

Exploring Women's Knowledge and Legal Reality: An Examination of the Advancement of Legal Education

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Abstract: *The feminist movement emerged as a response to the perceived inefficiency of existing legislation pertaining to women's rights, resulting in the development of feminist theories that have not been included into legal education. Given the historical conflict between the demands for professional training and the academic education of scholars, it is imperative that legal education prioritizes the acquisition of technical knowledge in the field of law. Consequently, the primary emphasis of legal education should be on the instruction of legal doctrine. The aim of this study is to propose the incorporation of feminist legal theories into legal education in order to enhance the frontier of legal education in our institutions. This will enable Law students to make well-informed decisions regarding the nature of Law. The employed methodology involves the utilization of a secondary source for data collection. The results indicate that feminist concepts are not sufficiently incorporated into legal education due to the absence of a systematic approach to teaching these concepts to law students. Additionally, law courses lack a comprehensive selection of feminist literature, with minimal or no emphasis on elucidating the importance of feminist critiques within the framework of other legal literature. Consequently, the study asserts that incorporating these theories into the curriculum of law students will empower them to assume accountability for their own perspectives on the essence of law. Additionally, a structured involvement with feminist criticisms in legal education can empower law students to critically examine the fundamental principles of prevailing knowledge.*

Keywords: Feminism, cognition, legal instruction, legal actuality, women

I. INTRODUCTION

The depiction of legal knowledge as objective and neutral is widely contested in the literature, yet it continues to be the prevailing paradigm in the field of law education. Historically, legal education has predominantly been a domain predominantly occupied by white males, with women and others from racial minority groups only recently gaining access. The historical prevalence of white male supremacy in legal education was perpetuated by admission policies intentionally meant to marginalize women, individuals from disadvantaged ethnic backgrounds, and those facing economic disadvantages. The makeup and demographics of law school student populations have seen significant transformations over the past 25 years. This shift can be attributed to the increased admission of historically underrepresented groups to law school, primarily through the implementation of race and gender-conscious admission processes. The admissions programs that prioritize race and gender, commonly known as affirmative action schemes, have consistently generated controversy and have faced an increasing number of legal challenges, voter initiatives opposing affirmative action, and legislative and executive efforts to reverse them.

The clarification of the legal status of affirmative action in higher education admission programs was achieved through the US Supreme Court's ruling in *Grutter v. Bollinger*. This achievement would not have been possible without the advocacy efforts of women groups now known as feminists. This paper will address various aspects of legal education, including its history and scope, a concise definition of feminism, the historical evolution of feminist legal theories, the various feminist legal theories that have emerged over time, the applicability of these theories to law students, specifically the development of feminist legal methods, findings, recommendations, and conclusions.

Legal academics

Legal education is the education of individuals who intend to become legal professionals or those who simply intend to use their law degree to some end, either related to law, politics or academics. The study includes first degrees in law, vocational courses e.g Nigerian Law School for Nigeria, applied legal education for specific branch of law such as Business law, human resources and labour law, higher education degrees and doctorate courses. Legal education generally focuses either on pedagogy or substantive content. It ought to incorporate interdisciplinary analysis of law in order to change the very fundamentals of legal knowledge. Legal education must take as a starting point that we need to create useful capacities in our students. While there are many abstracted fields of study, from sociology and literatures to economics, which can help inform a capable understanding of law, law itself is an applied discipline involved in creation and operations of critical institutions through which humans order many of their most important social activities.

Historical Background and Extent of Legal Education

The field of legal education has faced a longstanding conflict between the demands for professional training and the education of scholars in academia. In line with the professional aspect of legal education, there is a prevailing belief that effective learning in the profession equates to proficient lawyering skills. According to this perspective, students should acquire knowledge of the technical aspects of law, while the primary focus of legal education should be on teaching legal doctrine. In common law jurisdictions, courts serve as interpreters of both uncodified common law and statutes, and are the primary source of legal doctrine. Historically, lawyers were primarily trained to analyze and interpret case law, and this training took the form of apprenticeships.

Feminism

It is the belief in the social, political, and economic equality of the sexes. The movement is organised around this belief by the women folk. It is also said to be an analysis of women's subordination for the purpose of fighting out how to change it. Feminist Theory is an outgrowth of the general movement to empower women worldwide. Feminism can be defined as a recognition and critique of male supremacy combined with efforts to change it. It can also be defined as the quest by the female folk to gain respect, relevance and acceptability in the men's world. The goals of feminism are: to demonstrate the importance of women; to reveal that historically women have been subordinate to men and to bring about gender equity.

The evolution and advancement of feminist legal theories

During the century preceding the 1960s, there had been substantial efforts to change the law respecting women's rights in the United States. The women's suffrage movement fought for inclusion of sex in the text of the Fourteenth Amendment; Myra Bradwell fought for right to be admitted to the bar under the Privileges and Immunities Clause of the Fourteenth Amendment; many litigants and lawyers sensitive to issues of sex discrimination raised legal issues concerning women's equality; and a major and finally successful effort to pass the Nineteenth Amendment to the Constitution gave women the right to vote. In the 1960s, a "second wave" of an active women's rights movement developed from the civil rights struggle, leading to renewed efforts both to change the law so as to abolish sex discrimination and to reshape the legal profession so as to integrate women within it. This effort, led by a new generation of women's rights attorneys, manifested the interrelationship of theory and practice. Ruth Bader Ginsburg, a former law professor and advisor to the ACLU Women's Rights Project, along with notable scholars in the field of sex discrimination such as Herma Hill Kay at Boalt Hall and Barbara Babcock at Stanford (who developed one of the initial Women and the Law courses at Yale Law School), among others, played a significant role in educating and shaping a younger cohort of students who would subsequently emerge as prominent legal professionals specializing in sex discrimination litigation. In 1974, Wendy Williams, Mary Dunlap, and Nancy Davis, the women's rights litigators who established the public interest company Equal Rights Advocates in San Francisco, collaborated with Herma Hill Kay during their time at Boalt Hall. Ann Freedman and her colleagues, who established the Women's Law Centre in Philadelphia, were former students of Yale University who collaborated with Barbara Babcock. The National Conference on Women and the Law, a yearly gathering of professionals, law students, and law educators, provided a

crucial platform for deliberating and producing innovative research in the field of women's rights. Lawyers who were actively engaged in addressing countrywide concerns like as sexual harassment, date rape, battered women, and self-defence introduced groundbreaking concepts during these forums. The subsequent legal proceedings, which presented challenges regarding equal protection in various domains including social security, pregnancy bias, and parental leave, alongside activist endeavors centered on the Equal Rights Amendment, engendered significant debates concerning the essence of gender, thereby establishing the groundwork for feminist legal theory. The inclusion of female educators in law schools significantly influenced the mobilization, motivation, and assistance provided to a younger cohort of women pursuing careers in law. However, the concepts of equality and the Federal Equal Rights Amendment primarily originated from the practical requirements of activist endeavors in the legislative process. In 1971, Barbara Brown, Ann Freedman, Tom Emerson, and Gail Falk authored a significant article on Constitutional equality with the explicit purpose of influencing Congressional endeavors to enact the Amendment. In 1979, Catharine MacKinnon authored the book "Sexual Harassment of Working Women" with the intention of presenting a legal theory that elucidated the detrimental effects of sexual harassment, which had already been the subject of legal disputes by numerous feminist lawyers. The book also aimed to propose an efficient solution for addressing these damages. In Nigeria, the presence of the Private domain has influenced the mindset of the elites, resulting in a reduction but not complete elimination of the traditional African belief that women are objectified and subjected to ridicule.

The significance of feminist theories in the context of law students

Due to its emphasis on the importance of gender and the societal disparities stemming from gender-based beliefs and assumptions, feminist scholars can be found throughout all academic fields. Feminists, as a collective, express keen interest in examining the ramifications of both historical and contemporary instances of women's exploitation within societal contexts. Their primary objective is to advocate for the empowerment of women and the reformation of male-dominated institutions. Furthermore, numerous feminists employ unique feminist methodologies to elevate the prominence of women's experiences, including the elevation of consciousness or the utilization of narrative techniques. These methodologies acknowledge the legitimacy and significance of women's experiences, so making feminist theory and research a solid foundation.

The integration of practice and theory is a significant element of feminism. According to historian Linda Gordon, feminism is a study of the subjugation of women with the aim of determining how to bring about change. The acknowledged desirability of this pragmatic aspect has led numerous feminists to be drawn towards law and legal change as subjects of examination and implementation. They have achieved numerous accomplishments in the field of law. Indeed, it is accurate to assert that feminism, in conjunction with economics and, to a certain degree, psychology, has exerted a tangible and immediate influence on the field of law in recent decades.

The impact is evident not alone within the realm of academic and legal studies, but also in the theoretical frameworks utilized by courts and formulated by legislative entities. The evaluation and, at times, modification of legal institutions have been undertaken in response to feminist perspectives and arguments. The influence of feminism is unsurprising, considering the significant increase in female representation inside law schools during the 1970s. During this period, there has been a substantial growth in the representation of women in law schools, notwithstanding their presence before. Moreover, women have been assimilated into the profession at every hierarchical level. The initial cohort of women who pursued legal education exhibited a clear inclination towards a feminist political agenda. They arrived at law schools with the conviction that "the personal is the political," resonating firmly in their minds. Their focus was on reform and the impact of law in promoting a more gender-equitable society.

These early feminists held a positive outlook on utilizing legal means to achieve gender equality. The early legal feminist reformers employed diverse tactics and their viewpoints were not consistently congruent. The topic of gender difference remains a key gap that occurred during the early stages of developing a legal framework for feminist theory. What were the distinctions between females and males? In what manner were they to be addressed? A significant proportion of early feminist legal thinkers embraced a notion of gender-based discrimination. The aim was to prohibit prejudiced treatment and establish legislation that would grant women equitable chances on par with males. However, some feminist researchers sought to further refine and expand upon the notion of gender disparity. The perpetuation of gender inequality was not solely a result of exclusion from or unfair treatment inside established social systems.

Inequalities may arise from the implementation of facially neutral policies, particularly due to the significant disparities in societal situations between women and men. These variations necessitate distinct approaches, as simple legal equal treatment alone is insufficient to effectively tackle prevailing structural and ideological disparities. This branch of feminism aimed to challenge the validity of established gender norms and their consequences for societal institutions and legal frameworks. The primary goal was not solely to eliminate these standards, which is a significant undertaking that is still in its early stages, but rather to examine the consequences of gendered institutions. The perception of institutions, particularly the legal system, as neutral and potentially beneficial in this context was lacking. They were implicated in the issue as it is presently formulated. Feminists also provide a methodology for conducting their studies. Therefore, feminists have formulated comprehensive criticisms of the legal system and put forth suggestions for legal restructuring. However, feminists have expressed limited opinions regarding the operational aspects of law and the appropriate level of truth to assign to subsequent legal assertions. The significance of these methodological concerns lies in their influence on an individual's perspective regarding the potentialities of legal practice and reform. The method serves to structure the process of acquiring truth, as it establishes the criteria for determining what constitutes evidence and what is seen as verification. The significance of method cannot be disregarded by feminists, as employing the same methods that have established power structures may inadvertently perpetuate the very power structures they aim to challenge and dismantle. The method is crucial as it determines the legitimacy and accuracy of feminist claims within the legal framework. There is a prevailing suspicion that individuals who disregard feminism as minor or inconsequential inadvertently misconstrue its essence. Feminist scholars have shown a tendency to prioritize the defence of their diverse substantive ideas or political objectives, even within their own ranks. Allocating more focus to methodological matters could assist in solidifying these defences, elucidating the reasons behind the perceived radical nature (or lack thereof) of feminist agendas, and potentially fostering consensus among feminists.

Outcome of research

The Berkeley Women's Law Journal has played a prominent role in advocating for the inclusion of sex, gender, race, and sexual orientation in the law school curriculum. The primary drivers of this movement have been students and a cohort of law professors, a significant proportion of whom hold membership in the Society of American Law Teachers. The legal scholars acknowledge the significance and pertinence of matters pertaining to sex, gender, and sexual orientation, not alone in our personal lives but also in our educational pursuits.

Significant advancements have resulted from this endeavor, encompassing novel courses, casebooks, and academic research on topics such as sex bias and legal frameworks, as well as gender roles and legal systems.

An augmented level of receptivity towards these matters has also been observed in certain educational settings and establishments. Regrettably, the law university's reaction to the endeavor of acknowledging matters pertaining to sex, gender, and sexual orientation has not been entirely favorable. An inherent drawback is the practice of law professors assigning sex and gender to their classroom hypotheticals and final exams.

In legal education in certain countries such as Australia and Nigeria, feminist critiques are mostly regarded as the exclusive focus of certain academics, typically women, who are responsible for teaching about feminist conceptions of law. The incorporation of feminist ideas into legal education is insufficient due to the lack of systematic instruction on these ideas to law students. Law courses currently offer a diverse range of feminist literature, but there is little to no emphasis on explaining the importance of feminist critiques within the broader context of mainstream legal literature.

Suggestions:

The law school curriculum at every level of law education should not only include sex, gender, and sexual orientation, but also foster a deeper understanding of these topics.

It is of equal significance for reputable law schools or institutions to engage with inquiries pertaining to the fundamental principles of "justice" and "the rule of law," as these represent the ultimate objectives of an effective legal framework. When fresh legal challenges are brought for resolution, it is imperative to include them in the analysis, since they serve as a driving force in driving legal reforms. The definitions of "justice" and "the rule of law" are inherently intricate and subject to debate. However, the inclusion of these ideas in legal education should involve the process of debate and analysis. Legal educators should actively promote the utilization of law students' professional

skills to make meaningful contributions to society. Who will assume the task of upholding the rule of law and advancing justice if legal professionals exhibit a lack of commitment? Lawyers, being deeply immersed in the intricate real world and susceptible to its allure, especially in high-stakes situations, require a superior legal education that equips students with the ability to behave ethically and grapple with challenging ethical and moral dilemmas, such as the feminist legal theories that have developed over time.

The inclusion of these theories in the curriculum of law students can facilitate the development of their ability to assume accountability for their own perspectives on the essence of law. Furthermore, the deliberate incorporation of feminist critiques into legal education can empower law students to critically examine the fundamental underpinnings of prevailing knowledge.

II. CONCLUSION

The law is a crucial instrument for promoting women's rights and achieving gender equality. The presence of a rule of law in a society, accompanied by an accessible and equitable legal framework, facilitates the flourishing of women, enabling their active participation in the system and fostering its enhancement for subsequent generations. The rule of law necessitates that laws are devoid of prejudice and unfairness, uniformly enforced and autonomously assessed, and in accordance with international human rights norms and standards. Therefore, it is imperative to establish a strong and efficient legislative framework that adheres to the principles of the rule of law in order to facilitate the parity of women in decision-making processes and promote their progress. The expansion of legal education to encompass additional fields such as sociology, psychology, economics, feminism, and others can facilitate the attainment of this objective. It is crucial to ensure that both theoretical knowledge and practical application are integrated into the curriculum for law students. Hence, sex, gender, and sexual orientation are present in the room, regardless of whether we openly acknowledge them or not. However, all individuals feign ignorance, and when they do, they label it as a woman's affair or, even better, unethical women's affairs. However, a comprehensive understanding of feminist legal theories would enable the recognition of the bias and prejudice perpetuated by legislation, as well as the implementation of necessary modifications to effectively tackle these challenges.

REFERENCES

- [1]. Kavanagh, P. (1989). —Legal education and the functionalisation of the University| in Australian Journal of Law and Society 11(5):1988-1989.
- [2]. Kay, H.H. (1985). —Models of equality| in University of Illinois Law Review 1(1):, 39- 88.
- [3]. Kidder, W.C. (2001).| Does the LSAT mirror or magnify racial and ethnic differences in educational attainment?: A study of equally achieving "elite" college students| in Californian Law Review 89:1057-1066.
- [4]. Kidder, W.C. (2003). —Silence, segregation and student activism at Boalt Hall| in Californian Law Review 91(4):1167-1181.
- [5]. Lane, S. K. (1989). —Foreword: telling stories| in Michigan Law Review 87(8):2083- 2084.
- [6]. Law, S.A. (1984). —Rethinking sex and the constitution| in University Pennsylvania Law Review 132: 955-1040.
- [7]. Littleton, C.A. (1997). —Reconstructing sexual equality| in Californian. Law Review 75(4): 1279-1337.
- [8]. Littlejohn, E.J. & Rubinowitz, L.S. (1987). —Black enrollment in law schools: Forward to the past?| in Thurgood Marshall Law Review 12: 415, 433-444.
- [9]. Makinnon, A.C. (1979). Sexual harassment of working women: A case of sexual discrimination. New Haven: Yale University Press.
- [10]. Mackinnon, A. C. (1989). —Toward a feminist theory of the state| in Journal of Gender Social Policy and the Law 95:55-57.
- [11]. Meadow, C.M. (1985). —Too little theory too little practice? Steven's Law School: Review Essay| in American Bar Foundation Research Journal, 675-690.
- [12]. Meadow, C.M. (1994). —Narrowing the gap by narrowing the field: What's missing from the MacCrate report - of skills, legal science and being a human being| in Washington Law Review 69: 593.
- [13]. Murphy, W. & Roberts, S. (1987). —An Anniversary preface| in Modern Law Review 50: 673-683.

- [14]. Parashar, A. (2000). —Teaching family law as feminist critique of lawl in UNSW LawJournal 23(2):58-85.
- [15]. Pirie, A.J. (1987).l Objectives in legal education: The case for systematic instructional designl in Journal of Legal Education 37(4):576-597
- [16]. Sarat, A. (1989). —Donald black discovers legal realism: From pure science to policy science in the sociology of lawl in Law and Social Inquiry 14(4): 765-785.
- [17]. Scales-Trent, J. (1997). —Equal rights advocates: addressing the legal issues of women of colorl in Berkeley Women's Law Journal 13: 39-66.
- [18]. Schon, D.A. (1983). The reflective practitioner: How professionals think in action. 1st edition, Basic Books Publisher.
- [19]. Singer, J.W. (1989). —Should lawyers care about philosophy (Book Review)l in Duke Law Journal (1989) 1752-3503.
- [20]. Twining, W. (1994). “Brief history of legal educationl in Blackstone’s Tower: TheEnglish law school. London: Sweet and Maxwell.
- [21]. Wildman, S.M. (1995). —Privilege and liberalism in legal education: Teaching andlearning in a diverse environmentl in Berkeley Women’s Law Journal 88:88-90.