasheff, 1974:307). Application, however, should be such that "[i]f a similar case…is judged by the same tribunal or board, or by another tribunal or board, the same solution should be chosen" (Timasheff, 1974:306).

unavailable to the untrained, rationalization process able to provide the 'correct' answer to real or manufactured legal problems (Friedman, 1973:530; Sugarman, 1986:30; Naffine, 1990:30-31, 33, 34; Kairys, 1990:4; Stevens, 1983:63; Kennedy, 1990:43; Simon, 1984:470-472).

Social and legal change; law as responsive to social needs.

According to the structural-functionalist perspective, although law and society are separate, they nevertheless relate. Law and society, thus, relate primarily through the legal system's functional responsiveness to existing and changing needs of society. In other words, although social stability is their main interest, structural functionalists acknowledge the possibility and even inevitability of change. Change however, is according to the structural-functionalist perspective, a slow, evolutionary progressive process which at times causes social disturbances. Disturbances are usually short-lived and affect only parts of the social system. Changes in one part of the social system are accommodated by functional adjustments and adaptations in other parts of the social system. Through this process of adaptation social needs are redefined and society regains its equilibrium anew (Parsons, 1951:525-533; 1966:21-24; Hess et. al., 1993:15-16; Gordon, 1984:63).

Law according to structural functionalists is among the social institutions called upon to adapt to existing and emerging social needs. In the process of adaptation law adjusts its doctrine, principles, rule application, even practice in order to functionally meet these emerging social needs. For example, according to structural functionalists, the practice of law underwent significant changes resulting in extensive professionalization, specialization and formalization of education and practice as a response to increased complexity of social and economic modern life. This process of legal adaptation and

adjustment to social needs, according to structural functionalists can be dysfunctional for short periods of time. That is, while in the process of adjusting there may be a time lag between social needs and legal provisions. However, despite instances of lag and dysfunction, legal adjustment and adaptation –legal change— is accomplished. In other words, according to structural functionalism, social change precedes legal change. Moreover, legal change according to structural functionalism is essentially a functional adaptation of one part of the social system to changes occurring in other parts of the social system (Gordon, 1984:64-65).

Overall then, law is understood by the structural-functionalist perspective as an autonomous, internally consistent, self-contained, impartial, neutral, objective, rational, disinterested, persistent, predictable, general, uniform and, thus, just and fair mechanism of social conflict resolution. This mechanism is purported to stand apart from politics, morals, beliefs, socio-economic and political processes while at the same time is considered to be functionally responding to existing and emerging evolutionary and progressive social needs (Naffine, 1990:24-35; Stubbs, 1993:457; Unger, 1976:52-53; Gordon, 1984:60-65).

Critique of the structural-functionalist perspective.

The structural-functionalist perspective in social sciences in general and in law in particular has attracted much criticism. As basic criticisms against structural functionalism in general, some social scientists argue that structural-functionalist analysis is first, ahistorical. Second, structural functionalism is unable to adequately deal with social change because it focuses on slow evolutionary processes and minimizes the possibility of rapid social changes. Third, structural functionalism is unable to adequately deal with conflict because it approaches it only as an expression of temporary

dysfunction (Ritzer, 1988:222-223 Gordon, 1984:98, Kidder, 1983:81, 85, 86-87; Calhoun et. al., 1994:23). In this way, structural-functionalists "…obscure the ways in which…seemingly inevitable processes are actually manufactured by people who claim (and believe themselves) to be only passively adapting to such processes" (Gordon, 1984:70)

Critics of the structural-functionalist perspective in the area of law have argued "…that law does not operate neutrally, ahistorically, or independently of the underlying power relationship in society. [Furthermore]…those 'underlying power relationships' must be understood as having both a class and gender dimension" (Polan, 1993:419). Studies of specific laws, such as the law of vagrancy, antitrust legislation, regulation of commercial life and fraud, rape, Social Security Legislation, and tort, have pointed to the interdependence and mutual reinforcement between law and social structures. In other words, critics of the structural functionalist perspective have shown how law, the capitalist system of production and patriarchy are interdependent and mutually reinforced and have been used to facilitate and promote existing and emerging social class interests as well as keep women in a secondary to men social position. Consequently, some legal scholars critical of structural functionalism have shown that the construction of laws and the legal system are intertwined and mutually reinforced with various aspects of the social structure[17] (Taub and Schneider, 1990:153-154; Chambliss, 1964; Coleman, 1985; Schwendinger and Schwendinger, 1982; 1983; Levi, 1984; Olsen, 1984; Bender, 1988; 1993a; 1993b).

In addition to showing the interdependence between law and social structure in relation to the construction of the legal order, critics of structural functionalism have also

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[17]Examples of the ways in which law and the legal system have historically intertwined and reinforced aspects of the social structure as these apply to women were presented in chapter 2 (i.e. abortion laws, labor laws etc.)

shown that contrary to the structural-functionalist claims, application of laws is not autonomous but rather dependent upon social structure. Specifically, empirical political and social studies have shown that although legal doctrine may provide some basic guidelines for legal application, legal practitioners' previously defined attitudes and values rather than strict doctrinal application, are more influential on the way specific cases are decided (Gordon, 1984:66; Vago, 1994:15; Naffine, 1990:28, 39-41; Kidder, 1983:132-133; Epstein and Kobylka, 1992:13).

Feminist scholars in particular, have pointed to a number of Supreme Court cases in which the underlying issue was equality between men and women and the way in which stereotypical patriarchal understandings about the social position of men and women informed the Court's decisions. In *Rostker v. Godberg* for example, which upheld the exclusion of women from the military draft, dissenting Justices, White, Marshall, and Brennan explicitly acknowledge that the Court's decision was based on socially held preconceptions about men's and women's appropriate social position. Similarly, in *Michael M. v. Superior Court,* assumptions about men's and women's sexuality guided the Court in its decision to uphold California's statutory rape law which made only the male legally liable for engaging in sex with minors (Eisenstein, 1988:43, 62-65).

The bulk of criticism against structural functionalism originates from conflict oriented theorists who question structural-functionalist assumptions about law and society. The basic premises of conflict oriented perspectives as they are articulated specifically with the Critical Legal Studies movement and feminist jurisprudence I address next.

Conflict perspective.

The importance of conflict and inequality.

Contrary to the structural-functionalist emphasis on consensus and functional integration of social institutions, the conflict perspective focuses on discord, opposition and struggles –conflict-- between social groups. According to the conflict perspective, conflict within societies does not represent a temporarily dysfunctional social condition. Rather, argue conflict-oriented theorists, conflict characterizes societies organized on the bases of inequality. Social groups in such societies, argue conflict theorists, have disparate access to resources based on structural positions --defined on the basis of social class, race, gender, age, ethnicity—as well as associated forms of power. In addition to being ever present, conflict is also inevitable in societies organized on the bases of inequality as social groups struggle over control of resources and power. Thus, according to the conflict perspective, social conflict generates from unequal power relations, persistently permeates the social organization and results in the domination of one group over others (Hess et. al, 1993:17; Macionis, 1991:18-19; Gordon, 1984:101; Vold and Bernard, 1986:267, 272-273).

Social conflict and social change.

Power relations and the social organization they produce, according to the conflict perspective, are the outcomes of social struggles. As such power relations and the resulting social organization, are neither static, nor constant. Rather, they are fluid, dynamic and subject to change at any given moment. Consequently, according to the conflict perspective, to the extent power relations are altered and power balances shifted, social structure is affected and social change can and does occur. Furthermore, to the

extent conflict theory is associated with social activism, social change aiming at the empowerment of socially weak social groups, is desirable (Hess et. al, 1993:17; Macionis, 1991:18-19; Gordon, 1984:101; Vold and Bernard, 1986:267, 272-273; Schaefer, 1986:18, 534).

Overall, according to the conflict perspective, social conflict and struggle between social groups with unequal powers are dynamic elements of social organization. Depending on the distribution of powers, social conflict, argue conflict theorists, can contribute to the establishment, support and perpetuation of the status quo or effectuate social change.

Social conflict and the law.

Conflict-oriented theorists have paid particular attention to the relation between law and society and especially law and social change. In other words, conflict-oriented theorists have looked at the ways social groups can use the law in order to either maintain and promote or change existing social structure and power relations. According to conflict theorists, "[l]egal forms and practices are political products that arise from the struggles of conflicting social groups…" (Gordon, 1984:101). Consequently, contrary to the structural-functionalist understanding of the role of law, conflict-oriented theorists understand law as the product of existing social relations of power and not as a functional response to societal needs. Specifically, according to conflict-oriented theorists, law is enacted and enforced by powerful social groups and serves to promote and maintain these groups' interests. To that extent, conflict-oriented theorists consider law as generating and maintaining rather than resolving social conflict (Sumner, 1982:256-258; Smart, 1995:72; Chambliss, 1979:7; Vago, 1994:49; Kidder, 1983:83, 87-89; Vold and Bernard, 1986:272-274).

A key element in the power of law to promote and maintain the interests of the powerful as well as block changes to the benefit of powerless groups is the process of legal reification; the process, in other words, of drawing abstract legal concepts from concrete social relations and experiences and subsequently substituting the abstract concept for the concrete social relations and experiences. As an outcome of this process law is purported to acquire material substance as a singular, unified, internally consistent body of knowledge vested with the legitimacy and authority to define events and relationships of every day life (Gabel, 1982:263; Smart, 1989:4).

The central outcome of legal reification, detrimental for understanding the role of law in society is, according to conflict theorists, the power of law to conceal and obfuscate the power relations underlying and guiding the enactment and application of law and the legal order. Emphasizing legal principles of neutrality, objectivity and equality under the law, powerful social groups manage to enact laws which inscribe specific class, race and gender interests in the purportedly abstract form of rights and duties applying to all members of the society equally (Sumner, 1982:258; Poulantzas, 1982:193; Gabel, 1982:272).

Overall then, conflict-oriented theories understand law as a product of social conflict between groups with unequal power who struggle to either maintain or gain power and control over resources and processes. Furthermore, law and its power to impose and implement definitions of reality are used by the dominant social groups to establish and maintain their control over less powerful social groups. In that way, according to conflict-oriented theorists, law generates, promotes and sustains conflict between social groups (Kidder, 1983:91-92; Vago, 1994:50; Turk, 1976:276-281).

Law and social change: reciprocity of relation.

The conflict perspective's understanding of the relation between social and legal change largely depends upon the theoretical understanding that law and society are inextricably linked and reciprocally defined. Thus, according to conflict-oriented theorists "[l]aw creates society and society creates law; the relationships are complex and multidimensional. The resulting systems of action must be seen as a totality" (Trubek, 1984:609).

To the extent legal and social systems are mutually defined and one affects the other, it follows, according to conflict-oriented theorists, that changes in one result in changes in the other. Furthermore, as constructs of social relations, law and the legal system on the one hand structure people's lives while on the other are amenable to critique and reconstruction. To that extent, the relationship between law and social change is reciprocal (Trubek, 1984:609-610; Klare, 1990:74-75, 86).

Conflict-oriented theorists have developed different accounts explaining the relationship between law and society in general, and law and social change in particular. Two of these accounts expressed in the theoretical perspectives of Critical Legal Studies (CLS) and feminist legal theory –feminist jurisprudence-- are particularly relevant to my study. I will address each of these theoretical perspectives separately starting with CLS in the following sections.

Critical Legal Studies movement.

An explicitly conflict-oriented theoretical perspective, the Critical Legal Studies (CLS) movement, emerged during the late 1970s when a number of legal scholars –such as Duncan Kennedy, David Trubek, Mark Tushnet as well as Roberto Unger, Robert

Gordon, Karl Klare, Mark Kelman-- involved in social activism and committed to social change formed a social and professional network. This network was formalized in 1977 in the form of the Conference of Critical Legal Studies and came to be identified as the Critical Legal Studies (CLS) movement (Tushnet, 1991:1523-1524; Cardarelli and Hicks, 1993:510-513; Minda, 1988:614).

Although there is great diversity within the CLS, the movement's main project is to "…scrutinize and critically judge the ways in which law is taught and practiced, as well as its role in maintaining the status quo of the social structure" (Cardarelli and Hicks, 1993:512). Moreover, committed as it is to social activism and social change, the CLS movement's final goal is the reshaping of the present socio-legal order (Cardarelli and Hicks, 1993:512-513; Tushnet, 1991:1538; Matsuda, 1987:327-329; Gordon, 1984:95-97; Wishik, 1985:66; Kelman, 1987:244; Minda, 1988:601).

In summary then, CLS is critical of the notion that the role of law is to guarantee equality and justice and is further "…characterized…by a focus on the role of legal ideas in capturing legal consciousness, by agreement that fundamental change is required to obtain a just society, and by a utopian conception of a world more communal and less hierarchical than the one we know now" (Matsuda, 1987:326-327).

Law's indeterminacy and its oppressive and liberating impact.

As a conflict-oriented theoretical perspective CLS rejects the structural-functionalist notion of the separation between the legal and the social sphere. According to critical legal scholars thus, law and society are the products of social struggles inextricably connected, constantly interacting and shaping each other. Based on the understanding of the interdependence of law and society, critical legal scholars attack the notion that law has an internal logic which contributes to consistency and predictability.

To the contrary, argue critical legal scholars, there exists a fundamental contradiction within law, an indeterminacy of legal doctrine. Law's internal contradiction, argue critical legal scholars, is such that not only is legal doctrine incorporating opposing and contradictory statements but it can also be manipulated through the implementation and use of appropriate vocabulary and tactics which have the potential to yield and justify an almost infinite number of different outcomes of specific cases (Hutchinson and Monahan, 1984:206; Trubek, 1984:578; Minow, 1986:84; Minda, 1988:601; Milner, 1991:258).

In addition to its structural component, inherent in legal doctrine, the impact of law's indeterminacy on social organization and social change, argue critical legal scholars, is intensified through legal application. To that effect, the role of legal interpretation is of significance for the CLS. Common law tradition, argue critical legal scholars, allows much discretionary power to judges, lawyers, law educators and other legal interpreters. In that sense, legal interpretation, according to critical legal scholars, has the potential to be used either as a mechanism of oppression from the dominant group or a mechanism of liberation for disadvantaged social groups (Minda, 1988:620-621; Trubek and Esser, 1989:28-29; Dalton, 1989:207; Unger, 1989:339).

Legal interpretation and application allowed and facilitated by the indeterminacy of legal doctrine is oppressing to the extent that, as a product of power relations and struggles, represents, reinforces and perpetuates the interests of the dominant class. Specifically, mainstream legal doctrine, interpretation and practice are used by the dominant class in order to mystify social class relations by hiding the existence of power under the rubric of purportedly objectively defined and universally applied individual rights. Moreover, legal doctrine and principles relating to individual rights are established and supported by the perpetuation of opposing polarities. Thus, dichotomies such as objective/subjective, public/private, majority/minority and the like are reified and normalized by mainstream legal theory and purported to represent objective reality. This

process of dichotomizing and objectifying reality further disempowers disadvantaged social groups since the categories and definitions imposed on them are perceived as given, natural and unchangeable (Gabel, 1982:263; Hutchinson and Monahan, 1984:217; Minow, 1986:83, 85; Kelman, 1987:245; Minda, 1988:616; Eisenstein, 1988:48-49, 50).

Legal interpretation's liberating potential according to critical legal scholars originates from the same source its oppressive aspect originates; that is, legal indeterminacy. To the extent, argue critical legal scholars, legal indeterminacy, amenable to manipulation can yield and justify various outcomes, disadvantaged social groups and committed to social change activist legal interpreters can and should engage in litigation and adjudication efforts with the potential to reduce social inequality and effect social change[18]. Consequently, based on the critical understanding of the relation between law and society, law can be used as a means to effectuate social change (Tushnet, 1991:1527-1530; Gabel and Harris, 1989:304-305; Schneider, 1986:597-598; Trubek and Esser, 1989:28-29).

CLS, legal and social change.

As a conflict-oriented theoretical perspective, CLS is committed to changing law and the status quo which are perceived as oppressive and reinforcing the interests of the ruling class. Furthermore, since law is the product of social relations constructed on the bases of specific social, political and socio-economic historical conditions subject to change at any time, social changes and the related shifting of power relations effect legal changes. However, since law is a site of power struggles and has the power to describe,

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[18] Among critical legal scholars there are those who argue that legal indeterminacy strips legislative and adjudication efforts from any positive potential (Minda, 1988:619).

define and constitute the content of social relations, legal changes have the potential to influence social change. Consequently, following the basic premises of conflict perspective, legal change and social change argue critical legal scholars are reciprocal, desirable and attainable (Gordon, 1984:112).

There is a multiplicity of actions in which critical legal scholars engage in their attempt to affect and implement legal and social change. On a practical level, critical legal scholars often engage or at least are encouraged to engage in strategically selected litigation in order to legally support and promote the interests of disadvantaged individuals and groups. According to some critical legal scholars, "[a]lthough…all legal cases are potentially empowering, the classic political case remains one that receives widespread public attention because it emerges from a social conflict that has already achieved high visibility in the public consciousness" (Gabel and Harris, 1989:306). In other words, it is preferable that critical legal activists engage in litigation involving cases in which the social and the legal elements are widely acknowledged and realized. The aim of such litigation argue critical legal scholars "…is not only to win on the legal issues raised by the case but to speak of the movement itself" (Gabel and Harris, 1989:306). The Chicago Eight trial and the Inez Garcia trial[19] are just two examples of the way litigation can on the one hand produce immediate and direct outcomes for the individuals involved and on the other, furnish a social movement and/or a social group with a public forum from which to make their propositions known to a wide audience (Gabel and Harris, 1989:306).

In addition to --or better parallel—to litigation, critical legal scholars emphasize

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[19] The Chicago Eight trial involved the prosecution of anti-war demonstrators during 1968 outside the Democratic National Convention. The defendants were charged with conspiracy to cross state lines and incite a riot. Inez Garcia was a woman who had killed her rapists. In her retrial a radical-feminist lawyer defended Garcia implementing the accumulated experience of the women's movement and expert testimony on rape trauma (Gable and Harris, 1989:306-10).

the importance of the organization of social groups on a community level in order to gain the power necessary to initiate and implement social change through legal change. The 1954 US Supreme Court decision *Brown v. Board of Education* is one example of how organized social action and resistance can exercise pressure to the direction of legal change which can further affect social change (Tushnet, 1991:1539; Eskridge, 1994:143).

On a theoretical level, the central CLS project of legal transformation involves the detailed and in-depth analysis of legal doctrine and legal principles aiming at the reconstruction of legal thought. Focusing on the constitutive power of law, critical legal scholars argue that changes in the content of legal definitions of social relations changes the content of the relations as well. In that sense, critical legal scholars engage in the analysis of the political, socio-economic and historical processes that led to the creation of specific legal rules as well as legal doctrine. Through this analysis, critical legal scholars expose the ways in which specific group interests were reified in the law, were further used to enhance the social status of this group and inhibit disadvantaged social groups' efforts to alter social structure and organization to their benefit. In other words, in order to effectuate social change critical legal scholars capitalize on their project of exposing law's power to define reality. Specifically, argue critical legal scholars, to the extent law – the product of power relations and struggles-- defines reality, shifting of power balances results in changes in the law and contributes further to the constitution of a new social reality. A *sine qua non* prerequisite for changes in legal definitions, however, is, according to critical legal scholars, revealing the legal elements in the composition of social power (Gordon, 1984:104-109).

Critique of the CLS movement.

Since its establishment, the CLS movement has attracted much criticism originating from various scholars coming from within or outside the CLS. Although there are as many different strands of critique against the CLS as there are theoretical differences within the CLS, a base-line critique can be identified. This critique corresponds primarily to the general theoretical propositions widely acknowledged as identifying of CLS. In general, "[r]ecurrent criticisms of CLS…are that its claims that the law is incoherent and inadequate are inaccurate; that it is elitist and exclusionary; that its criticism lacks a program; that it is a cynical, antilaw movement; and that it fails to resolve conflicts of value" (Matsuda, 1987:331).

The CLS arguments on the indeterminacy of law are considered by its critics as inaccurate to the extent that given certain doctrinal queries, determined outcomes are conceivable. Furthermore, critics argue that the CLS argument of the indeterminacy of law nullifies the efforts of practitioners, theorists and activists to effect social change through legal change. The critical legal response to this type of criticism is based on the experience of legal practitioners and social activists who have succeeded in effectuating social change despite –or rather due—to law's indeterminacy. Additionally, to the extent that criticism, transformation and validation are all part of the critical legal project, exposing law's indeterminacy and using the law to effect social change are compatible actions (Matsuda, 1987:332-342).

The CLS movement has also been criticized as being elitist. Critics outside the CLS movement have focused primarily on the detailed deconstruction in which critical legal scholars engage. Theoretical propositions and vocabulary frequently articulating in

the form of 'trashing[20]' according to critics of CLS appear to be intended for internal use and communication between CLS scholars. The critical legal scholars response to this type of criticism is summarized in Mark Kelman's statement 'trashing is good' (Kelman, 1987:321) because it serves to expose the internal contradictions of legal arguments, a practice aligned with the transformative aims and goals of the CLS (Kelman, 1987:321-329).

Charges of elitism relative to the gender and race demographic composition and theoretical orientation have had significant impact on the CLS movement. Specifically, critical legal scholars' privileged social position as white, upper-class males has to a large extent contributed to an almost exclusive focus on the economic class politics. Thus, the CLS movement failed to see social relations as originating from other power relations such as gender and race. Responding to the criticism of elitism critical legal scholars have engaged in formal efforts –such as conferences—to establish dialogue with minorities and feminists and add their voices to the ones existing within the CLS movement. Feminist and minority scholars and activists however, question the extent to which inclusion of their voices in the dominant CLS voices will result in the transformation of the CLS project (Eisenstein, 1988:50-51; Kidder, 1983:92; Matsuda, 1987:343).

Despite criticisms against the CLS movement, legal scholars, particularly legal scholars concerned with issues of gender and race recognize the significant contributions of the CLS movement in the area of legal theory and practice. The major contribution of the Critical Legal Studies movement has been to "…put social structure, class and power

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[20] Based on the definition provided by Kelman the technique of 'trashing' requires to "[t]ake specific arguments very seriously in their own terms; discover they are actually foolish ([tragi]-comic); and then look for some external observer's order (not the germ of truth) in the internally contradictory, incoherent chaos we've exposed" (Kelman, 1987:293).

–whose very existence much liberal legal writing seems so astonishingly to deny—back into our accounts of law" (Gordon, 1984:75). Furthermore, the extensive deconstruction of legal theory and practice in which critical legal scholars engaged provided much of the background on which other types of jurisprudence based their critique of law, social order and social change (Matsuda, 1987:329-330). One such jurisprudential movement is feminist jurisprudence, the focal point of my study. In the next section I examine the basic arguments of feminist jurisprudence as they relate to law and social change.

Feminist Jurisprudence

The emergence of feminist jurisprudence

A conflict-oriented, theoretical perspective directly concerned with the relationship between women and the law, feminist jurisprudence, has relatively recently emerged as a distinct body of legal scholarship. The use of the term 'feminist jurisprudence' to identify a distinct body of scholarship, is recorded for the first time in 1978 at a conference commemorating the 25th anniversary of Harvard Law School's first class to include women. Ann Scales, an active participant in the conference and one of the leading figures among feminist jurisprudence scholars, writes in relation to the emergence of this highly controversial movement:

> More than a year before, it was decided by the planning committee that one of the five panel discussions to be offered during the April weekend should be intentionally esoteric. It should offer to alumnae returning from the working world a synthetic, perhaps even inspirational experience. Hence, *Towards a Feminist Jurisprudence* was born, the original description of which read: 'Reasonable women will differ on whether there is or should be such a thing. A wildly philosophical exploration of the impact of feminism on the structures and principles that support the legal system.' Though the astute

> panelists[21] concluded that there is not, and perhaps should not be, such a thing as a feminist jurisprudence, the title has been retained, due in part to the admiration, affection and historically threatening attitude generated by this panel and by the entire weekend (Scales, 1981:375 foot. #2).

Since the time of its original conceptualization, thus, the project of feminist jurisprudence emerged and developed amidst controversy and debate. Specifically, a number of legal scholars, have debated and continue to debate the feasibility, necessity, validity and implications of pursuing the project of feminist jurisprudence. Ann Scales, for example, while explicitly supportive of pursuing feminist jurisprudence, warned of the possibility the whole project to be misunderstood and misinterpreted as self-interested, supporting and promoting legislation favoring women (1981:375). Clare Dalton and Robin West argued that the project, and even the term 'feminist jurisprudence' constitutes an oxymoron, a contradiction in terms, because of the degree of androcentrism present historically and presently in mainstream jurisprudence (Dalton, 1988:6; West, 1988:3-4, 60-62). Other theorists, such as Patricia Cain, question the inclusiveness of the feminist jurisprudence project and maintain that it does not adequately account for lesbian women's experience (Cain, 1989:191).

Nevertheless, the 'threatening attitude' Ann Scales (1981:375) argues developed during the 1978 Harvard conference and gave feminist jurisprudence its name, was picked up by a number of feminist legal scholars and was transformed into an identifiable and

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[21] "The panelists were the Honorable Shirley S. Abrahamson, Justice, Wisconsin Supreme Court; Brenda Feigen Fasteau, Attorney, New York City, former Director, ACLU Women's Rights Project; Steward B. Oneglia, Director, Task Force on Sex Discrimination, Department of Justice; and Wendy Williams, Assistant Professor of Law, Georgetown University Law Center. The author [Ann Scales] moderated the discussion" (Scales, 1981:375 foot. #2).

distinct body of legal scholarship. Thus, during the early 1980s feminist legal scholars began to make explicit references to the term 'feminist jurisprudence' in several legal publications (Scales, 1981; MacKinnon, 1981a; 1982b; 1983a; 1983b). Furthermore, during the 1980s and the 1990s, despite, or rather in the midst of, persisting and new skepticism, criticism, and differences, scholars continue to engage in the project of feminist jurisprudence. Feminist jurisprudence arguments are articulated in published scholarly work—articles, edited books—organized symposia, conferences and the like[22]. The question however remains as to what extent feminist jurisprudence scholarly work is present and has had an impact into the mainstream of legal theory and practice (Weisberg, 1993:xviii).

Given the diversity within feminist jurisprudence, it follows that attempts to define it would be diverse, debatable and even controversial. One classic attempt to define feminist jurisprudence is Catharine MacKinnon's definition of feminist jurisprudence as "…an examination of the relationship between law and society from the point of view of all women" (MacKinnon, 1983a cited in Wishik, 1985:64). Although highly controversial[23], MacKinnon's definition points to a crucial characteristic of feminist jurisprudence: women and their experiences are at the center of this

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[22] An electronic network called FEMJUR has been established and supports, daily, a considerable number of electronic messages.

[23] The point of contest in MacKinnon's definition is primarily the use of the word **all** referring to women. Bartlett, for example, argues that such statements tend to perpetuate a treatment of women as a single analytical category or as a group easier to be devalued (Bartlett, 1990:834-835). This type of concern addresses not only the definition of feminist jurisprudence but also constitute a significant part of the debates and discussions carried on by feminist jurisprudence scholars I address this issue in more detail in chapter 4. An attempt towards a somewhat 'corrective' definition of feminist jurisprudence is proposed by Cole arguing that feminist jurisprudence is "…a model for equality which accounts for women's point of view without negating the difference" (1984:510).

jurisprudential inquiry. Centering on women's experiences makes feminist jurisprudence an explicitly feminist project, inextricably linked to feminist theory in general. Additionally, as a legal theory, feminist jurisprudence is linked with the CLS movement. Thus, the theoretical origins of feminist jurisprudence are located at the intersection between feminist theory and Critical Legal Studies. To the extent it is a feminist theory, feminist jurisprudence centers its socio-legal analysis and propositions for social and legal change on women's experiences. To the extent it is informed by Critical Legal Studies, feminist jurisprudence is concerned with the 'politics of law' and the need for social change (Wishik, 1985:65-66; Menkel-Meadow, 1988:61).

Feminist jurisprudence as feminist theory: the need for social change.

As a feminist theory feminist jurisprudence understands women's social position as dependent upon socially, legally, politically, and economically imposed hierarchical structures on the bases of gender. Hierarchically structured societies based on differential evaluation of the social worth of men and women, result, according to feminist jurisprudence and feminist scholars in general, in structural inequalities which devalue women. In the face of existing structural inequalities and the resulting disadvantaged social position of women, feminist jurisprudence scholars share the feminist goals of institutional transformation and aim at social changes benefiting women. Social change, however, according to feminist jurisprudence scholars and feminists in general, can not be accomplished unless women's social position is understood, their concerns are taken into account and gender hierarchies are eliminated (Hartsock, 1979:60-61; Hartmann, 1979:206; Fraser, 1989:106-107; Taub and Schneider, 1990:151-154; MacKinnon,

1987:22; Dalton, 1988:2).

Overall, feminists in general and feminist jurisprudence scholars in particular engage in a "…range of committed inquiry and activity dedicated first, to describing women's subordination –exploring its nature and extent; dedicated second, to asking both *how*—through what mechanisms, and *why*—for what complex and interwoven reasons—women continue to occupy that position; and dedicated third to change" (Dalton, 1988:2 emphasis in the original). In other words, the feminist project in general, and the feminist jurisprudence project in particular, includes two aspects: the theoretical understanding of women's social position and the implementation of political action in order to change this position (Wishik, 1985:71).

The two aspects of the feminist project –feminist theory and feminist praxis—are according to feminists, inextricably linked. Specifically, "[f]eminist theory is simultaneously political and scientific…[and]…[f]eminist scholars…see their scholarly work as contributing to a comprehensive understanding of how women's liberation should be achieved" (Jaggar, 1983:354). Accordingly, "…the acid test of whether a theory is feminist….rests with whether it *can be used*…to challenge, counteract, or change a status quo that disadvantages or devalues women" (Chafetz, 1988:5). Consequently, to the extent feminist theorizing is feminist praxis aiming at social change to benefit women, feminist scholars in general, and feminist jurisprudence scholars in particular, can attempt to effect social change through praxis and theory (Wishik, 1985:64; Hartsock, 1979:64-66).

Within feminist jurisprudence –the focal point of my study—feminist scholars are particularly concerned with the way law and the legal order create, maintain and perpetuate women's oppression. Given that feminist jurisprudence scholars as feminist scholars are dedicated to social change, they are specifically concerned with the ways law and the legal system can be changed and further social change can be effectuated (Smart,

1989:66-67; Rhode, 1990:619; Bartlett, 1990:833; Polan, 1993:419-420; Wishik, 1985:71; Smart, 1986:122; 1992:40).

Feminist jurisprudence and CLS; reciprocity between legal and social change.

As a jurisprudential movement largely informed by critical legal studies, feminist jurisprudence shares many of the basic tenets of the CLS movement. Specifically, feminist jurisprudence scholars share the critical legal scholars' critique of the indeterminacy of law and legal doctrine's amenability to manipulation as well as the role of law in reifying, mystifying and legitimating legally constructed hierarchies. In other words, feminist jurisprudence shares with critical legal studies the concern for the 'politics of law' (Rhode, 1990:629; Wishik, 1985:66).

Feminist jurisprudence scholars further share the CLS scholars' understanding that law is interdependent and mutually defined with the larger social organization. To that extent, feminist jurisprudence scholars consider legal change not only as desirable but attainable as well. Moreover, feminist jurisprudence scholars share the Critical Legal Studies' theoretical position of the reciprocity of legal change and social change. Thus, feminist legal scholars efforts to effect legal change are expected to have an impact on social change while institutional social changes are expected to effect legal change (Wishik, 1985:67; Dalton, 1988:5-6; West, 1988:71-72; Scales, 1981:444; Rhode, 1990:637-638).

Despite sharing many theoretical arguments, feminist jurisprudence differs significantly from Critical Legal Studies. The primary difference between the two perspectives is centered on their starting point. Specifically, the feminist critique of the social and legal order "…starts from the experiential point of view of the oppressed, dominated and devalued, while the critical legal studies critique begins –and, some would argue, remains—in a male-constructed, privileged place in which domination can be

described and imagined but not fully experienced" (Menkel-Meadow, 1988:61).

The CLS analysis of the locus of domination and oppression argue feminist jurisprudence scholars overemphasizes structural hierarchies and inequalities based on social class and privilege and ignores the existence and the social impact of hierarchies based on gender[24]. Thus, according to feminist jurisprudence scholars, critical legal theory's explanatory power is reduced. For example, according to feminist jurisprudence scholars critical legal theory can not account for women's subordination in non-capitalist societies. Exegesis of hierarchical social relations can not be completed according to feminist jurisprudence scholars unless law is considered at least to a minimum as being both "…bourgeois *and* patriarchal…" Eisenstein, 1988:51, emphasis in the original). The central feminist jurisprudence critique can be summarized in the arguments that the CLS "…is essentially and irretrievably masculine" (West, 1988:2).

Thus, according to feminist jurisprudence scholars, unless legal and social systems are understood as structured on the bases of class and gender hierarchies any attempted legal and social changes will not necessarily ameliorate the social position of women. Consequently, it is imperative that any attempted transformation of the legal and social order takes women's experiences into account and makes gender the focal point of analysis (Rhode, 1989:316; Menkel-Meadow, 1988:61, 63).

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[24] Legal scholars such as Mari Matsuda, Richard Delgado, Duncan Kennedy, Carrie Menkel-Meadow, have criticized Critical Legal Studies for not accounting for race hierarchies as well (Minda, 1988:616-617). Although I do not mean to underestimate the importance of race hierarchies for the structuring of legal and social order, I focus on gender hierarchies since gender is the focal point of my study.

Loci of legal and social change.

Based on the understanding that legal and social change are inextricably and reciprocally interrelated, feminist jurisprudence scholars who engage in the transformative project of feminism argue that although not sufficient, legal change is one of the necessary prerequisites for the accomplishment of social change to the benefit of women. Furthermore, feminist jurisprudence scholars, understand law and the legal system as a culmination of interconnected and interrelated but distinct areas of theory and practice. The different parts that constitute the whole –the legal system—can be subject to differential methods of manipulation and alteration. Consequently, feminist jurisprudence scholars aiming at restructuring the legal system and effecting social change engage in transformation projects in all the different areas of the legal system (Dalton, 1988:2; Wishik, 1985:71).

Specifically, feminist jurisprudence scholars argue that changes in the demographics of the profession can and do have an impact on the structure of the profession. Moreover, the structure of the profession has a significant impact on the practice of law as it pertains to the lawyer-client relationship for example. Consequently, argue feminist jurisprudence scholars, attempts should be made for the increase in the number of women law students, women lawyers, women law professors, women legal practitioner in general (Abrams, 1991:376; Freedman, 1990:876-877; Tobias, 1993:1237; Menkel-Meadow, 1988:62; 1989a:197; 1989b:315-317; Abrahamson, 1993:1221; Freedman, 1990:849-852).

Social change can also be effectuated through the implementation of laws which contribute to equality between men and women. To that extent, feminist jurisprudence scholars engage in litigation addressing issues of sex and gender as they pertain to a wide range of social relations and institutions such as work and family (Golstein, 1992:12-16,

29-30; Hoff-Wilson, 1987:8-13; Wishik, 1985:77; Dunlap, 1989:252; Dalton, 1988:4-5; Rifkin, 1980:85-87; Rhode, 1988:1225-1232).

In addition to changes in legal practice, feminist jurisprudence scholars advocate changes in legal theory and the education of legal practitioners. To that effect, feminist jurisprudence scholars engage in extensive critique of legal theory with the purpose of exposing law's sex-bias and patriarchal structure. According to feminist jurisprudence scholars, exposing legal assumptions and deconstructing the legal order is a necessary condition for the restructuring of law and the legal order. Furthermore, to the extent legal theory has a detrimental impact on shaping legal practitioners' attitudes and beliefs towards the law, changes in legal theory and legal education become an essential part of the feminist project of social change. To that effect, feminist jurisprudence scholars in particular and feminist legal scholars in general attempted and succeeded in introducing changes in the curriculum of law schools. Thus, not only were classes in women and law or law and feminism established, but new instructional methods and textbooks were incorporated which actively incorporated women and women's experiences as their focal point (Bender, 1993a:577; 1993b:1252; Matsuda, 1986:629; Minow, 1988:47; Smart, 1993:51-53; Olsen, 1984:388, 426-431; Resnik, 1993:1181; Hirshman, 1993:1908-1910; Shalleck, 1988:97-99; Erikson, 1988:101-102).

Legal education, however, is not the only locus of legal theory. Scholarly publications, legal journals in particular, play a significant role in dissemination of knowledge pertaining to issues of theory and practice. To that effect, legal journals, mainstream legal journals in particular, operate as a medium through which feminist theory of law can make its arguments known to its audience --legal practitioners—and potentially accepted by them, the final goal being the feminist transformation of the legal discipline (Schneider, 1988:92-93).

Although as it is recognized by feminist jurisprudence scholars in particular and

feminists in general all changes in legal theory and practice are equally important and carry the potential to effect social change, I focus on the extent to which feminist jurisprudence published scholarly work is present in mainstream legal journals. Publication of feminist jurisprudence scholarly work, legal articles in particular, increase the visibility of feminist legal theory as well as its potential to be read and accepted by other scholars in the mainstream of legal discipline. Acceptance of feminist legal theory, feminist jurisprudence in particular, has the potential to affect legal thinking and practicing in the areas of litigation, legislation, legal interpretation. Changes in these areas may finally effect social change to the benefit of women. The study of the availability of published scholarly feminist work is an important task since for feminist jurisprudence scholars, "[t]he question remains whether feminist teaching methodologies and theories in the law school, as in the rest of the academy, will become integrated into the mainstream or remain separated and oppositional" (Menkel-Meadow, 1988:85).

Attempts to incorporate feminist jurisprudence into the mainstream of legal theory parallels the efforts undertaken by feminists in other disciplines such as history, anthropology, sociology, education, literature to accomplish a paradigm shift. Paradigm shifts, argue feminist scholars, centered on women's experiences, have the potential to redirect the scope of scientific inquiry and reconceptualize social and legal structures and their impact on women's and men's lives (Dye, 1979:28; Stacey and Thorne, 1985:306; Hawkesworth, 1988:444-445; Smith, 1975:361; 1987:91; Kelly-Gadol, 1987:809; Strathern, 1987:276; Andersen, 1987:224; Bernard, 1988:261-262). In other words, incorporation of paradigms centered on women's experiences can and do contribute to the realization of feminist revolutions –paradigm shifts-- within disciplines (Stacey and Thorne, 1985:302).

Paradigm shifts and the feminist revolution as a factor of legal and social change.

The significance of paradigm shifts in the transformation of scientific disciplines can be evaluated in light of Thomas Kuhn's work on the structure of scientific revolutions. The significance of such shifts can be further evaluated in light of Stacey and Thorne's applied arguments concerning paradigmatic shifts based on feminist theory in different disciplines. Based on Thomas Kuhn a scientific paradigm as a concept "…stands for the entire constellation of beliefs, values, techniques and so on, shared by the members of the community" (Kuhn[25], 1970:175). The detrimental impact that scientific paradigms have in the direction of the scientific inquiry within a specific discipline is found according to Kuhn in that:

> The study of paradigms…is what mainly prepares the student for membership in the particular scientific community with which he[26] will later practice….Men whose research is based on shared paradigms are committed to the same rules and standards for scientific practice. That commitment and the apparent consensus it produces are prerequisites for normal science, i.e., the genesis and continuation of a particular research tradition (Kuhn, 1970:10-11).

In summary thus, the importance of scientific paradigms is established in that "[a]

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[25] Kuhn's book *The Structure of Scientific Revolutions* was originally published in 1962. The present definition is provided by Kuhn in the postscipt (written in 1969) of the second publication of his book in 1970. As a response to criticisms that he does not use a consistent definition of paradigm, Kuhn provides the present definition as the way in which he uses the term paradigm throughout his book.

[26] Thomas Kuhn joining himself the dominant scientific paradigm of androcentrism consistently refers to scientists as men.

paradigm is what the members of a scientific community share, *and*, conversely, a scientific community consists of men who share a paradigm" (Kuhn, 1970:176).

Nonetheless, shared paradigms often shift to new directions and eventually, "…an older paradigm is replaced in whole or in part by an incompatible new one" (Kuhn, 1970:92). To the extent that "paradigms provide all phenomena…with a theory-determined place in the scientist's field of vision" (Kuhn, 1970:97) paradigm shifts lead to scientific revolutions as they alter the scientists' perception of the world.

Given the fundamental changes that paradigm shifts effectuate, emerging paradigms are met with resistance. Resistance which is lifelong and inevitable is advanced by those who have vested their professional and career interests with the old –the dominant—paradigm and the belief in the paradigm's explanatory power (Kuhn, 1970:151-152). In other words, emerging paradigms such as feminist theory in general and feminist jurisprudence in particular, will be met with resistance launched from scholars in the disciplinary mainstream.

Applying Kuhn's understanding of paradigms and paradigm shifts, Stacey and Thorne (1985) looked at the way paradigm shifts based on feminist theory can be accomplished and contribute to the transformation of scientific disciplines. Specifically, they argue, a paradigm shift "…involves two separate dimensions: 1) the transformation of existing conceptual frameworks; and 2) the acceptance of those transformations by others in the field" (Stacey and Thorne, 1985:302). Feminist transformations of knowledge are further affected by "…demographic composition of a discipline, its internal organization and structure of opportunities…, and the relation of the discipline to the making of public policy" (Stacey and Thone, 1985:311). Along the lines of Kuhn's argument concerning resistance to emerging paradigms, feminist scholars have noted that feminist transformations of knowledge, the feminist revolution, has met strong resistance from the mainstream of disciplines. This is particularly true within disciplines whose

knowledge bases are more androcentric and positivist as it is the case with law (Stacey and Thorne, 1985:305; Cain, 1989:191; Bernard, 1988:263; Smith, 1975:361-362).

In the case of the legal profession and legal theory, some of the initial requisite changes and transformations have already occurred and have been documented in the literature. Specifically, the number of women law students and legal practitioners has increased in recent years including the number of women advancing in the occupational hierarchy. In parallel, structural occupational changes accommodating pregnancy, childbirth and parenthood have been established. Furthermore, the visibility of women practitioners in areas of law other than the 'gender-appropriate' specialization of family law has increased. Even further, and more closely related to my study is the development of theoretical frameworks which challenge the patriarchal structure of law from a feminist perspective (Epstein, 1981; Wishik, 1985; Boyle, 1986; Menkel-Meadow, 1989a; 1992; Smart, 1989; Bartlett, 1990; Hagan, 1990; Rhode, 1991). Consequently, with the entry of women and particularly feminists in legal practice and legal education "…law…turned into a *site* of struggle rather than being a *tool* of struggle" (Smart, 1992:30, emphasis in the original).

What has not been adequately investigated however, is the extent to which feminist jurisprudence has had an impact upon the mainstream of legal theory in terms of the actual number of feminist jurisprudence articles published in influential law journals as well as the kinds of arguments articulated in these articles. In other words, it becomes important to investigate how widespread and widely read feminist jurisprudence articles are within the mainstream of legal thought. Additionally, it becomes important to evaluate the state of feminist jurisprudence literature present in influential mainstream of legal journals or in other words, the extent and the depth of the feminist jurisprudence critique against the patriarchal structure of law and the legal system. To accomplish the two tasks of evaluating the extent to which feminist jurisprudence literature is present in

the mainstream of legal discipline and evaluating the depth of feminist jurisprudence arguments articulated within the mainstream of the legal discipline, it is important that I look at the way in which feminist jurisprudence as a paradigm has and continues to develop its critique of law and the legal system informed as it is by the women's movement and feminist theory in general, in its attempt to effect a paradigm shift: the feminist revolution within the discipline of law. Thus, in the next chapter, I am going to present a brief overview of the way in which feminist jurisprudence as a perspective has been informed by the women's movement and feminist theory in general and has developed in three different phases which are defined on the basis of the type of critique against law and the legal system articulated within each one of these phases.

CHAPTER 4. FEMINIST JURISPRUDENCE; THEORETICAL PHASES

The basic feminist accomplishment to turn law into a site of struggle, along with the other structural changes that have occurred within the legal discipline, have set the stage for a paradigm shift: a feminist revolution within law. In other words, feminists within law and the legal profession are analyzing, discussing and theorizing about the ways in which law, basic theoretical principles and assumptions, as well as legal practice are constructing and perpetuating gender categories. Thus, feminists within legal education and practice have and continue to develop theories addressing legal method and logic. Emerging and existing feminist legal theories of legal theory and method further, undergo a dynamic process of constant reevaluation, reinterpretation and refinement as feminist legal theorists, feminist jurisprudence scholars in particular, develop, mature and deepen their critique of mainstream legal theory and method as well as feminist theory (Smart, 1992:30). In that sense, it becomes important to trace the historical development of the perspective of feminist jurisprudence as well as evaluate the current state of the literature with respect to the kinds of arguments and propositions feminist jurisprudence scholars advance when they examine law and the legal system.

Phases of feminist jurisprudence and feminist theory

The process, through which feminist jurisprudence develops, matures and deepens its critique of legal theory and legal practice, parallels the developments of feminist theory in other disciplines and is informed by the political action undertaken by the women's movement. Feminist scholars argue that feminist theory in general, and feminist jurisprudence theory in particular, develop in 'waves', 'phases' or 'stages'. Specifically, scholars such as Naffine (1990), Smart (1992), Weisberg (1993), Bender (1993a), Menkel-

Meadow (1992) and Menkel-Meadow and Diamond (1991) acknowledge that there are three such 'waves', 'phases' or 'stages' in which feminist jurisprudence develops. These scholars divide the different phases in almost identical ways although they do name them differently.

The distinction of the phases of feminist jurisprudence scholarship and feminist theory in general, argue feminist scholars, is based on the different theoretical and methodological arguments and propositions articulated within each phase. In general, as feminist scholarship moves from one phase to the next, the arguments and propositions articulated become more complex, the level of inquiry broadens, and controversy increases. Nevertheless, the distinction between phases is neither hierarchical nor temporally ordered and because of this, the phases of feminist theory are not mutually exclusive. Thus, although significant differences exist in the scholarship of each of the phases, the distinction between phases is primarily analytical in purpose. Consequently, within disciplines it is conceivable that the main body of disciplinary feminist scholarship falls into one of the three phases. It is also conceivable that scholarship of all phases is contemporarily produced by feminist scholars. (Cain, 1989:197-201, 204-205; Naffine, 1990:1-3; Menkel-Meadow and Diamond, 1991:222-223; Weisberg, 1993:viii).

In terms of the theoretical stances and propositions advanced within each phase, in broad and general sense, the arguments of the first phase of feminist theory and feminist jurisprudence theory converge in the phrase 'law is sexist.' As such, law can be corrected by the inclusion of women's experiences in the process of making, theorizing and applying law. The arguments of the second phase emphasize the masculinity of law often summarizing it in the phrase 'law is male' meaning that the structure of the legal system represents, serves and reinforces the interests of men. Feminist jurisprudence theoretical argumentation of the third phase, focuses upon the way 'law is gendered' or in other words, the way law structures the lived realities of men and women by reinforcing

and perpetuating binary opposites created by patriarchal assumptions on gender (class, race, ethnicity, etc.) characteristics[27] (Smart, 1992:30).

Overall then, the different phases of feminist jurisprudence theory represent different approaches to the role of law and the way in which law reflects, perpetuates and constructs the reality of women's (and men's) lives. As feminist jurisprudence theory moves from one phase to the next, it matures, the critique of law deepens and progressively attacks core legal theoretical assumptions (Cain, 1989:197-201, 204-205; Naffine, 1990:1-3; Menkel-Meadow and Diamond, 1991:222-223; Weisberg, 1993:viii).

To the extent thus, feminist jurisprudence is conceived as an emerging legal paradigm aiming at the realization of the feminist revolution within the discipline of law, consecutive phases of feminist jurisprudence scholarship, represent gradually increasing threats to the integrity of the dominant paradigm. Therefore, looking at the content of the arguments of each of the phases is of paramount importance for the appreciation of the potential feminist jurisprudence has in displacing the dominant paradigm within the discipline of law. Moreover, understanding each of these phases requires situating them within the general historical and epistemological context of feminism as well as the women's movement. Here, my goal is to lay out the theoretical distinctions between each of the phases; specific examples of the work of feminist jurisprudence scholars will be given when I discuss my content analysis in chapter 8. In the rest of the chapter, thus, and for each of the phases I will present a brief overview of the state of the women's movement around the time each of the phases emerges, the basic premises of feminist theory within each phase such as the basic criticism against mainstream science as well as

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[27] Along the same line of distinction, feminist jurisprudence phases were characterized as being based on the 'gender of one', 'the gender of two' and the 'infinity of genders'. (Menkel-Meadow, 1992:1497).

the feminist contribution to science and finally the basic premises of feminist jurisprudence theory of each of the phases: feminist jurisprudence critique of mainstream legal theory as well as feminist legal activism and feminist reading of law. In that sense, I will be able to layout the characteristics of each of the feminist jurisprudence phases as they relate to the women's movement and feminist theory in general. This is important for my study since I am interested in the way in which feminist jurisprudence can reach its potential to effect legal change and social change. After laying out the characteristics of each of the phases I will be able to show on the one hand how interconnected feminist activism and feminist theory are and further, how and in what sense feminist jurisprudence scholarship is presenting its revolutionary potential as it progresses through stages.

Feminist Scholarship of the First Phase: The Gender of One

Early History of the Women's Movement

Some scholars place the beginning of the women's movement in mid-19th century, when activist and feminist women begun raising women's concerns in ways relatively structured and organized (Deckard, 1983:242). The First Women's Rights Convention which took place on July 19-20, 1848, at Seneca Falls, New York, is generally referred to as the event specifically marking the official beginning of the women's movement (Andersen, 1993:279-280).

The Seneca Falls Convention and the women's movement are both related to the abolitionist movement to the extent that it was women's negative gender experiences within this movement which led to the realization that there was a need for a women's movement. Long before the Seneca Convention, a number of women –predominantly white—were actively involved in the abolitionist movement of the 1830s, albeit on

unequal bases with men. When the American Anti-Slavery Society was formed in 1833, the 20 attending women were not allowed to sign the Declaration of Purpose. This led to the formation of the Female Antislavery Society. During the World Anti-Slavery Convention in 1840 in London, women delegates were refused seats and forced to sit in the gallery. Instances such as these, contributed to women's awareness of their inferior status due to their sex and led them to the realization that there was a need for a women's movement. Familiar as they were with the rhetoric of equality developed within the abolitionist movement, and equipped with similarly derived organizational knowledge and experience, women organized a movement of their own. The Seneca Falls Convention was the movement's first public appearance, and the Declaration of Sentiments signed at the Convention, the women's movement's manifested intent[28] (Deckard, 1983:250; Andersen, 1993:279).

Multi-phased as it was, the women's movement incorporated numerous women's issues ranging from women's access to education and the professions, to gaining property

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[28]The call for the First Women's Rights Convention was made during a July 14th celebration, five days before it took place. Despite such short notice, approximately 300 women and men participated in what was actually a meeting more than a convention, since the participants were not delegates. The participants signed the Declaration of Sentiments, patterned after the Declaration of Independence. In that, they voiced their belief that men and women are created equal and are endowed with inalienable rights such as life, liberty and the pursuit of happiness (Andersen, 1993:279). In the same document, they further included their evaluation that "[t]he history of mankind [sic] is a history of repeated injuries and unsurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her" (Declaration of Sentiments, reprinted in Lindgren and Taub, 1993:23-24). There was disagreement among participants at the Convention on whether the vote should be pursued. Although to some the issue was too radical, even ridiculous, a suffrage resolution was finally passed by a small majority (Deckard, 1983:252).

rights, to receiving equal pay and obtaining better working conditions. Although initially only a partial goal of the women's movement, the pursuit of the right to vote gradually gained ground. By the year 1890[29] the struggle for the right to vote became the movement's central point and remained as such until 1920 when the right to vote was officially granted to women[30].

However, the women's movement's significant victory[31] –gaining the right to vote—was proven to be a pyrrhic one. The intensity with which women activists focused on the right to vote depleted the women's movement of arguments and positions against social and political inequality in general to the extent that the women's movement

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[29] In 1890 two major women's organizations, the National Woman Suffrage Association and the American Woman Suffrage Assocation merged to form the National American Woman Suffrage Association. The National Woman Suffrage Association (NWSA) was established in May, 1869 by Susan B. Anthony and Elizabeth Cady Stanton. The NWSA admitted only women and worked militantly for suffrage. In addition to suffrage, the NWSA's paper, *Revolution* --which bankrupted two and half years later-- campaigned against women (and men) worker exploitation and terrible working conditions and the unequal social position of women. Lucy Stone founded the American Woman Suffrage Association in November of the same year. It was a moderate organization which admitted men and women (the president of the organization was a man), and addressed middle and upper class women. The organization's publication, *Woman's Journal*, a well-financed paper, was quite conservative in style and addressed only the issue of suffrage (Deckard, 1983:261; Andersen, 1993:280).

[30]"Before women's suffrage was won in 1920, the women's organizations conducted 56 referendum campaigns, 480 campaigns to get state legislatures to allow suffrage referenda, 47 campaigns at state constitutional conventions for suffrage, 277 campaigns to include women's suffrage in state party programs, 30 campaigns to get women's suffrage in national party programs, and 19 campaings to get the Nineteenth Amendment –the women's suffrage amendment-- through Congress" (Deckard, 1983:263).

[31] In addition to gaining the right to vote, women activists of the time, were successful in ensuring access to education and the professions, as well as guarantee certain property rights for women (Deckard, 1983:261; Andrersen, 1993:280).

was not able to sustain the conservative attack of the mid-1920s aimed at radical and liberal groups, in general, and women's groups in particular. As a result, the women' s movement lost its public momentum and remained dormant for a period of forty years. During these years, activism within the women's movement was undertaken only be few women's organizations explicitly promoting feminist goals pertaining to issues such as birth control, family planning, and, the improvement of working and housing conditions. It was this type of activism which provided not only a continuity within the women's movement but the necessary grounds for its re-emergence during the 1960s as well[32] (Deckard, 1983:286; Andersen, 1993:279, 281).

The re-emergence of the women's movement during first-phase feminism: Women's rights organizations and the struggle for equal rights.

As the 1960s began, women faced a number of significant contradictions relating to their private and public lives. The private sphere, the purported 'natural' place of women was not the promised fulfilling and satisfying heaven. White, middle-class women –those most likely to be found in the private—were experiencing isolation, depression, and boredom. On the other hand, women's position in the public sphere was not much better either. White, working-class women and minority women, already in the labor force, as well as white middle class women who joined the labor force either by choice or

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[32] Talking strictly about feminist scholarship, the 1960s should be considered the starting point (and thus marking the beginning) of first phase feminist scholarship because it is after the re-emergence of the women's movement that the volume and the visibility and thus, the potential impact of feminist scholarship increases. However, since theory and praxis are inseparable in feminism, early activism of the women should be considered as one of the factors preceding and preparing the development of first phase feminist scholarship.

necessity, instead of the promised[33] but not delivered equal treatment were experiencing discrimination and devaluation of their work (Andersen, 1993:282-283; Cain, 1989:198).

Similarly, women members of social movements which emerged during the 1960s had negative experiences to report. That is, social movements such as the civil rights movement, the free-speech and the anti-war movements which mobilized large numbers of men and women and radicalized the critique of the social order, did not consider gender to be a social issue. Women applied the social movements' rhetoric and articulated women's concerns only to find their concerns trivialized and appended to the broader, 'real,' social issues. Overall then, on the one hand, in their private and public lives women were experiencing contradictions and were faced with devaluating and exclusionary social practices. On the other hand, women activists became disillusioned about the ability and the willingness of existing social movements to understand and accept women's issues as social issues (Descard, 1983:320, 327). In other words, "[t]he widening of the gap between ideology and reality had reached a critical point" (Descard, 1983:319). At this critical point, the combined experiences of devaluation, exclusion, and disillusionment contributed to women's increased self-consciousness about their role as well as the realization that they needed to organize as women and engage in political action for change (Descard, 1983:320, 327).

Women's politically organized struggle for change during the 1960s led to the formation of a number of women's organizations. One of these organizations was the National Organization of Women (NOW) which was formed in 1966 and focused almost

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[33] The Equal Pay Act and Title VII prohibiting sex discrimination in employment are examples of legislative efforts purported to establish and guarantee equal treatment of men and women in the labor force (Andersen, 1993:282-283; Cain, 1989:198).

exclusively on formal equality[34]. The NOW Bill of Rights, passed in November 1967, asked for public policies facilitating the participation of women in public life and declared women's intent to take public action (Cain, 1989:191; Menkel-Meadow and Diamond, 1991:224; Goldstein, 1992:19).

The National Organization of Women was neither the only women's organization formed during that time, nor unquestionable accepted for its political activity. However, what is of particular interest to my study is the organization's focus upon formal equality characteristic of women's activism of the first phase and the way in which political activism and feminist theory of the same phase interrelate. That is, feminist activism during first phase aimed primarily at the inclusion of women into the male-dominated public sphere. Contemporaneous feminist theory provided the theoretical bases upon which these claims of inclusion were advanced and articulated (Meadow and Diamond, 1991:224; Goldstein, 1992:17-18).

To that effect, first-phase feminist theorists aiming at providing the theoretical bases for formal equality began by investigating women's position in a variety of social institutions; the majority of academic institutions included. Women were found to be

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[34] Other women's organizations more radical in orientation and directly linked to other social movements of the time were for example, the Women's Radical Action Project and the Westside Group which emerged during the national meeting of the New Left in Chicago in 1967. Also, in the fall of 1968, Shulamith Firestone and Pam Allen organized Radical Women in New York. These women's groups despite noted differences between them organized and participated in various co-ordinated activities. In November 1960 for example, 500 women participated in The Congress to Unite Women. This group agreed upon a 10-point set of demands, including: 24-hour childcare centers, abortion on demand, and equal opportunity in education and employment. Similar issues were advanced in the Massive Women's Strike for Equality in August 26, 1979. Black women's feminist organizing comes much later. In August 1973, 30 black women active in the women's movement formed the National Black Feminist Organization (Deckard, 1983:327-328, 335, 345).

conspicuously absent from various disciplines; further, the small number of women pursuing academic careers were subject to discrimination which thus, restricted their professional accomplishments. Overall then, feminists of the first phase documented the absence of women and the absence of knowledge about women. Women were not only physically absent from various academic disciplines. They were also absent as subjects of study. However, the effects of women's absence could be minimized and even corrected, should women physically, and as subjects of study be included in science (Andersen, 1993:65).

In essence then, feminist scholars of the first phase aligning with feminist activists of the first phase, engaged in a project of compensatory and corrective scholarship: documenting the exclusion of women and illuminating the sexist bias and gender discrimination in all aspects of the public sphere, questioning male scholars' accounts of women's condition, uncovering female experiences previously left out or distorted by male scholars' inquiry, and demonstrating commonalities or 'sameness' between women and men, since historically, real or perceived differences between the genders had been manipulated into justifications for women's exclusion (Hawkesworth, 1987:116; Wishik, 1985:64-66; Harding, 1987a:9; 1987b:182).

Feminist scholarship of the first phase: including women and 'correcting' bad science

In order to pursue their compensatory project, first-phase feminist scholars employed the scientific tools available to them: the tools of empiricism. In order to accomplish their corrective goal on the other hand, feminist scholars transformed the tools of empiricism and adjusted them to the needs of the feminist project (Hawkesworth, 1987:116; Wishik, 1985:64-66; Harding, 1987a:9; 1987b:182).

Underlying the use of empiricism for the inclusion of women during first phase feminist scholarship is the acceptance of the basic premises of empiricism, namely the attainability of the objective understanding of the world and the separation between the knower and the known (Wishik, 1985:64-66; Hawesworth, 1989:534; Harding, 1993:53). According to feminist empiricists thus, sexism and androcentrism within mainstream scholarship are identifiable and correctable biases of individual researchers. Strict adherence to methodological rules and application of methodological norms can eliminate the biases of the 'knower' –the observer. Eradication of gender bias constitutes a precondition for achieving objective knowledge. Consequently, for feminist empiricists of the first phase, 'bad' science is responsible for biases in the study of women's experiences. 'Good' science has the ability to correct this bias (Hawkesworth, 1989:535; Harding, 1987b:182).

Feminist empiricism of the first phase has been criticized by other feminists on the bases that by accepting empiricist rules –basically the separation between the knower and the known—the assumption of a 'value-free' objective understanding of the world, traditional male standards of scientific inquiry as basic patriarchal assumptions remain unchallenged and thus granted legitimacy (Wishik, 1985:64-66; Hawkesworth, 1989:534; Harding, 1993:53).

Criticism of feminist empiricism notwithstanding, Sandra Harding (1993:53) argues that feminist scholarship of the first phase significantly contributed to exposing sexist and androcentric biases of research practices and results. Even more so, feminist empiricism of the first phase prepared the way for further investigation into the reasons of empiricism (Harding, 1993:53). Moreover, feminist empiricism's major contribution particularly relevant to my study is that by appearing to leave intact many of traditional science's principles, feminist empiricism is perceived as less threatening than other modes of feminist analysis and can be more readily accepted by the mainstream (Harding,

1987b:183, 184). Taking into consideration that inclusion into the public was the goal of the women's movement and inclusion into the mainstream of scientific inquiry the goal of first phase feminist scholarship, the perceived non-threatening attitude of feminist empiricism and the consecutive possibility of acceptance indicates the significant contribution of feminist literature in preparing the way for inclusion and incorporation.

First-phase feminist science: consciousness raising

In addition to using and changing existing methods of scientific inquiry feminist scholars of the first phase have developed their own method of scientific inquiry distinctively feminist in nature: consciousness raising. Consciousness-raising can be defined as "the deliberate sharing of personal experiences in dialogue with others in order to better understand the human condition" (Matsuda, 1986:618 foot.#34). Although its value is widely accepted among feminists some see consciousness-raising as one, very significant, feminist method, while others see it as the cornerstone of feminist methodology --the only feminist method (Deckard, 1983:330; Bartlett, 1990:864; Wishik, 1985:65; Cain, 1990:844; MacKinnon, 1982b:519).

Consciousness-raising's primary contribution as a distinctly feminist method is found in the endorsement of the dialectical relationship between the personal and the political. It is through consciousness-raising that the phrase 'the personal is political' is better understood. In consciousness-raising groups, the learning process starts from the sharing of personal experiences; these become the fodder for understanding their connection with the gender and social –the public, the political (Schneider, 1986:602). "Consciousness-raising as feminist method is a form of praxis because it transcends the theory and practice dichotomy" (Schneider, 1986:602). As praxis, consciousness-raising can be used in small groups as well as public institutional settings, the academy or law, in

order to alter their structures (Bender, 1993:60). Consciousness-raising further provides a substructure for other feminist methods as it enables feminists to reflect upon personal experiences and those of other women and use these insights to challenge social reality. As consciousness-raising developed as a technique it was used to question women's reality as well as the meaning of experiences such as heterosexuality, motherhood and even the role of feminist women as participants in the system of oppression (Bartlett, 1990:866-867).

Overall, then, feminist scholarship of the first phase employed traditional methods of scientific inquiry as well as devised new ones. However, for the most part feminist theorists of the first phase focused on what constituted similarity or sameness and avoided issues which could potentially reinforce differences. As a result, they tended to focus upon the aspects of public life in which women could participate and make contributions equally important as men's contributions, should the legal restraints and social exclusionary practices be eliminated (Menkel-Meadow and Diamond, 1991:225).

The main strategy which would guarantee women's equal participation in the public sphere, according to many first phase feminist theorists, involved extensive legal reform. They believed that extending equal rights to women and reinforcing formal equality would eliminate discrimination against women (Andersen, 1993:285). In the next section I look at the development of feminist theory and praxis in relation to law and the legal system.

Feminist legal scholarship: add women and correct 'bad' law.

Paralleling the developments of first-phase feminist theory in other disciplines, feminist legal theorists, feminist jurisprudence scholars in particular, assumed the principle responsibility for carrying through the struggle for formal equality. The need

for formal equality expressed in sameness of treatment between men and women is the central theme in the writings of first-phase feminist legal scholars. Additionally, a number of authors examined women's situation within the legal profession and practice as well as the way law constructs and potentially alleviates women's limited opportunities in the public realm. Feminist empiricism and consciousness-raising were used by feminists in the legal discipline in a manner similar to those in other disciplines (Sachs and Wilson, 1978; Frug, 1979; Epstein, 1981; Cain, 1989:199; Naffine, 1990:3; Wishik, 1985:65; Frug, 1992b:63; Lindgren and Taub, 1993:94).

The distinctive feature of first-phase feminist legal scholarship is an implicit belief in the legal institution itself. That is, first-phase feminist legal scholars tend to consider law as an essentially fair and rational institution arbitrating conflicts between citizens. As such, law could operate fairly and correct gender inequality if it only recognized equal rights for women. Thus, the problem for feminist legal scholars of the first phase is not law in general, but rather 'bad' law which needs to be corrected in order to rectify women's secondary socio-economic and political position (Naffine, 1990:3-5; Cain, 1989:199).

In their attempt to correct 'bad' laws first-phase feminist legal scholars, reflecting and promoting the goals of the women's movement, engaged in litigation efforts aimed at removing the constraints blocking women's equal participation in the public sphere. Center stage in first-phase feminist legal activism --primarily during the late 1960s and early 1970s—was the passage of the Equal Rights Amendement (ERA) and the guarantee of availability of abortion on demand (Naffine, 1990:3-5; Cain, 1989:199).

Feminist legal activists and their efforts to correct 'bad' laws were met with significant resistance. The ERA was not ratified, neither was abortion on demand. Retrospectively, feminist legal scholars have argued that many attempts to use the law to promote and guarantee women's rights, at least during the first phase, have failed or, at

best, did not produce all of the expected results. A major impediment in the first phase feminist litigation efforts was the contradictory theoretical grounds on which different issues were promoted, namely, formal equality. Advancing equality arguments during first-phase feminist scholarship required the adoption of one of two approaches: that there were no differences between men and women; or that, even if there are differences between men and women, these differences were legally irrelevant. Thus, feminist legal scholars of the first phase advanced sex-blind, gender-neutral legal postures underlined by the assumption that men and women were similarly situated and that formal equality was both attainable and desirable (Frug, 1992c:672).

The struggle for formal equality and the use of the legal language that supported it has been criticized by later feminists as implicitly accepting the ideological assumptions and the androcentrism of the legal institution. According to the critics of the formal equality approach, first-phase feminist legal scholarship, paralleling first-phase feminist scholarship in general, leaves legal assumptions and principles unquestioned, hence, legitimized. At the same time, the male norm is reinforced and perpetuated (Cain, 1989:199; Naffine, 1990:3-5; Becker, 1992:102-103; Wishik, 1985:64-66).

The legal strategy of formal equality, however, and the theoretical arguments of sameness which supported it, were not without merit. The advantage is that, to the extent "...women are perceived as similar to men, formal equality can be used effectively to challenge rules or requirements expressly restricting entry to privileged male occupations....[As a result] many laws, rules, and practices limiting women's opportunities have been eliminated" (Becker, 1992:107). This last statement summarizes well the contributions of first-phase feminist legal theory and activism. Legal and non-legal feminist theory and praxis, extending between the 19th century and late 1970s (at times early 1980s) resulted in eloquent and daring protests against assumptions about women's appropriate place. They exposed the sexist treatment of women in all aspects

of the public life, and in the case of law, they presented a "...challenge to male dominance of legal institutions and to discriminatory legislation...instrumental in reshaping and reforming much of the law for women" (Naffine, 1990:6). If nothing else, first phase feminist theory and praxis prepared the way for the development of theory and praxis cutting deeply into the social organization and the structuring of men's and women's lives.

Feminist scholarship of the second phase: the gender of two.

Arguments of equality and sameness as well as the fight for women's inclusion characteristic of the first-phase, provided the background for the type of feminist theory and activism which developed during the second feminist phase. Documenting and fighting against women's exclusion facilitated women's increased participation in many aspects of public life, the academy included. A significant number of feminist women who became scientists and women scientists who became feminist, engaged their expertise for the service of women and feminism in a wide variety of disciplines (Dechard, 1983:380).

Second-phase feminist scholarship: feminist responses to 'male' science.

Women in the social sciences and law in particular, realized that "[o]nce women began to be treated like men, people began to notice that women really are not like men" (Cain, 1989:199). Consequently, in the mid-1970s and in the midst of efforts to eradicate discrimination and establish equality and justice between the sexes, feminist women social scientists began to 'rediscover' the differences between men and women (Gilligan, 1987:58).

Not only were there differences between men and women, but these differences

persisted irrespective of arguments of sameness and equality and carried with them social, political and economic implications. Situations such as pregnancy, resulted, further, in experiences unique to women. These unique experiences could not be dealt with, much less accounted for, by theories of sameness and equality. Women in the second phase, then, demanded that their distinctive experiences to be noted, accounted for, and appreciated apart from men's experiences. Thus, feminist scholars of the second phase began developing theories dealing with difference. The rediscover of, emphasis on, and the quest for the meaning of gender differences constitute the distinctive characteristizes of feminist theory and praxis of the second phase (Scales, 1981:376; Williams, 1993:129; Cain, 1989:199-200; Menkel-Meadow and Diamond, 1991:226; Naffine, 1990:6-7).

Feminists of the second phase developed a number of theories concerning the source, interpretation, meaning and implications of gender differences. For Carol Gilligan, for example, men and women differ primarily in the way they relate to others. Women tend to place value on their relation to others while men tend to place more emphasis on their autonomy and individuality. In that sense, men and women speak in different voices. The voices of men speak of the 'ethic of justice' while the voices of women speak of the 'ethic of care' (Gilligan, 1982). For Catharine MacKinnon, on the other hand, the differences between men and women are located and defined by the hierarchical relations of men's dominance and women's subordination. Consequently, women experience difference primarily as powerlessness and men as power and control (MacKinnon, 1982a; 1982b; 1983b; 1987; 1991).

Notwithstanding theoretical divergence, feminist scholars of the second phase employ notions of gender differences as their starting point in addressing all aspects of social organization and social structure. In that sense, the structure and the organization of scientific knowledge became a critical subject of inquiry during second phase feminism. Under the assertion that "...when the observer is a woman, the truth may be of a

different sort" (Gilligan, 1987:58), exposing the androcentric organization of science and inquiring into the ways this organization would be transformed if addressed from a woman's point of view became an essential part of second phase feminism. Addressing science from a women's point of view entailed phrasing new and non-traditional questions and obtaining new and non-traditional answers; the development of new research methods and the gathering of new research results. It involved in other words, the construction of new methodological and epistemological feminist concerns (Hess, 1990:78-80).

The kinds of questions asked, the methodological approach, and research results characteristic of feminist scholarship of second phase are described in the following excerpt:

> Once we undertake to use women's experience as a resource to generate scientific problems, hypotheses, and evidence, to design research for women, and to place the researcher in the same critical plane as the research subject, traditional epistemological assumptions can no longer be made. These agendas have led feminist social scientists to ask questions about who can be a knower (only men?); what tests beliefs must pass in order to be legitimated as knowledge (only tests against men's experiences and observations?); what kinds of things can be known (can 'subjective truths,' ones that only women--or only some women- tend to arrive at, count as knowledge?); the nature of objectivity (does it require 'point-of-viewlessness'?); the appropriate relationship between the researcher and her/his research subjects (must the researcher be disinterested, dispassionate, and socially invisible to the subject?); what should be the purposes of the pursuit of knowledge (to produce information *for* men?) (emphasis in the original) (Harding, 1987b:181).

These general questions applied by feminist scholars in the investigation of the organization and the content of knowledge of disciplines such as history (Dye, 1979; Kelly-Gadol, 1987), psychoanalysis (Mitchell, 1974), psychology (Sherif, 1987), politics

(Kelly et. al., 1987), sociology (Stacey and Thorne, 1985; Smith, 1974), criminology (Daly and Chesney-Lind, 1988), criminal justice (Heidensohn, 1986; Daly, 1989a; 1989b), and the law (Dahl, 1986; Menkel-Meadow, 1987) produced observations and results that continue to reverberate.

Feminist methodology of the second phase; examples from disciplines.

In the disciplines of history and anthropology, for example, asking questions from women's point of view, resulted in a re-thinking of the centrality of economics and politics in the shaping of world history. Furthermore, it led to the questioning of the distinction between the private and the public domain as two separate and unconnected places of human activity (Dye, 1979:9, 24-25; Keller, 1982:590-591; Stacey and Thorne, 1985:301-305; Andersen, 1993:72-73).

Beginning from women's point of view in the discipline of criminology challenged traditional beliefs and assumptions about crime. For example, looking at crime from a women's point of view, was the realization that crime was not only an expression of masculinity or a daring, fun activity; a glorified, 'macho' activity as criminologists like Cohen (1955), Hirschi (1969), Hagan (1989)--to name but a few-- would make it appear (Naffine, 1987:12-13, 68-69). Instead, crime --at least the majority of crimes committed by women—constituted either accommodation to the survival problem many poor women were facing, or resistance to victimization. At any rate, crime was understood as a function of the gendered structure of the social world (Messerschmidt, 1986:78, 85-87); Chesney-Lind, 1986; 1989; Carlen, 1985; 1990). However, what rendered feminist criminology most visible and what could be viewed as a feminist contribution to the study of crime, if not a revolution in the discipline of criminology, was the emphasis, that second-phase feminist criminologists placed on 'new' types of crimes, crimes which

victimized women: rape, incest, battery, and harassment and the way the criminal justice system responded to these crimes (Klein, 1973; Klein and Kress, 1976; Weisheit and Mahan, 1988:89; Datesman et. al., 1977; Chesney-Lind, 1977; 1978; 1987; Nagel, 1981; Carlen, 1983; Simpson, 1989; Frohman, 1991).

The study of women's victimization initiated within feminist criminology contributed to an inter-disciplinary study of men's violence against women and the related issue of men's control over women's sexuality (Daly and Chesney-Lind, 1988:520-522). Underlying the study of women's victimization was an understanding of women's social position as primarily a position of powerlessness. The source of women's powerlessness was located in the sexual division of labor (Hartmann, 1981; 1987), men's control over women's sexuality (MacKinnon, 1982b), or the use of the threat of violence against women (Brownmiller, 1975).

Women's subordinate position, even their position as victim, was understood by a number of feminist scholars as providing women with a unique if not privileged perspective of the world: a perspective the oppressors could not attain. Women's structurally subordinate lives, and their lived experience provide them with a 'double' vision, one which allows them a view of relations and structures above and below their level. From this privileged vantage point, their *standpoint*, women can seek new scientific knowledge, ask new questions, and launch a profound critique of sexist social organization. Borne from women's unique point of view, this new epistemology, called feminist standpoint epistemology, repudiated the possibility of unmediated truth -- without rejecting the notion of truth altogether-- and exposed the 'situatedness' of knowledge –its dependence upon the social position, gender, race, ethnicity of those producing it (MacKinnon, 1982b:534-538; Hawkesworth, 1989:536; Bartlett, 1990:872; Menkel-Meadow and Diamond, 1991:231; Harding, 1993:54).

Second-phase feminist legal theory; the maleness of law.

Following the lead of feminists in other disciplines, feminist legal scholars of the second phase engaged in an extensive critique of law and the legal structure. In the case of legal theory and praxis, "[t]he feminist perspective exposes the substance and procedure of law as inherently male-biased. A feminist critique articulates standards from a woman's point of view..." (Cole, 1984:51). Consequently, second-phase feminist legal theorists focused their attention on the way women's 'different voice' --their unique experiences, their standpoint-- related to law. On a theoretical level, the project of second phase legal feminism was to expose the patriarchal structure of law --the 'maleness' of law. According to these feminist legal scholars, law is 'male' because it is authored and regulated by men whom it intends to directly benefit. The maleness of the legal perspective, is thus, embodied and represented in the benefits law accords to men. Law, then, becomes an expression of masculinity by valuing autonomy and individuality; it describes and promotes men's experiences of separation and individuality. Women, on the other hand, find their experiences of care and connection and their perspectives absent from law (Smart, 1986:109; West, 1988; Naffine, 1990:7; Bender, 1993:575-577).

Feminist jurisprudence: a distinctly feminist legal project.

The demonstration and documentation of the absence of women's perspective from law and the exposure of the maleness of law --the central project of second-phase feminist legal scholarship—acquired a distinct literary body identified as feminist jurisprudence. Although the term feminist jurisprudence first appears during first phase

feminist scholarship, in reality it is a project of the second phase[35]. Scholarly articles explicitly referring to feminist jurisprudence as a theoretical movement distinct from other legal theories, appear during the 1980s. Furthermore, during the 1980s articles on feminist jurisprudence argue that it embodies a second-phase feminist project (MacKinnon, 1982a; 1982b; 1983a; 1983b; Scales, 1981; 1986; Cain, 1984).

Legal activism of the second phase.

The interdependence of feminist theory and praxis led feminist law practitioners of the second phase to venture into the legal system in order to generate legal changes that might harmonize law with women's lives and experiences. Such beneficial legal changes accomplished during second phase feminism addressed a variety of issues, many of which, such as spouse abuse, were not even recognized as a legal problem before that period (Naffine, 1990:21; Schneider, 1993:1232). Specifically, second-phase feminist legal practitioners and feminists in general succeeded in gaining legal recognition of battering as grounds for self-defense for women accused of killing abusive partners; expansion of the definition of rape to include marital rape; rape-shield laws; extension of statutes of limitations for incestuous sexual abuse of children; and partial improvements in family law in cases of divorce and child custody. These legal changes can be understood as a shift in the orientation of feminist legal activism, from seeking access to a fixed legal system towards acquiring and using legal tools to the benefit of women (MacKinnon, 1991:1294). Exposing the maleness of law and articulating propositions

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[35]The case of feminist jurisprudence provides a good indication of the overlapping and the temporal sequence of the different phase of feminist scholarship. The background theoretical preparation for the development of issues and projects central in a certain phase are usually prepared during the previous phase and slowly mature.

for women's inclusion from the standpoint of women are probably the most significant contributions made by second-phase feminist legal theorists. In the words of MacKinnon, during this second-phase scholarship"... women's legal initiatives have transformed inclusion into change. They have moved from a request to be permitted to play by the rules to an understanding that having no say in rule-making, rule-interpreting, and rule-applying means not being permitted to play the game. They have moved from the use of existing doctrine to a critical practice of reconstruction. They have begun to move from advancing within the gender hierarchy to subverting it" (MacKinnon, 1991:1295).

The theoretical contributions of second-phase feminist theory notwithstanding, recent scholars have identified shortcomings in the theoretical developments of that stage. First, second-phase feminist legal scholars tend to view men and women as two separate but relatively homogenous groups, each possessing characteristics commonly shared by its members. In that way differences within genders are reduced and minimized. This further implies that in the case of women, although there is an inclusion of the point of view of women, not all women are represented. Furthermore, not all of women's overlapping identities are represented (Hooks, 1990:186; Matsuda, 1991:1191; Cain, 1989:206).

A second problem associated with the theoretical developments in second-phase feminist legal scholarship and feminist scholarship in general relates to the central discussion of difference. Focusing on the differences between men and women but not paying attention to the differences within genders, feminists run the danger of assuming "...a definition of 'woman' or a standard for 'women's experiences' that is fixed, exclusionary, homogenizing, and oppositional..." and that women "...share a set of common, essential, ahistorical, characteristics that constitute a coherent identity..." contributing thus to the reinstating of "...the isolation and stigmatization of women..."

(Barlett, 1990:834, 835). Feminist theorists, thus, urge towards the exploration of differences within gender; differences based on race, class, and sexual orientation (Menkel-Meadow and Diamond, 1991:226).

Critics further argue that the project of second-phase feminist legal scholarship has not yet produced a feminist jurisprudence. In the worlds of Cain, "...we do not now have feminist jurisprudence…[W]e have feminist critiques of existing (masculine) jurisprudence. We have examples of feminist deconstruction that uncover the male bias in the existing legal system. And we have feminist litigation that strives to restructure the existing system. Thus we are moving 'towards a feminist jurisprudence,' because the critiques and the litigation have challenged the strength of the patriarchy" (Cain, 1989:194-195).

In other words, although feminist jurisprudence of the second phase has provided the ground –sound ground—for an articulate and in-depth critique of law and the legal system and has also exposed the 'masculinity' of law and the legal system, it has not met its full potential. The feminist jurisprudence towards which Cain (1989:194-195) considers necessary to move, is aligned with the project of third-phase feminist theory; the project of addressing, understanding and celebrating differences stemming from a variety of sources. The basic arguments and propositions of third phase feminism and third phase feminist jurisprudence I address next.

Third-phase feminist jurisprudence: the infinity of genders.

The decade of the 1980's was a critical period of time in the history of the women's movement and feminist theory in general. After a period of enormous growth and active political engagement the women's movement was showing signs of strain. To some extent, the state of the women's movement during the 1980s resembles that of the

1920s. During both periods of time, the women's movement had won significant victories followed by a period of recession. In the 1920s that is, women gained the right to vote. Preceding the decade of the 1980s was a period of extensive legislative efforts which resulted in a number of significant victories expressed primarily as legal restrictions overruling overt discrimination against women. Thus, and despite the fact that women lost the ERA, accomplished legal changes allowing for example large numbers of women to enter the academy and the professions. However, these victories of the women's movement, similarly to the victories during the 1920s, removed some of the movement's impetus. The relative loss of the movement's impetus in combination with a conservative turn in the political life in the United States contributed to overt attacks against feminism and feminist goals. The negative climate of the 1980s against the women's movement and feminism in general, was frequently evident in behaviors such as a tendency to preface efforts supportive of women with the phrase "I am not a feminist but…" (Rhode, 1989:305). Overall then, feminist political activity during the 1980s was declining and the women's movement was losing its momentum.

Yet, during the same time that feminist political activity appeared to be loosing its impetus, feminist theory was flourishing. Not only were there women's studies programs growing in number, scope and strength, but gender was increasingly becoming a significant analytical category in various disciplines. Moreover, and even more significantly, feminist theory in the 1980s appeared to by coming of age: feminists even when marginalized were articulating their positions in relation to various forms of academic and political discourse. In other words, 'women's issues; were not the only issues to be addressed by feminist theory while simultaneously all conceivable issues within discourses were becoming women's and feminism's issues (Rhode, 1989:305; Smart, 1989:66, 68).

However, the central characteristic of feminism in the 1980s and later the 1990s –

or better feminism of the third phase—was its emphasis on difference. Feminists in various disciplines openly and explicitly were acknowledging, exposing and debating differences within women and within feminism as well. Feminism's heterogeneity was widely acknowledged and became apparent that it was redundant and misguided to talk about a singular feminism or uniform experiences of women (Whelehan, 1995:127).

Black women, lesbians, and working-class women claimed their own particular identities and questioned the legitimacy of 'mainstream' feminists –white feminists in particular—to represent all women. "The increased presence of warring female identities necessarily shifted the terms for debate—women could no longer be certain that they meant the same thing when discussing their own experiences of social oppression….The development of an increasingly complex 'politics of identity' meant women found they had less, not more, in common…" (Whelehan, 1995:129). In other words, feminism of the third phase underwent a massive epistemological transformation to the extent theorizing and reflecting upon its processes became part of its theoretical project (Whelehan, 1995:127).

Post-modern feminism.

A partial expression of the epistemological transformation which feminism of the third phase underwent was the development of a rather distinct theoretical approach: post-modern feminism which engaged in a wide deconstructionist project. Post-modern feminists have focused extensively on the way living experiences of groups of people such as women for example, are simultaneously constituted by a set of complex social, historical and cultural constructs. In other words, lived experiences of various groups of people are best understood in the particular context in which they occur (Bartlett, 1990:877-878) .

In their project of understanding social reality post-modern feminists go a step further and question even the possibility of knowledge about different groups of people. That is, for postmodern feminists subjects of knowledge –women for example—lack core identities as the multiple structures and discourses which constitute identities are fluid, fluctuating, overlapping and even contradicting one another. Because of this, the lived experiences of groups of people are neither transcendent nor representational. To that extent, scientific claims to 'truth' and knowledge are widely questioned as unattainable (Bartlett, 1990: 877-878; Menkel-Meadow, 1992: 1503).

Because of its emphasis on the particularity and contextuality of knowledge and even the impossibility of verifiable scientific 'truths', the post-modern understanding of the social word has been criticized by other feminists as depleting women of theoretical foundations for political action to change the existing social order. That is, post-modern feminists appear to be «...left in the awkward position of maintaining that gender oppression exists while challenging our capacity to document it» (Rhode, 1990:620).

While analyzing post-modernism extends beyond the scope of my work, what is of particular relevance to my study because of its impact on third phase feminism in general and feminist jurisprudence in particular, is the post-modern critique of binary or oppositional systems. Binary or oppositional systems, argue post-modern and third-phase feminists in general are based upon hierarchies valuing one set of oppositions over another (Menkel-Meadow, 1992:1500). That is, "…binary oppositions in language, law and other socially-constituted systems…privilege one presence –male, rationality, objectivity—and marginalize its opposite –female, irrationality, subjectivity" (Bartlett, 1990:878). Furthermore, binary systems create reductionist polarities in which men and women for example, are understood only in ways and to the extent they can be compared and contrasted with one another as individuals and as groups (Menkel-Meadow, 1992:1500).

Overall then, third phase feminists emphasize the way in which complex, fluid, particular and even competing socially-structured discourses result in lived, non-transcendent and non-representational experiences of multiple identities for individuals and groups. In line with this argument, thus, third-phase feminists question the legitimacy of scientific, social and political discourses to claims of possessing any kind objective and verifiable truth and knowledge. To that extent, third-phase feminists oppose all expressions of abstracted and decontextualized 'grand theory' be that androcentric, feminist or otherwise defined (Dalton, 1988:7).

Third-phase feminist jurisprudence theory.

Third-phase feminist jurisprudence scholars, contrary to first-phase understanding, do not perceive law simply as an expression of sexism and a vehicle of women's oppression by men. Neither, do third-phase feminist jurisprudence scholars understand law as an expression of male culture and structure. Furthermore, third-phase feminist jurisprudence scholars oppose the assumption underlying first and second phase feminist jurisprudence that law is a rational, coherent and consistent system of women's oppression. According to third-phase feminist jurisprudence scholars, law is full of internal contradictions, conflicts and inconsistencies. As such, law and the legal system misrepresent not only women as a group but men as well. It is not, argue third-phase feminist jurisprudence scholars, men in general, that benefit from law and the legal structure. It is rather white, middle to upper class men who are more likely to be the beneficiaries of the legal structures. Furthermore, not all women are oppressed to the same extent and in the same way by law and the legal system. White, middle to upper class women, although oppressed on the basis of their gender, enjoy privileges and power accorded to them on the basis of their class, race, ethnicity and the like (Naffine,

1990:115).

This view, that law neither benefits nor oppresses groups in uniform and consistent ways has led some feminist legal scholars to question the attainability and even the validity of developing a general theory of law. The very project of developing a feminist jurisprudence was considered by some to be a contradiction in terms (Naffine, 1990:115; Dalton, 1988:6).

Carol Smart for example, one of the leading figures in third-phase feminist jurisprudence scholarship argues that to the extent feminist jurisprudence presumes an identifiable unity of law with principles of justice, rights, equality as being generally relevant and applicant to all aspects of law is facing the danger of making claims of truth; a truth better than other truths. Carol Smart goes even further to argue that feminism runs the danger of becoming a displacing paradigm to the extent it articulates its critiques and positions using the existing hierarchies of legal knowledge (Smart, 1989:68-69, 71). Smart thus, is adopting the position that "…working within the discourse of law seems to produce such tendencies –it is as if law's claim to truth is so legitimate that feminists can only challenge it and maintain credibility within law by positing an equally positivist alternative" (Smart, 1989:71).

Despite her reservations however, Smart along with other third-phase feminist jurisprudence scholars and while acknowledging the power of law to define realities, can and do foresee the potential of feminist jurisprudence to articulate a different approach to law (Smart, 1989:71). Thus, the way feminist jurisprudence scholarship should approach law is primarily through deconstructing truths and hierarchies of knowledge. Deconstruction however, is not the only type of third-phase feminist project. The ultimate goal of third-phase feminist jurisprudence is not so much ensuring women's equal participation to existing social, economic and political structures as it is the changing these structures and the way power within these structures is distributed. To accomplish

their ultimate goal, feminist jurisprudence scholars of the third phase have set as one of their priorities the empowerment of men and women so that they can reshape the structures defining their lives. For feminist jurisprudence scholars of the third phase then, legal reform is not enough to effect social change. What is needed primarily are changes in the core of legal doctrine, principles and procedures (Rhode, 1989:320; Smart, 1989:164, 165).

To accomplish this goal of feminist transformation of the core of the legal system third-phase feminists in general and third-phase feminist jurisprudence scholars in particular are making significant efforts to articulate their arguments and position from within the mainstream of legal theory.

Overall then, feminist jurisprudence scholarship in general and feminist jurisprudence theory in particular have and continue to develop in three non-hierarchically ordered but clearly identified theoretical phases. During each of these phases there have been different focal points although as a general rule the women's movement and feminist theorists have been in close communication and interdependence. Specifically, the three feminist jurisprudence phases can be distinguished as follows.

First phase is the phase during which the women's movement emphasizes formal equality between women and men as its main strategy to alleviate gender inequality. The theoretical support in the struggle for formal equality came from feminist and women in the academy who on the one hand employed traditional empiricist methods of scientific inquiry in order to expose correct the sexist biases underlying science. Science, laws as well, if corrected argue first phase feminists, could be used to establish formal equality between women and men.

The major contribution of first-phase feminism is the development of consciousness raising as a method of scientific inquiry. The major shortcoming of first-phase feminism is that by insisting upon similarities between men and women tends to

leave the patriarchal assumptions of social organization unquestioned.

Second-phase feminists dealt primarily with the issue of difference between women and men. Differences between women and men are based, according to second-phase feminists upon either structural or cultural bases. Furthermore, maleness --men's interests—are underlying all aspects of social organization, science included. Thus, science is not only sexist, argue second-phase feminists. It is male in that it represents the interests of men.

The major contributions of second-phase feminism is the exposure of the patriarchal bases of social organization and its attempts to deal and account for differences between men and women. The major shortcoming of second-phase feminism is that it tends to view men and women as belonging to two homogenous social groups which constitute binary opposites.

Finally, third-phase feminism is dealing with multiple differences. It is during this phase of more mature expression of feminism that men and women are not understood as two homogenized opposing groups. Men and women are rather understood as heterogeneous groups with complex and varying characteristics. Celebrating rather than transcending these differences is the major theme of third-phase feminism and third-phase feminist jurisprudence scholarship. Specific examples of scholarly work within each of the phases I present in chapter 8. In the following four chapters I address the extent and the form in which feminist jurisprudence scholarship is making progress in the mainstream of legal discipline.

CHAPTER 5. DATA AND METHODOLOGY

The goals of my analysis were twofold. The first goal was to measure the extent to which feminist jurisprudence articles appear in mainstream legal journals. The second goal was to classify family and penal law feminist jurisprudence articles published in mainstream legal journals according to the three phases of feminist jurisprudence theory.

To accomplish my first goal, I quantified the presence of feminist jurisprudence articles in legal journals by publication and citation patterns. As a partial test of the relative standing of feminist jurisprudence, within the legal discipline, I compared the number of feminist jurisprudence articles to the overall number of articles published in legal journals. Consequently, I used data that identified feminist jurisprudence articles published in legal journals. Second, I identified mainstream legal journals. Third, I counted the overall number of articles published in legal journals. Fourth, I used data that provided the complete references of citations received by feminist jurisprudence articles published in mainstream legal journals. All of these data were amenable to numerical manipulation.

To accomplish the second goal of my study, I located feminist jurisprudence articles on family law and penal law published in mainstream legal journals. Furthermore, I accessed the full text of the feminist jurisprudence articles on family and penal law. Because there was no singular database that would satisfy the data requirements for my study, I depended on a number of different data sources.

Description of data sources.

Data for this study were derived from the following data sources: WESTLAW, Social SciSearch, and the Journal Citation Reports (JCR). Reprints of articles whose

contents were analyzed were available either online from WESTLAW or as photoduplicated copies.

WESTLAW indexing and research method

Research of legal literature can be performed in two general ways. One way is to use indices such as the Index to Legal Periodicals and the Current Law Index that are organized under subject headings. Another way is to employ the use of on-line, full-text databases, such as WESTLAW and LEXIS, that allow flexible, user-framed searches of text (Delgado and Stefancic, 1989:209, 212, 216; Shapiro, 1991:1457). Because I was interested in selecting scholarly publications containing a specific term, the use of electronic databases was more appropriate. For availability and convenience reasons I selected to use WESTLAW.

WESTLAW[36] "...is a computer assisted legal research (CALR) service...[providing] access to statutes, codes, regulations, rules, judicial and administrative decisions, legal articles and periodicals, and other secondary material" (Johnson-Maloney, 1993:xvii). WESTLAW was developed around the mid-1970s and is constantly being updated and modified (Delgado and Stefancic, 1989:216). The material indexed in WESTLAW can be accessed electronically, is organized into a number of thematic databases, and can be searched in two different ways.

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[36] WESTLAW is a product of the West Company. West Company's indexing system has been endorsed by the American Bar Association since 1898 (Delgado and Stefancic, 1989:215).

Description of WESTLAW databases

The different thematic databases in WESTLAW cover areas such as family law, penal law, civil rights, legal ethics and professional responsibility, bankruptcy law, workers' compensation, and so on. Within WESTLAW, each database is assigned a unique identifier. I will be referring to different databases using the identifiers assigned to them in WESTLAW. After accessing a specific database in WESTLAW, the user can obtain information on the areas of law it addresses and the sources of the material indexed in the database. In order to obtain data for my study, I accessed a number of WESTLAW databases. Three of WESTLAW thematic databases were particularly relevant to my study, and for that reason, I made more extensive use of them. Next, I describe these three databases.

The first database I used, TEXTS & PERIODICALS - ALL LAW REVIEWS, TEXTS & BAR JOURNALS, is assigned the identifier TP-ALL and is inclusive of other more specialized thematic databases. Material indexed in TP-ALL may also be indexed in the more specialized databases and is based on "...documents published in the law reviews, Continuing Legal Education (CLE) course handbook collections, bar journals..., and legal practice-oriented materials" (on-line WESTLAW description of TP-ALL database, p. 1). Documents indexed in TP-ALL are fully or selectively covered.

Full coverage, indexing of all articles published, is provided by WESTLAW for 50 journals and periodicals[37]. Full coverage of different journals began at different points in

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[37] The information provided in this paragraph is true for the time of data collection (Spring and Summer of 1994). Indexing information provided by WESTLAW is subject to change on an annual basis depending on availability of resources as well as contractual agreements between legal journals and West Company. (Personal communication with WESTLAW reference attorneys on June 1 1996).

time. For 20 of the 50 fully covered journals, coverage began before 1983. For 14 additional journals, full coverage began between the years 1984 and 1985 while for the rest, full coverage began between 1986 and 1990. (See Appendix A, Table 1.)

Of the 50 fully covered journals, 30 are cross-indexed in the Journal Citation Reports (JCR); thus, impact factors (see page 107 for definition of impact factors) are available for these journals. Full coverage for a large number of legal journals and periodicals with impact factors (16 journals and periodicals), began between the years 1980 and 1983 and for an additional number (14 journals and periodicals) full coverage began in the years between 1984 and 1987. (See Appendix A, Table 1.)

The second indexing method of WESTLAW databases entails selective coverage of legal journals and periodicals. According to on-line WESTLAW documentation, in order to "...enhance the research potentiality of the database, coverage of ...periodicals is limited to those selected works that present pragmatic discourses on legal issues of national interest" (on- line WESTLAW description of TP-ALL database, p. 1). Selective coverage of journals allows for the indexing of a large number of legal journals and periodicals. Approximately 500 legal journals and periodicals are indexed in WESTLAW.

Selective coverage of legal journals and periodicals could present problems for sample selection since articles on feminist jurisprudence potentially could have been excluded. However, selection and indexing of feminist jurisprudence articles is an indication in itself of the advances feminist jurisprudence literature is making into the

mainstream of legal theory[38] since articles are indexed on the basis of their presenting "pragmatic discourses on legal issues" (on-line WESTLAW description of TP-ALL database, p. 1). For example, an article on feminist jurisprudence, published in Southwestern Law Journal in 1984, is indexed in TP-ALL although the journal is not fully covered.

In addition to TP-ALL, I made extensive use of two of the specialized thematic databases: FAMILY LAW - LAW REVIEWS, TEXTS & BAR JOURNALS (FL-TP) and CRIMINAL JUSTICE-LAW REVIEWS, TEXTS & BAR JOURNALS (CJ-TP). These two databases were used to locate feminist jurisprudence articles pertaining to issues of family and penal law. A number of these articles were used for the qualitative content analysis.

As it is the case with TP-ALL database, material included in FL-TP derives from publications in law reviews, bar journals, and the like and is either selectively or fully covered. The FAMILY LAW -LAW REVIEWS, TEXTS & BAR JOURNALS (FL-TP) database is described as follows:

> Family Law databases contain documents that relate to incidents of the family relationship. Among the subjects included are adoption, custody and guardianship, divorce, juvenile delinquency, marriage and rights of family members (on-line WESTLAW description of FL-TP database, p. 1).

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[38] Indexing of feminist jurisprudence articles acknowledges feminist theory within an androcentric discipline and may be indicative of some weakening of the discipline's resistance to non-mainstream approaches to the study of law. The same would hold true for negative references to feminist jurisprudence since even criticism of the movement of feminist jurisprudence albeit controversial is to some extent acknowledgment of its importance and potential impact upon the legal discipline (Shapiro, 1985:1543, discussing the issue of negative citations in general).

Of the fully covered legal journals indexed in FL-TP, five specialize in family law and justice (on-line WESTLAW description of CJ-TP p. 2). (See Appendix A, Table 2.)

The material covered in CJ-TP derives from the same sources as the material in FL-TP and ALL-TP databases, and it also is selectively or fully covered. The contents of CJ-TP are described as follows:

> Criminal Justice databases contain documents that relate to criminal acts and the investigation, prosecution and punishment of crimes. Among the subjects included are bail, constitutional proscriptions on searches, seizures and other police activities, habeas corpus, parole, prisons, probation, the Racketeer Influenced and Corrupt Organizations Act (RICO), and the rules of criminal procedure (on-line WESTLAW description of CJ-TP database, p. 1).

There are eight specialized penal law journals indexed in CJ-TP. (See Appendix A, Table 3).

WESTLAW Search Techniques

The material indexed in the different WESTLAW databases can be searched in two different ways, depending on the syntax used to describe the research topic. One of the research methods, WIN (natural language search), allows the use of standard English for the description of the research topic. When WIN is used, WESTLAW retrieves cases and documents that closely match the description of the research topic.

The second research method is called "terms and connectors" and is considered the primary search method by the designers of WESTLAW. This method is available in all WESTLAW databases. The method of "terms and connectors" is designed to scan entire documents --or parts thereof-- and retrieve those documents in which the word

combinations defined by the user appear, where and as the user has specified. This method is suggested as the most appropriate for users aiming to locate a particular concept phrased in a specific way, as is the case in my study (Johnson and Maloney, 1993:xvii; Delgado and Stefancic, 1989:216, 221). I used the method "terms and connectors" as the appropriate method for my first research goal, the identification of articles that contained the term "feminist jurisprudence[39]" anywhere in their text, title, or references and were published in legal journals. Furthermore, this search method, had the necessary flexibility for the text manipulation required for the identification of the overall number of articles published in legal journals indexed in WESTLAW, as I will describe later on in the chapter.

Journal Citation Reports.

Since my first research goal was to measure the presence of feminist jurisprudence literature in the mainstream of the legal discipline, I needed to identify mainstream legal journals. For the identification of mainstream legal journals, I used rankings of journals published in the Journal Citation Reports (JCR). I assumed that highly ranked journals within a discipline tend to represent the disciplinary mainstream. Different estimates of journal rankings, calculated on the basis of citation data, are compiled for the Social Science Citation Index (SSCI), the Science Citation Index (SCI), and the Arts & Humanities Citation Index (A&HCI). These data are published on a yearly basis in the JCR.

The basic goal of the JCR is to show "...the relationships between journals and the frequency with which individual journals are cited over a chosen time period..." (Garfield, 1991:5). Estimates in the JCR are based on current issues of 6,000 journals and almost 12

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[39] Specifically the words feminism, feminist, feminists and jurisprudence in the same sentence.

million citations appearing in the references of over one million articles published in the above journals (Garfield, 1991:5). One of the estimates reported in the JCR is the "impact factor" of a journal which is:

> [a] measure of the frequency with which the 'average article' in a journal has been cited in a particular year. The JCR is basically a ratio between citations and recent citable items published. Thus, the impact factor of Journal X would be calculated by dividing the number of all current citations of source items published in Journal X during the previous two years by the number of articles Journal X published in those two years (Garfield, 1991:8).

Impact factors have two properties particularly important for my study. First, impact factors do not depend on the size and the frequency of publication of journals. Consequently, the advantage larger or more frequently published journals have over smaller or less frequently published ones in affecting the frequency of citations received by articles published in the specific journals is discounted. Second, although not the only estimate of the value of a journal, impact factors estimate the relative standing of a journal within its respective discipline. Because law journals are compared with other law journals, the impact factors cannot be compared across disciplines (Garfield, 1991:9, 5-6).

Since impact factors are based on the frequency with which other journals cite the average article published in that journal, impact factors can be used as estimates of the influence a journal may exert within its respective academic discipline. In that sense, the more often articles published in a specific journal are cited, the more likely it is that the scholarly and scientific value of this journal's publications is recognized and used to support other academic work (Garfield, 1972:477). Frequently cited journals are possibly widely read journals as well, and consequently, more likely to influence disciplinary discourses.

The absolute value and the rank-order of impact factors are estimated anew every

year. It is conceivable thus, that the relative standing of each journal within its respective discipline may change from one year to the next. Since the goal of my research was the evaluation of the overall standing of feminist jurisprudence literature within the legal discipline, I needed a somewhat standardized base of comparison. In other words, I needed the same estimate of the relative standing of each journal across years. One way to accomplish this, would be to assign the same impact factor for each journal across years. However, although impact factors differ each year, it is conceivable that these differences are not statistically significant. Should this be the case, assigning impact factors estimated for one year could provide me a relatively standardized measurement of the relative standing of legal journals across time. In order to test whether these differences are statistically significant, I compared the absolute value for the impact factors estimated for legal journals for 1987 and 1992. The year 1987 was selected as the mid-point between 1983, the year the first feminist jurisprudence article indexed in WESTLAW was published, and 1992, the most recent year for which impact factors were available. (See Appendix A, Table 4).

Spearman correlation coefficient[40] (r_S) was calculated to determine the relationship between impact factors for the years 1987 and 1992. The statistic indicates a relatively strong positive relationship between absolute values of impact factors (r_S=0.80). The relationship was statistically significant at the 0.001 level.

Given that impact factors are rather robust estimates of the relative standing of

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[40] Spearman correlation coefficients "…are the correlations of the ranks of the variables. It is appropriate only when both variables lie on an ordinal scale…Range -1£ r_s≥1." (SAS Institute Inc., 1095:864).

legal journals within the discipline for more than one year[41], I concluded that estimates of impact factors for either year would be equally representative of the relative value of legal journals. I decided to use impact factors estimated for the year 1992, the most recently available ones at the time of data collection. (See Appendix A, Table 5).

Social SciSearch.

Citations to published work have been used for a variety of reasons. One of these reasons is the evaluation of the scientific worth of specific scholarly publications. Another use of citation analysis, especially in recent years, is the escription and evaluation of communications between scientists and across scientific disciplines. These communications are indicative of the diffusion of concepts and ideas within and across scientific disciplines (Garfield, 1972:471; Shapiro, 1985:1541).

The Social Science Citation Index, compiled by the Institute for Scientific Information since 1973, is one of the tools social scientists use to locate citations to specific published scholarly work. Within the legal discipline, SSCI is recognized as a basic research tool providing particularly useful citation data (Shapiro, 1991:1456).

The Social Science Citation Index (SSCI) is a calendar-year index of social science journals and periodicals which indexes a large number of social science disciplines. (See Appendix A, Table 6). Approximately 4,700 journals are indexed and 1,400 of those are fully covered. The SSCI provides complete lists of citations for every article published in the indexed journals (ISI, 1995:5). SSCI is also available in an electronic form called the

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[41] Although this relationship is found to hold true for relatively short periods of time (5 years in the present case) I have not tested the possibility that the same relationship would stand for longer time periods.

Social SciSearch. For convenience reasons, I decided to use Social SciSearch in order to locate all citations to feminist jurisprudence articles identified by WESTLAW.

Data collection process

Data collection for the full sample; All feminist jurisprudence articles included

The procedure I followed for the collection of data is described below. As a first step, I searched WESTLAW's database TP-ALL in order to identify documents --articles published in legal journals-- in which the phrase "feminist jurisprudence" or a combination of the words feminist, feminism, feminists and jurisprudence appeared in the same sentence, anywhere in the title, the body or the references of the document. (See Appendix C for a detailed description of the data collection process and the resulting samples.)

This initial search resulted in a sample of 602 feminist jurisprudence articles published between 1983 and 1993 and indexed in WESTLAW. There were no feminist jurisprudence entries in WESTLAW before the year 1983. Of the initial 602 articles identified, three were immediately excluded; two for lacking title and the third for not being a scholarly publication (it was the Index to Legal Periodicals).

Of the remaining 599 articles, 223 were published in legal journals without impact factors and as such, they were excluded from my sample. Thus, the resulting sample included 376 articles published in legal journals and periodicals and cross-listed in the JCR. Next, book reviews were deleted from the sample. After the exclusion of book reviews, 322 articles were retained in the sample. I refer to these articles as ***source*** articles. Of all source articles, 207 were cited at least once. I refer to these articles as ***cited articles***. (See Table 1.)

Table 1. Number of articles identified compared to the number of articles excluded and the number of articles retained for all samples by year.

Year	Source articles					All articles published in legal journals in general, and indexed in WESTLAW	Citing articles	
	No. of articles identified	No. of articles in no impact factor journals	No. of other non-retained articles	No. of articles retained	No of cited fem. juris. Articles		No. of articles identified	No. of articles retained
1983	2			2	2	2,175		
1984	4	1		3	2	3,266		
1985	10	1	1	8	7	6,578	3	3
1986	28	5		23	16	7,718	8	7
1987	31	9	6	16	14	8,711	34	20
1988	35	4	9	22	15	9,791	84	59
1989	46	10	5	31	26	11,815	312	245
1990	83	31	14	38	25	13,031	473	379
1991	114	49	8	57	43	15,014	657	537
1992	114	57	6	51	32	24,526	908	769
1993	135	56	5	71	25	20,760	1,060	887
1994							140	99
TOTAL	N=602	N=223	N=57	N=322	N=207	N=123,385	N=3,679	N=3,005

Table 1 (continued). Number of articles identidied compared to the number of articles excluded and the number of articles retained for all samples by year.

Year	Family law feminist jurisprudence articles				Penal law feminist jurisprudence articles			
	No. of articles identifie d	No. of excluded articles	No. of non-feminist articles excluded	No. of articles included in the sample	No. of articles identified	No. of articles excluded	No. of non-feminist articles excluded	No. of articles included in the sample
1983	1			1				
1984					1			1
1985								
1986	2	1		1	6	1	1	4
1987	2	2			5	3		2
1988	3	2		1	3	2		1
1989	6	2	1	2	1			1
1990	5	3	1	1	6	3	2	1
1991	14	8		6	17	11	2	4
1992	14	8	1	5	14	8		6
1993	8	5	1	2	4	1		3
1994								
TOTAL	N=55	N=32	N=4	N=19	N=57	N=29	N=5	N=23

In the second step in the data collection process, I determined the total number of articles published in legal journals and indexed in WESTLAW. Since, WESTLAW does not provide any information on the total number of articles included in the various databases, I had to use a term so generic that it would be included in all and every article indexed in WESTLAW. The term I used was *copyright*. This term appears in each and every article indexed in WESTLAW as part of the identification information of each article

(See Appendix C.) Further, I used year restrictions in order to retrieve the total number of articles published in legal journals and indexed in WESTLAW for each of the years between 1983 and 1993, the years feminist jurisprudence articles included in my sample were published. This type of search retrieved a grand total of 123,385 articles published in legal journals indexed in WESTLAW. (See Appendix C and Table 1.)

In the third step in the data collection process, I obtained information on those articles that had cited the source articles. Social SciSearch was used to locate all articles that cited each of the source articles[42]. For each of the citing articles, I obtained regarding full citation information, including journal of publication, volume number, and year of publication. (See Appendix C.) The above search resulted in the initial sample of 3,679 citing articles. Articles published in journals without impact factors were then deleted from the sample. Furthermore, book reviews, editorials and other non-scholarly publications were excluded from the sample[43]. This process resulted in a sample of 3,005

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[42] Copyright release form was obtained from the Institute for Scientific Information. A copy of this is included in Appendix B.

[43] I report the number of articles excluded from the sample without distinguishing between book reviews and articles published in no-impact journals since I make no further use of this data in my analysis.

articles. (See Table 1.)

Data collection for specialized legal journals

Feminist jurisprudence articles in the sub-fields of family and penal law

To collect data on feminist jurisprudence articles pertaining to family and penal law published in mainstream legal journals I searched the FL-TP and CJ-TP WESTLAW databases. I searched these two databases using the method of "terms and connectors". Each of the databases was accessed separately and was searched for articles in which the words feminist (feminism, feminists) and jurisprudence appeared in the same sentence anywhere in the title, the body, and/or references of articles. (See Appendix D for a complete list of articles identified from both databases.)

The initial search in the FL-TP database identified 55 family law articles. A total of 31 book reviews, editorials, and articles published in journals without impact factors were excluded from the sample. One additional article for which there was no author's name was also excluded. These exclusions (N=32) reduced the sample size of family-law related articles to N=23. (See Appendix C and Table 1.)

The initial search in CJ-TP located 57 penal law articles published in various legal journals. After excluding 28 book reviews, editorials, and articles published in legal journal without impact factors, and one article without an author's name (N=29), the sample size of penal law articles was reduced to N=28. (See Appendix C and Table 1.)

The purpose of the qualitative data analysis was to classify family and penal law feminist jurisprudence articles according to the three phases of feminist jurisprudence literature. Therefore, I decided that only articles advancing feminist jurisprudence arguments and positions should be included in the sample. Articles rejecting or opposing feminist legal theory and/or feminism in general, as well as articles in which the term

feminist jurisprudence is mentioned only superficially were excluded from the sample.

Each of the 23 family law articles and the 28 penal law articles retained in my samples was scanned, using search technique available in my word-processing computer program, to locate the term “feminist jurisprudence” in the text. Based on the meaning and the content of the relevant passage, I decided whether I should retain or exclude each article. In cases in which the position of the author was not clearly negative, I referred to the whole article in order to decide whether I should include or exclude it.

For example, the following is an excerpt from an article that was rejected from my sample for explicitly opposing feminism:

> They [feminist activists and scholars] have made significant advancements against both domestic battery and sexual harassment in the workplace. As a consequence of all these efforts, there are more women now than ever before in professional schools, city halls, state houses, and courts. Such well deserved victories, however, have been achieved at the cost of a goodly number of Purrhic ones, not the least of which have been wholesale changes in the language and literature of the law-- most of it force-fed to the silent majority of women everywhere and to a lesser extent the hapless readers of law reviews. Good people of both sexes have been stampeded into corners of stilted parlance and tortured logic by self-appointed thought police. Big Sister has imposed herself on us all; nowadays she throws no pots and burns no bras but brandishes instead a sacred and unbridgeable Lexicon of Political Correctness. It is not just labeling lawyers who apply the 'reasonable man' standard as profoundly sexist or forcing substantial expenditures to render the text of codes and constitutions 'gender-neutral' or --even likening the first movement of Beethoven's Ninth to the murderous rage of a rapist. The vernacular required by Feminist Newspeak is as inconsequential as it may be silly or supercilious...
>
> What we know as radical feminist jurisprudence has been with us for at least twenty years now. It is part of the curricula of many law schools, and the focal point of an increasing number of law review articles. If this is 'scholarship,' what is it all about? Does the virtual absence of any meaningful challenge mean that the majority of male scholars tacitly agree with their radical feminist colleagues? Or are

> they too intimidated, bored, amused, or confused to respond? How much of the current literature continue to reflect a plaintive cry for equality by a sex unjustly scorned --and how much of it is strewn with the petty newlings of pouty prima donnas who are intellectually dishonest to boot? Which are the rights, and which the trifles?
>
> Such queries themselves, of course, can be criticized as gender-biased, and it is a virtual certainty that the asters suggested by this article--that the best-known feminist legal scholars have unfairly arrogated to themselves the right to speak for all women, that their advocacy is confounded by their language, and that what they can or should get is more often limited by logic and the natural condition than by an oppressive masculine society-- will be dismissed as reflected the misguided misogyny of a society dominated by male chauvinists.
>
> So be it. The time is past due for an intellectually responsible challenge to the radical feminists who have assumed command of the Ivory Tower and the world beyond to which it beckons (Lasson, 1992:2, 3-6) (footnotes and references omitted).

The following is an example of an article excluded because it made marginal or circumstantial use of feminist jurisprudence literature. There is no further use of feminist jurisprudence scholarship anywhere else in the text or the references of this article. Both the text and the related footnote[44] are included.

> As others have observed, the exclusion of multiple perspectives from our legal system has contributed to the concentration and perpetuation of power in a privileged dominant group. [FN215]
>
> FN215. See R. COVER, JUSTICE ACCUSED (1975) (describing willingness of nineteenth century courts to disregard claims of blacks and to enforce fugitive slave laws); MacKinnon, Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence, 8 SIGNS 635 (1983) (white male perspective informs all legal doctrine); Minow, Foreword: Justice Engendered, 101 HARV. L. REV. 10, 94 (1987)

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[44] The author's reference style was retained.

> ("Court judgments endow some perspectives, rather than others, with power. Judicial power is least accountable when judges leave unstated --and treat as a given-- the perspective they select.") (Atwood, 1989:1099).

This last step in the data selection process resulted in the exclusion of four additional family law feminist jurisprudence articles. This reduced the sample size to 19 feminist jurisprudence articles dealing with family law issues. From the group of penal law feminist jurisprudence articles, six additional articles were excluded, and the sample size was reduced to 23 articles. Because two articles were cross-listed the total number of feminist jurisprudence articles whose content was analyzed was 42. (See Table 1.)

To summarize, my data collection process resulted in a sample of 123,385 articles published in legal journals indexed in WESTLAW, 322 source articles, 207 cited feminist jurisprudence articles, and 3005 citing articles. Analysis of these samples addressed my first research goal –evaluation of the extent to which feminist jurisprudence literature is present in the mainstream of the legal discipline. Furthermore, a sample of family law feminist jurisprudence articles (N=19) published in legal journals with impact factors and a sample of penal law feminist jurisprudence articles (N=23) published in legal journals with impact factors were analyzed and classified according to the three phases of feminist jurisprudence literature.

CHAPTER 6. DESCRIPTIVE STATISTICS

In this chapter, I present a description of the data collected. First, I address the frequency and publication patterns of all feminist jurisprudence source articles. Source articles are articles that include the term "feminist jurisprudence" anywhere in their title, text and/or references and are published in legal journals with impact factors. Source articles may or may not have received any citations. I identified these articles through WESTLAW. Second, I address the frequency and publication patterns of feminist jurisprudence cited articles. Cited articles are articles that include the term "feminist jurisprudence" anywhere in their title, text and/or references, are published in legal journals with impact factors and have received at least one citation. Third, I address the frequency and publication patterns of feminist jurisprudence citing articles. Citing, are articles in which bibliographic reference to any of the cited articles. Citing articles are also published in legal journals with impact factors.

Feminist jurisprudence source articles.

A total of 322 publications were included in my sample of feminist jurisprudence source articles. Feminist jurisprudence source articles were published in 40 of the 96 legal journals assigned an impact factor by the Journal Citation Reports (JCR) for the year 1992. (See Table 2.)

The frequency with which legal journals published feminist jurisprudence source articles varied by legal journal and ranged from 1 to 32 publications. The mean number of publications per journal was 8.05, the median 6, and the standard deviation 6.9. The legal journal that published the largest number of feminist jurisprudence source

Table 2. Frequency of publications of all source, cited and citing feminist jurisprudence articles by legal journal and impact factor.

Journal Title	Impact factor	No. of source articles	No. of cited articles	No. of citing articles
Harvard Law Review	8.397	13	12	154
Stanford Law Review	7.220	25	20	180
Yale Law Journal	5.073	32	29	145
Michigan Law Review	4.634	26	14	132
Columbia Law Review	4.412	6	6	62
California Law Review	3.898	13	9	147
UCLA Law Review	3.800	9	7	56
Duke Law Journal	3.754	13		96
University of Pennsylvania Law Review	3.563	6	6	87
University of Chicago Law Review	3.519	4	4	52
Virginia Law Review	3.319	9	6	74
Georgetown Law Journal	3.290	7	4	166
American Journal of International Law	2.846	2		8
Cornell Law Review	2.509	12	8	113
Journal of Legal Studies	2.196			1
Law and Society Review	2.149			30
Texas Law Review	2.013	10	8	115
Harvard International Law Journal	1.852			1
Northwestern University Law Review	1.785	4	3	74
Harvard Civil Rights-Civil Liberties Law Review	1.750	11	7	59
Southern California Law Review	1.711	14	13	152
Law and Social Inquiry	1.688			15
American Journal of Law and Medicine	1.630			3
Journal of Law and Economics	1.581			1
Journal of Law Economics and Organization	1.540			1
Law and Human Behavior	1.487			2
Hastings Law Journal	1.467	11	10	108
New York University Law Review	1.444	13	8	78
Vanderbilt Law Review	1.442	8	6	72
Family Law Quarterly	1.266			9
Boston University Law Review	1.133	3		45
Wisconsin Law Review	1.075	7		51
Ecology Law Quarterly	1.067			8
Minnesota Law Review	1.055	6	6	37
Indiana Law Journal	1.035	10	3	77
American Criminal Law Review	0.974			8
Administrative Law Review	0.902			3
Buffalo Law Review	0.886	5	2	57

Table 2 (continued). Frequency of publications of all source, cited and citing feminist jurisprudence articles by legal journal and impact factor.

Journal Title	Impact factor	No. of source articles	No. of cited articles	No. of citing articles
Journal of Criminal Law and Criminology	0.882			3
University of Pittsburg Law Review	0.878	4	3	23
Harvard Journal of Law and Public Policy	0.872			15
University of Illinois Law Review	0.871	1		41
Washington Law Review	0.867	3		30
George Washington Law Review	0.806	4		47
Law and Contemporary Problems	0.800	2	1	32
Iowa Law Review	0.750	6	5	63
Harvard Environmental Law Review	0.700			1
Fordham Law Review	0.616	7	4	46
Criminal Law Review	0.614			1
Catholic University Law Review	0.508	2	1	10
American Bankruptcy Law Journal	0.486			1
American Journal of Comparative Law	0.471			2
Judicature	0.442	5		10
Journal of Legal Medicine	0.414			6
Urban Lawyer	0.407			2
Law and Philosophy	0.406			6
Columbia Journal of Law and Social Problems	0.375			8
International Journal of the Sociology of Law	0.372			4
Virginia Journal of International Law	0.367	1		
American Journal of Legal History	0.333			3
Journal of Legal Education	0.329	4	5	101
Journal of Law and Society	0.327			15
Journal of Law and Education	0.316			2
Harvard Journal on Legislation	0.313	1	1	15
Stanford Journal of International Law	0.292			2
Cornell International Law Journal	0.273			3
Law Library Journal	0.205	1		17
Journal of Family Law	0.169			1
American Business Law Journal	0.154			13
International and Comparative Law Quarterly	0.154			1
Human Rights	0.091	2	1	1
University of Pennsylvania Journal of International Business Law	0.000			1

Table 2 (continued). Frequency of publications of all source, cited and citing feminist jurisprudence articles by legal journal and impact factor.

	Source Articles ($N_{legal\ journals}$=40)		**Cited Articles ($N_{legal\ journals}$=30)**		**Citing Articles ($N_{legal\ journals}$=71)**	
	Impact factors	Publication frequency	Impact factors	Publication frequency	Impact factors	Publication frequency
Mean	2.12	8.05	2.42	7.07	1.56	42.61
Median	1.44	6	1.73	6	0.97	15
St. Dev.	1.93	6.9	2.05	5.98	1.63	49.78

articles was *Yale Law Review* (32 publications), followed by *Michigan Law Review* (26 publications), and *Stanford Law Review* (25 publications). The legal journals that published the smallest number of feminist jurisprudence source articles were *University of Illinois Law Review, Virginia Journal of International Law, Harvard Journal on Legislation,* and *Human Rights* which published one article each. Further, three journals, *American Journal of International Law, Law and Contemporary Problems,* and *Catholic University Law Review,* published two articles each. (See Table 2.) The upper ten percent of legal journals published 30.12% of the source articles, while the bottom 12.5% of legal journals published 3.7% of all the source articles. In other words, feminist jurisprudence publications were concentrated among a relatively small number of legal journals.

Feminist jurisprudence source articles included in the sample were published between the years 1983 and 1993. The largest number of source articles (71 publications) appeared in 1993 while the smallest number of source articles (2 publications) appeared in 1983. On average, there were approximately 29 feminist jurisprudence source articles published each year. The median number of publications was 23, and the standard deviation was 22.84. (See Table 3.) The data in Table 3 are graphically represented in Figure 1.

Feminist jurisprudence source articles were published in legal journals whose impact factors ranged from 0.09 (*Human Rights*) to 8.39 (*Harvard Law Review*). The mean impact factor of legal journals that published source articles was 2.12, the median 1.44 and the standard deviation 1.93. (See Table 2.)

The values of the mean, per year, impact factor of journals that published feminist jurisprudence source articles, ranged from a high of 6.74 in 1983 to a low of 2.45 in 1992. (See Table 4.) The data in Table 4 are shown in Figure 2.

Source articles were authored by 260 different scholars whose names appear as

Table 3. Frequency of publications of source, cited and citing feminist jurisprudence articles per year.

Year	No. of source articles	No. of cited articles	No. Of all articles in WESTLAW	No. of citing articles
1983	2	2	2,175	
1984	3	2	3,266	
1985	8	7	6,578	3
1986	23	16	7,718	7
1987	16	14	8,711	20
1988	22	15	9,791	59
1989	31	26	11,815	245
1990	38	25	13,031	379
1991	57	43	15,014	537
1992	51	32	24,526	769
1993	71	25	20,760	887
1994				99

	Source articles (N=322)	Cited articles (N=207)	All articles in WESTLAW (N=123,385)	Citing articles (N=3,005)
Mean	29.27	18.82	11,216.82	300.5
Median	23	16	9,791	172
St. Dev.	22.84	12.8	6,879.8	330.14

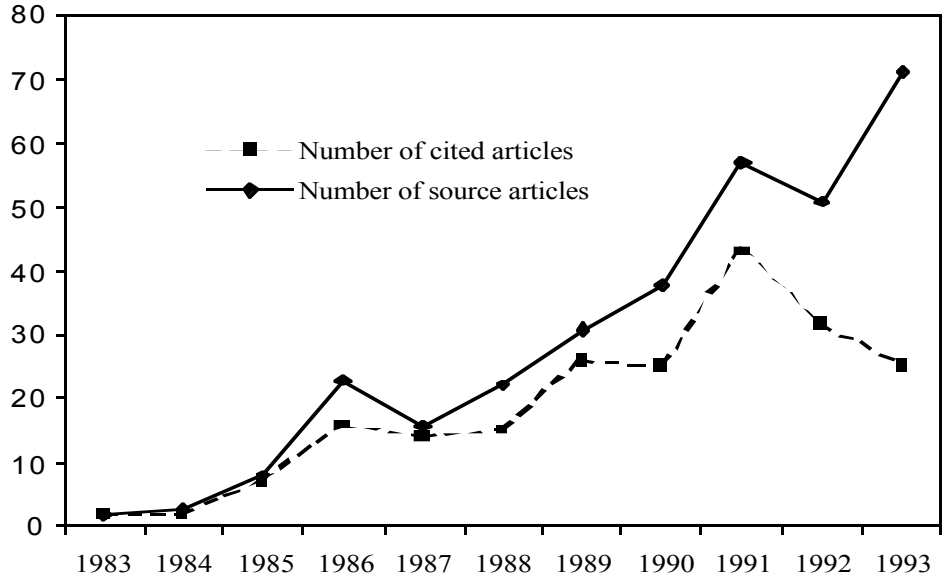

Figure 1. Frequency of publications of source and cited feminist jurisprudence articles

Table 4. Mean impact factor of legal journals which published source, cited and citing feminist jurisprudence articles per year.

Year	Source articles	Cited articles	Citing articles
1983	6.74	6.74	
1984	4.63	5.07	
1985	4.24	4.31	2.01
1986	3.41	3.91	2.82
1987	3.74	3.92	2.32
1988	3.61	3.65	1.39
1989	3.67	3.88	3.18
1990	2.77	3.02	3.60
1991	3.22	3.28	2.80
1992	2.45	2.63	2.40
1993	3.17	4.40	3.17
1994			3.26

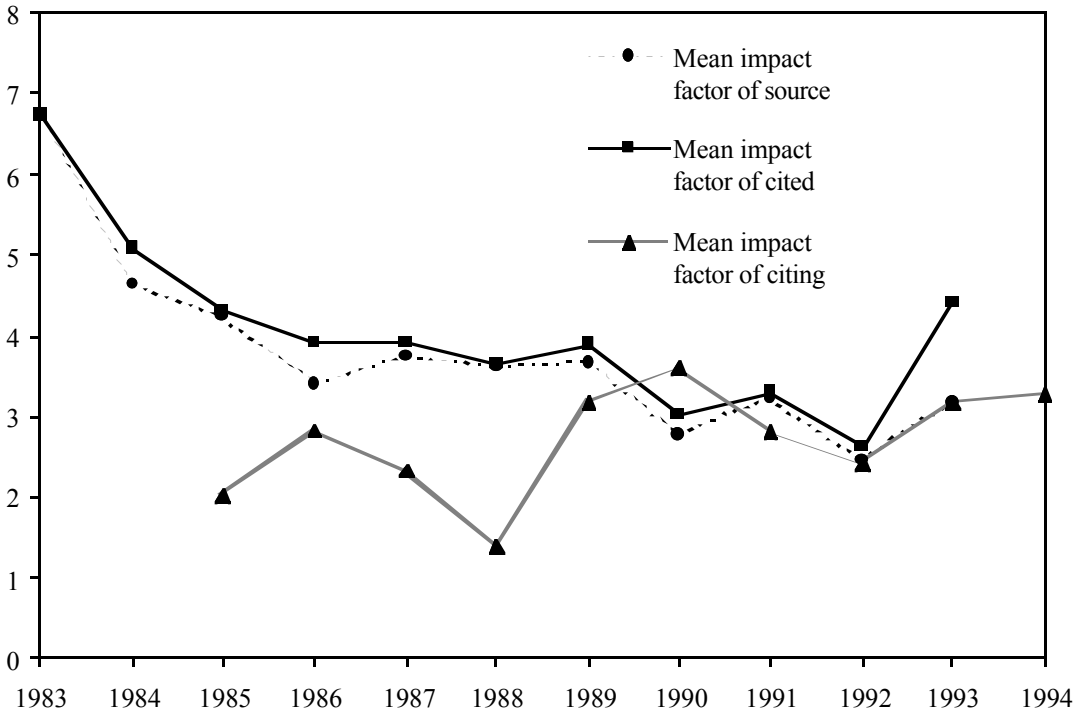

Figure 2. Mean impact factor per year for source, cited and citing articles.

authors and/or coauthors[45]. One scholar authored five publications; five scholars authored four publications; nine scholars authored three publications and 23 scholars authored two publications. The remaining 221 scholars authored one publication. (See Table 5 for names of authors with two publications or more.) The list of authors that was generated although it cannot be considered all-inclusive nor exhaustive of feminist jurisprudence scholars includes the names of scholars such as Matsuda (1986; 1987; 1991), Bender (1988; 1993b), Rhode (1986a; 1986b; 1988; 1989; 1991; 1993), and Scales (1981; 1986) who have made significant contributions to the development of feminist jurisprudence and feminist theory in general. This observation points to the representativeness of my sample selection process.

Feminist jurisprudence cited articles.

My sample of cited feminist jurisprudence articles—that is articles that were cited at least once—included a total of 207 articles. Cited feminist jurisprudence articles were published in 30 of the 96 legal journals with impact factors. The number of cited feminist jurisprudence published per journal ranged from 1 to 29. On average, each of the legal journals published approximately 7 cited feminist jurisprudence articles. The median number of publications per journal was 6 and the standard deviation 5.98. (See Table 2.)

Similarly to the source articles, cited articles tended to be published in a relatively small number of legal journals. Ten percent of legal journals published almost 30% of

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[45] This number may not be completely accurate since few of the authors' names may appear different depending on whether middle initials for example, are included or not. It also is likely that few women scholars may have changed their last name due to changes in their marital status.

Table 5. Names of scholars who authored two or more articles by number of articles authored.

Name of author	Number of source articles authored	Number of cited articles authored
Matsuda MJ	5	4
Abrams K	4	4
Delgado R	4	3
Littleton CA	4	4
Radin MJ	4	4
Resnik J	4	4
Bender L	3	2
Cahn NR	3	2
Cloker R	3	3
Dowd NE	3	3
Feldman SM	3	
Hirshman LR	3	3
McConnell MW	3	2
Schlag P	3(5)*	2
Singer JW	3	2
Ansley FL	2	2
Bell D	2	
Boyle J	2	2
Davis S	2	
Eskridge WN	2	
Estrich S	2	
Farber DA	2	
Freyfogle ET	2	
Goldfarb P	2	2
Karst KL	2	
Mahoney MR	2	2
Minow M	2	2
Mitchell LE	2	
Posner RA	2	
Radford MF	2	
Roberts DE	2	
Scales AC	2	
Schlag PJ	2(5)*	
Schneider EM	2	2
Schroeder JL	2	2
Sunstein CR	2	2
Tushnet MV	2(3)*	2
Williams DC	2	2

*Number of articles authored by these scholars may vary dependent on whether or not middle initials were included.

cited articles, and 13.33% of legal journals published approximately 2% of cited feminist jurisprudence articles. The list of journals that published the largest number of cited articles overlaps with the list of journals that published the largest number of source articles. *Yale Law Review* published the largest number of cited source articles (29 publications), followed by *Stanford Law Review* (20 publications), and *Michigan Law Review* (14 publications). These are the same journals that published the largest number of source articles. *Human Rights*, *Harvard Journal on Legislation*, *Catholic University Law Review*, and *Law and Contemporary Problems* published the smallest number of cited feminist jurisprudence articles (1 publication each). (See Table 2.)

The number of feminist jurisprudence cited articles published per year ranged from a low of 2 in 1983 to a high of 43 in 1991. On average, there were approximately 19 cited feminist jurisprudence articles published per year. The median number of publications per year was 16 and the standard deviation was 12.8. (See Table 3.) Observation of the graph of the frequency of publication of feminist jurisprudence cited articles by year shows an upward trend until 1991. During 1992 and 1993 the number of cited feminist jurisprudence articles dropped. (See Figure 1.) The observed drop in the number of cited feminist jurisprudence articles published during 1992 and 1993 may be a function of time needed for the publication of scholarly work citing relatively recently published articles. A further indication that the decline in the number of cited articles may be a function of time needed for the publication of citing articles is that the pattern of publication of source articles differed somewhat. That is, although the number of source articles declined somewhat in 1992 it increased again in 1993. In other words, the two samples appear to be following different patterns at least as far as the raw numbers of publications may indicate.

Cited feminist jurisprudence articles were published in legal journals whose impact factor ranged from 0.91 (*Human Rights*) to 8.397 (*Harvard Law Review*); the same range

of impact factors observed among legal journals that published source articles. The mean impact factor of the list of legal journals which published cited feminist jurisprudence articles was 2.42, the median 1.73 and the standard deviation 2.05. (See Table 2.)

Mean impact of legal journals that published cited feminist jurisprudence articles is basically declining over the years. (See Figure 2.) The mean, per year, impact factor ranged from a high of 6.74 in 1983 to a low of 2.63 in the year 1992. However, the mean increased to 4.4. in 1993. (See Table 4.)

The number of citations received by cited articles ranged from 1 to 156. On average, cited articles received approximately 15 citations (mean=14.52). The median number of citations received by cited articles was 5. (See Table 6.)

The majority of cited articles (69.6%) received between 1 and 10 citations. Twelve percent of cited articles received between 11 and 20 citations. Thirteen articles (6.2%) received between 21 and 30 citations while an even smaller number of articles (5) received between 31 and 40 citations. Additionally, four articles, (2%) received over 100 citations each. (See Table 6.) Two of the articles that received the largest numbers of citations were published in *Harvard Law Review* --the legal journal with the highest impact factor-- as part of the highly prestigious and scholarly series of Forewords to the Supreme Court. Articles published in this series tend to yield significant number of citations and often appear among lists of frequently cited legal articles (Shapiro, 1985:1546-1547). The other 2 articles that received over 100 citations were published in *Stanford Law Review* and *Michigan Law Review,* journals with the second and fourth higher ranking impact factors. (See Table 7.) For the purposes of my study It is important that these highly cited articles are authored by scholars who have significantly and consistently contributed to feminist theory in general and feminist jurisprudence theory in particular.

Cited articles published in 1986 received the largest number of citations (549),

Table 6. Frequency distribution of citations received by cited articles published in legal journals with impact factors; summary results.

No. of citations received	Frequency	Percent	Cumulative Percent
1	29	14.0	14.0
2	29	14.0	28.0
3	20	9.7	37.7
4	17	8.2	45.9
5	17	8.2	54.1
6	8	3.9	58.0
7	8	3.9	61.8
8	6	2.9	64.7
9	4	1.9	66.7
10	6	2.9	69.6
11-20	25	12.1	81.6
21-30	13	6.2	87.9
31-40	5	2.5	90.3
41-50	3	1.5	91.8
51-60	5	2.5	94.2
61-70	3	1.5	95.7
71-80	1	5	96.1
81-90	2	1	97.1
91-100	2	1	98.1
111	1	0.5	98.6
129	1	0.5	99.0
136	1	0.5	99.5
156	1	0.5	100.0

Mean 14.52
Median 5
Stand. Dev. 24.58

Table 7. Articles which received over 100 citations by number of citations.

Rank order	Title of article	Number of citations received
1.	Minow, Martha. 1987. "Foreword: Justice Engendered." *Harvard Law Review* 101:10	156
2.	Michelman, Frank I. 1986. "Foreword: Traces of Self-Government." *Harvard Law Review* 100:4	129
3.	Sunstein, Cass R. 1985. "Interest Groups in American Public Law." *Stanford Law Review* 38:29	136
4.	Matsuda, Mari J. 1989. "Public Response to Racist Speech: Considering the Victim's Story." *Michigan Law Review* 87:2320	111

followed by articles published in 1989 (498) and 1987 (464). (See Table 8.) However, articles published in 1985 received the largest mean number of citations (mean=51.14) followed by 1984 (mean=48.5) and 1986 (mean=33.14).

Overall, the mean number of citations received by cited articles per year is showing a downward trend. After its pick in 1985 the mean number of citations received per year is declining. This decline in the number of citations received is most likely a function of needed for new scholarly work to be published. (See Figure 3.)

Cited feminist jurisprudence articles were authored by 166 different authors. Of these, five authors published four articles each, six authors published three articles each, 17 authors published two articles each (see Table 5) and 139 authors published 1 article each. An overlap exists between the list of names of scholars which authored source articles in general and the list of names of scholars which authored cited articles. However, a number of scholars (12) who were included in the list of authors of source articles were not included among the authors of cited articles.

All articles published in legal journals in general and indexed in WESTLAW.

There were 123,385 articles included in my sample of all articles published in the 504 legal journals indexed in WESTLAW during the time of the data collection. The average number of articles published per year and indexed in WESTLAW was approximately 11,217. The median number of publications was 9,791 while the standard deviation was 6,879.8. (See Table 3.) The number of publications exhibited an overall

Table 8. Number of citations and mean number of citations received by cited articles by year.

Year	No. of citations received	Mean no. Of citations received	Median no. of citations received
1983	21	10.50	10.50
1984	97	48.50	48.50
1985	358	51.14	49.00
1986	549	34.31	20.00
1987	464	33.14	6.50
1988	120	8.00	5.00
1989	498	14.15	10.50
1990	332	13.28	7.00
1991	342	7.95	4.00
1992	166	5.19	4.00
1993	58	2.32	2.00

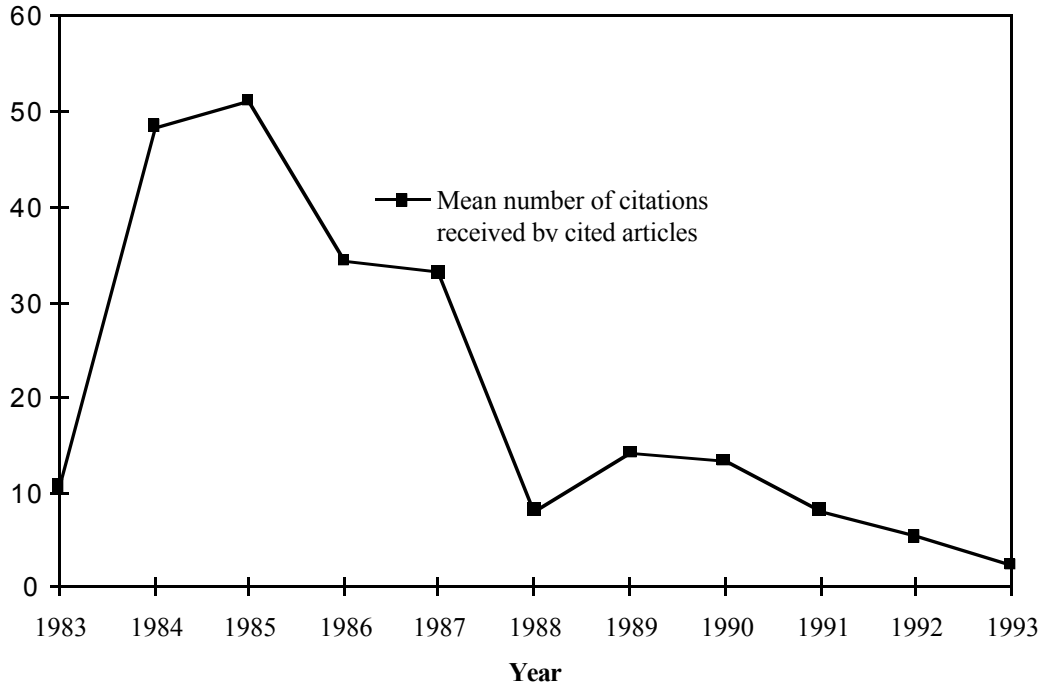

Figure 3. Mean per year number of citations received by cited feminist jurisprudence articles

increasing trend except for a decline in the number of publications observed during 1993[46]. (See Figure 4.)

Citing feminist jurisprudence articles.

There were 3,005 articles included in my sample of articles citing any of the feminist jurisprudence source articles. Citing articles were published in 71 of the 96 legal journals for which the JCR reported an impact factor in the year 1992.

The number of citing articles published in each of the 71 legal journals ranged from 1 to 180. On average, each of the legal journals published approximately 43 citing articles (mean=42.61). The median number of citing articles published per journal was 15 and the standard deviation was 49.78. (See Table 2.)

The pattern of the concentration of publications in a relatively small number of legal journals observed for source and cited articles was repeated for citing articles as well. (See Table 2.) *Stanford Law Review* published the largest number of citing articles (180 publications) followed by *Georgetown Law Review* (166 publications) and *Harvard Law Review* (154 publications). That is, 4.23% of legal journals included in the

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[46] The decline in the number of publications during the year 1993 is probably a function of delays in updating of databases and/or changes in the number of journals indexed rather than an actual decline in the number of publications. (Personal communication with WESTLAW attorneys on June 5, 1996.)

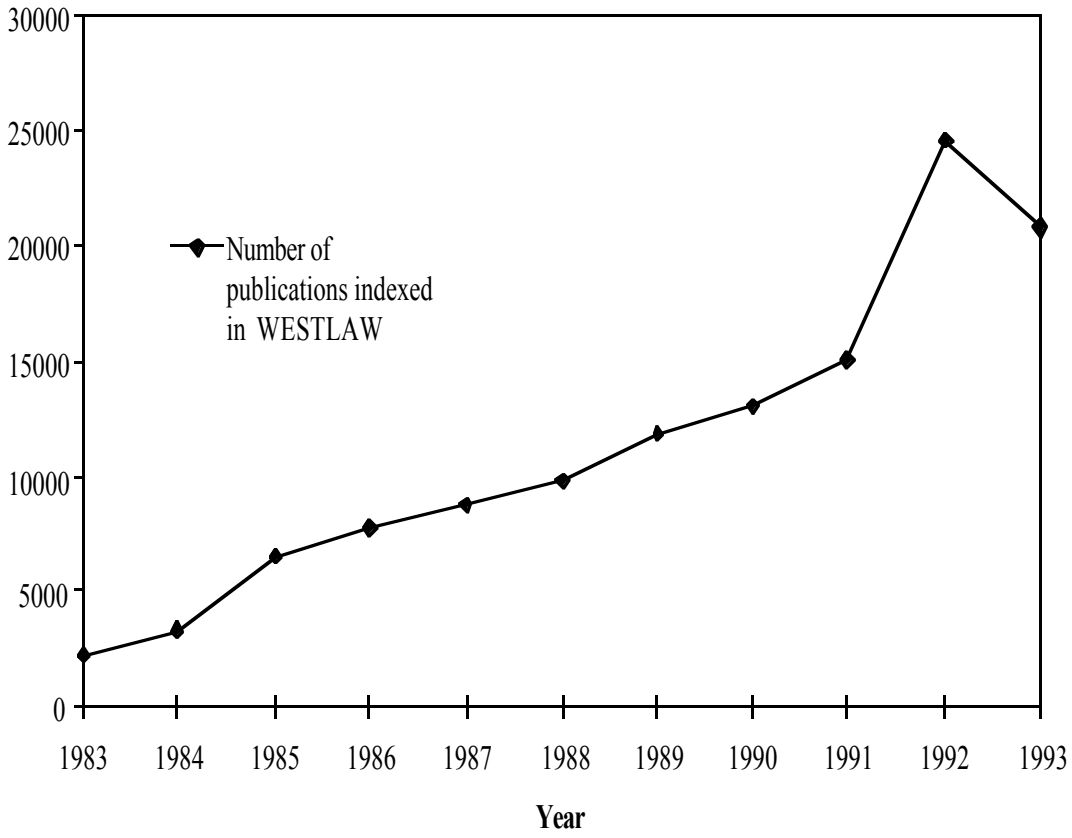

Figure 4. Number of articles published in legal journals in general and indexed in WESTLAW

sample published a total of 500 articles or 16.6% of all citing articles. There were eight additional legal journals representing 11.27% of legal journals which published over 100 articles

Citing articles were published between the years[47] 1985 and 1994. That is, a time lag, expected given time requirements for incorporation, preparation and publication of articles citing published scholarly work, existed between year of publication of source and cited articles and citing articles.

The frequency of publications of citing articles showed an upward trend (See Figure 5.) The number of citing articles published per year ranged from 3 to 887. The largest number of citing articles were published in 1993 (887 articles), 1992 (769 articles) and 1991 (537 articles). The smallest number of citing articles was published in 1985 (3 articles) and 1986 (7 articles). The average number of citing articles published per year was approximately 300. The median number of citing articles published was 172 and the standard deviation 330.14. (See Table 3.)

The impact factor of journals which published citing articles ranged from 0.00 (*University of Pennsylvania Journal of International Business Law*) to 8.397 (*Harvard Law Review*). The mean impact factor of legal journals whic published citing articles was 1.56, the median 0.97 and the standard deviation 1.63. (See Table 2.)

The mean, per year, impact factor of journals publishing citing articles ranged from

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[47] The year 1994 was included in selection of data for citing articles in order to be more inclusive and allow room for the full inclusion of citing articles.

1.39 in 1988 to 3.6 in 1990. (See Table 4.) The data of Table 4 are presented in Figure 2. The different data samples described in this chapter were used to address my research questions. I proceed to examine these questions in the next chapter.

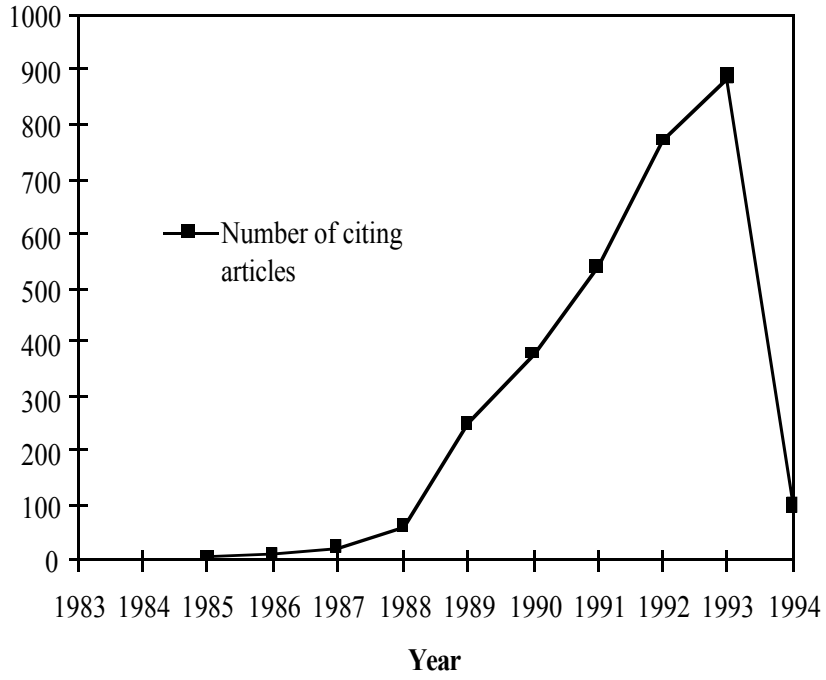

Figure 5. Frequency of publications of citing articles per year

CHAPTER 7. ANALYSIS OF THE FULL SAMPLE; RESEARCH QUESTIONS AND FINDINGS

Research questions.

To assess feminist jurisprudence's relative standing within the legal discipline, I generated a number of specific research questions relating to the identification and description of publication and citation patterns of feminist jurisprudence articles. The research questions I address are the following:

> *1. What is the relative standing of feminist jurisprudence literature within legal literature as a whole in terms of the number of feminist jurisprudence articles published per year?*
>
> *2. What is the relative standing of feminist jurisprudence literature within legal literature as a whole in terms of the influence --as measured by impact factors-- legal journals publishing feminist jurisprudence articles may exert on disciplinary discourses?*
>
> *3. Are feminist jurisprudence articles published in more influential legal journals --that is journals with higher impact factors-- receiving more citations than articles published in less influential legal journals --that is journals with lower impact factors?*
>
> *4. Are feminist jurisprudence articles published in legal journals with high impact factors cited in legal journals with equally high impact factors?*
>
> *5. Are feminist jurisprudence articles concentrated in specific areas of legal specialization or do they address a wide range of legal areas?*

Research questions 1 and 2 address the publication patterns of feminist jurisprudence articles. Research questions 3 and 4 address the citation patterns of

feminist jurisprudence articles, while research question 5 addresses the spectrum of legal specialization covered by feminist jurisprudence scholarship.

There are two basic assumptions underlying my research. First, legal journals with impact factors are considered mainstream legal journals. Second, the higher the impact factor of a legal journal, the higher the influence this journal exerts on the mainstream of the discipline. Both assumptions are based on the way impact factors are calculated.

Publication patterns.

Relative standing of feminist jurisprudence literature within the legal discipline as a whole, over time.

In order to address the first research question I restated it in the following two questions:

1a. *Is the number of feminist jurisprudence articles increasing over time?*
1b. *Is the number of feminist jurisprudence articles increasing over time relative to the overall number of articles published in legal journals?*

Feminist jurisprudence articles published over time.

In order to address the question of whether feminist jurisprudence articles are increasing over time, I looked at the relationship between year of publication and the total number of feminist jurisprudence articles I identified by WESTLAW, the number of feminist jurisprudence source articles (articles published in legal journals with impact factors) the number of feminist jurisprudence cited articles (feminist jurisprudence articles used as reference material at least once), and the number of feminist jurisprudence articles

published in journals without impact factors[48]. Correlations[49] between variables are shown in Table 9.

As a next step, the total number of feminist jurisprudence articles identified was regressed against year of publication. I followed the same statistical procedure for the number of source and cited articles as well as feminist jurisprudence articles published in journals without impact factors. The results of the simple regression presented in table 10 indicate that year of publication had a significant relationship with the increase in the number of publications of all feminist jurisprudence articles identified (β=0.96; $p \leq 0.001$), the number of source (β=0.96; $p \leq 0.001$), and cited articles (β=0.88; $p \leq 0.001$), as well as the number of feminist jurisprudence articles published in journals without impact factors (β=0.91; $p \leq 0.001$). Furthermore, year of publication explained a large and statistically significant proportion of the variance in the total number of feminist jurisprudence articles (93%) as well as source (93%), cited (77%) and feminist jurisprudence articles published in journals without impact factor (82%).

Overall, statistical analysis showed that year of publication related to the number of feminist jurisprudence articles published in legal journals. Furthermore, this relationship is statistically significant and positive indicating an upward trend in the number of published articles. The graphic representation[50] of the above relationships is

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[48] Feminist jurisprudence articles published in journals without impact factors are included in this stage of the analysis for comparative and descriptive purposes and will not be included in other stages of the analysis.

[49] Although I will note levels of statistical significance, because of the small sample size, they will not be considered critical in the interpretation of results.

[50] Some of the information presented in Figure 6 is included in different format in previous figures. However, such information is repeated here in order to facilitate comparisons.

Table 9. Correlation Matrix.

(numbers in parenthesis refer to sample size)

	Year	All legal publications	All fem. jur. Articles	Fem. jur. source articles	Fem. jur. cited articles	Fem. Jur. articles in no-impact journals
Year	1.00 (11)					
All legal publications	0.95** (11)	1.00 (11)				
All fem. jur. articles	0.95** (11)	0.93** (11)	1.00 (11)			
Fem. Jur. source articles	0.96** (11)	0.91** (11)	0.98** (11)	1.00 (11)		
Fem. jur. cited articles	0.88** (11)	0.81** (11)	0.87** (11)	0.87** (11)	1.00 (11)	
Fem, jur. articles in no-impact journals	0.89** (11)	0.92** (11)	0.98** (11)	0.92** (11)	0.83** (11)	1.00 (11)
Ratio of all fem. jur. to all legal publications	0.89** (11)	0.78** (11)	0.92** (11)	0.93** (11)	0.93** (11)	0.86** (11)
Ratio of fem. jur in impact to all legal publications	0.78** (11)	0.61* (11)	0.74** (11)	0.84** (11)	0.83** (11)	0.62* (11)
Ratio of cited to all legal publications	0.27 (11)	0.06 (11)	0.18 (11)	0.25 (11)	0.58 (11)	0.10 (11)
Ratio of fem jur in no-imp. journals to all legal publications	0.87** (11)	0.81** (11)	0.94** (11)	0.89** (11)	0.89** (11)	0.94** (11)
Ratio of source to all fem. jur. articles	-0.89** (11)	-0.87** (11)	-0.88** (11)	-0.83** (11)	-0.85** (11)	-0.89** (11)
Ratio of cited to all fem. jur. articles	-0.85** (11)	-0.79** (11)	-0.77** (11)	-0.78** (11)	-0.66* (11)	-0.72* (11)
Ratio of fem. jur in no-impact to all fem. jur.	0.81** (11)	0.79** (11)	0.83** (11)	0.76** (11)	0.75** (11)	0.87** (11)
Year of publication of source	-0.21 (11)	-0.36 (11)	-0.25 (11)	-0.14 (11)	-0.33 (11)	-0.35 (11)
Impact factor of source	-0.11 (11)	-0.09 (11)	0.04 (11)	0.05 (11)	-0.38 (11)	0.04 (11)
Year of publication of cited	-0.53 (11)	-0.56 (11)	-0.65* (11)	-0.59 (11)	-0.28 (11)	-0.69* (11)
Impact factor of cited	0.67* (11)	0.61* (11)	0.5 (11)	0.57 (11)	0.65* (11)	0.40 (11)
Year of publication of citing	0.00 (11)	-0.06 (11)	-0.03 (11)	0.03 (11)	0.06 (11)	-0.09 (11)
Impact factor of citing	0.59 (11)	0.69* (11)	0.66* (11)	0.65* (11)	0.41 (11)	0.65* (11)
No. of citations to cited articles	0.74** (11)	0.78** (11)	0.74** (11)	0.76** (11)	0.42 (11)	0.69* (11)

Table 9. (continued) Correlation matrix.

(numbers in parenthesis refer to sample aize)

	Ratio of all fem. jur. to all legal publications	Ratio of fem. jur in impact to all legal publications	Ratio of cited to all legal publications	Ratio of fem jur in no-imp. journals to all legal publications	Ratio of source to all fem. jur. articles	Ratio of cited to all fem. jur. articles	Ratio of fem. jur in no-impact to all fem. jur.
Ratio of all fem. jur. to all legal publications	1.00 (11)						
Ratio of fem. jur in impact to all legal publications	0.92** (11)	1.00 (11)					
Ratio of cited to all legal publications	0.53 (11)	0.65* (11)	1.00 (11)				
Ratio of fem jur in no-imp. journals to all legal publications	0.94** (11)	0.73* (11)	0.36 (11)	1.00 (11)			
Ratio of source to all fem. jur. articles	-0.85** (11)	-0.62* (11)	-0.29 (11)	-0.92** (11)	1.00 (11)		
Ratio of cited to all fem. jur. articles	-0.74** (11)	-0.67* (11)	-0.22 (11)	-0.73* (11)	0.75** (11)	1.00 (11)	
Ratio of fem. jur in no-impact to all fem. jur.	0.78** (11)	0.52 (11	0.19 (11)	0.90** (11)	-0.93** (11)	-0.81** (11)	1.00 (11)
Year of publication of source	-0.20 (11)	-0.04 (11)	-0.15 (11)	-0.32 (11)	0.48 (11)	0.29 (11)	-0.53* (11)
Impact factor of source	-0.13 (11)	-0.16 (11)	-0.61* (11)	-0.06 (11)	0.23 (11)	0.08 (11)	-0.09 (11)
Year of publication of cited	-0.43 (11)	-0.22 (11)	0.38 (11)	-0.58 (11)	0.44 (11)	0.57 (11)	-0.63* (11)
Impact factor of cited	0.59 (11)	0.64* (11)	0.47 (11)	0.44 (11)	-0.61* (11)	-0.58 (11)	0.39 (11)
Year of publication of citing	0.17 (11)	0.34 (11)	0.27 (11)	0.00 (11)	-0.01 (11)	-0.11 (11)	-0.05 (11)
Impact factor of citing	0.43 (11)	0.37 (11)	-0.29 (11)	0.46 (11)	-0.36 (11)	-0.60* (11)	0.48 (11)
No. of citations to cited articles	0.52 (11)	0.41 (11)	-0.35 (11)	0.52 (11)	-0.55 (11)	-0.59 (11)	0.53 (11)

Table 9. (continued) Correlation matrix.

(numbers in parenthesis refer to sample size)

	Year publ. of source	Imp. factor of source	Year publ. of cited	Imp. factor of cited	Year publ. of citing	Imp. factor citing	No. of citations to cited
Year of publication of source	1.00 (322)						
Impact factor of source	-0.16** (322)	1.00 (322)					
Year of publication of cited	-0.05 (207)	-0.15* (207)	1.00 (207)				
Impact factor of cited	0.0 (307)	-0.18** (207)	-0.13 (207)	1.00 (207)			
Year of publication of citing	0.06 (322)	-0.11* (322)	0.12 (207)	-0.11 (207)	1.00 (3005)		
Impact factor of citing	-0.05 (322)	0.04 (322)	-0.04 (207)	0.05 (207)	0.01 (3005)	1.00 (3005)	
No. of citations to cited articles	0.01 (207)	0.02 (207)	-0.44** (207)	0.33** (207)	0.08 (207)	0.02 (207)	1.00 (207)

* $p \leq 0.05$ ** $p \leq 0.01$

Table 10. Simple regressions between year of publication and number of feminist jurisprudence articles identified, number of feminist jurisprudence source articles, number of feminist jurisprudence cited articles, number of feminist jurisprudence articles in journals without impact factors and overall number of legal publications in WESTLAW.

	Dependent Variables									
	Feminist jurisprudence articles identified		Feminist jurisprudence source articles		Feminist jurisprudence cited articles		Feminist jurisprudence articles in journals without impact factor		Overall legal publications in WESTLAW	
Independent variable	**b**	**beta**	**b**	**Beta**	**b**	**beta**	**b**	**beta**	**b**	**beta**
Year	14.02	0.96**	6.63	0.96**	3.36	0.88**	6.37	0.91**	1972.76	0.95**
Constant	27813		-13146		-6649.9		-12649		-4.E+06	
R^2	0.93**		0.93**		0.77**		0.82**		0.90**	
Adjusted R^2	0.92		0.92		0.75		0.80		0.89	

** $p \leq 0.001$

shown in Figure 6. Specifically, the number of all feminist jurisprudence combined, as well as the number of source feminist jurisprudence articles exhibit an overall increasing trend. The same is true for articles published in journals without impact factors. Feminist jurisprudence cited articles exhibit somewhat of a different trend since their number declines during 1992 and 1993. This decline, however, can be explained given that fewer of the articles published in more recent years have had the chance of being used as reference material in other scholarly publications and be included in my sample.

According to my analysis, the body of feminist jurisprudence literature is growing over time. That is, larger numbers of feminist jurisprudence articles appear in legal journals with impact factors, the mainstream of legal literature, as well as in journals without impact factors. This trend further indicates that feminist jurisprudence literature is becoming present and thus, available to legal scholars in the mainstream and non-mainstream legal journals. The presence and availability of feminist jurisprudence literature has the potential to effect legal change through changes in legal theory and further effect social change benefiting women.

Feminist jurisprudence articles published over time relative to the overall number of articles published in legal journals.

To readily compare feminist jurisprudence publication trends to the trends of legal articles in general, I converted absolute numbers into ratios. Thus, the total number of feminist jurisprudence articles, the number of feminist jurisprudence source articles, the number of feminist jurisprudence cited articles, as well the number of feminist jurisprudence articles published in journals without impact factors were converted to represent proportions of the overall number of articles published in legal journals in general. Moreover, the number of feminist jurisprudence source articles, the number of

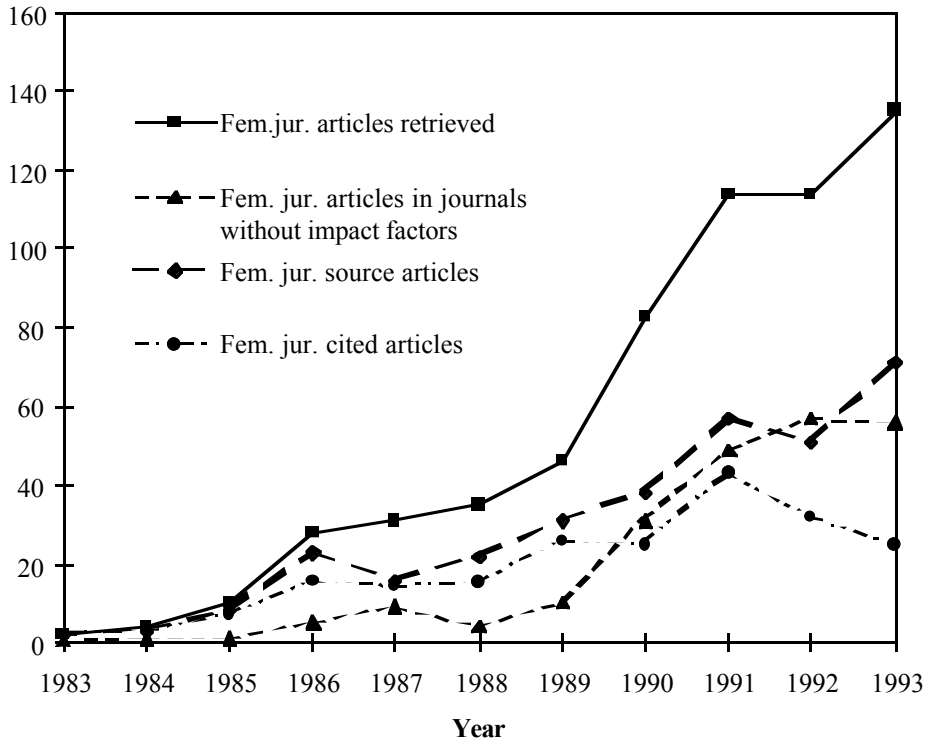

Figure 6. Publication trends of feminist jurisprudence articles

feminist jurisprudence cited articles, and the number of feminist jurisprudence articles published in journals without impact factors were expressed as proportions of the total number of feminist jurisprudence articles. These conversions are shown in Table 11. Correlations between the variables are shown in Table 9.

As shown in Table 12, simple regression between year of publication and the ratio of the total number of feminist jurisprudence articles to the overall number of publications in WESTLAW produced an R^2=0.8, statistically significant at the 0.001 level. Furthermore, the positive regression coefficient indicates that publication of feminist jurisprudence articles in relation to the overall number of publications exhibits an upward trend. In other words, feminist jurisprudence articles as a proportion of the overall number of legal articles are increasing over time. This upward trend of feminist jurisprudence articles expressed as a proportion of the overall number of legal articles is graphically depicted in Figure 7. The graphic representation of the ratio of feminist jurisprudence articles over the overall number of legal articles is similar to the graphic expression of the absolute number of feminist jurisprudence articles.

A series of simple regressions further showed that relative to the overall number of articles published in legal journals, feminist jurisprudence source articles, as well as feminist jurisprudence articles published in legal journals without impact factor exhibit an overall upward trend as it is shown in Figure 7. Year of publication explained a large proportion of the variance in both variables. (See Table 12.) The regression between year of publication and cited feminist jurisprudence articles expressed as a ratio of the overall number of legal articles was found to be non-significant. (See Table 12.)

Since the total number of feminist jurisprudence articles is increasing relatively to the overall number of legal articles published, it is important to know whether feminist jurisprudence source articles, feminist jurisprudence cited articles, and feminist jurisprudence articles published in journals without impact factors increase in similar or

Table 11. Ratios[51] of feminist jurisprudence articles to all legal articles published in legal journals in general and indexed in WESTLAW and ratios of feminist jurisprudence cited articles and feminist jurisprudence published in journals without impact factors to all feminist jurisprudence articles identified.

Year	Ratio of all fem. jur. articles retrieved to articles published in legal journals in general	Ratio of fem. jur. source articles to articles published in legal journals in general	Ratio of fem. jur. cited articles to articles published in legal journal in general	Ratio of fem. jur. articles in no-impact journals to articles published in legal journals in general	Ratio of fem. jur. articles source articles to all fem. jur. articles retrieved	Ratio of fem. jur. articles in no-impact factor journals to all fem. jur. articles retrieved	Ratio of fem. jur. cited articles to all fem. jur. articles retrieved
1983	0.92	0.92	1	0.00	1000	0.00	1000
1984	1.22	1.22	1	0.31	1000	250.00	500
1985	1.52	1.22	1	0.15	800	100.00	700
1986	3.63	2.98	2	0.65	821.43	178.57	571
1987	3.56	1.84	2	1.03	516.13	290.32	452
1988	3.57	2.25	2	0.41	628.57	114.29	429
1989	3.89	2.62	2	0.85	673.91	217.39	565
1990	6.37	2.92	2	2.38	457.83	373.49	301
1991	7.59	3.80	3	3.26	500.00	429.82	377
1992	4.65	2.08	1	2.34	447.37	500.00	281
1993	6.50	3.42	1	2.70	525.93	414.81	185

[51] Ratios were multiplied by 1000 in order to produce more meaningful numbers allowing easier comparisons.

Table 12. Simple regressions between year of publication and ratios of feminist jurisprudence articles to legal journals in general and feminist jurisprudence source articles, cited articles and articles published in journals without impact factors to feminist jurisprudence retrieved articles.

Indep. Variable	**Dependent Variables**													
	Ratio of all fem. jur. articles retrieved to all articles in general		Ratio of fem. jur. source articles to all articles in general		Ratio of fem. jur. Cited articles to all articles in general		Ratio of fem. jur. art. in no-impact factor journals to all articles in general		Ratio of fem. jur. source articles to all fem. jur. articles retrieved		Ratio of fem. jur. cited articles to all fem. jur. articles retrieved		Ratio of fem. jur. articles in no-impact factor journals to all fem. jur. articles retrieved	
Year of publication	b	β	b	β	b	β	b	β	b	β	b	β	b	β
	0.6	0.9**	0.23	0.78*	9.0E-02	0.46	0.31	0.89**	-45.91	-0.85*	-57.7	-0.85*	39.82	0.84*
Constant	-1182.5**		-459.42*		-176.93		-616.25**		9190.2*		115187*		-78906*	
R^2	0.8**		0.61*		0.21		0.79**		0.73*		0.72*		0.71*	
Adj. R^2	0.78		0.57		0.12		0.76		0.70		0.69		0.67	

* $p \leq 0.01$ ** $p \leq 0.001$

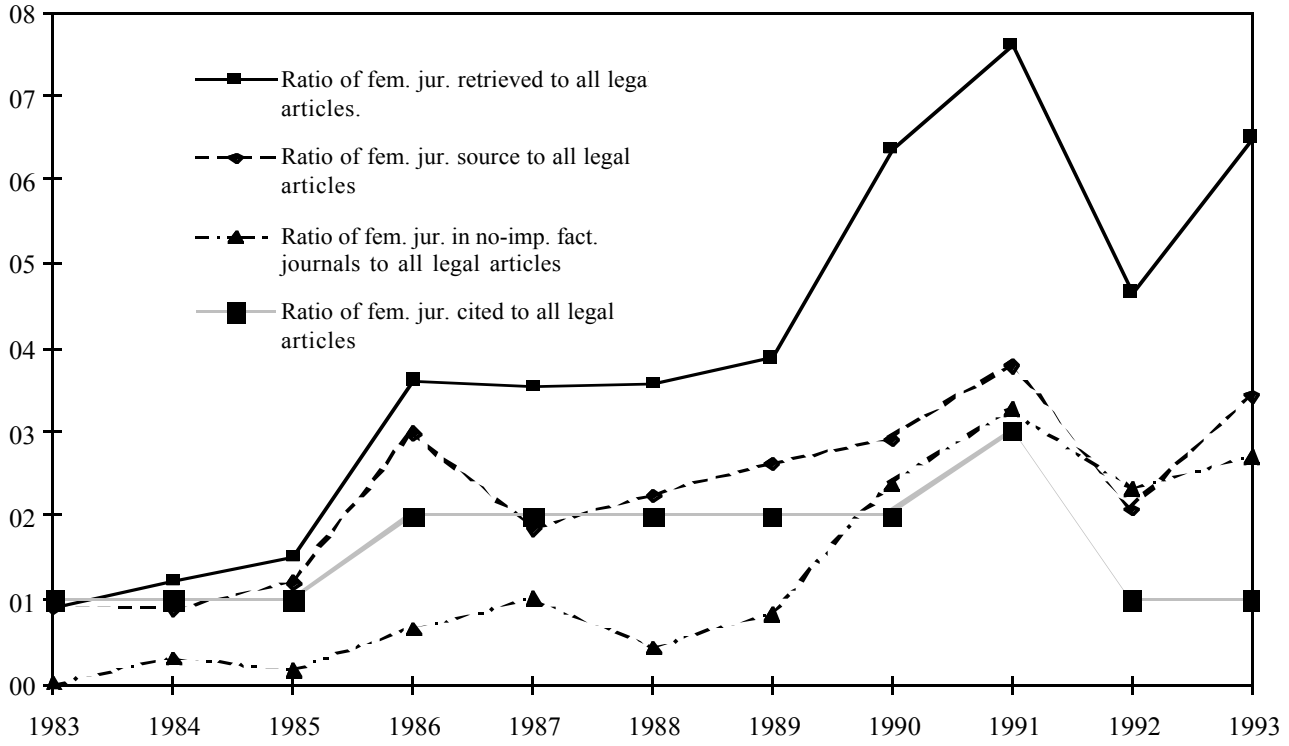

Figure 7. Regression line between time and the ratio of fem. jur. articles identified, fem. jur. source articles, fem. jur. cited articles and fem. jur. articles in journals without impact factors to all legal articles in WESTLAW

different ways. This question although it does not directly address the potential of feminist jurisprudence literature to influence the mainstream of the legal discipline, it can provide indicative information as to where feminist jurisprudence literature is more likely to be represented, that is, in mainstream or non-mainstream legal journals.

The number of feminist jurisprudence source articles, feminist jurisprudence cited articles and feminist jurisprudence articles published in journals without impact factors were converted and expressed as a function of the total number of feminist jurisprudence articles retrieved from WESTLAW. Conversions are shown in Table 11 and the correlations between variables are shown in Table 9.

Simple regression indicated that over time the number of feminist jurisprudence source articles, that is, articles published in journals with impact factor, is declining in proportion to the total number of feminist jurisprudence articles. Year of publication explained 73% of the variance in the variable while the regression was statistically significant at the 0.01 level. (See Table 12.) This downward trend is clearly shown in Figure 8. In other words, feminist jurisprudence scholars are more likely to publish their articles in non-mainstream legal journals.

The number of feminist jurisprudence cited articles is also declining over time relative to the total number of feminist jurisprudence articles. (See Figure 8.) Year of publication had a statistically significant impact on the decline in the number of cited feminist jurisprudence articles relative to the total number of feminist jurisprudence articles (Table 12). This decline however can be explained as a function of time required between the publication of an article and the subsequent publication of articles which make bibliographic references to this article.

Contrary to the declining trends of feminist jurisprudence source and cited articles published in legal journals with impact factors relative to the total number of feminist jurisprudence articles, articles published in journals without impact factor exhibited an

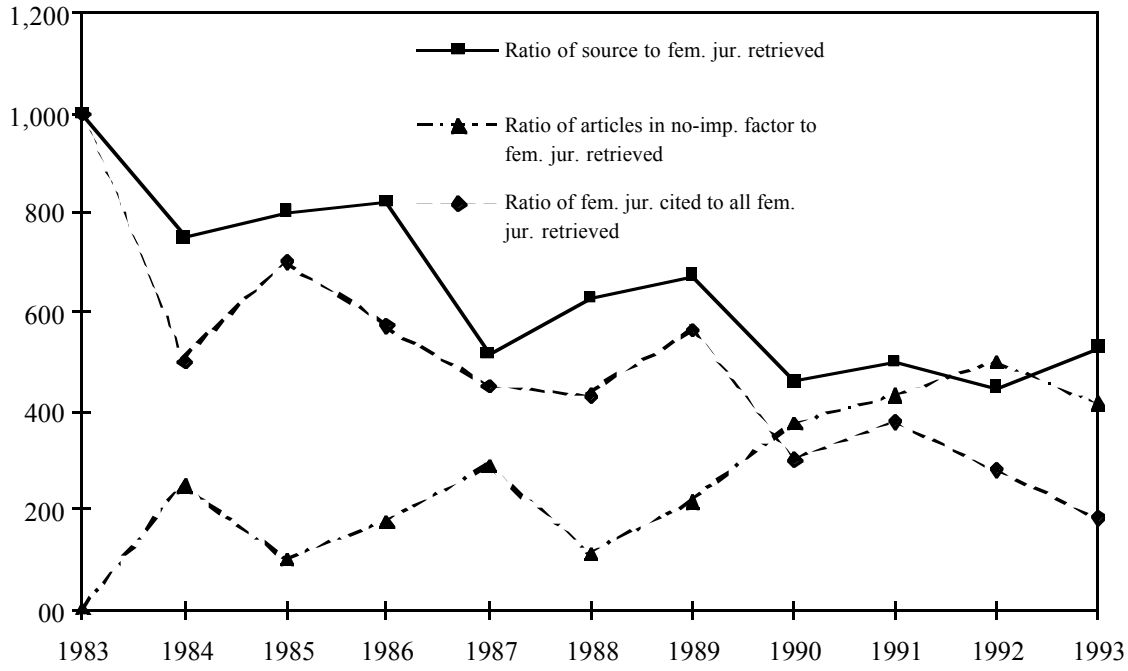

Figure 8. Regression line between time and the ratio of fem. jur. source articles, fem. jur. cited articles, and fem. jur. articles published in journal without impact factor to the total number of fem. jur. articles identified.

increasing trend relative to the total number of feminist jurisprudence articles. (See Figure 8.) The proportion of feminist jurisprudence articles published in journals without impact factors increased at a statistically significant rate over time relatively to the total number of feminist jurisprudence articles. Year of publication explained a large proportion of the variance observed (R^2=0.71). (See Table 12.) Thus, while the ratio of all feminist jurisprudence articles identified to articles published in legal journals in general and the ratio of feminist jurisprudence source articles published in legal journals with impact factors to the total number of articles published in legal journals in general in increasing, the ratio of feminist jurisprudence source articles published in journals with impact factors to feminist jurisprudence articles published in legal journals without impact factors is decreasing. In other words, it appears that the number of feminist jurisprudence articles published in legal journals without impact factors are increasing at a faster rate than feminist jurisprudence articles published in legal journals with impact factors.

Feminist jurisprudence literature's relative standing within the legal discipline as measured by impact factor of journals.

Related to the relative standing of feminist jurisprudence within the legal discipline is the issue of the relation between year of publication and the impact factor of journals that publish feminist jurisprudence articles. This issue is addressed in the second research question which I repeat here:

What is the relative standing of feminist jurisprudence literature within legal literature as a whole in terms of the influence --as measured by impact factors-- legal journals publishing feminist jurisprudence articles may exert on disciplinary discourses?

To address this question, I examined the relationship between impact factors of

journals publishing source and cited feminist jurisprudence and year of publication. In other words I looked at whether or not year of publication has an effect on the impact factors of journals that publish feminist jurisprudence articles. Correlations between the variables are shown in Table 9.

Simple regression between year of publication and the impact factor of journals which publish feminist jurisprudence source articles revealed that year of publication was related to the impact factor of journals that published feminist jurisprudence source articles (Table 13). However, the relationship was negative pointing to a decrease in the value of impact factors of journals that publish feminist jurisprudence articles. In addition, year of publication explained only a small proportion of the variance in impact factors despite the fact that the relationship was statistically significant at the 0.05 level. Thus, my analysis shows that over the years the value of the impact factors of journals that publish feminist jurisprudence articles declines.

Simple regression further showed that the relationship between year of publication and the impact factor of journals that publish cited feminist jurisprudence articles was not statistically significant. The fact that the regression equation for the relationship between year of publication and impact factor of journals publishing source articles produced such a low R^2 points to the possibility that parameters other than year of publication are more likely to explain the decline in the journals' impact factor.

Table 13. Simple regression between time and impact factors of journals publishing feminist jurisprudence source and cited articles.

Independent Variable	Dependent Variables			
	Impact factor of journals publishing source articles		Impact factor of journals publishing cited articles	
Year	b	β	b	β
	-0.14*	-0.16	-0.12	-0.13
Constant	290.19		244.74	
R^2	0.03		0.02	
Adj.R^2	0.02		0.01	

* $p \leq 0.05$

Citation patterns of feminist jurisprudence articles.

The next research question is whether feminist jurisprudence articles published in legal journals are used by legal scholars and in what way. I examine these issues on the bases of the third and fourth research questions.

Impact factor of publishing journal and citations received.

One of the issues related to the citation patterns of feminist jurisprudence articles is addressed in the third research question which is stated as follows:

> *Are feminist jurisprudence articles published in more influential legal journals (that is journals with higher impact factors) receiving more citations than articles published in less influential journals (that is journals with lower impact factors)?*

Given the way impact factors of journals are estimated, it follows that the average article in journals with high impact factor should receive more citations than the average article published in a journal with lower impact factor. Therefore, a positive relationship between number of citations received by an article and the impact factor of the journal in which it is published should be expected. However, should there not be a positive relationship between these two variables, this would indicate that feminist jurisprudence articles do not do as well as the average article in mainstream journals. In other words, it would mean that regardless of whether they are published in mainstream journals, feminist jurisprudence articles are not used as reference material by scholars as often as other articles published in mainstream journals.

To address the third research question I looked at the relationship between impact factor of journals that published cited feminist jurisprudence articles and the number of

citations received by these articles. The correlations between the variables are shown in Table 9.

Simple regression between impact factor and number of citations showed that articles published in legal journals with higher impact factors tended to receive larger number of citations. Specifically the R^2 of the equation was 0.33 (adj. $R^2 = 0.11$) significant at the 0.001 level. The regression coefficient was 3.57 while the beta was 0.33 (significant at the 0.001 level). The low R^2 may be an indication that apart form the journal's impact factor other parameters are needed to explain the variation in the number of citations received. (See Table 14.)

Relation between the impact factor of journals publishing source articles and the impact factor of journals publishing citing articles.

The fourth research question is: *Are source feminist jurisprudence articles published in legal journals with high impact factors cited in legal journals with equally high impact factors?* In other words, what is the relationship between the impact factor of journals publishing cited articles and the impact factor of journals publishing citing articles. This relationship is important because it addresses the issue of whether or not feminist jurisprudence literature found in the mainstream is further used by scholars in the mainstream of the legal journals.

To address this question I looked into the relationship between the impact factor of cited source feminist jurisprudence articles and the impact factor of citing articles. The correlation coefficients between the variables are presented in Table 9.

Table 14. Simple regression between impact factor of journals publishing cited articles and impact factor of journals publishing citing articles.

Independent Variable	Dependent Variable: Impact factor of journals publishing source articles	
Impact factor of journals publishing citing articles	b	β
	0.03	0.09

Constant	2.67
R^2	0.01
Adj.R^2	0.00

Simple regression between the impact factor of journals publishing feminist jurisprudence cited articles and the impact factor of journals publishing citing articles showed a non-statistically significant relationship between the two. (See Table 15.) In other words, the impact factor of journals publishing citing articles did not depend upon the impact factor of the journal in which the cited article was published.

A final step in looking at feminist jurisprudence's standing within the legal discipline was to look at the extent to which feminist jurisprudence literature tends to be concentrated in specific areas of legal specialization. Since I am not able to make direct comparisons to the publication patterns of other theoretical perspectives within the legal discipline my data are only descriptive of the possibility that feminist jurisprudence has in effecting the mainstream. That is, to the extent feminist jurisprudence literature is explicitly acknowledged in various legal specialties its potential to effect legal change and social change is increasing.

Diffusion of feminist jurisprudence literature within the legal discipline.

The final research question was as follows: *Are feminist jurisprudence articles concentrated in specific areas of legal specialization or are they found within various specializations?*

To address this question I accessed each one of the specialized data bases included in the general database, TP-ALL and retrieved all the articles on feminist jurisprudence published and indexed in the specific database. There are 33 specialized databases included in TP-ALL. Articles explicitly referring to feminist jurisprudence were included in 25 (75.75%) of the specialized databases. (See Table 16.)

The largest number of articles was indexed in the labor law database followed by the civil rights database. Criminal justice and family law databases were also among the

Table 15. Simple regression between impact factor of journals publishing cited articles and number of citations received by articles published in mainstream legal journals.

Independent Variable	Dependent Variable: Impact factor of journals publishing source articles	
Number of citations received by articles published in mainstream legal journals	b	β
	3.57**	0.33

R^2	0.33
Adj.R^2	0.11

** $p \leq 0.001$

Table 16. Frequency of feminist jurisprudence articles published in specialized legal databases.

Database	Number of articles included
Labor and Employment (LB-TP)	81
Civil Rights (CIV-TP)	70
Criminal Justice (CJ-TP)	57
Family Law (FL-TP)	56
Education (ED-TP)	43
Health Law (HTH-TP)	30
First Amendment (CFA-TP)	29
International Law (Products Liability (INT-TP)	21
Legal Ethics and Professional Responsibility (ETH-TP)	12
Commercial Law and Contracts (CML-TP)	10
Military Law (MIL-TP)	9
Tort Law (TRT-TP)	8
Real Property (RP-TP)	7
Business Organization (BUS-TP)	6
Pension and Retirement (PEN-TP)	6
Government Benefits (GB-TP)	5
Environmental Law (ENV-TP)	4
Taxation (TAX-TP)	4
Intellectual Property (IP-TP)	4
Bankruptcy (BKR-TP)	3
Immigration (IM-TP)	2
Transportation (TRANS-TP)	2
Products Liability (PL-TP)	2
Antitrust and Trade Regulation (ATR-TP)	1
Sec. and Blue Sky Technologies (SEC-TP)	1
Energy (EN-TP)	0
Estate Planning and Planning (ENN-TP)	0
Finance and Banking (FIN-TP)	0
Government Contracts (GC-TP)	0
Insurance (IN-TP)	0
Maritime Law (MRT-TP)	0
Professional Malpractice (MAL-TP)	0
Worker's Compensation (WC-TP)	0

legal databases in which large number of feminist jurisprudence articles were included.

It follows then that the feminist jurisprudence perspective is being explicitly referred to, in a large number of legal specialties. This indicates the possibility that feminist jurisprudence is explicitly recognized as a relevant and legitimate legal perspective addressing a variety of legal issues and not only 'women's issues.' As such, feminist jurisprudence increases its likelihood and potential of effecting legal change and finally social change.

Overall, my research indicates that the presence of feminist jurisprudence literature within the mainstream of the legal discipline is increasing over time. That is, the number of feminist jurisprudence source and cited articles published in legal journals with impact factors is increasing between the years 1983 and 1993. Furthermore, the positive relationship between year of publication and ratio of feminist jurisprudence articles published in legal journals to the total number of articles in general published in legal journals indicates that the rate of increase of feminist jurisprudence publications is higher than the rate of increase of overall legal publications in general. The implication of these findings is that between the years 1983 and 1993 the presence of feminist jurisprudence literature is becoming more pronounced increasing thus, its potential to effect legal changes and social changes.

My research further indicates that similarly to the increase of the number of feminist jurisprudence articles published in journals with impact factors, the number of feminist jurisprudence articles published in journals without impact factors is increasing. Actually, the number of feminist jurisprudence articles published in legal journals without impact factors increases faster than the number of feminist jurisprudence articles published in legal journals with impact factors.

In terms of the relationship between year of publication of source articles and impact factor of legal journals, my research showed that this is a negative relationship

albeit statistically significant. In other words, there is indication from my research that the impact factors of journals publishing feminist jurisprudence articles decline.

My research also showed that feminist jurisprudence articles, similarly to the average legal article tend to receive larger number of citations when published in journals with higher impact factors. However, there was no relationship between the impact factors of the journals that publish cited feminist jurisprudence and the impact factor of journals that publish citing feminist jurisprudence articles. Consequently, although the impact factor of a journal affects the number of citations an article receives, it has no effect on the impact factor of the journal that publishes the citing articles.

Finally, my research showed that feminist jurisprudence endeavors are widespread within the legal discipline. Feminist jurisprudence thus is used as a term in the majority of legal specializations indexed by WESTLAW.

An issue related to the presence of feminist jurisprudence literature within the legal discipline is the issue of the types of arguments feminist jurisprudence scholars are advancing within the mainstream. Specifically, it is important to classify feminist jurisprudence literature appearing in the mainstream of legal discipline on the bases of the three phases of feminist jurisprudence literature. In order to address this issue I proceed in the next chapter in the analysis of the content of feminist jurisprudence articles published in the areas of family and criminal law.

CHAPTER 8. ANALYSIS OF SPECIALIZED LEGAL ARTICLES: FAMILY AND PENAL LAW-RELATED FEMINIST JURISPRUDENCE ARTICLES

The incorporation and acceptance of feminist jurisprudence theory and practice into the mainstream of the legal discipline are necessary steps in the feminist project of transforming law. While feminist jurisprudence literature is neither homogenous nor static, it is of paramount importance that feminist jurisprudence arguments that appear in the mainstream literature --in the form of articles published in mainstream legal journals-- present a challenge to the patriarchal bases of law and the legal principles of neutrality, objectivity, and equality. At the same time, the feminist transformation of law is resisted by the androcentrism present in the legal discipline. But while androcentrism exists in all legal sub-fields, the extent of its presence is likely to differ across the different sub-fields of law.

Hence, my second research goal was to evaluate the extent to which feminist jurisprudence arguments articulated in mainstream legal journals present the potential to revolutionize legal scholarship, while recognizing that androcentric resistance has an impact on the kinds of arguments feminists can articulate in different legal sub-fields. Thus, I formulated my second research question as follows: To what extent feminist jurisprudence arguments articulated within the mainstream of legal discipline have the potential to revolutionize legal theory and practice? Specifically, the purpose of my second research goal was to classify family and penal law feminist jurisprudence articles published in mainstream legal journals according to the three phases of feminist jurisprudence theory.

I focused on the areas of family and penal law because of the possibility that feminist jurisprudence scholarship would be unequally incorporated into different areas of law. Specifically, I assumed that since women and women's concerns have traditionally

been associated with the private sphere, the realm covered by the specialization of family law, feminist legal theory would be more likely to be considered relevant to this sub-field. Thus, I assumed that within the specialization of family law, feminist jurisprudence arguments would be met with less resistance from the mainstream, and that feminist jurisprudence debates would be more likely to articulate more advanced, in-depth critiques of the legal theory. I expected, then, that a higher proportion of articles could be classified as belonging to second and third phases of feminist jurisprudence theory than would be the case in a more androcentric sub-field.

This contrast, I believe, is likely to be evident in relation to penal law. This area is primarily associated with the public sphere and traditionally has been dominated by men; thus, the relevance of feminist theory would be disputed and met with more resistance. Consequently, feminist jurisprudence arguments pertaining to issues of penal law would be less likely to develop to their full potential; thus, a smaller proportion of articles would be classified as belonging to second and third phase of feminist jurisprudence literature compared to the ones in family law. Importantly, feminists have paid particular attention to both areas; as demonstrated in Table 16, they are among the areas of legal specialization with the highest number of feminist jurisprudence articles[52].

The data selection process has already been described in detail in chapter 5. My sample of family law articles included a total of 19 articles explicitly advancing feminist jurisprudence arguments while my sample of penal law articles included 23 articles with this type of argument.

In deciding upon my analytic method, I considered the following issues. First, since my focus was on the substantive meaning of arguments, I had to address each article

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[52] The areas of legal specialization in which feminist jurisprudence articles appear in higher frequencies are the areas of Labor and Employment and Civil Rights.

in its entirety. Thus, my analysis had to allow me the ability to consider the full context of the author's theoretical discussion and reasoning. Second, feminist jurisprudence emerged as a distinct legal perspective relatively recently, and continues to be developed and modified. Furthermore, feminist jurisprudence arguments pertain to a wide spectrum of theoretical and practical issues. Accordingly, the debates among feminist jurisprudence theorists are extensive, strong, and ongoing. Thus, I felt it imperative that my method of analysis be able to consider the complexity, fluidity, dynamic modifications and ongoing debates within feminist jurisprudence while simultaneously recognizing the relatively distinct theoretical phases. Based on the above issues, I concluded that content analysis was the appropriate method. Content analysis is an unobtrusive research method based on the observation and analysis of forms of communication such as scholarly articles. While performing content analysis, the researcher may code either the manifest –visible, surface content—or the latent – underlying-- content of communication (Babbie, 1989:294, 298-299).

I decided that the coding method which could best serve the goals of my research was the latent content analysis. I based this decision on a number of reasons. First, my sample contained scholarly articles in which basic feminist jurisprudence theoretical propositions were advanced. Second, while no specific words or phrases directly and exclusively identify each theoretical phase, there are general themes and theoretical propositions more closely associated with each phase. Third, each author employs a unique writing style. Finally, multiple issues may be simultaneously addressed in each article. As a result, I felt my coding method should allow me the flexibility of discovering the underlying meaning of the communication attempted in each of the articles.

Steps in the analysis.

The first step in my analysis was to define the classification categories. Each of

the classification categories were defined broadly based on the characteristics of each phase of feminist jurisprudence perspective.

Second, I read each of the articles and identified those parts I consider to be indicative, representative, and particularly relevant to the arguments the author(s) of each article were articulating. Specifically, I was interested in locating portions of the text that associated the author(s)' arguments with the characteristics of any one of the three phases of feminist jurisprudence literature. At the same time, I noted the specific topic addressed by the author, the year of publication, the author's name, and the journal in which the article was published.

Third, I read each of the articles in order to categorize them on the basis of the three classification categories. Broadly speaking, articles discussing issues of ***formal equality*** were classified as ***first phase***; articles discussing issues of ***difference between men and women*** were classified as ***second phase;*** and articles discussing ***multiple differences*** were classified as ***third phase***.

Finally, I compared my findings across family and penal law articles and drew my conclusions. Below, I present an overview of the characteristics of each of the classification categories, primarily excerpts from articles and writing representative of the three phases of feminist jurisprudence literature. I have already analyzed each of the phases in chapter 4.

Classification categories.

First phase—equality.

I classified as first phase all articles that indicate a belief in the law and the legal system's ability to effect social change through legal change, particularly those articles advocating formal equality by removing legal constraints to women's participation in the

public sphere. I also considered as first phase articles advocating the enactment of gender-neutral legal statutes as a necessary if not sufficient condition for equalizing women's social position with men's social position. The following excerpts exemplify statements representative of first phase feminist jurisprudence argumentation:

> The significance of the ERA from a social policy standpoint is that it can provide a universal legal definition of equality, at once activating widespread and consistent change throughout the nation. From a moral standpoint, a constitutional amendment is the highest sanction in our legal system (Greenberg, 1977:1)

Several first-phase assumptions can be identified in the above quote. For example, the statement that the ERA can provide a 'universal definition of equality' is indicative of the author's belief in the legal system. That is, the author does not question the notion of equality, and at the same time accepts the presumed feasibility of universal equality under the current legal structure. Furthermore, the belief in the legal system's ability to initiate and effect sweeping social change is evidenced in the author's statement that ratification of the ERA will 'at once' activate 'widespread and consistent change throughout the nation'. The last sentence in the above quote also signifies the author's unquestioned acceptance of the Constitution as the ultimate mechanism of legitimization. Overall, then, the underlying meaning of this quote is that the changes necessary for ameliorating women's status can be actualized through the careful and well-guided application of the existing principles underlying the legal system. The author accepts law and the legal system as well as their efficacy unquestionably and at face value, and advocates changes in the administration of law as necessary conditions for correcting 'bad' law. According to Naffine (1990:3-5) the attempt to correct 'bad' law is a central characteristic of first-phase feminist jurisprudence literature.

In line with the first-phase acceptance of the legal system's fundamental

principles, the implementation of gender-neutral language is identified as one of the mechanisms guaranteeing formal equality and implementing socio-legal changes that alter the social status of women. The following excerpt is an example of arguments supporting the use of gender-neutral language in relation to the criminal justice system:

> Sexism permeates the criminal justice system....The ERA will be a powerful tool for the elimination of sexist laws and policies in criminal law enforcement and administration...
> Rather than protecting all adults and youths from sexual assault or coercion, rape laws traditionally have singled out women and girls as a vulnerable class needy of special protection against men....In addition, consolidation would encourage the reform of restrictive evidentiary rules that derive from this same sex stereotyping. Moreover, since most people probably would agree that homosexual rape is as serious a crime as heterosexual rape, it would be appropriate to set common penalties for both (Brown et. al., 1977:45, 55).

The authors of this quote are careful to word their argument in gender-neutral language and prefer the use of terms such as sexual assault and coercion --presumably 'equalizing' or even 'neutralizing' gender-- over the use of the more gender- specific term, rape. The authors further argue that using gender-neutral legal language in reference to rape allows for and requires acknowledging men as possible victims. Rape thus ceases to be 'just' about women, and is presumably transformed into a crime which can affect the lives of women and men. This 'consolidation', according to the authors, provides substantial grounds for reforming evidentiary rules in rape cases; it provides for a better administration of justice accomplished, at least in part, through reorganizing and correcting existing law.

Second phase--differences between men and women.

The second classification category includes articles characterized as belonging to

second phase feminist jurisprudence literature. In broad and general terms, second phase feminist jurisprudence scholars argue that gender-neutral law reforms failed to contribute to substantial gender equality because they accept law and the legal system at face value. Law and the legal system however, argue second-phase feminist jurisprudence scholars, are based on the implicit assumption that the legal person is a man, and it is in this man's interests that laws are promoted, represented, and reinforced (Naffine, 1990:6-7; Cain, 1989:199-200; Menkel-Meadow, 1992:1498-1499; Scales, 1981:376).

These two general stances of second-phase feminist jurisprudence arguments -- that gender neutral laws do not contribute to gender equality, and that law and the legal system cater to the needs and interests of men—are expressed in the following excerpt:

> Attempts to reform and enforce rape laws, for example, have tended to build on the model of the deviant perpetrator and the violent act, as if the fact that rape is a crime means that the society is against it, so law enforcement would reduce or deligitimaze it. Initiatives are accordingly directed toward making the police more sensitive, prosecutors more responsive, and the law, in words, less sexist. This may be progressive in the liberal or the left senses, but how is it empowering in the feminist sense? Even if it were effective in jailing men who do little different from what nondeviant men do regularly, how would such an approach alter women's rapability? Unconfronted are *why* women are raped and the role of the state in that. Similarly, applying laws against battery to husbands, although it can mean life itself, has largely failed to address, as part of the strategy for state intervention, the conditions that produce men who systematically express themselves violently toward women, women whose resistance is disabled, and the role of the state in this dynamic. Criminal enforcement in these areas, while suggesting that rape and battery are deviant, punishes men for expressing the images of masculinity that mean their identity, for which they are otherwise trained, elevated, venerated, and paid. These men must be stopped. But how does that change them or reduce the chances that there will be more like them? (emphasis in the original) (MacKinnon, 1983b:643)

In this quote, the author argues that first-phase feminist efforts to reform the legal system on its own grounds —that is, extending existing legal categories to include women— do not produce the desired social change nor do they eliminate gender inequality. The primary reason for this failure is that such legal reforms do not address the source of the problem --the creation and perpetuation of gender inequality. As the author puts it, first-phase legal reforms do not address "...*why* women are raped...", that is, what social forces operate to create and maintain gender inequality; or what social "...conditions that produce men who systematically express themselves violently toward women..." exist. This type of critique against gender neutrality marks the beginning of second-phase feminist jurisprudence literature; thus, articles which articulate critiques of the first- phase gender-neutral equality approach are included in the second classification category.

The way in which second-phase feminist jurisprudence scholars understand law and the legal system as serving the interests of men is evident in the following quote:

> This is my retrospective on *Roe v. Wade*. Reproduction is sexual, men control sexuality, and the state supports the interest of men as a group. *Roe* does not contradict this. So why was abortion legalized? Why were women even imagined to have such a right as privacy? It is not accusation of bad faith to answer that the interests of men as a social group converged with the definition of justice embodied in law in what I call the male point of view. The way the male point of view constructs a social even or legal need will be the way that social event or legal need is framed by state policy. For example, to the extent that possession is the point of sex, illegal rape will be sex with a woman who is not yours unless the act makes her yours. If part of the kick of pornography involves eroticizing the putatively prohibited, illegal pornography –obscenity—will be prohibited enough to keep pornography desirable without ever making it truly illegitimate or unavailable. If, from the male standpoint, male is the implicit definition of human, maleness will be the implicit standard by which sex equality is measured in discrimination law. In parallel terms, abortion's availability frames, and is framed by, the conditions men

> work out among themselves to grant legitimacy to women to control the reproductive consequences of intercourse. (MacKinnon, 1987:97)

In line with the second-phase understanding of feminist jurisprudence theory, the author of this quote approaches the legalization of abortion not as women's gain leading towards gender equality –the way first-phase feminist jurisprudence scholars would understand it— but rather as a legal construct which ultimately favors men. Men are favored by legal constructs –and other state supported actions—because the legal person is implicitly assumed to be male. Furthermore, according to both the author and second-phase feminist jurisprudence theory, the maleness of law and the legal system maintains gender inequality through its perpetuation of the control of women by men.

In addition to criticisms of gender-neutral legal reforms, and law and the legal system as inherently serving men's interests, a central characteristic of second-phase feminist jurisprudence literature is the debate over differences between men and women. According to the second-phase feminist jurisprudence, *all* men belong to one group which is distinct, separate, and different from the group to which *all* women belong. The characteristics and sources of differences between the two groups are approached by second-phase feminist jurisprudence theorists in two ways, either a structural or a cultural approach. Theorists associated with the structural approach locate the source of differences between men and women in the power differential accorded to each gender within the social structure. Theorists who adopt a cultural approach understand men and women to be different in relation to morality and their ability to connect to others.

The following two statements are characteristic of the structural approach:

> "To be rap*able*, a position which is social, not biological, defines what a woman *is*." (MacKinnon, 1983b:651).

> "What is wrong with rape is that it is an act of the subordination of women to men" (MacKinnon, 1983b:652)

In other words, according to the above statements, a socially constructed power differential exists between men and women, resulting in the subordination of *all* women to *all* men.

Statements representing a cultural perspective on men's and women's differential ability to connect to others –the 'connection thesis' or the cultural approach—is detailed in the following excerpts:

> The 'connection thesis' is simply this: Women are actually or potentially materially connected to other human life. Men aren't**.** This material fact has existential consequences. While it may be true *for men* that the individual is 'epistemologically and morally prior to the collectivity,' it is not true for women. The potential for material connection with the other defines women's subjective, phenomenological and existential state, just as surely as the inevitability of material separation from the other defines men's existential state. Our potential for material connection engenders pleasures and pains, values and dangers, and attractions and fears, which are entirely different from those which follow, for men, from the necessity of separation (West, 1988:14).

> We might summarize cultural feminism in this way: women's potential for a material connection to life entails (either directly, as I have argued, or indirectly, through the reproduction of mothering) an experiential and psychological sense of connection with other human life, which in turn entails both women's concept of value, and women's concept of harm. Women's concept of value revolves not around the axis of autonomy, individuality, justice and rights, as does men's but instead around the axis of intimacy, nurturance, community responsibility and care. For women, the creation of value, and the living of a good life, therefore depend upon relational, contextual, nurturant and affective responses to the needs of those who are dependent and weak, while for men the creation of value, and the living of the good life, depend upon the ability to respect the rights of independent co-equals, and the deductive, cognitive ability to infer from those rights, rules for safe living. Women's concept of harm revolves not around a fear of annihilation by the other but around a

> fear of separation and isolation from the human community on which she depends, and which is dependent upon her (West, 1988:28).

Based on the above quotes it becomes evident that for cultural feminists, women and men are different because of their divergent ability to connect to others. In turn, this has implications for the kind of morality men and women develop. Men's morality centers around 'autonomy, individual, justice, rights' while women's morality is based on 'intimacy, nurturance, communal responsibility and care'. Men and women thus evaluate the worth of their lives and experiences based on these different moralities. A further implication of the 'ethics of justice' and the 'ethics of morality' is that men and women develop a different understanding of right and wrong and consequently the kinds of principles on which law and the legal system are structured and applied. For second-phase feminist jurisprudence scholars, the structure of law and the legal system expresses the morality of men (Gilligan, 1982:62-62; Naffine, 1990:9-10).

Overall, then, in the second classification category --articles belonging to the second phase—I included three kinds of articles: articles which took a critical stance against first-phase theory and the practice of gender-neutral equality, articles which criticized the maleness of law and the legal system and articles which dealt with differences between men and women as a group at either the structural or the cultural levels[53]

Third phase--multiplicity of differences.

The theoretical debates concerning differences between men and women which dominate second-phase feminist jurisprudence literature, provide, to a large extent, the

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[53]Second phase cultural and second phase structural articles are presented as two subgroups primarily for descriptive purposes.

foundation for the discussions and debates of the third phase. Third-phase feminist jurisprudence scholars find the second-phase understanding of difference to be problematic. According to third-phase feminists, focusing on differences between genders reinforces binary opposites. By dividing along gender lines, third-phase scholars argue, differences within and between gender groups by virtue of class, age, race, ethnicity and so on, are discarded, possibly resulting in the further reinforcement of gender stereotypes (Menkel-Meadow, 1992:1500, 1501-1502).

Consequently, the major characteristic of articles included in the third classification category is the author(s)' recognition of multiple, interconnected differences. Below is an example of a third-phase understanding of difference:

> There is no one body, only bodies, only differences, as well as pluralized conceptions of equality....We need to recognize that differences exist within and between the sexes. There are a variety of kinds of female bodies: thin, fat, small-breasted, large-breasted, muscular, flabby, and so forth. These differences exist within other differences as well: sexual preference, economic class, race, age, and so on. Age has a specifically gendered meaning, given women's life cycle and its relation to pregnancy. Individuated experiences are a part of women's lives. Recognizing the multiple and diverse meanings of difference in these instances is quite distinct from recognizing engendered 'difference' per se. The first viewing focuses on differences as diversity, acknowledging the differences among women and between women and men. The second focuses on 'difference' as homogeneity, meaning women are different, all in the same way, from men. Focusing on the mix of differences that establish individuals' lives allows us to celebrate difference rather than view it as a problem because it makes one *not* the same as something else" (emphasis in the original) (Eisenstein, 1988:5; 31-32).

In this quote, the author clearly acknowledges the existence of multiple differences. The significant implications of the way difference is understood becomes evident. According to the author, recognizing differences only along gender lines means that the two groups,

men and women, are homogenized. Homogenizing women and men creates the danger of setting one group as the standard against which the other is evaluated. As the author puts it, by homogenizing the groups, difference becomes "…a problem because it makes one *not* the same as something else" (emphasis in the original) (Eisenstein, 1988:32). On the other hand, through acknowledging multiple differences, diversity is celebrated without needing to be legitimized by its proximity to the standard.

In sum, articles which critique the second- phase understanding of difference as maintaining binary opposites and neglecting issues of differences within genders are included in the third classification category as third phase feminist jurisprudence articles. Furthermore, articles which specifically address the multiplicity of differences are also included as third phase feminist jurisprudence articles[54].

Transitional categories.

During my analysis it became clear that a number of articles did not belong to one particular classification category. Instead, the arguments articulated were simultaneously expressing positions associated with more than one phases. For example, a writer could critique the maleness of law and the legal system, thus expressing a second-phase position. At the same time, the author could make a first- phase argument, stating that the negative consequences of law can be overturned by proper application of existing legal

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[54] Within third-phase feminist jurisprudence scholarship, postmodern feminists contribute their understanding of multiple differences through the interpretive deconstruction of the legal and non-legal text and their emphasis on the power of language. However, none of my sampled articles could be characterized as a postmodern feminist article. Thus, this category was not included in my analysis.

principles[55]. A case in point: in one of the penal law articles included in my sample, the author discusses the practical implications of the effectiveness of police protective orders for battered women. The author discusses the issue in light of the Supreme Court decision *DeShaney v. Winnebago County Department of Social Services*[56] as it was applied in *Balisteri v. Pacifica Police Department*[57]. The author's acceptance of second-phase feminist jurisprudence understanding of law as male is demonstrated in the following quote:

> The perception of the state as potentially oppressive and threatening to the private, "free" world reflects a vision of rugged individualism which defines human beings as independent,

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[55] Reinharz (1992:245) makes a similar argument concerning the interrelation between research methods and stages of feminist theory. Specifically, she argues that feminists accumulate stages rather that moving or progressing from one stage to the next. She further notes that phases or stages of feminist theory exist simultaneously and that the researcher may express arguments belonging to different phases even within the same project (Reinharz, 1992:245).

[56] "In that case, a father had beaten his son, Joshua DeShaney, so severely that the boy was rendered permanently and profoundly brain-damaged. Joshua's mother sued the local government, alleging that its social worker's failure to protect the boy, despite their awareness of the great danger Joshua faced at home, violated Joshua's fourteenth amendment due process right. The Court found in favor of the defendants, reasoning that, except in limited circumstances, states have no affirmative duty under the due process clause of the fourteenth amendment to protect citizens from infliction of private harm, even where the state has knowledge of an individual's danger and expresses an intent to provide protection to that person" (footnotes omitted) (Borgman, 1990:1282).

[57] In that case "…the Ninth Circuit originally issued an opinion…upholding a battered woman's due process of law and equal protection claims against the police, [for failing to protect her by enforcing a police protection order against her husband] the court later amended its opinion, dismissing the due process claim in light of the Supreme Court's ruling in *DeShaney v. Winnebago County Department of Social Services"* (footnotes omitted) (Borgman, 1990:1292).

> autonomous, and self-sufficient. Problems are seen to arise not when the individual is left alone, but rather when human interaction occurs. It has been argued frequently that this "atomistic vision [of] autonomy and separation" is a typically "masculine perspective." This notion of a masculine view of the world is seen as grounded in both philosophical and psychological theory. The masculine perspective provides the dominant underlying framework for modern jurisprudence and is characterized by an emphasis on justice defined in terms of rights.
>
> From the perspective of a battered woman, it is particularly inappropriate to use a standard of individualism to determine when the state must intervene to protect. Under that masculine standard, battered women are left largely, if not totally, without effective legal remedies. The idea that individuals are autonomous and should be "left alone" by the state is of no relevance to those members of society who depend for their safety and well-being upon the very state involvement which courts typically refer to as oppressive. The "hands off" view effectively abets the batterer, who maintains control and autonomy in his personal life, and turns a deaf ear to the battered woman, who is often completely without self-help options. If this is the result of the masculine perspective, its value should be reconsidered in the context of battered women's claims that the state has a duty to protect them. In recognizing the state's obligation to protect battered women, an "ethic of care" would not oppress them; rather, it could save them. (footnotes omitted) (Borgman, 1990:1321-1322).

Despite acknowledging the masculinity of law and its negative implications for women – battered women in particular—the author is expressing the view that the problem with law's masculinity can be corrected, and that even as it stands, law can be used to benefit women. According to the author, therefore, *DeShaney* was wrongly applied to *Ballisteri* and the court erred in its decision because the events in the two cases were not the same. The author's line of argument however, expresses the author's belief in the potential of law and the legal system to operate, under careful application and interpretation, to the

benefit of women despite any apparent shortcomings. Thus, the author is also expressing a first- phase position, as can be seen in the following excerpts:

> On its face, *DeShaney* appears to call into question the continuing validity of a line of cases that has expanded the scope of claims under section 1983, including claims of battered women like Joanne Tremins, who are harmed as a result of the state's failure to enforce their orders of protection. This Note argues, however, that despite *DeShaney's* apparently sweeping restrictions, battered women's substantive process claims based upon a state's failure to enforce their orders of protection still constitute valid causes of action under section 1983; as amended, Balistreri was therefore wrongly decided (footnotes omitted) (Borgman, 1990:1283).

> This Note shows that, indeed, *DeShaney* does not close the door on battered women; the *DeShaney* holding, contrary to the conclusions of some courts, still leaves room for their substantive due process claims (Borgman, 1990:1293).

As a result of such mixed positions, which simultaneously expressed both first- and second-phase arguments, all such articles are classified as first-phase transitional articles.

Similarly, articles which express positions associated with the second and the third phases simultaneously are classified as second-phase transitional articles. Second-phase transitional articles tend to recognize the multiplicity of difference, a position associated with third phase of feminist jurisprudence literature. However, differences are treated as representative of separate groups; they are not incorporated and interrelated, as they would be within articles considered to be third phase. For example, in one of the family law articles, the author attempts to introduce the notion of separation as influential in defining legal images of battered women. In debating the issue of separation the author introduces the experience of lesbians and attempts to consider the way the experience of lesbians may inform the discussion of separation in situations of women's abuse. However, lesbians as a group, as well as their experience, disappear from the debate

somewhere in the middle of the article (see Mahoney, 1991).

Another article which I include in the transitional category between second and third phase recognizes differences between men and women and among and within women. However, men are treated as an homogeneous group whose individual members equally benefit from the oppression of women. This is evident in the following quote:

> Only by understanding how to control this gender dynamic can feminists translate conflicts among and within women back into conflicts over the power differential between men and women. Underlying this approach is a postmodern sense that our rhetorics are social constructions that frame our range of possibilities. If we as feminists want to reconstruct the framework of women's lives, close attention to rhetoric is vital to empower women-and-men to reimagine a differently gendered world (footnotes omitted) (Williams, 1991:1561)

> Feminists need to challenge this gendered system by contesting the marginalization of caregivers and reopening the issues of what care children need and the extent to which parental caregiving is delegable…In part this entails gathering sociological data to document how social patterns reflect a gender system that privilege men (footnotes omitted) (Williams, 1991:1596).

In summary then, family law and penal law articles are classified as belonging to one of five different categories. Three of the classification categories include articles associated with one of the three phases of feminist jurisprudence literature. The other two classification categories include articles in transition between the first and second phase and articles in transition between the second and third phase of feminist jurisprudence literature. These five categories are used to ascertain the extent to which feminist jurisprudence literature published in mainstream legal journals between the years 1983 and 1993, presents the potential to revolutionize legal theory and practice through scholarly publications which challenge the patriarchal bases of law and question the legal

principles of neutrality, objectivity, and equality. I present the results of my latent content analysis of family and penal law-related feminist jurisprudence arguments published in mainstream legal journals in the following section.

Findings and results of content analysis

Family law feminist jurisprudence articles

A total of 19 articles comprise the sample of feminist jurisprudence family law articles. The different steps of the sample selection process are explained in chapter 5 and Appendix C, and a complete list of the sampled family law and penal law articles is presented in Appendix D. My classification of family law articles is presented in Tables 17 and 18. (In Table 17 I classify family law feminist jurisprudence articles by year. In Table 18 I classify family law feminist jurisprudence articles by phase).

As can be seen (Table 18), four articles are classified as first phase while one article is classified as first phase transitional. A total of four family law articles are classified as second phase: three of these articles are classified as second-phase structural while one article is classified as second-phase cultural[58]. In addition, three of the family law articles are classified as second phase transitional articles. Finally, seven articles fell into the last classification category: third-phase feminist jurisprudence. Thus, my analysis showed that the larger number of family law articles belonged to the third phase. Further, feminist jurisprudence family law articles published in mainstream legal journals tended to belong to the second and third phase of feminist jurisprudence literature;

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[58] I was surprised to find such a small number of second-phase cultural articles. Given that second-phase cultural feminists are primarily concerned with differences between men and women and, further, that it is within the family that many of these differences are experienced, I expected to find a larger number of cultural feminist jurisprudence articles.

Table 17. Analysis of family law feminist jurisprudence articles by year of publication and phase of feminist jurisprudence literature.

Year	Phases of feminist jurisprudence literature					
	First phase	First transitional	Second phase		Second transitional	Third phase
			Struc	Cult.		
1983						1
1984						
1985						
1986	1					
1987						
1988		1				
1989					1	1
1990						1
1991			1	1	2	2
1992	3		1			1
1993			1			1
Number of articles per phase (N=19)	4	1	3	1	3	7

Table 18. Analysis of family law articles according to phases of feminist jurisprudence literature.

Topic/theme	Year	Author	Journal	Code
First Phase (N=4)				
Fetal rights/constitutional rights (liberty, privacy, equal protection)	1986	D. E. Johsen	Yale Law Journal	FL55 CJ56
Privatization of family law	1992	J. B. Singer	Wisconsin L. R.	FL23
1st phase critique of 2nd phase's understanding of law as male	1992	L. C. McClain	S. C. Law Review	FL16
Child Custody	1992	E. S. Scott	Cal. L. Review	FL12
First phase transitional (N=1)				
Homosexual marriage	1988	C.A. Lewis	Yale Law Journal	FL49
Second Phase (N=4)				
Second Phase Structural (N=3)				
Postpartum Disorders (infanticide by mothers)	1991	L.E. Reece	UCLA L. Review	FL35 CJ30
Judicial Rhetoric in relation to reproduction	1992	S.F. Colb	Bost.U. L. Review	FL18
Abortion rights for minors (critique of privacy)	1993	C. G. Schmidt	NY U L Review	FL04
Second Phase Cultural (N=1)				
Divorce Law	1991	B. Stark	UCLA L. Review	FL29
Second Phase Transitional (N=3)				
Cross cultural family law policies	1989	N. C. Dowd	H. J. on Legis	FL44
Abortion	1991	J. Williams	NY U L Review	FL24
Battering of women/Redefining separation	1991	M R Mahoney	Mich. L. Rev.	FL28 CJ23
Third Phase (N=7)				
Relation of family and the market	1983	F. Olsen	Harv. L. Review	FL56
Discrimination analysis and the relation of family and the market	1989	N.E. Dowd	HCR-CL L Rev.	FL48
Nicaraguan constitution and women	1990	M. I. Morgan	BU L Review	FL41
Mediation and women	1991	T. Grillo	Yale Law Review	FL33
Federal Courts and Gender	1991	J. Resnik	NY U L Review	FL25
Relation between theory and practice (abortion)	1992	R. Colker	Hastings L. Jour.	FL14
Abortion	1993	P.C. Davis	HCR-CL L Rev.	FL03

the total number (N=14) of such articles --including second phase transitional—is larger than the number of articles (N=5) which belong to first and first transitional phases. In other words, to the extent feminist jurisprudence literature of the second and third phase represent more in-depth critique of law and the legal system, the accumulated effect -- as Reinhartz (1992:245) would have put it-- of these articles' publication is a greater potential to revolutionize legal theory and practice.

The topics and themes of family law articles range widely. Abortion and related issues such as fetal rights and reproduction were exclusively addressed in six of the articles (see FL55/CJ56, FL04, FL24, FL14, FL03, FL18) while they were addressed along with other issues in at least two additional articles (see FL44, FL41). Issues related to different forms of violence within the family were addressed in four of the articles (see FL35/CJ30, FL44, FL28/CJ23). Additionally, in a few articles, the authors engaged in theoretical analyses of the connection between family and the market, family and the workplace, and gender and the courts. It appears then, that feminist jurisprudence articles within the specialization of family law articulated their arguments in relation to a relatively large number of issues, and that these arguments were primarily second and third phase. See Table 18.

In terms of the temporal order of publication, I did not observe a particular relationship between year of publication and phase of feminist jurisprudence theory. Actually, the chronologically oldest article, Frances Olsen's 1983 article (FL53) on the interrelation between the family and the market, was classified as third phase. On the other hand, three of the four first phase articles were published during 1992 (see FL23, FL16, FL49). See Table 17.

This observed lack of relationship between year of publication and phase of literature indicates the dynamic coexistence and interrelation of feminist jurisprudence literature phases. In other words, the phases of feminist jurisprudence are not time-lagged

or hierarchically arranged despite the fact that, to a large extent, the theoretical foundations for later phases are grounded in the work of previous phases. Of course, part of the problem in discussing phases is that it gives the appearance of linearity--that one phase supersedes the other—although this is not necessarily the case. To be sure, 'earlier' phase arguments may well be advanced in opposition to 'later' phase positions. For example, one article included in my sample, is Linda McClain's 1992 article (FL16) on the relation between liberalism, the connection thesis, and feminist jurisprudence. In her article, McClain articulates a first-phase critique of the second-phase understanding of law and the legal system as male. According to the author, the relation between liberalism, the 'atomistic man', and the project of feminist jurisprudence needs to be revisited as it is likely that feminists and liberals have more in common than they realize. Characteristic is the following excerpt:

> One of the major strains of feminist jurisprudence has criticized American law, and the liberal jurisprudence and political philosophy on which it is said to be grounded, as male or masculine. A central theme of critique has been that the law embodies a masculine perspective in emphasizing autonomy and the individual over interdependency and the community. Liberalism has been viewed as inextricably masculine in its model of separate, atomistic, competing individuals establishing a legal system to pursue their own interests and to protect them from others' interference with their rights to do so.
> Hence, it is said that liberal, masculine jurisprudence has exalted rights over responsibilities, separateness over connection, and the individual over the community.
>
> This article looks at the model of "atomistic man" that is claimed by much of feminist jurisprudence to be at the root of liberalism and the legal system. I shall argue that the feminist critique of liberalism as presenting an atomistic and unconnected conception of the person attacks a caricatured picture of liberalism. By "caricature" I mean an exaggeration that is not without some basis in fact, particularly as to certain historical and even contemporary forms of liberalism, but that

> is not accurate as to other contemporary versions of liberalism, most prominently the work of both John Rawls and Ronald Dworkin. I do not mean to suggest that the feminist critique is intended as a caricature, nor do I intend to downplay its significance for feminist jurisprudence. I am not suggesting a simple identity between liberal and feminist jurisprudence, nor that Rawls and Dworkin, if properly interpreted, are wholly acceptable to feminists on their own terms. Finally, I do not intend to ignore the claims of feminist jurisprudence to be engaged in projects that are both radical and distinctive. Rather, I question the simple dichotomies drawn to date between rights and responsibilities, justice and care, and male and female jurisprudence and experience, and I attempt to point to unexplored common ground. As a feminist with respect to liberalism, I am arguing that there is more room for dialogue between feminists and liberals than feminists have acknowledged and that such dialogue might be furthered by revisiting the feminist critique of liberalism as atomistic (footnotes omitted) (McClain, 1992:1173-1175).

Thus, the author sets the stage for the critique she is going to advance against second phase's understanding of law as masculine. As part of her project, the author critiques the work of Leslie Bender, one of the authors explicitly identified with second-phase feminist literature, stating:

> The above liberal arguments for a duty to rescue, which stem from a duty of mutual aid and a duty of beneficence, derive from notions of personhood and what we owe each other by virtue of our common humanity. Like many feminists, Bender criticizes prevailing legal doctrine and theory because it applies universal standards and, as a result, fails to approach issues contextually and by reference to relationships and factual particulars.
> Unlike those liberal proposals, Bender premises her feminist proposal on a model of a caring neighbor or social acquaintance. She argues that one has a duty, regardless of the actual relationship, based on the self-conscious care for the safety of others that responsible (and responsive) persons would give their neighbors or social acquaintances. For Bender, one is moved to aid a stranger by the recognition that the stranger is connected to others in familial, friendship, and other relationships. For liberal reformers advocating a

> less explicitly relational rationale, one is moved to aid a stranger by the recognition that life and health are constitutive for each person and are a precondition of one's ability to live and to realize one's life projects and that each person would wish to live in a society in which she or he could depend on others to come to her or his aid when doing so would not put the others at significant risk. I shall argue that models deriving a legal duty to rescue from a notion of what is owed to all human beings, as human beings or citizens, are a better basis for recognition of such a duty than is a model of what is owed to neighbors or social acquaintances (footnotes omitted) (McClain, 1992:1238-1239).

Thus, an author publishing in the 1990s –presumably the decade of the 3rd phase—is advancing first phase arguments; arguments which were presumably articulated primarily during mid-70s to mid-80s.

Notwithstanding the chronologically reversed progress of critique, what is of paramount importance for my study is the fact that theoretical debates within feminism and among feminists such as the one mentioned above, occur in the mainstream of legal theory. The implication of this fact, I discuss next.

Feminist debates within the mainstream

The implication of critiques such as the one above, are far-reaching. Scholars, explicitly identifying themselves as feminists, debate issues such as the definition, content, goals and purpose of feminist theory and praxis from different feminist standpoints. More importantly, these discussions and debates take place within the frame of mainstream legal publications. That is, in the family law articles I found feminists publicly, openly, and within the mainstream of the legal discipline acknowledging their differences and debating their theoretical positions. Irrespective of

the specific phase of feminist literature with which particular articles are associated, the fact that such a feminist debate is taking place in mainstream publications may be an indication that feminists are making gains within the dominant theory. Taking this argument a step further, it is as if the presence of feminist theory, as a whole, has become third phase by celebrating its own internal differences.

Even more representative of the feminist celebration of differences within the mainstream are two additional family law articles. One of these is a western feminist reading of the experience of feminist praxis in the third world: Nicaragua during the making of the 1987 Constitution (Morgan, 1990). The other article discusses *Roe v. Wade* and its implication for individual rights from the point of view of racially oppressed groups, specifically, African-Americans (Davis, 1993).

Upon the occasion of the bicentennial celebration of the United States Constitution, the author of the first article (Morgan, 1990) is looking at the contributions and the experiences of Nicaraguan women during the making of the 1987 Constitution of Nicaragua. The 1987 Constitution of Nicaraguan was the product of a revolution led by the Sandinista National Liberation Front, a revolution that acknowledged women's rights among its fundamental principles (Morgan, 1990:4). According to the author, the study of the "…drafting and adoption of the 1987 Nicaraguan Constitution provides a valuable opportunity to examine the effects of women's participation in the framing of a modern constitution" (Morgan, 1990:4).

The Nicaraguan experience however, taught western feminists valuable lessons concerning difference. Thus, western feminists studying the experience of Nicaraguan women came to the realization that the implications of feminist involvement are different for women of different ethnic backgrounds. Most importantly, in looking at the experience of Nicaraguan women, western feminists became aware of multiple differences. In analyzing the Nicaraguan women's experiences, they realized that western feminist

praxis, and the western interpretation of difference, are both context-specific; they are not, do not, cannot, and should not be understood as a comprehensive standard against which other women's experiences will be evaluated (Morgan, 1990: 92). As an example, I include the following excerpts in which the author discusses how Nicaraguan women were able to demand equality on the basis of difference, an issue particularly puzzling for western feminist theory and praxis:

> Neither gender-based nor class-based analyses alone are adequate to explain the complexities of Latin American women's lives.
>
> A second major theme raised by women was that of la dignidad de la mujer. This theme, which was present in many different stories, is a particularly complex one in Nicaragua. Given the religiosity of the culture, appeals for respect of women's dignity often have religious overtones that make some feminists uncomfortable. As feminists in the United States have learned in the battle over pornography, issues related to women's dignity sometimes produce unlikely alliances. The primary issues that Nicaraguan women have raised as issues of dignity are abuse, rape, prostitution, and the media's use of their bodies as sexual or commercial objects.
> Women's participation in the constitutional process affected not only the constitution but Nicaraguan society as well. Constitution-making is a time of societal self-examination and redefinition; women's participation assured that the societal soul-searching that occurred in Nicaragua went beyond what have traditionally been considered public sphere concerns to what have been considered private or personal as well.
> Finally, women's participation in constitution-making, along with their
> participation in other revolutionary tasks, dramatically affected women
> themselves. They have come to understand the process of empowerment involved in becoming active subjects in the construction of the reality of their society and their daily lives. The measures some use to reflect on these changes may appear insignificant. For example, peasant women pointed to their ability to leave their homes to work or attend meetings. But for women who

> previously lacked even this simple control over their own lives, the impact was profound.
>
> Although their constitution contains a guarantee of personal and familial privacy, in general Nicaraguans' notions of privacy are different from those of many in the United States. Rather than talking about reproductive freedom in terms of "privacy,"' Nicaraguan women talked about voluntary motherhood or motherhood freely and responsibly chosen and about reducing the need for abortions through programs of sex education and family planning.
>
> While Nicaraguan women were aware of the dangers of protectionist measures, their concept of equality was not offended by special treatment for those with special needs. When questioned about the concept of special protection for motherhood, Milu Vargas first stressed the social value of motherhood and then responded: "[Y]es there is different treatment, but it is not discriminatory. . . . [T]o treat us equal would be unjust, because . . . we are not in equal conditions. . . . To be just, you have to treat each one according to their conditions at the moment."' (footnotes omitted) (Morgan, 1990:9, 44, 70, 93-94, 97).

Thus, Nicaraguan women were able to identify, come to terms with, and incorporate into their struggle for equality and justice their differences and their diversity. In their struggle for social transformation, Nicaraguan women were faced with the social and ideological constraints imposed on them by *machismo*[59] and the Catholic Church which exerts significant levels of influence on Nicaraguan's everyday life and has frequently extended control over the political process as well (Morgan, 1990:7, 4). In their attempt to overcome the above constraints, Nicaraguan women opposed, capitalized upon, used, and at times changed gendered cultural, religious, and societal expectations that appeared

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[59] Morgan (1990:4 foot. #9) based on various sources reports that *machismo* in the Latin American context is a form of manifestation of oppression of women men which contains elements of exaggerated aggression and reducing women to the condition of object.

similar to those applying to western women; and they experienced empowerment in ways different from, if not antithetical to their western sisters. The primary sources of the difference in experience between women in the United States and women in Nicaraguan possibly rests with the differential social emphasis placed upon the individual and the community. Thus, empowerment of western feminists is based upon notions of individuality, while for Nicaraguan women while individuality was not discarded, the responsibility to the community remained particularly important. For example, Nicaraguan women's claims to abortion were not advanced as a 'privacy' right but rather as a right to voluntary, freely chosen and responsible motherhood. Additionally, Nicaraguan women struggled for the reduction in the need for abortion through programs, of sex education and family planning defended within a communal framework of values (Morgan, 1990: 93-94, 95).

In the final article celebrating diversity among feminists, Davis (1993) questions the stance of white feminists' critique of individual rights, which is then employed as justification for abortion rights. Davis argues that this questioning of individual rights, commonplace in much of feminist argumentation, is blind to race relations. She maintains that questioning individual rights can only have meaning for privileged groups, since enjoying individual rights is necessary for the oppressed group's sense of self-worth. In that sense, individual rights is an issue of particular sensitivity to women who belong to oppressed racial groups. The author's position can be seen in the following excerpts from the article:

> Feminist scholars have had particular cause to resist family rights doctrine. The doctrine has its origins in a male-centered ideology that asserts, vis-a-vis the state, the primacy of the claims of male heads of households to act as they please with respect to their property, their wives and their children. Calling attention to abuse and exploitation of women and children, some feminist scholars argue that support of rights- based doctrines of liberty and privacy amounts to complicity

> in private systems of abuse. They have been motivated to rethink the right of abortion choice as a matter of individual (rather than of family) liberty or of equal opportunity, and to join other progressive scholars in calls for collectivist and protectionist strategies of family governance. Seeing government as an entity responsible for meeting the needs of individuals, feminist and progressive scholars have deemphasized rights-based jurisprudence and public-private dichotomies. They have shown more concern for the government's duty of care and less concern for the individual's right "to be let alone." As notions of "rights" and "privacy" have been deconstructed the work of these scholars, arguments for autonomy within spheres of private life have been neglected, or deconstructed by implication.
>
> To the position of progressive and feminist scholars, I offer no refutation. I share their concern for the welfare of individuals within families and for advancement of the collective good. I differ only in my assessment of the importance of competing concerns: preservation of the integrity of the private sphere and protection against the risks, particularly the risks to the disempowered, of invasive governance. Like Patricia Williams, I speak from a tradition that has confronted "the utter powerlessness of status" that resulted in the loss of "languages, cultures, tribal ties, kinship bonds, even of the power to procreate in the image of oneself and not that of an alien master." Like Williams, I see the maintenance of rights as a safeguard against status degradations that erode the power to define and to preserve a culture, an intimate community, and a sense of self:
>
> For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply a respect that places one in the referential range of self and others, that elevates one's status from human body to social being. For blacks, then, the attainment of rights signifies the respectful behavior, the collective responsibility, properly owed by a society to one of its own (footnotes omitted) (Davis, 1993:307, 308).

Thus, Davis is explicitly criticizing the gender-oppressed but racially-privileged white feminists for ignoring the reality of the simultaneous oppression of African American women. Davis' critique is particularly significant because, as an avowed feminist, she

nonetheless exposes white feminists' blindness to the full range of women's oppression from within a high visibility point: a mainstream legal journal, *Harvard Civil Rights-Civil Liberties Law Review.*.

Consequently, and as far as my sampled family law articles are concerned, feminist jurisprudence scholars have published many of their differences and debates. To the extent that public acknowledgment of heterogeneity is a sign of theoretical maturity and confidence, the feminist critique of feminist work published in mainstream legal journals is an indication that not only is feminist jurisprudence moving towards the mainstream of legal theory but it is doing so in forms that present a threat to the legal establishment. Specifically, feminist jurisprudence literature acknowledging its heterogeneity into the mainstream is moving toward the third phase and is increasing its potential to accomplish the transformative feminist goal.

Feminist heterogeneity in theory and praxis.

The issue of women's and feminists' heterogeneity –third-phase concern—was further addressed in few family law articles dealing with the connection between feminist theory and feminist praxis. Characteristic is the article authored by Colker (1992) in which she relates the way she experienced feminist praxis guided by feminist theory and shaped by women's heterogeneity while preparing an *amicus curiae* for a Louisiana abortion case.

Among the first things Colker does in her article is to make explicit the way she sees feminist theory intertwined with feminist praxis. Characteristic is the following excerpt:

> As a law professor and practicing lawyer, I try to work on cases that are consistent with my feminist perspective in two ways. First, I try to choose cases that address issues fundamental to the subordination

> of women. Second, I try to utilize legal theories in ways that are consistent with feminist jurisprudence. In other words, I evaluate both the substantive issue and theoretical approach that I will be utilizing to determine my willingness to work on a case. Both these inquiries serve an overarching commitment to make my practice consistent with my feminist theory.
>
> Because writing the brief was, for me, a political project, I have tried to take advantage of whatever opportunities were available to inform others of its contents-through speaking engagements, op-ed pieces, and now this Essay (footnotes and references omitted) (Colker, 1992:1195, 1197).

In this quote thus, Colker argues that feminist theory and feminist praxis are intertwined in a political project. A project whose content and implications need to become public and form the basis for informing others. Thus, dissemination of experiences and knowledge gained throughout this political process is imperative. Publishing articles is one of the ways to disseminate such knowledge and experience. To the extent Colker's practice is representative of feminist praxis, it follows that for feminists the roles of theorist, practitioner and political activist should and often do coexist in the same person and the same activity.

The goal of dissemination of knowledge notwithstanding, Colker's primary aim is to partake in the project of including the experiences of disadvantaged groups of women in the legal process. Characteristic is the following excerpt:

> Our abortion doctrine under Roe is erroneously premised on a white, adult, able-bodied, middle-class woman who can afford to purchase reproductive services, including abortion. Focusing on disadvantaged women and equality arguments will shift the core of our abortion doctrine from privileged women to disadvantaged women. Placing the lives of disadvantaged women on the pages of briefs filed in court is the first step in this process. That was my intention in Sojourner T. (footnotes and references omitted) (Colker, 1992:1200)

To the extent Colker was interested in including the experiences of disadvantaged groups of women into the legal process, she solicited the assistance and support of various women's groups, particularly African-American women's groups. In other words, she solicited the assistance and support of the groups of women whose experiences she aimed at including in the legal process. Contrary to her expectations however, Colker realized that organization and co-operation of different women's groups at the political level is not always feasible, even when politically comparable groups are concerned.

Analyzing this observed lack of support and co-operation from the part of the people whose interests she was aiming at promoting, Colker reached the conclusion that the main reason behind the lack of political organization and co-operation is the heterogeneous experiences of women and feminists. Thus, Colker realized that at least as far as abortion is concerned, not all groups of women share the same political position. That is, not all groups of women are supportive of abortion. Says Colker:

> The difficulties I experienced in organizing groups to participate in the amicus process may be reflective of the larger problem of organizing groups in conservative communities to oppose anti-abortion efforts. If the women of Louisiana were more politically organized, one might expect that the state legislature would not be able to enact the harshest anti-abortion statute in the United States. But the problem is not merely one of political disorganization. Women in the South, on average, simply are not as pro-choice as women in the Northeast, where the national pro-choice groups are based. Thus, women involved in the New Orleans chapters of groups such as the National Council for Negro Women will not necessarily share the pro-choice perspective of their counterparts in the New York chapter of the same organizations (footnotes and references omitted) (Colker, 1992:1207).

Colker's project and her related experiences are particularly relevant to my study. First of all, Colker explicitly identifies publishing as one of the ways in which the

political project of feminism can be realized. Furthermore, it is particularly important that Colker is relating her experiences of the way in which heterogeneity between women influences the direction and the possibility of feminist political activity in a mainstream publication. In other words, Colker not only acknowledges women's heterogeneity within the mainstream but she also points to the practical difficulties, often impossibility of organizing women against the pursuit of a common goal, even the identification of a common goal. In that sense within the sub-field of family law feminist jurisprudence scholars in addition to celebrating the heterogeneity of women at the theoretical level, they acknowledge and consider these differences at the practical level as well indicating that feminist praxis may be moving towards third-phase feminist involvement.

In summary, my analysis of feminist jurisprudence family law articles shows that the larger number of articles belong to second-, second-phase transitional, or third-phase of feminist legal theory. To the extent the second and third phases represent feminist jurisprudence literature's greater potential to revolutionize legal theory, my finding that the majority of feminist jurisprudence family law articles belong to these classification categories indicates that feminist jurisprudence articles published in mainstream legal journals within the specialization of family law are gaining ground against the androcentric mainstream resistance and are moving closer to realizing the goal of feminist transformation of legal theory and praxis. Furthermore, my findings that within the specialization of family law, feminist articles openly, publicly, and in mainstream legal journals debate core theoretical issues of feminist theory and praxis with other feminists indicate that the feminist jurisprudence perspective as a whole is engaging in a third-phase project: acknowledging and celebrating differences, including their theoretical differences.

Feminist jurisprudence penal law articles.

A total of 23 articles comprise my sample of penal law articles. Again, sample selection procedures are discussed in Chapter 5 and Appendix C, while a complete list of all penal law related articles is presented in Appendix D.

The results of the classification of penal-law related articles are presented in Tables 19 and 20. (In Table 19 I classify penal law feminist jurisprudence articles by year. In Table 20 I classify penal law feminist jurisprudence articles by phase). As can be seen (Table 19), three articles are classified as first phase. The same number of articles (N=3) is classified as first-phase transitional. In the next classification category, second-phase feminist jurisprudence, the total number of articles is seven. Moreover, three penal law articles, are classified as second phase (structural) transitional articles. The final classification category, third-phase feminist jurisprudence, also includes a total of seven articles. Overall then, similar to the pattern observed for family law articles, the largest number of penal law articles were classified as second-, second-phase transitional, and third-phase of feminist jurisprudence literature. See Table 19. Thus, contrary to my expectations, with respect to their numbers, penal law articles are also moving towards the realization of the feminist transformation of law.

The range of themes and topics of penal-law related articles differed from that of family law articles. While family law, sampled articles address a wide variety of topics, penal law articles tend to concentrate upon a smaller number of topics. See Table 20. The issue most frequently addressed within penal law articles is violence against women. Violence against women is addressed either exclusively or in relation to other issues in at least 10 of the sampled articles. Of these, four articles deal with rape, either exclusively or in relation to other topics, such as the teaching of law and the structure and function of

Table 19. Analysis of penal law feminist jurisprudence articles by year of publication and phase of feminist jurisprudence literature.

Year	Phases of feminist jurisprudence literature					
	First phase	First transitional	Second phase		Second transitional	Third phase
			Struc	Cult.		
1983						
1984				1		
1985						
1986	1		3			
1987				1		1
1988		1				
1989						1
1990		1				
1991	1		2		2	1
1992	1					3
1993		1				1
Number of articles per phase (N=24)	3	3	5	2	2	7

Table 20. Analysis of penal law articles according to phases of feminist jurisprudence literature.

Topic/theme	Year	Author	Journal	Code
First Phase (N=3)				
Fetal rights/constitutional rights (liberty, privacy, equal protection)	1986	D. E. Johsen	Yale Law Journal	FL55 CJ56
Reasonable-belief defense in rape	1991	d. Berliner	Yale Law Journal	CJ25
Birth control and implications for crime control (Norplant case)	1992	S.L.Arthur	UCLA L. Review	CJ07
First phase transitional (N=3)				
Legal understanding of consent in sexal conduct	1988	M. Chamallaw	S.C.L. Review	CJ43
Orders of protection for battered women	1990	C E Borgman	NY U L Review	CJ36
Street harassment of women	1993	C. Grant	Har. L. Review	CJ03
Second Phase (N=7)				
Second Phase Structural (N=5)				
Rape and the CJS	1986	S. Estrich	Yale Law Review	CJ52
Battered women, self-defense strategies	1986	L. J. Taylor	UCLA L. Review	CJ51
Role of police in protection of battered women	1986	A. Eppler	Yale Law Journal	CJ55
Battering of women/ redefining separation	1991	M R Mahoney	Mich. L. Review	FL28 CJ35
Postpartum disorders/infanticide by mothers	1991	L.E. Reece	UCLA L. Review	CJ30 FL35
Second Phase Cultural (N=2)				
Women's voice and constitution	1984	K L Karst	Duke L. Journal	CJ57
The Fourth Amendment centered on connectness and relations	1987	M I Coombs	Cal. L Review	CJ48
Second Phase Transitional (N=3)				
Reflections on the structure, functions of the CJS	1992	J M Doyle	HCR-CL L Review	CJ43
Police interrogation and powerlessness	1993	JE Ainsworth	Yale Law Journal	CJ01
Homophobia, murder, CJS	1992	R B Milson	Cal. L Review	CJ15

Table 20 (continued). Analysis of penal law articles according to phases of feminist jurisprudence literature.

	Topic/theme	Year	Author	Journal	Code
Third Phase (N=7)					
	Forward to the Supreme Court on difference	1987	Marha Minow	Harv. L Review	CJ46
	Punishment of drug addiction	1991	D E Roberts	Harv. L Review	CJ27
	Reasonableness, legal language, connection between theory and practice	1992	N R Cahn	Corn. L Review	CJ09
	Theory and practice in relation to woman abuse	1992	EM Schneider	NY U L Review	CJ11
	Teaching of rape law	1992	S Estrich	Yale Law Journal	CJ06
	Difference and jury decision	1993	N J King	Mich. L Review	CJ02
	Storytelling in the jurisprudence of outsiders	1989	KL Scheppele	Mich. L Review	CJ42

the Criminal Justice System (see CJ25, CJ43, CJ52, CJ06). Issues of women's abuse are further addressed either exclusively or in relation to other issues in six of the sampled penal law articles (see CJ36, CJ51, CJ55, FL28/CJ23, CJ09, CJ11). The theoretical and practical implications of the ideological and organizational structure of the Criminal Justice System was the next most frequently discussed topic[60]. The authors of eight of the sampled penal law articles engage in theoretical discussions about existing legal standards and principles, their underlying assumptions and their implications as women and other oppressed groups experience them within the Criminal Justice System (see CJ143, CJ01, CJ15, CJ09, CJ46, CJ02, CJ42, CJ06, CJ52). It is noteworthy that all eight of the articles which discuss theoretical issues concerning the Criminal Justice System are classified as second-, second-phase transitional, or third-phase feminist jurisprudence, a finding which is in line with the argument that second- and third-phase feminist jurisprudence literature is more likely to direct its critical attention to the legal system in general. Additionally, three of the sampled penal law articles address issues generally characterized as related to individual rights, such as fetal rights, birth control, or street harassment of women (see FL55/CJ56, CJ07, CJ03). The issue of difference and the related issue of women's connectness are addressed in two of the penal law articles, both classified as second-phase cultural feminist jurisprudence articles (see CJ57, CJ48). Third-phase understanding of difference as it relates to legal principles is provided in two of the penal law articles (see CJ46, CJ02). The issue of infanticide and the treatment of drug addicted pregnant women are addressed in 2 additional penal law articles (see CJ30/FL35, CJ27, respectively).

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[60] There is some overlapping between the different thematic categories since a few of these articles cover both categories.

The lack of relationship between year of publication and phase of feminist jurisprudence scholarship which I noted in the sample of family law articles is also true for the sample of penal law articles. As a matter of fact, Martha Minow's forward to the Supreme Court, which articulates a third-phase understanding of difference and which received the highest number of citations of all feminist jurisprudence articles included in my general and my specific samples, was published in 1987, while a number of the more recent articles are classified as first- and first-phase transitional.

Applying and resisting feminism; the role of practitioners

One difference between the sampled penal law articles and family law articles of particular relevance to my study is the importance that authors of penal law articles place upon the practical implications and applications of their theoretical projects. Thus, many of the authors of the sampled penal law articles gave concrete advice on how feminist practitioners could apply theoretical critiques, exposed underlying assumptions, and expanded and redefined legal standards and principles. However, awareness of the extent to which the criminal justice system resists feminist transformation led feminist practitioners to warn others to be prepared, at times, to implement more conventional legal strategies to benefit their clients.

For example, in one of the articles, the author explores numerous alternatives open to homicide defenders –self-defense being one of them—and the extent to which they can be successfully implemented in defending women. She argues that the reality in the criminal justice system is that:

> [f]emale homicide defendants…have encountered legal categories that do not accommodate their behavior and have been tried and sentenced by courts that ignore or misunderstand their actions and motivations.

> In particular, women have faced difficulties proving the legal excuses and justifications which either reduce a charge of murder to manslaughter or mandate acquittal (footnotes and references omitted) (Taylor, 1986:1682).

As a result, if these defense strategies do not prove successful, feminist attorneys defending women need to employ more conventional strategies of defense likely to operate to the benefit of women. This line of argument is explicit in the following quote:

> Although imperfect self-defense offers an alternative path to mitigation, a number of factors support emphasizing fear as adequate emotion for heat of passion. First, while nearly all jurisdictions recognize killings in the heat of passion or under extreme emotional disturbance as manslaughter, some jurisdictions do not allow mitigation when a defendant fails to satisfy all the elements of self-defense. Second, imperfect self-defense fits uneasily into the doctrine of excuse, and criminal law considers partial justification a contradiction in terms. Third, and most relevant to the subject of this Comment, the circumstances under which women most often kill have been omitted from the traditional definitions of heat of passion and provocation.
>
> Broadening provocation to include long-term physical violence and expanding passion to include fear would subject women to the same level of accountability as men when they are provoked beyond reason. A finding of imperfect self- defense means that the woman was unreasonable and misunderstood the situation; a finding that she acted in the heat of passion indicates that her passionate response to provocation was reasonable under the circumstances. As long as the law continues to recognize heat of passion as a partial excuse to homicide, women's experiences should be specifically included in the definition of what is reasonable. Women who kill in a passion of fear for their physical safety would then have the same protection as men who kill in a passion of rage to defend their honor.
>
> This expansion would not supplant the claim of self-defense. However, if the claim of self-defense fails, a female defendant may argue that she genuinely, though unreasonably, believed she was in imminent danger from the victim's attack (imperfect self-defense), or that she was so terrified as a result of the victim's provocation that she killed in a passion of fear (heat- of-passion manslaughter). A

> defendant clearly would prefer to plead self-defense to obtain acquittal rather than to invoke imperfect self-defense or voluntary manslaughter to obtain mere mitigation. But self-defense theory will not work for all women who kill in response to real or threatened violence, and the availability of alternative mitigating defenses will be important for those defendants (references and footnotes were omitted) (Taylor, 1986:1713-1715).

Thus, the author is alerting practitioners to the possibility that attempts to implement feminist theory will not necessarily help women within the framework of the present criminal justice system, and that they should, therefore, examine other solutions.

The implementation of feminist theory within the existing Criminal Justice System, according to many of sampled penal law articles, is only partly dependent upon the structural organization of the system. That is, feminist writers within the penal law specialization recognize and acknowledge the significant role that criminal justice practitioners play in maintaining and perpetuating the structural inequalities embedded in the system. The following quotes from one of the penal law articles are indicative of the feminist understanding of how criminal justice system personnel perpetuate societal views condoning violence against women:

> ...police are motivated by their belief that it is a man's right to rule the home as he pleases. Police perpetuation of this stereotype harms women, and is evidence of discriminatory intent.
> By allowing men to beat their wives with impunity, the state implicitly condones such behavior and is thus complicit in one of the most fundamental and extreme acts of male domination over women in contemporary American society.
>
> Although the courts no longer grant men the right to batter their wives, current police policies implicitly condone behavior once explicitly condoned at common law. The police's non-interference policy, justified by a definition of family privacy that recognizes only the man's desires, empowers men to batter women.

> There is anecdotal evidence that the views of many police officers today are much like the old common law notions explicitly condoning men's right to batter. Some officers still believe that men are the head of the household, and should therefore have the prerogative to beat their wives. Such evidence, when available, supports a finding that a police policy of non-intervention in domestic violence is motivated by discriminatory intent (footnotes and references omitted) (Eppler, 1986:790, 198).

Consequently, women's negative experiences within the criminal justice system do not only depend upon the organization of the system. The criminal justice system's operating principles are implemented, maintained and, at times overridden because of the ideologies and practices of criminal justice system practitioners. This points once again to the interconnection between theory and practice.

Feminist jurisprudence and 'outsiders' in law.

An issue of particular importance to my study was raised in one of the articles included in my penal law articles. In this article, the author uses feminist jurisprudence theory, specifically, a feminist analysis of the legal standard of the 'reasonable person,' in order to legitimize the claim of another oppressed group –homosexuals—to be heard and accounted for, within law and the legal system. The author of this article uses the feminist critique and re-conceptualization of reasonableness to expose the homophobic assumptions underlying law's application in a case in which homosexual advances were considered sufficient provocation to allow for a defense of 'killing in the heat of passion,' thereby mitigating murder to manslaughter. As the author puts it:

> The reasonable man is an ideal, reflecting the standard to which society wants its citizens and system of justice to aspire. It is an "entity whose life is said to be the public embodiment of rational behavior." If the reasonable man is the embodiment of both rational

> behavior and the idealized citizen, a killing based simply on a homosexual advance reflects neither rational nor exemplary behavior. The argument is not that the ordinary person would not be provoked by a homosexual advance, but rather that a reasonable person should not be provoked to kill by such an advance.
> The reasonable man should not possess prejudices and biases such as homophobia and heterosexism. Even if the reasonable-man standard allows for "shortcomings and weaknesses which the community will tolerate," courts should decide that homophobia, especially when expressed through violent acts, is not among those shortcomings that are tolerable. As the following Sections show, homophobia should not be allowed to play a role in the law of provocation because it undermines the fairness and rationality of jury decisionmaking, blames gay victims instead of their victimizers, and frustrates positive social change (references and footnotes omitted) (Mison, 1992:161).

It is likely that the social change the author is referring to will have to proceed through exposing homophobic assumptions and articulating the way in which these assumptions structure and re-structure people's lives; a process not foreign to the development of feminist theory and practice. However, what is of particular interest to my study is the observation that the experiences of women, and feminist theory, are used by 'outsider' groups to substantiate their positions and arguments of inclusion. To the extent this is the case, it is also an indication of the way feminist jurisprudence literature is affecting social change through legal change. Furthermore, I would argue that the extent to which outsider groups use the experience, knowledge, tools, and skills developed by women and feminists to advance their positions within the mainstream of the legal discipline indicates the impact feminist jurisprudence literature has upon mainstream legal theory.

Summary and discussion of findings of content analysis.

My research goal in this chapter was to evaluate the extent to which feminist jurisprudence articles published in mainstream legal journals in the sub-fields of family and penal law, have the potential to revolutionize legal thought. Specifically, I classified family and penal law feminist jurisprudence articles according to the three phases of feminist jurisprudence scholarship.

The underlying assumptions guiding my research were the following: 1. As feminist jurisprudence scholarship advances, so does its potential to revolutionize legal though. In other words I assumed that feminist jurisprudence articles of the second and third phases have higher potential to effect legal changes as they present more in-depth critiques of law and the legal system. 2. Mainstream resistance against the feminist transformation would vary within different sub-fields of legal theory and practice depending upon the degree of androcentrism present in each of these areas. I further assumed that to the extent the legal specialization of family law deals with issues related to the private sphere –the sphere traditionally associated with women and women's concerns—it would be less resistant to feminism and the feminist transformation of law. Thus, feminist jurisprudence literature within this specialization would come closer to the feminist transformation of law. On the other hand, I assumed that penal law –the legal specialization associated with the public sphere would be more resistant to feminism and the feminist transformation. Feminist jurisprudence literature within this legal specialization would not be as likely to develop its full potential to revolutionize legal theory and practice.

The latent content analysis I performed in my sample of family and penal law articles showed that the majority of articles in both legal specializations belong to either the second or the third phase of feminist jurisprudence literature. Furthermore, there was

not a great difference between the overall number of family law articles and penal law articles which belonged to either the second or third phase of feminist jurisprudence literature. Thus, to the extent their numbers are concerned, my analysis showed that family and penal law feminist jurisprudence articles have similar potential to revolutionize legal theory and praxis.

Differences however existed between feminist jurisprudence articles published in the two sub-fields of legal theory in relation to the topics addressed as well as the ways in which these topics were addressed. Specifically, my analysis showed that feminist jurisprudence articles within the specialization of family law tended to cover a wide range of topics in contrast to penal law articles which exhibited a concentration around issues of violence against women. In that sense, feminist jurisprudence scholars within the sub-field of family law applied their in-depth critical reading of patriarchal legal principles, law and the legal order to a wider spectrum of family law. Feminist jurisprudence scholars within the specialization of penal law on the other hand, tended to target specific issues, primarily issues of violence against women. To the extent thus, the feminist transformation of the legal discipline needs to address the entire legal discipline, it is likely that the impact of feminism within the area of family law is larger than the impact of feminism within the area of penal law.

There was yet another important difference between feminist jurisprudence articles published in family law and those published in penal law. Specifically, feminist jurisprudence scholars within the specialization of family law were openly and explicitly debating feminist positions not as they compare and contrast with other legal perspectives in general, but as they compare and contrast within feminist legal perspectives. The same is true for the feminist jurisprudence discussion of praxis within the sub-field of family law. That is, feminist scholars within family law discuss the issue of feminist praxis as it relates to the theoretical, political, organizational and other aspects

of the feminist project. The overall impression of the feminist project within the specialization of family law is the celebration of differences not only within women but within feminisms as well. Drawing an analogy from the phases of feminist jurisprudence literature I would argue that the feminism within the specialization of family law is an overall third phase project.

Feminist penal law scholars on the other hand, although acknowledge, discuss and celebrate differences within women they do not discuss differences within feminism as often and as openly as family law feminist scholars. Feminist scholars within the specialization of penal tend rather tend to focus on the way feminist perspectives—complex as they are—differ from other non-feminist perspectives. This is particularly evident in the discussion of practical application of feminist theory. That is, feminist penal law scholars discuss feminist praxis in relation to the resistance feminist practitioners encounter either from law and the legal system in general, or individual practitioners. In other words, within the specialization of penal law there still exists for feminist scholars an identifiable external 'common enemy', an enemy against which they either need or feel they need to present a united front and a strategic plan. This need is evident in the frequent attempt of many of the feminist penal law scholars to give advice to feminist practitioners on how to practice feminist law within the hostile environment of penal law, the Criminal Justice System, individual practitioners supporters of the existing patriarchal social order. To draw from the same analogy of the feminist jurisprudence phases, the cumulative impression of feminism within the specialization of penal law resembles the project of second phase feminism: the reality of binary opposites, the existence of two camps 'us and them'.

Thus, my finding that feminist scholars within the specialization of family law are openly and explicitly debating feminist theory and practice as they pertain to differences among feminists is, on the one hand, a definite sign of theoretical maturity. On the other

hand, it is probably a sign that feminists within family law do not experience high levels of resistance.

By contrast, feminist penal law scholars do not discuss differences within feminism as much. They rather tend to discuss differences between feminisms and the mainstream as it is particularly evident in the issue of feminist praxis. Although this difference may be an indication that feminist jurisprudence literature within the specialization of penal law has not reached the same level of maturity as feminist jurisprudence literature within the specialization of family law, is rather likely an indication that feminists within the specialization of penal law experience more androcentric resistance than feminists within the specialization of family law. At a minimum, feminist penal law scholars acknowledge the existence of this androcentric resistance more openly than feminist family law scholars. Although I have not measured differences in degree of androcentrism in the two legal sub-fields indications that this difference exists are provided in my analysis as well as the feminist legal literature (Naffine, 1990:69, 137).

However, to the extent such differences in degree of androcentrism are present in the two legal sub-fields and do have an impact upon the way feminists within these sub-fields present their arguments, the fact that feminist penal law articles are as likely as family law articles to be classified as second- and third- phase is testimony to the more significant feminist impact within the specialization of penal law.

A further indication that feminism within the specialization of penal law may be experiencing higher levels of resistance and consequently their inclusion may be signifying stronger impact, is the observation that within the specialization of penal law, feminists tended to spend more effort and energy dealing with the Criminal Justice System than feminists within the specialization of family law spent discussing the equivalent system. In other words, penal law tended to exhibit higher levels of theoretical abstraction –at

least when they were discussing the structure and the organization of the Criminal Justice System—more so than did family law feminists. It is likely that, having to articulate their feminist world within the 'masculine,' 'public' area of legal specialization, feminist penal law scholars had to use the style of presentation more applicable to this world. In other words, they had to adopt a more general and abstract posture even when discussing specific issues pertaining to 'women only.'

At the same time, and despite resistance, feminist penal law scholars appear to be gaining acceptance. If nothing else, feminism within the specialization of penal law is likely to be considered the exemplary paradigm among alternative understandings of law and legal practice as indicated by the use of feminism as validation point for other outsider groups' claims of inclusion. If so, it may be the case that feminist jurisprudence literature is within the specialization of penal law is realizing its potential for legal change and social change. Whether or not it is doing so to a greater degree than the feminist jurisprudence literature within the specialization of family law is open to debate and not answerable here. However, it is apparent that in both areas feminist jurisprudence literature is not only present, but in a form that constitutes an actual threat of revolutionizing legal theory.

CHAPTER 9. DISCUSSION AND CONCLUSIONS

My general interest in this dissertation was gender inequality and the potential for its elimination through legal and social changes. I assessed the extent to which feminist jurisprudence scholarship has developed the potential to initiate a paradigm shift—a feminist revolution—within the legal discipline and thus effect legal and social changes contributing to gender equality. Based upon Kuhn's (1970) theory of paradigm shifts as constituting scientific revolutions and Stacey and Thorne's (1985) argument that centering scientific inquiries upon women's experiences constitutes a feminist transformation of knowledge, my use of the term 'feminist revolution' within the legal discipline refers to a shift in the scientific inquiry toward centering upon women and women's experiences.

Drawing on Stacey and Thorne's (1985) arguments concerning the feminist transformation of disciplines, I theorized that for a feminist revolution to occur within the legal discipline, a number of preconditions need to be met. First, the demographic composition as well as the structural and occupational organization of the legal profession needed to change. Further, existing conceptual frameworks of knowledge must be transformed and centered on women and women's concerns. Finally, the transformed frameworks of knowledge must overcome androcentric disciplinary resistance in order to be recognized and incorporated into the mainstream.

Research in legal theory and practice has already shown that the demographic, structural, and occupational organization of the legal profession has and continues to change as a result of increasing numbers of women and feminists who have entered the profession and advanced in the occupational hierarchy. More importantly, research has further shown that there are theoretical frameworks –feminist jurisprudence in particular—which effectively question and challenge the patriarchal structure of legal theory and practice. However, absent from the literature was an assessment of the extent

to which feminist jurisprudence literature presents the potential to effect a paradigm shift, a feminist 'revolution', within the discipline of law.

Given the interdependence between law and society, the realization of paradigm shifts that might contribute to legal and, potentially, social change, requires the acceptance of feminist jurisprudence within the mainstream of legal discipline. Publishing in mainstream legal journals provides one avenue of such acceptance since, according to legal scholars, journals play an important role in communicating and affecting scientific knowledge.

Although necessary, the mere presence of the feminist paradigm within the mainstream of the legal discipline is not sufficient for a feminist transformation of law. Such a transformation requires the articulation of arguments and positions challenging the core of legal theory and praxis; positions inconsistent with the dominant paradigm. Inconsistency between dominant and emerging scientific paradigms is, according to Kuhn (1970), one of the *sine qua non* conditions for the accomplishment of scientific revolutions. However, not all feminist jurisprudence inquiries carry the same potential to revolutionize legal theory and practice; the degree of inconsistency tends to increase as feminist jurisprudence literature moves from one phase to the next, and deepens its critique of law and the legal system. Furthermore, to the extent the feminist paradigm challenges the dominant legal paradigm, it is likely to be resisted by the mainstream. Consequently, assessing the extent to which feminist jurisprudence literature can effect changes in legal theory and practice, requires evaluating both the degree to which this literature is present in mainstream legal publications and the extent to which it is articulating in-depth, potentially revolutionizing, critiques of law and the legal thought.

Thus, I phrased my general research question as follows: to what extent has feminist jurisprudence contributed to changes in legal theory and potentially, legal practice, to the benefit of women? Specifically, to what extent has feminist jurisprudence

scholarship been incorporated into mainstream legal theory by publishing in widely-read legal journals, thereby contributing to a feminist challenge to established legal principles?

Implied in the general question were two more specific questions: First, to what extent is feminist jurisprudence scholarship moving into the mainstream of legal thought? That is, have there been any changes over time in the inclusion of feminist jurisprudence literature into the mainstream? Second, to what extent do feminist jurisprudence publications in the mainstream constitute a challenge to the patriarchal bases of the construction of legal theory?

The goal of my dissertation thus was twofold. First, I addressed the extent to which feminist jurisprudence literature was making progress into the mainstream by noting whether there have been any changes over time in the publication and citation patterns of feminist jurisprudence articles. Second, I addressed the extent to which feminist jurisprudence articles published in mainstream legal journals challenge the patriarchal bases of law and question the legal principles of neutrality, objectivity, and equality. To do this, I examined the topics, discussions, and arguments advanced by feminist jurisprudence scholars in selected articles in the subfields of family and penal law.

To address my first question, the extent to which feminist jurisprudence literature has made inroads into mainstream legal literature, I documented the publication and citation patterns of articles which explicitly referred to feminist jurisprudence anywhere in their title, body and/or references. A total of 602 articles were initially identified through WESTLAW. My final sample of feminist jurisprudence sources articles included a total of 322 articles while my sample of cited feminist jurisprudence articles included a total of 207 articles. Furthermore, my sample of citing articles included a total of 3,005 articles. I assessed the publication patterns of feminist jurisprudence articles by looking at their publication frequency in mainstream legal journals, the level of relative influence

each of the publishing journals exerts upon the legal discipline as measured by the rankings of legal journals provided by the Journal Citation Reports, and whether there have been changes in these patterns over time. I evaluated the citation patterns of feminist jurisprudence articles published in mainstream legal journals by examining the frequency with which articles explicitly referring to feminist jurisprudence are cited by others in the mainstream, the relative influence journals publishing citing articles exert upon the legal discipline, and whether there have been any changes in these citation patterns over time.

Two assumptions underlie my general question. First, I assume that widely-read legal journals have the potential to influence a larger number of scholars than less frequently-read journals. Second, I assume that widely-read legal journals are representative of the mainstream legal paradigm. As such, and based upon Kuhn's and Stacey and Thorne's arguments, widely-read legal journals would tend to resist the feminist transformation of legal thought.

I addressed my second question, the extent to which feminist jurisprudence articles published in mainstream legal journals articulate an in-depth critique of core issues and assumptions of legal theory and praxis, by analyzing the content of feminist jurisprudence articles published in the sub-fields of family (N=19) and penal law (N=23), and classifying them according to the three phases of feminist jurisprudence theory: The three phases of feminist jurisprudence are: first phase --the gender of one or equality phase--, second phase --the gender of two or the difference phase-- and third phase --the phase of multiple differences. I assumed that as feminist jurisprudence literature moved from one phase to the next, its critique of law and the legal system matured and, as a consequence, its revolutionary potential increased.

I selected these two legal sub-fields based on the assumption that since penal law addresses primarily the public sphere, it would tend to be male-centered. Consequently,

feminist jurisprudence arguments would be considered irrelevant. Thus, articles published within the area of penal law would be less likely to exhibit their revolutionary potential. If so, feminist jurisprudence penal law articles would not be as likely to be classified as second and third phase. By the same token, I assumed that because family law addresses the private sphere, the presumed social locus of women's activities, feminist jurisprudence would be more likely to be considered relevant. As such, feminist jurisprudence family law articles would be more likely to exhibit their revolutionary potential, as evidenced by a larger number of such articles being classified as second and third phase.

Summary: quantitative analysis.

Publication patterns.

Analyzing the full sample of feminist jurisprudence articles, I formulated several specific research questions, detailed in chapter 5, that basically addressed three subjects. First, the publication patterns of feminist jurisprudence articles was measured by the number of feminist jurisprudence articles published in mainstream and non-mainstream legal journals over time, as well as the impact factors --a measure of the frequency of citations received by an average article published in the respective journal-- of legal journals publishing feminist jurisprudence articles. Second, I examined the citation patterns of feminist jurisprudence articles as measured by the impact factor of legal journals that published citing feminist jurisprudence articles over time, and the number of citations received by feminist jurisprudence articles over time. Third, I investigated the diffusion of feminist jurisprudence literature within the different sub-fields of legal theory.

My analysis showed that, overall, the volume of feminist jurisprudence articles

published in mainstream legal journals increased over time. That is, for the years between 1983 and 1993 the number of feminist jurisprudence articles published in mainstream legal journals gradually rose. Furthermore, the number of feminist jurisprudence articles published in mainstream legal journals rose at a faster rate than the general number of legal articles published in mainstream legal journals. I also found that the number of feminist jurisprudence articles published in non-mainstream legal journals also increased and did so at a faster rate than the number of feminist jurisprudence articles published in mainstream legal journals).

Taken together, these findings indicate an increasing presence of feminist jurisprudence literature within the mainstream of the legal discipline. To the extent that this is the case, feminist jurisprudence scholarship enhances its potential to effect a feminist revolution, that is, a paradigm shift. Although finding increased numbers of feminist jurisprudence articles in non-mainstream legal journals is not directly related to the question of the potential impact of feminist jurisprudence literature within the mainstream, it does show the potential feminist jurisprudence literature has in influencing all aspects of the legal discipline.

Considering a third finding renders a fuller picture of the publication patterns of feminist jurisprudence articles. According to my analysis, over time the impact factor of journals that published feminist jurisprudence articles declined. There are two possible explanations for the decrease in the impact factor of journals that publish feminist jurisprudence articles. First, it may be that feminist jurisprudence literature is losing ground in the face of mainstream resistance. That is, it could be that, after appearing in widely-read mainstream legal journals, possibly as a 'trendy' subject, feminist jurisprudence literature was not able to overcome mainstream, androcentric resistance and was thus restricted to less influential albeit mainstream legal journals.

A second possible explanation for the decline of impact factors is that, having

appeared in widely-read mainstream legal journals, feminist jurisprudence gained legitimation as a distinct paradigm. Given the overall increase in volume of feminist jurisprudence literature, it may be that secondary mainstream legal journals were more inclined to publish feminist jurisprudence articles. In that sense, the combination of the declining impact factor of legal journals publishing feminist jurisprudence articles with the overall increased publication rates of articles may actually indicate that feminist jurisprudence increased its potential power. That is, it could be that, having gained legitimacy as a distinct paradigm through publication in mainstream legal journals, feminist jurisprudence literature has expanded, covering a wider spectrum of the discipline, and thus reaching larger and more heterogeneous legal audiences. This is further bolstered by additional exploratory analysis which showed a strong and statistically significant negative correlation between the number of feminist jurisprudence articles published and the mean impact factor of legal journals publishing feminist jurisprudence articles. Thus, when the number of feminist jurisprudence articles increased the impact factor of publishing journals declined or vice versa.

Although my research provides no definitive answers, there are indications that the second of the two possible explanations is more plausible. Specifically, my research showed that feminist jurisprudence literature is dispersed within the legal discipline and addresses a wide spectrum of legal specializations. Thus, it may be the case that feminist jurisprudence is not losing its potential to revolutionize mainstream legal thought. Rather, it is gaining another type of potential influence by addressing and possibly influencing wider legal audiences.

Citation patterns.

Examining the citation patterns of feminist jurisprudence articles showed that, on

average, the impact factor of publishing journals was related to the number of citations feminist jurisprudence articles received: the higher the impact factor, the larger the number of citations. Yet, it had no effect on the impact factor of the journals publishing citing articles. Based on these findings, it follows that if feminist jurisprudence scholars are interested in approaching large audiences, it is imperative that they publish in mainstream legal journals with high impact factors.

Overall then, the publication and citation patterns as well as the diffusion of feminist jurisprudence literature, indicate that over time, feminist jurisprudence literature is increasingly present within the mainstream of legal theory and its specializations. To the extent that incorporation and acceptance of a new paradigm within the mainstream of a scientific discipline are necessary steps for the transformation of a respective discipline, feminist jurisprudence is moving in this direction.

Analysis of family and penal law feminist jurisprudence articles.

My analysis of family and penal law articles addressed my second research question: the extent to which feminist jurisprudence articles published within these two legal subfields have the potential to revolutionize legal thought. To assess this issue, I classified articles in the sub-fields of family and penal law according to the three phases of feminist jurisprudence literature (see chapters 4 and 8). I assumed that as feminist jurisprudence theory advanced through the different phases, its critique of law and the legal system deepened and as a consequence, its potential to effect a paradigm shift within the legal discipline increased. A second assumption guiding this part of my research was that the degree of resistance to the feminist transformation would differ between the two legal specializations. Family law, with its association with the private –women's— sphere, was assumed to be a specialization which would present relatively less resistance

than other areas; penal law, which is associated with the public –male—realm, was assumed to be an area presenting relatively more resistance.

Contrary to my expectations, my research showed that the majority of feminist jurisprudence articles in **both** areas of legal specialization were classified either as second or as third phase. These findings indicated that, at least as far as numbers are concerned, feminist jurisprudence literature in both areas of legal specialization is moving towards the realization of a feminist revolution within the discipline.

At the same time, suggestive differences between the two areas of legal specialization emerged in relation to authors' choices of the topics as well as the way these topics were addressed. On the one hand, feminist jurisprudence scholars within family law addressed a wider range of topics than their counterparts within penal law. Additionally, they were more likely than were feminist jurisprudence penal law scholars to address differences within feminism. On the other hand, feminist jurisprudence penal law scholars tended to emphasize the difficulties they encountered in practicing feminism when applying penal law. The difficulties these scholars encountered originated from both the structure and organization of the penal law system and practitioners. Thus, it appeared that, in a broad sense, feminist jurisprudence family law articles exhibited the characteristics of third-phase feminism: they were more likely to address difference and diversity within feminism. By contrast, feminist jurisprudence penal law scholars more often dealt with issues that differentiated feminists from non-feminists. In so doing, they tended to exhibit the characteristics of second-phase feminism.

My research cannot directly assess whether the observed differences between family and penal law feminist jurisprudence literature are due to variations in androcentric resistance because I did not measure androcentrism in the two sub-fields. However, my finding that feminist jurisprudence penal law, but not family law, scholars referred extensively to difficulties originating from the criminal justice system and legal

practitioners, suggests that feminism is resisted more strongly within the specialization of penal law than within family law. In other words, it may be the case that feminist jurisprudence within family law is more likely to be accepted by the mainstream than feminist jurisprudence within penal law. Thus, and to the extent we can infer meaning from the fact that difficulties arising from mainstream theorists and practitioners were not mentioned as frequently among family law scholars, feminist jurisprudence literature within family law may be moving closer to realizing the feminist transformation than is the case within penal law. This points once again to the importance that mainstream acceptance of feminist jurisprudence has for the accomplishment of the feminist paradigm shift.

An intermediate step for the paradigm shift is the mainstream recognition of the relevance of feminist jurisprudence literature to the understanding of law; this is likely to be the case within family law. Thus, my finding that feminist jurisprudence literature is spreading throughout legal specializations is important to the degree that it indicates an increased recognition of the relevance of a feminist understanding of law.

Overall then, and in relation to the general question of my research –the extent to which feminist jurisprudence literature has the potential to revolutionize legal thought—I would argue that a feminist revolution within the discipline of law has begun, and, despite resistance, it appears to be making progress. However, the feminist revolution within the legal discipline is far from being successful and it appears that a long and perhaps difficult road to its accomplishment must still be traveled.

Implications of findings.

As a conflict-oriented, feminist theory, feminist jurisprudence understands women's social position as dependent upon socially-, legally-, politically-, and

economically-imposed gendered hierarchies which assign women to a secondary social position. In the face of existing structural inequalities and the resulting disadvantaged social position of women, feminist jurisprudence scholars share the goal of institutional transformation advocated by critical legal studies and feminism, and aim at social changes benefiting women and eliminating gender inequality. In order to accomplish social change, feminists engage in a dual project: developing a theoretical understanding of women's social position and implementing political action in order to change this position. The two aspects for the feminist project are inextricably linked. Consequently, to the extent feminist theorizing is feminist praxis aiming at social change to benefit women, feminist scholars in general, and feminist jurisprudence scholars in particular, try to enact social change through praxis and theory.

Sharing critical legal studies' understanding that legal and social change are inextricably and reciprocally interrelated, feminist jurisprudence scholars who engage in the transformative project of feminism argue that although it is not sufficient, legal change is one prerequisite for accomplishing social change that benefits women. Furthermore, feminist jurisprudence scholars and critical legal scholars understand law and the legal system as a culmination of interconnected and interrelated yet distinct areas of theory and practice. The different parts that constitute the whole—the legal system—can be subjected to different methods of manipulation and alteration. Consequently, feminist jurisprudence scholars aiming at restructuring the legal system and enacting social change engage in transformative projects in different areas of the legal system.

Specifically, feminist jurisprudence scholars argue that the demographics of the profession have an impact on the structure and organization of the profession which, in turn, may have an impact on legal practice and the construction of legal knowledge through legal education and legal theory. To that extent, argue feminist jurisprudence scholars, attempts should be made to increase the numbers of women and feminists law

students, lawyers, law professors and legal practitioners.

However, feminist jurisprudence scholars and critical legal studies scholars, also argue that social change can be further affected through legal change in the form of litigation and legislation. Thus, feminist jurisprudence scholars engage in selected litigation and legislation efforts which address issues of sex and gender as these pertain to a variety of social relations and institutions.

Finally, feminist jurisprudence and critical legal studies scholars note that social change also depends upon altering the construction of legal knowledge through legal education and legal theory. To that effect, feminist jurisprudence scholars engage in extensive critique of legal theory, the goal being to expose legal assumptions and deconstruct the legal order, both conditions necessary for affecting legal change. Overall then, the feminist project of social change involves significant changes in legal praxis and legal theory.

As I have already discussed, one way that legal change aimed at gender equality can occur is to shift the dominant legal paradigm, centering it on women and their experiences. Shifting the dominant paradigm is important to the extent scientific paradigms define the organization and production of knowledge within disciplines. However, given the interrelation between law and society, the organization and production of legal knowledge has a significant impact on social relations as well as people's everyday lives through law's enactment, interpretation, and application. Thus, depending upon the 'politics of law,' the relation between law and society may express its oppressive or liberating potential. In that sense, changes in the legal paradigm which will lead to changes in the production, interpretation, and application of law may further effect social changes aiming at the elimination of gender inequality.

Research on the structure and the organization of the legal profession indicates that women within the legal profession are demanding and establishing their presence

among the ranks of legal practitioners and theorists as indicated by their increasing numbers. My analysis showed that in addition to their demand for equal participation in the profession, women and feminists demand, and to an extent succeed, in having their voices heard. Being heard, especially in the mainstream, may produce a number of direct and indirect effects. To the extent this depends upon the publication of scholarly work, may provide women legal theorists a vehicle to advance within the hierarchy of the legal education. Feminist educators, may also increase law students' awareness of women's experiences. Increased student awareness of women and their experiences may further influence the practice and theory of future members of the profession.

The advancement of women and feminists in the hierarchy of legal education, while it is a significant gain towards the goal of gender equality, is not the only beneficial impact of having women's voices heard within the mainstream. More importantly, and as indicated by this project, women and feminists within the legal discipline can thereby increase their participation in the construction of legal knowledge.

Women's and feminists' participation in the construction of legal knowledge has further implications for the feminist project of eradicating gender inequality through legal and social change. One implication is that law and the legal system will be analyzed and understood from a feminist perspective. In other words, feminist perspectives, and feminist jurisprudence in particular, are becoming relevant to the study of all areas of law. Given the interrelation between law and society, making feminism and women's experience relevant to law has significant implications at the theoretical and the practical level for women. At the theoretical level, making women's experiences relevant, provides ground for in-depth feminist explorations in the relation between law and the social construction of gender. For example, the overall project of feminist jurisprudence within family law –the legal specialization theorized to be more relevant to women and their experiences— exhibited characteristics of third phase feminism and acknowledged,

debated and elaborated upon differences between feminists and feminisms. In that way, feminist jurisprudence family law scholars were able to break the constraints of abstracted and oppositional legal knowledge and move towards the construction of gendered, situated and contextual knowledge accounting for the lives of women.

The construction of legal knowledge also has significant implications for feminist praxis aiming to bring about social change that benefits women. For example, feminist praxis resulted in litigation and legislation efforts ensuring –to some extent—women's interests concerning issues of pregnancy, abortion, equal opportunity, sexual harassment, and domestic violence. Thus, feminist litigation and legislation efforts contributed to the alleviation of some of the negative consequences of oppressive laws.

However, litigation and legislation efforts cannot by themselves change women's social position and lead to gender equality for two principal reasons. First, although they have the potential to alleviate some of the oppressive elements of social organization, laws promoting gender equality or providing protection for women do not guarantee gender equality, primarily because they leave intact the patriarchal assumptions of legal and social organization. Patriarchal assumptions underlying legal and social organization further impact on the way laws beneficial to women are applied. For example, the existence of police orders of protection for abused women does not guarantee effective response by the police. This was evident in one of the articles I analyzed which addressed the issue of police orders of protection for abused women. The police, who tended to minimize the seriousness of domestic abuse, were not effectively responding to women's calls for protection even when bound by the duty to intervene in such situations. That is, patriarchal assumptions about domestic relations, the ideology of the separation between the public sphere and the private sphere and the resulting ideology of state non-intervention in family relations, inhibited the application of beneficial legal rules to the extent these depended upon individuals subscribing to the above ideological constructs.

Second, patriarchal and gendered organization characterizes not only the legal system but the social system as well. To that extent, legal efforts to promote gender equality, even when applied to the benefit of women, cannot significantly ameliorate women's social position unless they are accompanied by changes in the social organization. That is, even if police orders of protection were granted to women and honored effectively by the police, they still would not be able to eliminate women's abuse; nor would they suffice for alleviating the impact of such a problem upon women's lives.

To be effective, legislation and litigation efforts need to be accompanied by changes in the social organization that seek to alleviate the sources of the problems that laws attempt to regulate. So, for example, to alleviate women's abuse patriarchy needs to be challenged and people's consciousness needs to be raised. At the same time, social institutions need to be restructured in order to allow and guarantee that women have access to affordable and safe birth control, abortions, housing, operational and efficient abused women's shelters, divorce with no detrimental impacts on the livelihood of women and potentially their children, and economic independence. It is only through the simultaneous attack on all social institutions that legal and social changes can be implemented and gender inequality be eliminated.

To accomplish their ultimate goal of gender equality, women activists and feminists will have to engage in various forms of praxis and theory. At times they will need to employ first-phase activism and theorizing in order to guarantee women's entrance in all aspects of the social organization. At times, they will need to engage in second-phase activism and theorizing so as to raise women's and men's consciousness about gender issues, while at other times they will need to engage in third-phase activism and theorizing which will allow for the differences among men and among women to be considered and understood. Feminist jurisprudence scholars, at least within family and

penal law, are already engaging in such projects. As my findings indicate, although feminist jurisprudence scholars have developed second- and third-phase arguments, first-phase arguments continue to exist. Furthermore, my findings that there exist transitional categories indicate that, in their attempt to effect legal and social changes, continue to develop those arguments which are judged to best serve the interests of women.

Suggestions for future research.

My study has shown that feminist jurisprudence scholars have taken a few initial steps necessary for shifting the legal paradigm. To that extent, feminist jurisprudence has shown that it has the potential to effect legal and social changes and reconceptualize law and the legal order. Unanswered, however, is the question of whether or not this potential for change has, to some degree, been realized, actually changing the way legal theorists and practitioners understand as well as practice law. Consequently, an important area for future inquiry involves investigating the extent to which exposure to feminist jurisprudence literature has indeed altered legal theorists' and practitioners' understanding of law and the legal order and the way they practice law.

Another important direction for research concerns examining the extent to which the mainstream actually resists feminist jurisprudence literature. Although the existence of androcentric resistance was assumed in my study and implied in some of the analyzed articles, it was not systematically measured. If, however, feminist jurisprudence scholars desire to shift the dominant legal paradigm, the degree and manner in which the mainstream resists is particularly important for understanding the extent to which such a transformation can occur. Moreover, understanding the degree and ways in which the mainstream resists becomes particularly relevant in planing strategies for effectively overcoming such resistance.

Important questions are also raised by my finding that the volume of feminist jurisprudence articles published in non-mainstream legal journals is increasing at faster rates than the volume of feminist jurisprudence articles published in mainstream legal journals. One potential research question involves looking at the reasons feminist jurisprudence scholars provide for publishing either in mainstream or non-mainstream legal journals. For example, are feminist jurisprudence scholars publishing in non-mainstream legal journals more frequently than in mainstream legal journals because they fail to publish in mainstream legal journals, or because they choose to do so? Or because non-mainstream journals are proliferating more rapidly and thereby offering more publication opportunities for these types of articles? The former scenario could indicate difficulties that feminist jurisprudence scholars face in overcoming mainstream resistance. If, instead, the other possibilities are correct, then it may not be that the mainstream is rejecting feminist scholarship but rather that feminist scholars are rejecting the mainstream and electing to publish in different kinds of journals.

A corollary question is why feminist scholars would choose to publish in non-mainstream legal journals; does it relate to the content of the debates undertaken in such journals, or are there other reasons? That is, is it possible that feminist scholars are electing to publish in non-mainstream legal journals because they prefer to address other feminists or other scholars sympathetic to feminism? Or is it because non-mainstream legal journals provide friendly grounds on which feminist issues can be discussed, debated, and questioned among feminists in order to better formulate arguments and positions?

Finally, although my research showed that the presence of feminist jurisprudence within the mainstream is increasing, I did not address the issue of how the progress feminist jurisprudence literature is making towards mainstream acceptance and incorporation compares to other legal paradigms with the same goal; specifically, legal and

social change. Thus, an important issue to be addressed in future research is how publication and citation patterns and the content of feminist jurisprudence literature present in mainstream journals, compare to publication and citation patterns and content of critical race studies or outsider scholarship, for example. In other words, what are the similarities and what are the differences in the attempts of these paradigms to enter the mainstream? Further, which of the paradigms is more likely to succeed in entering the mainstream of legal theory and why?

Comparing inclusion patterns of 'outsider' scholarship –for example, feminist jurisprudence and critical race studies—will provide insights into the strengths and weakness of mainstream legal theory. Moreover, such comparative analysis will provide insights for the potential and the likelihood of establishing 'outsider' coalitions. Establishing coalitions among those marginal to the dominant legal paradigm can have two principal outcomes. First, through subsequent collaboration the full spectrum of people's different experiences can be addressed and comprehended. Second, by better understanding the human experiences, various social groups can potentially engage in more effective actions geared toward alleviating various forms of oppression .

Overall, future research related to feminist jurisprudence theory should look into, and seek to understand, the interplay between androcentric mainstream resistance and feminist strategic planning for future changes, changes which will better the lives of all people, women and men alike. Further, future research should attempt to fully comprehend the way structural elements constructing people's lives can be challenged and changed in ways that will liberate and allow them to experience their full potential.

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APPENDIX A: DESCRIPTION OF DATA-SOURCES

Table 1. Fully covered journals and periodicals in TP-ALL with year coverage began and impact factor of journals.

Journals and Periodicals	Year Coverage Began	Impact Factor
American Bankruptcy Law Journal	1986	0.486
American Journal of International Law	1982	2.846
American University Law Review	1982	
Arizona Law Review	1990	
Boston College Law Review	1989	
Boston University Law Review	1986	1.133
Brooklyn Law Review	1985	
California Law Review	1984	3.898
Catholic University Law Review	1981	0.508
Columbia Law Review	1981	4.412
Cornell Law Review	1985	2.509
Duke Law Journal	1981	3.754
Emory Law Journal	1982	
Environmental Law	1981	
Fordham Law Review	1982	0.616
George Washington Law Review	1981	0.806
Georgetown Law Journal	1985	3.290
Georgia Law Review	1981	
Harvard Law Review	1981	8.397
Hastings Law Journal	1982	1.467
Hofstra Law Review	1982	
Indiana Law Journal	1983	1.035
Iowa Law Review	1985	0.750
Louisiana Law Review	1982	
Maryland Law Review	1983	
Michigan Law Review	1985	4.634
Minnesota Law Review	1985	1.055
New York University Law Review	1982	
North Carolina Law Review	1984	
Northwestern University Law Review	1984	1.494
Notre Dame Law Review	1983	
Ohio State Law Journal	1982	
Southern California Law Review	1987	1.711
Stanford Law Review	1984	7.220
Tax Law Review	1988	
Texas Law Review	1983	2.013
Tulane Law Review	1982	
UCLA Law Review	1982	3.800

Table 1 (continued). Fully covered journals and periodicals in TP-ALL with year coverage began and impact factor of journals.

Journals and Periodicals	Year Coverage Began	Impact Factor
University of Chicago Law Review	1982	3.519
University of Cincinnati Law Review	1984	
University of Colorado Law Review	1990	
University of Miami Law Review	1980	
University of Pennsylvania Law Review	1984	3.563
University of Pittsburgh Law Review	1983	0.878
Vanderbilt Law Review	1984	1.442
Virginia Law Review	1983	3.319
Washington Law Review	1980	0.867
William & Mary Law Review	1981	
Wisconsin Law Review	1985	1.075
Yale Law Journal	1982	5.073

Table 2. Fully covered journals and periodicals in FL-TP with impact factors.

Journals and Periodicals	Impact Factors
Fair$hare	
Family Law Advocate	
Family Law Quarterly	1.226
Journal of the American Society of Matrimonial Lawyers	
University of Louisville Journal of Family Law formerly: Journal of Family Law	0.169

Table 3. Fully covered journals and periodicals in CJ-TP with impact factors.

Journals and Periodicals	Impact Factors
American Criminal Law Review	0.974
American Journal of Criminal Law	
Criminal Justice	
Criminal Law Forum	
DOJ Alert	
Federal Sentencing Law & Practice	
Journal of Criminal Law & Criminology	0.882
New England Journal of Criminal & Civil Confinement	

Table 4. Rank order and impact factor of legal journals for 1987 and 1992.

Journal Title	Rank Order 1987	Impact Factor 1987	Rank Order 1992	Impact Factor 1992
Harvard Law Review	1	7.962	1	8.397
Yale Law Journal	2	3.390	3	5.073
California Law Review	3	3.081	6	3.898
University of Pennsylvania Law Review	4	3.079	9	3.563
Harvard Civil Rights-Civil Liberties, Law Review	5	2.833	20	1.750
University of Chicago Law Review	6	2.783	10	3.519
Journal of Legal Studies	7	2.772	15	2.196
Columbia Law Review	8	2.738	5	4.412
Stanford Law Review	9	2.667	2	7.220
Michigan Law Review	10	2.515	4	4.634
Virginia Law Review	11	2.116	11	3.319
American Journal of International Law	12	1.943	13	2.846
Southern California Law Review	13	1.904	21	1.711
Journal of Law and Economics	14	1.860	24	1.581
Minnesota Law Review	15	1.860	35	1.055
Wisconsin Law Review	16	1.754	33	1.075
American Bar Foundation Research Journal	17	1.667		
UCLA Law Review	18	1.638	7	3.800
New York University Law Review	19	1.618	29	1.444
Georgetown Law Journal	20	1.603	12	3.290
Texas Law Review	21	1.569	17	2.013
Administrative Law Review	22	1.512	39	0.902
Law and Social Inquiry			22	1.688
Duke Law Journal	23	1.492	8	3.754
Journal of Legal Education	24	1.438	71	0.329
Law and Human Behavior	25	1.383	27	1.487
Journal of Law and Economic Organization			26	1.540
Cornell Law Review	26	1.370	14	2.509
Business Lawyer	27	1.309	37	1.020
Law and Society Review	28	1.300	16	2.149
Vanderbilt Law Review	29	1.290	30	1.442
Family Law Quarterly	30	1.222	31	1.226
American Criminal Law Review	31	1.188	38	0.974
University of Pittsburgh Law Review	32	1.088	42	0.878
Law Library Journal	33	1.000	81	0.205
Northwestern University Law Review	34	0.983	19	1.785
Boston University Law Review	35	0.938	32	1.133

Table 4 (continued). Rank order and Impact factor of legal journals for 1987 and 1992.

Journal Title	Rank Order 1987	Impact Factor 1987	Rank Order 1992	Impact Factor 1992
George Washington Law Review	36	0.900	47	0.806
Syracuse Law Review	37	0.877		
Harvard Environmental Law Review	38	0.870	50	0.700
Food Drug and Cosmetics Law	39	0.855		
Urban Lawyer	40	0.853	64	0.407
Iowa Law Review	41	0.847	49	0.750
Ecology Law Quarterly	42	0.838	34	1.067
Harvard Journal of Law and Public Policy			43	0.872
Security Regulation Law Journal	43	0.838	93	0.079
American Bankruptcy Law Journal	44	0.821	55	0.486
Buffalo Law Review	45	0.813	40	0.886
American Journal of Law and Medicine	46	0.810	23	1.630
American Journal of Legal History	47	0.810	69	0.333
Columbia Journal of Law and Social Problems	48	0.800	66	0.375
Washington Law Review	49	0.771	45	0.867
Ocean Development International Law	50	0.767	89	0.118
Virginia Journal of International Law	51	0.711	68	0.367
Harvard Journal of Legislation	52	0.700	74	0.313
Judicature	53	0.682	59	0.442
Hastings Law Journal	54	0.651	28	1.467
Harvard International Law Journal	55	0.640	18	1.852
Indiana Law Journal	56	0.638	36	1.035
Fordham Law Review	57	0.631	51	0.616
American Bar Association Journal	58	0.597	60	0.435
Journal of Legal Medicine	59	0.593	63	0.414
Law and Contemporary Problems	60	0.561	48	0.800
Forum	61	0.545		
American Journal of Comparative Law	62	0.512	56	0.471
Criminal Law Review	63	0.500	52	0.614
Banking Law Journal	64	0.489	25	1.556
Journal of Law and Society	65	0.488	72	0.327
Common Market Law Review	66	0.479	53	0.510
Journal of Criminal Law and Criminology	67	0.478	41	0.882
Emory Law Journal	68	0.472		
Natural Resources Journal	69	0.470	87	0.125
Real Property Probate & Trust	70	0.463		
Uniform Commercial Code Law Journal	71	0.441		
American Business Law Journal	72	0.400	83	0.154

Table 4 (continued). Rank order and Impact factor of legal journals for 1987 and 1992.

Journal Title	Rank Order 1987	Impact Factor 1987	Rank Order 1992	Impact Factor 1992
Federal Probation	73	0.381	58	0.461
Arbitration Journal	74	0.353	76	0.291
International Journal of Law and Psychiatry	75	0.353	62	0.420
University of Illinois Law Review	76	0.343	44	0.871
Natural Resources Law	77	0.333		
International Journal of Sociology of Law	78	0.310	67	0.372
Issues in Law and Medicine			78	0.255
Justice System Journal	79	0.310	88	0.118
Journal of Family Law	80	0.286	82	0.169
Stanford Journal of International Law	81	0.269	75	0.292
Catholic University Law Review	82	0.268	54	0.508
Employee Relations Law Journal	83	0.264	86	0.138
Labor Law Journal	84	0.264	80	0.215
Journal of Maritime Law and Commerce	85	0.250	79	0.225
University of Cincinnati Law Review	86	0.250		
LA Law Review	87	0.248	69	0.333
Columbia Journal of Transnational Law	88	0.245	57	0.468
Journal of Law and Education	89	0.240	73	0.316
Cornell International Law Journal	90	0.227	77	0.273
International Journal of Semiotics and Law			90	0.111
George Washington Journal of International Law	91	0.222	91	0.103
International Comparative Law Quarterly	92	0.222	85	0.154
Medical Science Law	93	0.221	61	0.422
Military Law Review	94	0.208	84	0.154
Law and Philosophy	95	0.172	65	0.406
Canadian Bar Review	96	0.145		
University of Pennsylvania Journal of International Business Law			96	0.000
Journal of Copyright Society of USA	97	0.133	46	0.808
Chinese Law and Government	98	0.075	94	0.049
Journal of Comparative Business and Capital Market Law	99	0.053		
Human Rights	100	0.038	92	0.091
Urban Law Policy	101	0.036		
Environmental Policy Law	102	0.022		
Soviet Law and Government	103	0.000	95	0.000

Table 5. Law Journals with impact factor and rank order for 1992.

Journal Ranking	Journal Title	Impact factor
1.	Harvard Law Review	8.397
2.	Stanford Law Review	7.220
3.	Yale Law Journal	5.073
4.	Michigan Law Review	4.634
5.	Columbia Law Review	4.412
6.	California Law Review	3.898
7.	UCLA Law Review	3.800
8.	Duke Law Journal	3.754
9.	University of Pennsylvania Law Review	3.563
10.	University of Chicago Law Review	3.519
11.	Virginia Law Review	3.319
12.	Georgetown Law Journal	3.290
13.	American Journal of International Law	2.846
14.	Cornell Law Review	2.509
15.	Journal of Legal Studies	2.196
16.	Law and Society Review	2.149
17.	Texas Law Review	2.013
18.	Harvard International Law Journal	1.852
19.	Northwestern University Law Review	1.785
20.	Harvard Civil Rights-Civil Liberties Law Review	1.750
21.	Southern California Law Review	1.711
22.	Law and Social Inquiry	1.688
23.	American Journal of Law and Medicine	1.630
24.	Journal of Law and Economics	1.581
25.	Banking Law Journal	1.556
26.	Journal of Law Economics and Organization	1.540
27.	Law and Human Behavior	1.487
28.	Hastings Law Journal	1.467
29.	New York University Law Review	1.444
30.	Vanderbilt Law Review	1.442
31.	Family Law Quarterly	1.226
32.	Boston University Law Review	1.133
33.	Wisconsin Law Review	1.075
34.	Economic Law Quarterly	1.067
35.	Minnesota Law Review	1.055
36.	Indiana Law Journal	1.035
37.	Business Lawyer	1.020
38.	American Criminal Law Review	0.974
39.	Administrative Law Review	0.902
40.	Buffalo Law Review	0.886
41.	Journal of Criminal Law and Criminology	0.882
42.	University of Pittsburg Law Review	0.878

Table 5 (continued). Law Journals with impact factor and rank order for 1992.

Journal Ranking	Journal Title	Impact factor
43.	Harvard Journal of Law and Public Policy	0.872
44.	University of Illinois Law Review	0.871
45.	Washington Law Review	0.867
46.	Journal of the Copyright Society of the USA	0.808
47.	George Washington Law Review	0.806
48.	Law and Contemporary Problems	0.800
49.	Iowa Law Review	0.750
50.	Harvard Environmental Law Review	0.700
51.	Fordham Law Review	0.616
52.	Criminal Law Review	0.614
53.	Common Market Law Review	0.510
54.	Catholic University Law Review	0.508
55.	American Bankruptcy Law Journal	0.486
56.	American Journal of Comparative Law	0.471
57.	Columbia Journal of Transnational Law	0.468
58.	Federal Probation	0.461
59.	Judicature	0.442
60.	ABA Journal	0.435
61.	Medicine Science and the Law	0.422
62.	International Journal of Law and Psychiatry	0.420
63.	Journal of Legal Medicine	0.414
64.	Urban Lawyer	0.407
65.	Law and Philosophy	0.406
66.	Columbia Journal of Law and Social Problems	0.375
67.	International Journal of Sociology of Law	0.372
68.	Virginia Journal of International Law	0.367
69.	American Journal of Legal History	0.333
69.	Los Angeles Law Review	0.333
71.	Journal of Legal Education	0.329
72.	Journal of Law and Society	0.327
73.	Journal of Law and Education	0.316
74.	Harvard Journal of Legis	0.313
75.	Stanford Journal of International Law	0.292
76.	Arbitration Journal	0.291
77.	Cornell International Law Journal	0.273
78.	Issues in Law and Medicine	0.255
79.	Journal of Maritime Law and Commerce	0.225

Table 5 (continued). Law Journals with impact factor and rank order for 1992.

Journal Ranking	Journal Title	Impact factor
80.	Labor Law Journal	0.215
81.	Law Library Journal	0.205
82.	Journal of Family Law	0.169
83.	American Business Law Journal	0.154
83.	Military Law Review	0.154
83.	International Comparative Law Quarterly	0.154
86.	Employee Relations Law Journal	0.138
87.	Natural Resources Journal	0.125
88.	Justice System Journal	0.118
88.	Ocean Development and International Law	0.118
90.	International Journal for the Semiotics of Law/Revue Internationale de Semiotique Juridique	0.111
91.	George Washington Journal of International Law	0.103
92.	Human Rights	0.091
93.	Securities Regulation Law Journal	0.079
94.	Chinese Law and Government	0.049
95.	Soviet Law and Government	0.000
95.	University of Pennsylvania Journal of International Business Law	0.000

Table 6. Social Science Disciplines covered in the *Social Science Citation Index*.

anthropology archeology area studies business & finance communication community health criminology & penology demography economics educational research environmental studies ergonomics	ethnic group studies family studies geography geriatrics & gerontology health policy history information & library sciences international relations **law** linguistics management marketing	nursing personal management philosophy political science psychiatry psychology sociology statistics substance abuse urban planning & development women's studies

APPENDIX B. RELEASE FORM FROM SSCI

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June 13, 1994

Mr. Vassiliki Petoussi
Virginia Tech
Department of Sociology
660 McBryde Hall
Blacksburg, VA 24061-0137

Dear Mr. Petoussi:

Thank you for your letter of June 4, 1994.

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Sincerely,

B. Schreiber-Coia

Barbara Schreiber-Coia
Information Resources Consultant

APPENDIX C. DETAILED DESCRIPTION OF DATA COLLECTION PROCESS AND SAMPLE SIZE.

Description of Data Collection Process.

Step One: Identification of feminist jurisprudence articles.

In order to identify all articles which explicitly referred to the term 'feminist jurisprudence' anywhere in their title, body or references and were published in legal journals, I searched WESTLAW's TP-ALL database using the method "terms and connectors". The syntax I used to search WESTLAW was *'feminis! /s jurisprudence"* . With this syntax I identified articles in which the words feminist and jurisprudence or a combination of the two, appear in the same sentence anywhere in the title, the body or the references of the document. The above statement allowed the identification of articles which contained the two words in different combinations. The majority however, of articles retrieved contained the entire phrase "feminist jurisprudence". Exploratory searches I performed in WESTLAW using feminist jurisprudence as a phrase, retrieved approximately the same number of articles with the ones retrieved when the expanded root syntax (feminis!) was used. For example, in year 1987 the expanded root syntax retrieved 31 feminist jurisprudence articles while the restricted syntax (feminist jurisprudence as a phrase), retrieved 30. Thus, I retained the search with the expanded root in order to be more inclusive.

For each of the articles retrieved, the following information was listed: journal name, volume and page number, title of article, year of publication and author(s)'s name(s). As an example, I present a randomly selected article, the 146th retrieved article:

42 J. Legal Educ. 607
INTEGRITY IN RESEARCH December, 1992 Harold S. Lewis, Jr.
42 JLEGED 607

In the first line, the volume number, journal name, and the number of the article's first page appear. The title of the article and the author's name appear in the second line, while the third is reserved for the volume number, the abbreviated name of the journal, and the page number.

Although WESTLAW does not note type of publication in a consistent way, book reviews are easily identifiable primarily because of the format in which they are indexed. For example, a book review appeared as follows:

78 Cornell L. Rev. 84 Book Review
NOTES TOWARD AN AESTHETICS OF LEGAL PRAGMATISM; THE WALLACE STEVENS CASE: LAW AND THE PRACTICE OF POETRY. BY THOMAS C. GREY. CAMBRIDGE: HARVARD UNIVERSITY PRESS. 1991. 155 PP. $24.95. November, 1992 David A. Skeel, Jr.
78 CNLLR 84

Step Two: Retrieval of all articles published in legal journals and indexed in WESTLAW.

WESTLAW does not provide any information on the total number of articles indexed in each database. To obtain the total number of articles indexed in TP-ALL I had to use a term so generic that it would be included in each article in the database so that every

article would be located and counted. The general term I used was *copyright* since for each article the word "copyright" precedes reference information. Additionally, and in order to retrieve all articles published during each of the years between 1983 and 1993, I added a year restriction. Personal communication with WESTLAW Reference Attorneys on June 1, 1996 confirmed that the search strategy I employed was the best approximation to the total number of articles indexed in WESTLAW's database TP-ALL

Step Three: Accessing citing articles.

To generate the sample of citing articles I used Social Sci Search. For each of the source articles the following information had to be entered in Social SciSearch: author's name, year of publication, volume number, page number and journal name, following a particular syntax. For example, for the source article:

72 Tex. L. Rev. 211
CONSTRUCTING THE SUBSTANTIVE CONSTITUTION December, 1993 James E. Fleming
72 TXLR 211,

the statement:
cr=fleming je, 1993, v72, p211, tex law rev

was entered in Social SciSearch. With this statement, I was able to search Social SciSearch for the 'cited references' (cr) of the source article authored by Fleming JE, published in 1993, volume 72, page 211 of Texas Law Review. The above statement produced the following results:

s22 1 CR=FLEMING JE, 1993, V72, P211, TEX LAW REV

The first number preceded by the letter 's' represents the number of the search set. In other words, the above source article was the 22nd entry I made in Social SciSearch since I accessed the program. The number appearing before the information on the source article (which is repeated in Social SciSearch results) indicates the number of citations the source article received. In the present case, the source article was cited one time. To access the citing article, I entered the following statement:

t s22/3,k/all

The first statement (t) generates a print out of the results obtained for set 22 (s22). The next statement (3,k) is used to generate reference information (in a summary format) for the publications in which the specified source article is cited. The final statement (all) indicates that the same procedure should be followed for the identification of all publications which cited the specified source article. The above statements produced sets of information as the following example:

22/3,k/1
DIALOG (R) File 7:Social SciSearch (R)
(c) 1994 Inst for Sci Info. All rts. reserv.
02597302 Genuine Article#: NG797 No. References: 131
Title: PUBLIUS AND FEDERALISM - ON THE USE AND ABUSE OF THE FEDERALIST

IN CONSTITUTIONAL INTERPRETATION
Author(s): DUCAYET JW
Journal: NEW YORK UNIVERSITY LAW REVIEW, 1993, V68, N4(OCT), P821-869
ISSN: 0028-7881
Language: ENGLISH Document Type: ARTICLE
Cited References:
...FLEMING JE, 1993, V72, P211, TEX LAW REV

At the very first line of the results the set number (s22) and the printing specifications (3,k) are repeated, followed by the number of publications citing the specified source article. In this case the number is 1 since there is only one citation. Should there have been more citing articles, the same information would have been repeated and the numbering of citing articles would have continued. At the second line copyright information is included, followed by an identification number for the citing article and the number of references this article used. Further, title of citing article, author's name, publishing journal, year of publication, language of document as well as type of publication such as book review, editorial, article and the like, are printed. In the last line, Social SciSearch, prints the citation to the source article.

Sample size resulting form the data collection process.

Data collection steps	Resulting sample size
Step One: Retrieval of feminist jurisprudence articles	
1. Initial search; retrieval of all articles containing 'feminist jurisprudence'	N=602
2. Exclusion of incomplete articles (non-scholarly, missing author, title)	N=599
3. Retaining only articles in journals cross listed in JCR	N=376
4. Exclusion of book reviews	N=322
5. Identification of cited articles	N=207
Step Two: Retrieval of all articles indexed in WESTLAW	
Total number of articles retrieved	N=123,385
Step Three: Retrieval of citing articles	
1. Initial search, locating of citing articles	N=3,679
2. Excluding book reviews, editorials, articles published in journals without impact factors	N=3,005

Retrieval of family-law related feminist jurisprudence articles

1. Initial search; all feminist jurisprudence articles in FL-TP	N=55
2. Excluding book reviews, editorials, articles in journals without impact factors	N=23
3. Excluding non-feminist, non relevant articles	N=19

Retrieval of penal-law related feminist jurisprudence articles

1. Initial search; all feminist jurisprudence articles in CJ-TP	N=57
2. Excluding book reviews, editorials, articles in journals without impact factors	N=28
3. Excluding non-feminist, non relevant articles	N=23

APPENDIX D. FAMILY AND PENAL LAW FEMINIST JURISPRUDENCE ARTICLES IDENTIFIED BY WESTLAW.

FAMILY LAW ARTICLES IDENTIFIED BY WESTLAW[61]

1. 79 Va. L. Rev. 1515 October, 1993 Symposium on Sexual Orientation and the Law REASON, TRADITION, AND FAMILY LAW: A COMMENT ON SOCIAL CONSTRUCTIONISM Milton C. Regan, Jr. [FNa]
EXCLUDED; (superficial use of feminist jurisprudence)
(CODE: FL02)

2. 28 Harv. C.R.-C.L. L. Rev. 299 Summer, 1993 Symposium- -In your Midst: Contributions of Women of Color in the Law NEGLECTED STORIES AND THE LAWFULNESS OF ROE V. WADE [FNa] Peggy Cooper Davis [FNaa]
INCLUDED
(CODE: FL03)

3. 68 N.Y.U. L. Rev. 597 June, 1993 WHERE PRIVACY FAILS: EQUAL PROTECTION AND THE ABORTION RIGHTS OF MINORS Catherine Grevers Schmidt [FNa1]
INCLUDED
(CODE: F04)

4. 14 Cardozo L. Rev. 1747 May, 1993 HATCHING THE EGG: A CHILD-CENTERED PERSPECTIVE ON PARENTS' RIGHTS Barbara Bennett Woodhouse [FNa1]
EXCLUDED; NO IMPACT FACTOR
(CODE: FL05)

5. 10 N.Y.L. Sch. J. Hum. Rts. 513 Spring, 1993 WHO IS A PARENT?: THE NEED TO DEVELOP A LESBIAN CONSCIOUS FAMILY LAW Paula L. Ettelbrick [FNa1]
EXCLUDED; NO IMPACT FACTOR
(CODE: FL06)

6. 71 N.C. L. Rev. 721 March, 1993 MAINTENANCE, ALIMONY, AND THE REHABILITATION OF FAMILY CARE Ann Laquer Estin [FNa]
EXCLUDED; NO IMPACT FACTOR
(CODE: FL07)

7. 2 Tex. J. Women & L. 1 1992 Symposium on New Perspective on Women and Violence - Part I INCENDIARY CATEGORIES: LESBIANS/VIOLENCE/LAW Ruthann Robson [FNa1]
EXCLUDED; NO IMPACT FACTOR
(CODE: FL08)

8. 2 Tex. J. Women & L. 75 Winter, 1993 1992 Symposium on New Perspective on Women and Violence - Part I CHILD ABUSE: A PROBLEM FOR FEMINIST THEORY Marie Ashe [FNa1] Naomi R. Cahn [FNaa1]
EXCLUDED; NO IMPACT FACTOR
(CODE FL:09)

9. 18 New Eng. J. on Crim. & Civ. Confinement 1 Winter/Summer, 1992 THE LOGIC OF IDENTITY AND THE POLITICS OF JUSTICE: ESTABLISHING A RIGHT TO COMMUNITY-BASED TREATMENT FOR THE INSTITUTIONALIZED MENTALLY DISABLED Bruce A. Arrigo [FNa1]

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[61] The bibliographic format is the same as the original WESTLAW format.

EXCLUDED; NO IMPACT FACTOR

(CODE FL:10)

10. 66 Tul. L. Rev. 1435 Essay MANDATORY MARRIAGE "FOR THE SAKE OF THE CHILDREN": A FEMINIST REPLY TO ELIZABET SCOTT May, 1992 Linda J. Lacey [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE FL:11)

11. 80 Calif. L. Rev. 615 May, 1992 PLURALISM, PARENTAL PREFERENCE, AND CHILD CUSTODY Elizabeth S. Scott [FNd]

INCLUDED

(CODE: FL12)

12. 90 Mich. L. Rev. 1453 May, 1992 1992 Survey of Books Relating to the Law DIVORCE REFORM AND THE LEGACY OF GENDER THE ILLUSION OF EQUALITY: THE RHETORIC AND REALTY OF DIVORCE REFORM. BY MARTHA ALBERTSON FINEMAN. CHICAGO: UNIVERSITY OF CHICAGO PRESS. 1991. PP. 252. $27.50. Milton C. Regan, Jr. [FNa]

EXCLUDED; BOOK REVIEW

(CODE: FL13)

13. 43 Hastings L.J. 1195 April, 1992 Theoretic of Practice: The Integration of Progressive Thought and Action THE PRACTICE/THEORY DILEMMA: PERSONAL REFLECTIONS ON THE LOUISIANA ABORTION CASE Ruth Colker [FNa]

INCLUDED

(CODE: FL14)

14. 25 Loy. L.A. L. Rev. 711 April, 1992 Symposium: Does Evidence Law Matter? RAPE, LIES AND VIDEOTAPE Robert Garcia [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:FL15)

15. 65 S. Cal. L. Rev. 1171 March, 1992 "ATOMISTIC MAN" REVISITED: LIBERALISM, CONNECTION, AND FEMINIST JURISPRUDENCE Linda C. McClain [FNa]

INCLUDED

(CODE: FL16)

16. 42 J. Legal Educ. 1 March, 1992 General Article FEMINISM AWRY: EXCESSES IN THE PURSUIT OF RIGHTS AND TRIFLES Kenneth Lasson [FNa]

EXCLUDED; (opposing feminism)

(CODE: FL17)

17. 72 B.U. L. Rev. 101 January, 1992 WORDS THAT DENY, DEVALUE, AND PUNISH: JUDICIAL RESPONSES TO FETUS-ENVY? Sherry F. Colb [FNa]

INCLUDED

(CODE: FL18)

18. 23 St.Mary's L. J. 893 ADMISSIBILITY OF A RAPE VICTIM'S PRIOR SEXUAL CONDUCT IN TEXAS: A CONTEMPORARY REVIEW AND ANALYSIS 1992 James A.Vaught [FNa1] Margart Henning [FNaa1]

EXCLUDED; NO IMPACT FACTOR

(CODE FL:19)

19. 6 Notre Dame J.L. Ethics & Pub. Pol'y 449 1992 Symposium on Women & the Law WOMEN AND CHILDREN FIRST, BUT ONLY IF THE MEN ARE UNION MEMBERS: HIRING HALLS AND DELINQUENT CHILD-SUPPORTERS Lorraine A. Schmall [FNa1]

EXCLUDED; NO IMPACT FACTOR

(CODE FL:20)

20. 3 Colum. J. Gender & L. 119 1992 THE POVERTY OF PRIVACY? Linda C. McClain [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE: FL21)

21. 37 Vill. L. Rev. 1705 1992 Twenty-Sixth Annual Symposium: Integrating Legal and Psychological Perspectives on the Right to Personal Autonomy ON AUTONOMY: LEGAL AND PSYCHOLOGICAL PERSPECTIVES Bruce J. Winick [FNa1]

EXCLUDED; NO IMPACT FACTOR

(CODE: FL22)

22. 1992 Wis. L. Rev. 1443 1992 THE PRIVATIZATION OF FAMILY LAW Jana B. Singer [FNa1]

INCLUDED

(CODE: FL23)

23. 66 N.Y.U. L. Rev. 1559 December, 1991 Centennial Celebration: A Tradition of Women in the Law GENDER WARS: SELFLESS WOMEN IN THE REPUBLIC OF CHOICE Joan Williams [FNa]

INCLUDED

(CODE FL:24)

24.66 N.Y.U. L. Rev. 1682 December, 1991 Centennial Celebration: A Tradition of Women in the Law "NATURALLY" WITHOUT GENDER: WOMEN, JURISDICTION, AND THE FEDERAL COURTS Judith Resnik [FNa]

INCLUDED

(CODE: FL25)

25. 44 Stan. L. Rev. 179 November, 1991 Review Essays TRIBE'S JUDICIOUS FEMINISM Anita L. Allen [FNa]

EXCLUDED; BOOK REVIEW

(CODE: FL26)

26. 13 Women's Rts. L. Rep. 81 Summer/Fall, 1991 The Jurisprudence of Justice Sandra Day O'Connor JUSTICE O'CONNOR AND CHILDREN AND THE LAW Twila L. Perry [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE: FL27)

27. 90 Mich. L. Rev. 1 October, 1991 LEGAL IMAGES OF BATTERED WOMEN: REDEFINING THE ISSUE OF SEPARATION Martha R. Mahoney [FNa]

INCLUDED

(CODE: CJ23/FL28)

28. 38 UCLA L. Rev. 1483 August, 1991 DIVORCE LAW, FEMINISM, AND PSYCHOANALYSIS: IN DREAMS BEGIN RESPONSIBILITIES [FNa] Barbara Stark [FNaa]

INCLUDED

(CODE: FL29)

29. 24 Creighton L. Rev. 1589 June, 1991 Law and Medicine Symposium Issue A PREGNANT WOMAN'S RIGHT TO REFUSE MEDICAL TREATMENT--IS IT ALWAYS HER CHOICE?: IN RE A.C. Rodney A. Halstead

EXCLUDED; NO IMPACT FACTOR

(CODE: FL30)

30. 69 N.C. L. Rev. 1083 June, 1991 RE-IMAGINING CHILDHOOD AND RECONSTRUCTURING THE LEGAL ORDER: THE CASE FOR ABOLISHING THE JUVENILE COURT Janet E. Ainsworth [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE: FL31)

31. 65 Tul. L. Rev. 953 May, 1991 RETHINKING MARRIAGE: FEMINIST IDEOLOGY, ECONOMIC CHANGE, AND DIVORCE REFORM June R. Carbone [FNa] Margaret F. Brinig [FNaa]

EXCLUDED; NO IMPACT FACTOR

(CODE:FL32)

32. 100 Yale L.J. 1545 April, 1991 THE MEDIATION ALTERNATIVE: PROCESS DANGERS FOR WOMEN Trina Grillo [FNd]

INCLUDED

(CODE:FL33)

33. 23 Case W. Res. J. Int'l L. 197 Spring, 1991 Topical Article LESSONS FROM NORWAY: THE CHILDREN'S OMBUDSMAN AS A VOICE FOR CHILDREN Gary B. Melton [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:FL34)

34. 38 UCLA L. Rev. 699 February, 1991 Comment MOTHERS WHO KILL: POSTPARTUM DISORDERS AND CRIMINAL INFANTICIDE Laura E. Reece [FNa]

INCLUDED

(CODE:FL35)

35. 64. 1991 B.Y.U. L. Rev. 143 1991 Symposium on Family Law DIVORCE STORIES: READINGS, COMMENTS AND QUESTIONS ON LAW AND NARRATIVE Carol Weisbrod [FNaa]

EXCLUDED; NO IMPACT FACTOR

(CODE:FL36)

36. 1991 B.Y.U. L. Rev. 351 1991 Symposium on Family Law YOUTH CRIME AND THE CHOICE BETWEEN RULES AND STANDARDS Lee E. Teitelbaum [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:FL37)

37. 38 Buff. L. Rev. 859 Fall, 1990 Comment SIN, STIGMA & SOCIETY: A CRITIQUE OF MORALITY AND VALUES IN DEMOCRATIC LAW AND POLICY Timothy W. Reinig [FNa]

EXCLUDED; (non-feminist)

(CODE:FL38)

38. 58 Geo. Wash. L. Rev. 599 February, 1990 Book Review A LAWMAKER'S GUIDE TO REPRODUCTIVE FREEDOMS--A REVIEW OF REPRODUCTIVE LAWS FOR THE1990S EDITED BY SHERRILL COHEN [FNa] AND NADINE TAUB. [FNaa]CLIFTON, N.J.: HUMANA PRESS (1989) VII, 438 PP. $27.00 Philip C. Kissam [FNaaa]

EXCLUDED; BOOK REVIEW

(CODE:FL39)

39. 42 Fla. L. Rev. 181 January, 1990 Symposium: Women and the Law: Goals for the 1990s GENDER AND JUSTICE: FLORIDA AND THE NATION [FNa] Lynn Hecht Schafran [FNaa]

EXCLUDED; NO IMPACT FACTOR

(CODE:FL40)

40. 70 B.U. L. Rev. 1 January, 1990 FOUNDING MOTHERS: WOMEN'S VOICES AND STORIES IN THE 1987 NICARAGUAN CONSTITUTION Martha I. Morgan [FNa]

INCLUDED

(CODE:FL41)

41. 32 Ariz. L. Rev. 431 1990 WORK AND FAMILY: RESTRUCTURING THE WORKPLACE Nancy E. Dowd [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:FL42)

42. 36 UCLA L. Rev. 1051 August, 1989 FIGHTING OVER INDIAN CHILDREN: THE USES AND ABUSES OF jurisdictional ambiguity Barbara Ann Atwood [FNa]

EXCLUDED; (superficial use of feminist jurisprudence)

(CODE:FL43)

43. 26 Harv. J. on Legis. 311 Summer, 1989 Symposium: Legislative Approaches to Work and the Family ENVISIONING WORK AND FAMILY: A CRITICAL PERSPECTIVE ON INTERNATIONAL MODELS Nancy E. Dowd [FNa]

INCLUDED

(CODE:FL44)

44. 87 Mich. L. Rev. 1377 May, 1989 1989 Survey of Books Relating to the Law MOTHER-LOVE AND ABORTION: A LEGAL INTERPRETATION. BY ROBERT D. GOLDSTEIN. BERKELEY: UNIVERSITY OF CALIFORNIA PRESS. 1988. PP. XII, 240. $19.95. Darleen Darnall

EXCLUDED; BOOK REVIEW

(CODE:FL45)

45. 57 UMKC L. Rev. 261 Winter, 1989 Comment THE FETAL RIGHTS CONTROVERSY: A RESURFACING OF SEX DISCRIMINATION IN THE GUISE OF FETAL PROTECTION Ellen Bigge [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:FL46)

46. 23 Ga. L. Rev. 359 Winter, 1989 INTERSPOUSAL TORT IMMUNITY IN AMERICA Carl Tobias [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:FL47)

47. 24 Harv. C.R.-C.L. L. Rev. 79 Winter, 1989 Voices of Experience: New Response to Gender Discourse WORK AND FAMILY: THE GENDER PARADOX AND THE LIMITATIONS OF DISCRIMINATION ANALYSIS IN RESTRUCTURING THE WORKPLACE Nancy E. Dowd [FNa]

INCLUDED

(CODE:FL48)

48. 97 Yale L.J. 1783 July, 1988 Note FROM THIS DAY FORWARD: A FEMININE [FN1] MORAL DISCOURSE ON HOMOSEXUAL MARRIAGE Claudia A. Lewis

INCLUDED

(CODE:FL49)

49. 86 Mich. L. Rev. 1365 May, 1988 1988 Survey of Books Relating to the Law STORIES OF RIGHTS: DEVELOPING MORAL THEORY AND TEACHING LAW RIGHTS, RESTITUTION, & RISK: ESSAYS IN MORAL THEORY. By Judith Jarvis Thomson. Edited by William Parent. Cambridge, Mass.: Harvard University Press. 1986. Pp. x, 260. $12.95. Patricia A. Cain [FNa] Jean C. Love [FNaa]

EXCLUDED; BOOK REVIEW

(CODE:FL50)

50. 82 Nw. U. L. Rev. 387 Winter, 1988 Review Essay CONVERSATION AND ABORTION A REVIEW OF ABORTION AND DIVORCE IN WESTERN LAW. BY MARY ANN GLENDON. [FNa] CAMBRIDGE, MASSACHUSETTS: HARVARD UNIVERSITY PRESS, 1987. PP. 197. $25.00. Marie Ashe [FNaa]

EXCLUDED; BOOK REVIEW

(CODE:FL51)

51. 42 U. Miami L. Rev. 55 September, 1987 Symposium: Excluded Voices: Realities in Law and Law Reform REFLECTIONS ON THE SIGNIFICANCE OF THE SEX/GENDER SYSTEM: DIVORCE LAW REFORM IN NEW YORK Isabel Marcus [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:FL52)

52. 65 N.C. L. Rev. 195 January, 1987 THE PARTNERSHIP IDEAL: THE DEVELOPMENT OF EQUITABLE DISTRIBUTION IN NORTH CAROLINA Sally Burnett Sharp [FNp]

EXCLUDED; NO IMPACT FACTOR

(CODE:FL53)

53. 99 Harv. L. Rev. 1255 April, 1986 Note TO HAVE AND TO HOLD: THE MARITAL RAPE EXEMPTION AND THE FOURTEENTH AMENDMENT

EXCLUDED; NO AUTHOR'S NAME

(CODE:FL54)

54. 95 Yale L.J. 599 January, 1986 Note THE CREATION OF FETAL RIGHTS: CONFLICTS WITH WOMEN'S CONSTITUTIONAL RIGHTS TO LIBERTY, PRIVACY, AND EQUAL PROTECTION Dawn E. Johnsen

INCLUDED

(CODE:CJ/56FL55)

55. 96 Harv. L. Rev. 1497 May,1983 THE FAMILY AND THE MARKET: A STUDY OF IDEOLOGY AND LEGAL REFORM Frances Olsen [FNa]

INCLUDED

(CODE:FL56)

PENAL LAW FEMINIST JURISPRUDENCE ARTICLES IDENTIFIED BY WESTLAW

1. 103 Yale L.J. 259 November, 1993 IN A DIFFERENT REGISTER: THE PRAGMATICS OF POWERLESSNESS IN POLICE INTERROGATION Janet E. Ainsworth [FNd1]

INCLUDED

(CODE CJ:01)

2. 92 Mich. L. Rev. 63 October, 1993 POSTCONVICTION REVIEW OF JURY DISCRIMINATION: MEASURING THE EFFECTS OF JUROR RACE ON JURY DECISIONS Nancy J. King [FNa1]

INCLUDED

(CODE:CJ02)

3. 106 Harv. L. Rev. 517 January, 1993 STREET HARASSMENT AND THE INFORMAL GHETTOIZATION OF WOMEN Cynthia Grant Bowman [FNa]

INCLUDED

(CODE:CJ03)

4. 4 Crim. L. F. 327 Conference Paper CONTINUING BARRIERS TO WOMEN'S CREDIBILITY: A FEMINIST PERSPECTIVE ON THE PROOF PROCESS [FNa] 1993 Kathy Mack [FNaa]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ04)

5. 11 Law & Ineq. 1 December, 1992 CIVIL RIGHTS FOR BATTERED WOMEN: AXIOMATIC & IGNORED Andrea Brenneke [FNa] [FNaa]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ05)

6. 102 Yale L.J. 509 November, 1992 Essay TEACHING RAPE LAW Susan Estrich [FNd]

INCLUDED

(CODE:CJ06)

7. 40 UCLA L. Rev. 1 October, 1992 THE NORPLANT PRESCRIPTION: BIRTH CONTROL, WOMAN CONTROL, OR CRIME CONTROL? Stacey L. Arthur [FNa]

INCLUDED

(CODE:CJ07)

8. 9 Touro L. Rev. 39 Fall, 1992 Symposium: The Supreme Court and Local Government THE FOURTH, FIFTH AND SIXTH AMENDMENTS: THE SUPREME COURT'S MAJOR SEARCH AND SEIZURE, INTERROGATION, AND CRIMINAL JURY SELECTION DECISIONS DURING THE 1990 TERM Professor William E. Hellerstein

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ08)

9. 77 Cornell L. Rev. 1398 September, 1992 Symposium THE LOOSENESS OF LEGAL LANGUAGE: THE REASONABLE WOMAN STANDARD IN THEORY AND IN PRACTICE Naomi R. Cahn [FNd]

INCLUDED

(CODE:CJ09)

10. 70 N.C. L. Rev. 1592 June, 1992 Note MICHIGAN v. LUCAS: FAILING TO DEFINE THE STATE INTEREST IN RAPE SHIELD LEGISLATION Lara English Simmons

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ10)

11. 67 N.Y.U. L. Rev. 520 June, 1992 PARTICULARITY AND GENERALITY: CHALLENGES OF FEMINIST THEORY AND PRACTICE IN WORK ON WOMAN-ABUSE Elizabeth M. Schneider [FNa]

INCLUDED

(CODE:CJ11)

12. 25 Loy. L.A. L. Rev. 711 April, 1992 Symposium: Does Evidence Law Matter? RAPE, LIES AND VIDEOTAPE Robert Garcia [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ12)

13. 23 U. Tol. L. Rev. 599 Spring, 1992 The Sixth Circuit Review GIBSON v. MATTHEWS, THE SIXTH CIRCUIT, AND THE STILLBIRTH OF THE REPRODUCTIVE RIGHTS OF INCARCERATED WOMEN James A. Hickey *

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ13)

14. 27 Harv. C.R.-C.L. L. Rev. 71 Winter, 1992 "IT'S THE THIRD WORLD DOWN THERE!": THE COLONIALIST VOCATION AND AMERICAN CRIMINAL JUSTICE James M. Doyle [FNa1]

INCLUDED

(CODE:CJ14)

15. 80 Calif. L. Rev. 133 January, 1992 Comment HOMOPHOBIA IN MANSLAUGHTER: THE HOMOSEXUAL ADVANCE AS INSUFFICIENT PROVOCATION Robert B. Mison [FNd]

INCLUDED

(CODE:CJ15)

16. 23 St. Mary's L.J. 893 1992 ADMISSIBILITY OF A RAPE VICTIM'S PRIOR SEXUAL CONDUCT IN TEXAS: A CONTEMPORARY REVIEW AND ANALYSIS James A. Vaught [FNa1] Margaret Henning [FNaa1]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ16)

17. 53 Ohio St. L.J. 363 1992 CONSTITUTIONAL DIMENSIONS OF THE BATTERED WOMAN SYNDROME Erich D. Andersen [FNa1] Anne Read-Andersen [FNaa1]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ17)

18. 37 Vill. L. Rev. 1705 1992 Twenty-Sixth Annual Symposium: Integrating Legal and Psychological Perspectives on the Right to Personal Autonomy ON AUTONOMY: LEGAL AND PSYCHOLOGICAL PERSPECTIVES Bruce J. Winick [FNa1]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ18)

19. 79 Calif. L. Rev. 1421 December, 1991 FROM CAPONE TO BOESKY: TAX EVASION, INSIDER TRADING, AND PROBLEMS OF PROOF Linda S. Eads [FNa]

EXCLUDED (ambivalence and partly disassociation from feminist critique of law)

(CODE:CJ19)

20. 19. Am.J.Crim. L. 35 Notes
RAPE SHIELD LAWS: LIMITS ON ZEALOUS ADVOCACY Fall, 1991 Peter M. Hazelton [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ20)

21. 4 Yale J.L. & Feminism 155 Fall, 1991 Comment UNMADDENING: A RESPONSE

TO ANGELA HARRIS E. Christi Cunningham [FNd1]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ21)

22. 13 Women's Rts. L. Rep. 81 Summer/Fall, 1991 The Jurisprudence of Justice Sandra Day O'Connor JUSTICE O'CONNOR AND CHILDREN AND THE LAW Twila L. Perry [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ22)

23. 90 Mich. L. Rev. 1 October, 1991 LEGAL IMAGES OF BATTERED WOMEN: REDEFINING THE ISSUE OF SEPARATION Martha R. Mahoney [FNa]

INCLUDED

(CODE:CJ23/FL28)

24. 26 Harv. C.R.-C.L. L. Rev. 327 Summer, 1991 CONFESSIONS, CRIMINALS AND COMMUNITY Sheri Lynn Johnson [FNa]

EXCLUDED; (feminist jurisprudence presented as one of many different perspectives--author supportive of non-feminist perspective)

(CODE:CJ24)

25. 100 Yale L.J. 2687 June, 1991 Note RETHINKING THE REASONABLE BELIEF DEFENSE TO RAPE Dana Berliner

INCLUDED

(CODE:CJ25)

26. 69 N.C. L. Rev. 1083 June, 1991 RE-IMAGINING CHILDHOOD AND RECONSTRUCTURING THE LEGAL ORDER: THE CASE FOR ABOLISHING THE JUVENILE COURT Janet E. Ainsworth [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ26)

27. 104 Harv. L. Rev. 1419 May, 1991 PUNISHING DRUG ADDICTS WHO HAVE BABIES: WOMEN OF COLOR, EQUALITY, AND THE RIGHT OF PRIVACY Dorothy E. Roberts [FNa]

INCLUDED

(CODE:CJ27)

28. 3 Yale J.L. & Feminism 327 Spring, 1991 WOMAN, WOMB, AND BODILY INTEGRITY Christyne L. Neff [FNd]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ28)

29. 1 UCLA Women's L.J. 53 Spring, 1991 WOMEN'S DEFENSES TO CRIMINAL HOMICIDE AND THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL: THE NEED FOR RELOCATION OF DIFFERENCE Laura E. Reece [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ29)

30. 38 UCLA L. Rev. 699 February, 1991 Comment MOTHERS WHO KILL: POSTPARTUM DISORDERS AND CRIMINAL INFANTICIDE Laura E. Reece [FNa]

INCLUDED

(CODE:CJ30)

31. 42 Mercer L. Rev. 713 Winter, 1991 AND GOD CREATED WOMAN . . . .BUT TO BE A CRIMINAL DEFENSE ATTORNEY? Ellen S. Podgor [FNa] Leonard D. Pertnoy [FNaa]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ31)

32. 35 St. Louis U. L.J. 205 Winter, 1991 THE CONSTITUTIONALITY OF

HIGH-SPEED PURSUITS UNDER THE FOURTH AND FOURTEENTH AMENDMENTS Kathryn R. Urbonya [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ32)

33. 18 N.Y.U. Rev. L. & Soc. Change 887 1990/1991 Challenging the Death Penalty: A Colloquium ON METAPHORS, MIRRORS, AND MURDERS: THEODORE BUNDY AND THE RULE OF LAW [FNa1] Michael Mello [FNaa1]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ33)

34. 1991 B.Y.U. L. Rev. 351 1991 Symposium on Family Law YOUTH CRIME AND THE CHOICE BETWEEN RULES AND STANDARDS Lee E. Teitelbaum [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ34)

35. 9 J.L. & Religion 49 1991 THE JUSTIFICATION STORY: LAW AS INTEGRITY AND DEVIATIONIST DOCTRINE John Rockwell Snowden [FNa]

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ35)

36. 65 N.Y.U. L. Rev. 1280 November, 1990 Note BATTERED WOMEN'S SUBSTANTIVE DUE PROCESS CLAIMS: CAN ORDERS OF PROTECTION DEFLECT DESHANEY? Caitlin E. Borgman

INCLUDED

(CODE:CJ36)

37. 38 Buff. L. Rev. 859 Fall, 1990 Comment SIN, STIGMA & SOCIETY: A CRITIQUE OF MORALITY AND VALUES IN DEMOCRATIC LAW AND POLICY Timothy W. Reinig [FNa]

EXCLUDED (non-feminist)

(CODE:CJ37/FL38)

38. 47 Wash. & Lee L. Rev. 1183 Fall, 1990 Note USING MEDIATION IN CASES OF SIMPLE RAPE Deborah Gartzke Goolsby

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ38)

39. 88 Mich. L. Rev. 1430 May, 1990 1990 Survey of Books Relating to the Law DEFENDING WOMEN JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE AND THE LAW.% S BY CYNTHIA GILLESPIE. COLUMBUS: OHIO STATE UNIVERSITY PRESS. 1989. PP. XIII, 252. $24.95. Susan R. Estrich [FNa]

EXCLUDED; BOOK REVIEW

(CODE:CJ39)

40. 58 Fordham L. Rev. 1257 May, 1990 Note COMPULSORY PSYCHOLOGICAL EXAMINATION IN SEXUAL OFFENSE CASES: INVASION OF PRIVACY OR DEFENDANT'S RIGHT? Judith Greenberg

EXCLUDED; (advancing arguments opposed by feminists)

(CODE:CJ40)

41. 10 B.C. Third World L.J. 355 Spring, 1990 Note OBTAINING POLITICAL ASYLUM: CLASSIFYING RAPE AS A WELL-FOUNDED FEAR OF PERSECUTION ON ACCOUNT OF POLITICAL OPINION Maureen Mulligan

EXCLUDED; NO IMPACT FACTOR

(CODE:CJ41)

42. 87 Mich. L. Rev. 2073 August 1989 Legal Storytelling FOREWORD: TELLING STORIES Kim Lane Scheppele [FNa]

INCLUDED

(CODE:CJ42)

43. 61 S. Cal. L. Rev. 777 May, 1988 CONSENT, EQUALITY, AND THE LEGAL CONTROL OF SEXUAL CONDUCT Martha Chamallas [FNa]

INCLUDED

(CODE:CJ43)

44. 86 Mich. L. Rev. 1365 May, 1988 1988 Survey of Books Relating to the Law STORIES OF RIGHTS: DEVELOPING MORAL THEORY AND TEACHING LAW RIGHTS, RESTITUTION, & RISK: ESSAYS IN MORAL THEORY. By Judith Jarvis Thomson. Edited by William Parent. Cambridge, Mass.: Harvard University Press. 1986. Pp. x, 260. $12.95. Patricia A. Cain [FNa] Jean C. Love [FNaa]

EXCLUDED; BOOK REVIEW

(CODE:CJ44)

45. 66 Tex. L. Rev. 905 March, 1988 Book Review NEW PERSPECTIVES ON THE LAW OF RAPE Real Rape. By Susan Estrich. [FNp] Cambridge: Harvard University Press, 1987. Pp. 145. $15.95. [FNd] Leslie J. Harris [FNa]

EXCLUDED; BOOK REVIEW

(CODE:CJ45)

46. 101 Harv. L. Rev. 10 November, 1987 The Supreme Court, 1986 Term JUSTICE ENGENDERED Martha Minow [FNa]

INCLUDED

(CODE:CJ46)

47. 39 Hastings L.J. 207 November, 1987 Review Essay DISCERNING JUSTICE WHEN BATTERED WOMEN KILL Battered Women Who Kill: Psychological Self-Defense As Legal Justification. By Charles Patrick Ewing. [FN#] Lexington, Massachusetts: Lexington Books, 1987 Pp. . . . David L. Faigman [FN*]

EXCLUDED; BOOK REVIEW

(CODE:CJ47)

48. 75 Calif. L. Rev. 1593 October, 1987 [FNp] SHARED PRIVACY AND THE FOURTH AMENDMENT, OR THE RIGHTS OF RELATIONSHIPS Mary I. Coombs

INCLUDED

(CODE:CJ48)

49. 54 U. Chi. L. Rev. 1095 Summer, 1987 Review THE RE-VISION OF RAPE LAW REAL RAPE: HOW THE LEGAL SYSTEM VICTIMIZES WOMEN WHO SAY NO. SUSAN ESTRICH. HARVARD UNIVERSITY PRESS, CAMBRIDGE, MASS., 1987. PP. 160. $15.95 Kim Lane Scheppele [FNp]

EXCLUDED; BOOK REVIEW

(CODE:CJ49)

50. 85 Mich. L. Rev. 1261 April/May, 1987 1987 Survey of Books Relating to the Law THE ULTIMATE VIOLATION. BY JUDITHROWLAND. NEW YORK: DOUBLEDAY & COMPANY, INC. 1986. PP. XIII, 353. $17.95 Todd Maybrown

EXCLUDED; BOOK REVIEW

(CODE:CJ50)

51. 33 UCLA L. Rev. 1679 August, 1986 Comment PROVOKED REASON IN MEN AND WOMEN: HEAT-OF-PASSION MANSLAUGHTER AND IMPERFECT SELF-DEFENSE Laurie J. Taylor [FNa]

INCLUDED

(CODE:CJ51)

52. 95 Yale L.J. 1087 May, 1986 RAPE [FNa] Susan Estrich [FNd]

INCLUDED

(CODE:CJ52)

53. 99 Harv. L. Rev. 1255 April, 1986 Note TO HAVE AND TO HOLD: THE MARITAL RAPE EXEMPTION AND THE FOURTEENTH AMENDMENT

EXCLUDED; NO AUTHOR'S NAME

(CODE:CJ53)

54. 72 Va. L. Rev. 619 April, 1986 Note THE BATTERED WOMAN SYNDROME AND SELF-DEFENSE: A LEGAL AND EMPIRICAL DISSENT David L. Faigman

EXCLUDED (explicitly opposing feminist positions)

(CODE:CJ54)

55. 95 Yale L.J. 788 March, 1986 Note BATTERED WOMEN AND THE EQUAL PROTECTION CLAUSE: WILL THE CONSTITUTION HELP THEM WHEN THE POLICE WON'T? Amy Eppler

INCLUDED

(CODE:CJ55)

56. 95 Yale L.J. 599 January, 1986 Note THE CREATION OF FETAL RIGHTS: CONFLICTS WITH WOMEN'S CONSTITUTIONAL RIGHTS TO LIBERTY, PRIVACY, AND EQUAL PROTECTION Dawn E. Johnsen

INCLUDED

(CODE:CJ56/FL55)

57. 1984 Duke L.J. 447 June, 1984 WOMAN'S CONSTITUTION Kenneth L. Karst [FNa]

INCLUDED

(CODE:CJ57)

CURRICULUM VITA

VASSILIKI PETOUSSI

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EDUCATION

Ph.D. Sociology, January 1998
Virginia Polytechnic Institute and State University, Blacksburg, Virginia
Dissertation: From Reified Abstractions to Situated Contexts: Feminist Jurisprudence, Paradigm Shift and Legal Theory.

M.S. Sociology, January 1991.
Virginia Polytechnic Institute and State University, Blacksburg, Virginia
Thesis: Gender Inequality and Crime: A Socialist-Feminist Approach to Spouse Murder

B.S. Law, April 1988.
Aristotelion University of Thessaloniki, Thessaloniki Greece.

PRESENT POSITION

Project consultant, "Office for Women-NOW", Prefectural Administration of Chania, Greece, European Union Project on Occupation-New Opportunities for Women

TEACHING AND RESEARCH INTERESTS

Sociology of Law,
Sociology of Gender,
Criminology,
Sociology of Work and Occupations,
Social Stratification,
Social Problems,

Sociology of Deviant Behavior

HONORS AND AWARDS

Fall 1993	Instructorship (partial)
Spring 1993	Instructorship (full)
Fall 1991	Instructorship (partial)
1988-present	Alpha Kappa Delta (National Honor Society). U.S.A. member.

PROFESSIONAL TEACHING EXPERIENCE

Fall 1997: Business Law; Behavioral Sciences: Polycenter (Oxford University certified) Chania, Greece

Spring 1997: Business Law; Introduction to Sociology: Polycenter (Oxford University certified), Chania, Greece

Fall 1996: Behavioral Sciences; Business and its Environment: Polycenter (Oxford University certified), Chania, Greece

Fall 1991- Summer 1993: Criminology, Department of Sociology, Virginia Polytechnic Institute and State University, Blacksburg, Virginia

1989-1991; 1993-1994: Teaching Assistant, Department of Sociology, Virginia Polytechnic Institute and State University

PUBLICATIONS

Petoussi, Vassiliki and Kalliopi Stavrou. 1996. «The Juvenile Justice System in Greece.» In *International Handbook of Juvenile Justice* edited by Donald J. Shoemaker. Westport, Ct: Greenwood Publishing Group.

PRESENTATIONS

Petoussi, Vassiliki, Kristi L. Hoffman, Karen Bishop. «Battered Women and Self-Defense: An Examination of Theoretical and Legal Arguments». Presented at the 45th Annual Conference of the American Society of Criminology. Phoenix, Arizona. USA. October, 1993.

Petoussi, Vassiliki. «The Quest for a Feminist Jurisprudence or Some Notes on the Politics of Inclusion in Criminology and Criminal Justice». Presented at the 44th Annual Conference of the American Society of Criminology. New Orleans, Louisiana. USA. November 1992.

Petoussi, Vassiliki. «Women Killing Their Mates: An Alternative Theoretical Interpretation.» Presented at the joint conference of the Southeast Association of Women's Studies and the Annual Conference of Women in Arts and Sciences of the Women's Studies of University of North Carolina. Charlotte, North Carolina. USA. April, 1991.

Petoussi, Vassiliki. «Trends in Female Criminal Activity». Poster presented at the 6o Annual Graduate Research Symposium. Blacksburg, Virginia. USA. 1991.

OTHER ACTIVITIES

1993-1994 Treasurer: Sociology Graduate Student Association of Virginia Tech. Department of Sociology, Virginia Polytechnic Institute and State University.

1991-1992 Student Representative: Department of Sociology Executive Committee. Virginia Polytechnic Institute and State University

1990-1991 Member: International Club of Virginia Polytechnic Institute and State University.

1989-1990 President: Hellenic Association of Virginia Polytechnic Institute and State University

1989-1990 Secretary: Council of International Student Organizations of Virginia Polytechnic Institute and State University

1989-1990 Member: International Week Committee of Virginia Polytechnic Institute and State University.

PROFESSIONAL AFFILIATIONS

1988- present American Sociological Association
1989-present American Society of Criminology
1989-1992 Southeastern Women's Studies Association
1990-1993 National Organization of Women
1993-present Women's International Studies Europe