FEMINISM AND LEGAL EDUCATION: QUANDARIES OF INCLUSION AND EXCLUSION

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I am here tonight to invite you to celebrate with me a feminist vision, a transformation or reweaving of the values which define our political, economic, social and legal structures and relationships. And I am here to celebrate, as well, the confidence, vibrancy and diversity of this feminist vision.

Cette vision feministe n'est pas encore réalisée, c'est évident. Je sais que l'on réussira à la créer. Même aujourd'hui, on peut voir l'avenir – un nouveau monde dans lequel la diversité sera reconnue comme normale.[1]

It is, of course, fitting that as the first hundred years of the life of the University of New Brunswick Law School draw to a close, we mark the establishment of the Mary Louise Lynch Chair of Women and Law. The growth of women's presence in the law school, in the legal profession, and in the political, economic and social life of this country has been one of the outstanding achievements of the last quarter of a century; its full realisation will stand as one of our most important goals as we enter the next century. We are talking about more than the physical presence of women, however. We are talking about the values which we as feminists bring to this enterprise – values which contain the promise of transforming those structures and relationships.

When the members of the Faculty of Law, University of New Brunswick, decided to establish a Chair in Women and Law, they knew that they had taken a major step in acknowledging the need to enhance women's place in the law

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*Of the Faculty of Law, University of New Brunswick. The Mary Louise Lynch Chair in Women and Law was established by the Faculty of Law, University of New Brunswick, in 1991, the first such Chair in Canada. I became the first holder of the Chair on 1 July 1992. This article is a revised version of the Inaugural Lecture of the Mary Louise Lynch Chair in Women and Law delivered at the Faculty on 7 October 1992. I gave the Lecture as an oral commentary or discourse, communicating what I hoped would be a spirit of feminist strength and celebration which would establish a connection with some members of the audience; at times, I also explicitly addressed myself to those in the audience who might still be more comfortable with malestream theory and teaching. It was not intended as a scholarly lecture, although underpinning it were the concepts and ideas which permeate feminist theoretical and procedural development: it was not necessary for my message that listeners identify those concepts and ideas, but listeners who were familiar with feminist theoretical development should have had no difficulty in recognizing them. It *was* intended to be, in itself, a representation of my approach as the Chair in Women and Law. As a written piece, much of these effects have been lost, although I have not attempted to eliminate all echoes which might still sound of that more "conversational" (one-sided though it be) tone.

[1]Translation: It is clear that this feminist vision has not yet been realized. I know that we will succeed in creating it. Even today, we can see the future – a new world in which diversity will be recognized as normal.

school. I hope it does not surprise them when I say that was only the beginning of the journey – that we have a long way to go and that it is going to involve a fundamental restructuring of the law school, its curriculum and its teaching practice. The Chair will be, of course, only one part of this and these changes in the law school will be just one element in the transformation of law itself.

As with most disciplines, law has had and continues to have a male image.[2] Given the centrality of law in creating and enforcing societal norms, this has had ramifications far beyond the walls of the law school. The law has been the means by which women have been excluded from the marketplace and by which the separation of the public and private spheres has been reinforced. Those men who made the law and interpreted it also decided who should exercise that power to exclude. To exclude and to claim the power to include *is* an exercise of power, the power not to have to acknowledge the specificity of one's own status and the power to put on the defensive those who challenge the *status quo*. Deigning to *include* is the exercise of the power to force others to look and act like you.[3]

As women, we have lacked the power to define ourselves. We have either had to try to take on someone else's identity or be defined separately on someone else's terms; in other words, "we have [had] to meet either the male standard for males or the male standard for females."[4] Among other shifts in this dynamic of exclusion and inclusion, and in the process of eliminating the power of control over exclusion and inclusion, therefore, we need to understand what the *female* standard for females is.

Changing the law and its processes requires a momentous shift in thinking. Women are no longer satisfied to be victims, to be acted upon, to be seen as "other," our "interests" treated as outside and sometimes in contradiction to the "norm" of male behaviour and expectations and therefore unacceptable. We will, in short, help shape the world; to do so, it hardly bears saying, we must be prepared to act. It is necessary for women to say that how the legal world works will change, and that we are going to make it change. We are doing exactly that

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[2]A. Miles & G.Finn, eds, *Feminism: From Pressure to Politics*, 2d ed. (Montreal: Black Rose Books, 1989) includes feminist assessments of a variety of disciplines, among them psychology, law, sociology, economics and history.

[3]The grand political theories have always been about exactly that: the developing of the legitimacy of exclusion – why only some people should receive benefits, such as the protection of the law – and then, of inclusion – why we will extend benefits to those who seem enough like us to deserve them.

[4]C.A. MacKinnon, "On Exceptionality: Women as Women in Law (1982)" in C.A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, Mass: Harvard University Press, 1987) 70 at 71.

now.[5] The establishment of this Chair is merely a small manifestation of that process, but it gains strength from its links with all these other expressions of feminism.

On men's part, they must stop thinking they know exactly how the world works, that somehow they have the right to have the world created in their own image.[6] Men have no right to expect that it will be so. It is taking a bit longer for many of them to recognize that this is the case than it is for women to assert their claim. One can argue that men simply did not think about women's experience as they developed these various systems making up "society" – for instance, is it surprising that they wrote laws which reflected their own lives? Others would attribute more consciousness to the development of an entire legal system, however; they would argue that legal doctrine is really a way of maintaining male supremacy and when the law is dealing with women it "is about the uses that men make (or would like to make) of women."[7]

The challenge now for women and men is to understand how law might be different when women participate fully in deciding what it is, in defining what it is, from the very beginning, from the very rebuilding of what we consider legal premises and the underpinnings of the legal system.

When women first received "permission" to enter law (as in fact they had to do),[8] little changed; progress was slow and numbers few. There was little, if any,

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[5]For an extensive recent summary of how feminist legal scholars and activists are making changes in curriculum and in law, see C. Menkel-Meadow, "Mainstreaming Feminist Legal Theory" (1992) 23 Pacific L.J. 1493.

[6]One feels it is becoming almost trite to point out that, of course, not *all* men made the rules; that, in fact, only a minority of men made and enforced the rules, and that the majority of men have been marginalized because of their race, disability, sexual orientation or class. Nevertheless, it *was* men, and not women, who held this power; the fact that they also excluded other men does not change the fact that they excluded in various ways and at various times, *all* women. Furthermore, while women may be marginalized in different ways (and to some extent by each other), in my view, ultimately all women are marginalized in some way by the "malestream" or "masculinist" legal (or political or economic) system (values, norms, processes), whether the purveyors and enforcers of that system are men or other women. In other words, generally speaking, I would argue that as a political, rather than as a personal, matter male/female relations are characterized by dominance/subordination.

[7]K.A. Lahey, "Celebration and Struggle: Feminism and Law" in *Feminism: From Pressure to Politics*, *supra*, note 2, 99 at 100.

[8]On the struggle of Clara Brett Martin, the first woman admitted to the bar in the British Commonwealth (Ontario's in 1897), see C. Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: The Osgoode Society (Women's Press), 1991) at 301-21. Part of the resistance took the form of questioning whether she was a "person" (merely for legal purposes, of course). Mabel Penery French was also required to make the point that she was a "person" – twice – when she sought calls to the bars of New Brunswick in 1906 and British Columbia in 1912. Women get the sense that we are still supposed to ask "permission" that the legal profession will be organized

questioning of the law's precepts, its methodology, its application, its exclusionary bent. Today, however, the feminist challenge has extended to the substantive foundations of law. We are questioning everything.

It is only through major restructuring that equity for all communities which have been marginalized by the exercise of exclusionary power can be achieved. I see this, perhaps not surprisingly, as an ethical and political imperative. I cannot envision as a "good world" one that does not change to include the diversity of communities which inhabit it.

Nevertheless, I recognize that that imperative does not move all those in the legal community in the same way. To those who do not share my view (those who share my view already know this), I say that understanding gender and other diversity issues is integral to being a competent lawyer, that these issues do not stand outside the practice of law, but are part of it, and that we would be derelict in our obligation as law teachers not to prepare future lawyers by teaching them about the ways in which the legal system treats, faces demands by, and must accommodate to the needs of a wide range of communities, among them women and men of diverse backgrounds and identities.

Our students are going out into a legal world which has begun to recognize that people who have up to now been excluded do matter, and that the world must be defined to include their perspectives.[9] The "objective observer" (a truly

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in such a fashion as to allow the full participation of women.

[9]For example, with respect to women, the Supreme Court of Canada is beginning to recognize that much of what had been accepted as "normal" is not normal or that it is not normal for a significant portion of the population, and that how we "characterize the issue" may be in large measure determined by who we are. In *R.* v. *Butler* (1992), 89 D.L.R. (4th) 449 (S.C.C), for example, the Court views pornography from the perspective of the "subject/object," that is, women for the most part; in *R.* v. *Lavallee*, [1990] 1 S.C.R. 852, the Court understood that "reasonable" may have different content depending on the context, that is, the context of battered women (although this approach is not without its difficulties: *supra*, note 5 at 1507-1508). In *K.M.* v. *H.M.* (S.C.C., 29 October 29 1992), we saw a recognition that assumptions about limitation periods must take into account that the very act complained of might be the reason a person cannot assert a legal right against the abuser. The new sexual assault provisions embodied in Bill C-49 also shift the focus from the eye of the aggressor to the eye of the victim of the assault. There have also been important reassessments of categories of law which make us realize that there is not just one way of looking at them: for example, see M.J. Frug's analysis of a contracts casebook: "Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook" (1985) 34 Am. U. L. Rev. 1065; and J.W. Singer's questioning of property law: "Re-Reading Property" (1992) 26 New Eng. L. Rev. 711. Singer suggests at pages 712-13, for example, that "we might examine property law from several angles. The first angle might involve examining the relation between property theory and social reality. Do the principles used to justify property acquisition apply equally to women and men? Which women and which men? How has race made a difference in the acquisition and distribution of property? How has the intersection of race and sex made a difference? What about other factors, like disability? ... If we focus on the interests and situations of women of all races and men of colour, how might our understanding of

hypothetical character) who is supposedly able to stand outside the dispute in order to judge it and the equally hypothetical "reasonable person" who serves as the model of reasonable behaviour in the circumstances is female just as much as male, black just as much as white, or, in short, those who have previously been excluded just as much as those who have been included.

More to the point, these viewpoints are subjective in that they reflect the way the world looks through the mind's eye. Sometimes what male and female observers see is the same, or at least they think it is; sometimes what happens to them and what they do to others is the same; sometimes, however, what the female observer sees and what the female participant feels and knows about what has occurred is not what her male counterpart feels or knows has occurred. Nor can we assume that all female observers will see and feel the same thing: femaleness is not a monolithic gender, nor is maleness. Consequently, when we assume that men and women (or all men and all women) do see and feel things the same way, we have an incomplete picture, and therefore a false one.

What is missing from the picture is often the very thing that defines the act as wrong: how it affects those who are its victims. Pornography is "wrong" because women feel demeaned by it and because it portrays women as subordinate; we ought to identify an act as sexual assault because a woman has not given consent and because her body has been invaded – we ought not to identify the same act as consensual on the basis that the man "thought" it was. It is sad, but true, that women and men are often quite at odds when they talk about or define things like pornography or sexual assault or, indeed, in naming particular forms of conduct as sexual harassment, pornography, rape, spousal abuse or sexual assault.[10] It is distressing that "normal" young men – and even boys – believe it is acceptable to

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antidiscrimination law change and how would that affect the way we view property? How can issues about race, gender, disability, and the like be integrated into the law school curriculum so that we are not merely reversing what is at the margin and what is at the center but reconceiving the system as a whole?"

[10]While I was revising this Lecture, I watched a tape called "Forum on Men, Sex and Rape" which ABC Television had been prompted to organize and air by the William Kennedy Smith rape trial. Six women and six men with a variety of expertise (counselling, law, psychology, corrections, therapy) talked about rape. While two of the men had some insight into the experience of women, and in fact, engaged in dispute with their fellow male panellists, generally speaking I felt as if I were listening to two different conversations with few points of intersection. For example, the men tended to see the problem as an individual one, while the women saw it as systemic; the men were more likely to think women ought to be doing something to prevent rape (one, a therapist, proposed that women should "take the initiative" more often so they would understand what rejection was); the men were more likely to think of rape as distinct from other forms of oppressive treatment of women as opposed to one part of the continuum. A survivor of rape in the audience was accused by a male member of the audience of not taking enough "caution" because she had been raped while walking down the street, but other male audience members spoke against the "rape myths" which have been ascribed to women.

force a woman to have sex even if she does not want to do so. But this is all part of the perspective that says "it's my world and you are welcome to it only on my terms for my purposes." It is all part of the worldview of which law has been not only a part, but a support. This has been the real homogeneity of the world as most of us have known it.

However one views the changes I am talking about, they are of such a nature that they could be called, in traditional terms, "revolutionary." Indeed, at one stage in the preparation of this Lecture, I considered opening with the invitation: "Welcome to the feminist revolution!".

That opening might have been more dramatic than a trite, but nevertheless obligatory, reference to today's date,[11] and I admit I would have had more fun with it. It would have conveyed quite quickly that I expect those of us in the law school to make some fundamental changes to the world as we know it. It would have said, "law school, look out!". But I decided not to begin that way. Not because I want to give anyone any comfort; that is not a concern of mine tonight. The reason I changed my mind is that I started to think about what that word "revolution" conjured up in my mind. I think of it as angular, as having hard corners; it connotes weapons and armies, destruction and imposition, winners and losers, two camps opposed, the replacement of one hegemony by another. I am not talking about that when I propose to you a feminist vision and a feminist form of change. A clarion call to revolution would, therefore, have made one of my points clearly, but it would also have communicated something else that I really do not want to communicate at all.

I started to think about better words and images to convey my message tonight. I thought about "transformation" and the imagery of weaving.[12] I like the imagery of weaving because it allows an unravelling without total destruction; it suggests a harmony of method or process and result or goal. A new weaving can use some of the same threads as a previously created weaving, as well as new threads. The excellence of weaving derives from the proper intermeshing of its

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[11]7 October 1992 was the last day of the Law School's first century and therefore a particularly significant date on which to "inaugurate" the Chair.

[12]An elaborate analogy of a specific form of quilting for teaching is developed by E. Barkley Brown in "African-American Women's Quilting: A Framework for Conceptualizing and Teaching African-American Women's History" (1989) 14 Signs 921. Weaving, of course, has an important place in women's mythology and is itself part of our reclaiming of the value of women's lives (think of the word "spinster," for example). See, for example, M. Stone, *Ancient Mirrors of Womanhood* (Boston: Beacon Press, 1991).

threads – excellence is found in balance.[13] And the potential for success, for excellence, may lie in quite different and ostensibly conflictual tones. It is how those tones are blended which determines compatibility.

These images are truer to the kind of change I am asking you to think about – and, if you are of a mind, and I know many of you are, even celebrate – tonight. For the changes of feminism are dynamic and on-going: I think of words such as "seamless," "fluid," "infinite." There is no real end to this process. As the context changes, as we learn more, as we listen harder and better, as we gain confidence, we shift to include what was excluded, to exclude what was included. This feminism develops through the merging of a range of perspectives and differences, to come forth in a fuller, more complete whole. The paradigm or the framework is fluidity. To those who seek a state of achievement, a state of having achieved, a place we can call the goal, the stopping place, that may seem frustrating. Yet it is true that our weaving is itself unavoidably static – it can, after all, be representative only of a point in time; still, its images can be rewoven, the flow of colours changed, the shapes differently curved.

My analogy explains more clearly than I can otherwise explain the way in which feminism does not have strict boundaries, with hard square corners, that it reflects a confluence of perspectives, ideas and views. But I would not want to carry this metaphor too far – because it runs the risk of running smack against one of the important elements of my theme of inclusion and exclusion. That element is the hard question: who gets to decide who is included or excluded – or, if we can pull it off, how do we avoid the need to have someone make that decision? I have no intention of promoting a cult of reverence for "The Great Weaver" who decides what the next weaving will look like, how the pattern is placed, where the colours fit, how the shapes mesh. That would be little better than the image of revolution. But it is not necessary to think in those terms. It is the weaving itself, the *process* of weaving, that brings everything together for us. It is the representation in the weaving that reflects the confluence, the excitement of the harmony. In the weaving are the interrelated perspectives that have developed through myriad exchanges about ways in which women have been disadvantaged and the ways in which different women have been differently disadvantaged.

By now, many of you will be asking, "what does she mean by 'feminist' and 'feminism'?". As to the first, you cannot tell a feminist by looking at her – or him. You cannot tell a feminist by what she wears. More likely you can tell a feminist by what she – or he – says. But not by how she says it.

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[13]"Excellence in craft is born in a physical sense of balance ... the correct tension of fibres on the loom": S. Inglis, "A Quest for Balance" in *Works of Craft* (National Museums of Canada, 1984) at 15.

As for the second, there is no one definition, no one "grand theory" called "feminism."[14] It becomes easier to understand why we have so many different people who call themselves "feminist" when we realise that feminism is a methodology, a way of approaching, and then changing the world. Le feminisme, c'est un processus. Il faut développer une sensibilité à la situation véritable de la femme pour comprendre la subordination – une subordination politique, économique, sociale et, bien sûr, légale. La prochaine mesure est la formulation des réponses nécessaires. On doit se souvenir que la femme n'est pas identifiée seulement par le sexe, mais aussi, par la race, la langue maternelle et les autres qualités.[15]

When we talk about "feminism," we have to think about it as a confluence or merging at some level of all women's diverse experiences. The world can look quite different to people who are viewing it through a filter of separate identities formed in part by the way in which they have interacted with social institutions and political and economic organizations. They may, nevertheless, use a "feminist perspective" to sort out for themselves how women are treated and how they should be treated. Feminism is capable of encompassing a variety of strands, a tapestry of women's self-definition and self-assertion.

But there is some shape to our weaving, to feminism. "Feminism" requires an identification with women of all experiences, a commitment to change for the advancement of women's status, and a belief that women must retain control of how those changes occur. When I speak of "woman" in this context, I am not speaking so much of a biological category, but more of the set of assumptions and expectations that have been ascribed to female human beings – it is the political, social, economic and legal meaning of being a woman. That may change with time and place. We have a good idea of what it means in this time and place.

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[14]Feminists have developed theories to explain the world, including the legal world. But there are so many ways in which women experience condescension, assumptions, ridicule, harassment, violence, mere tolerance, being told what is good for us, being told we have asked for too much, being told that suddenly when we ask for the same that others have, that we are undermining those sacred notions of democracy which we all know have determined how this society is run, that we cannot hope to capture it in a single theory. Regardless, we *are* looking at specific context – does this law or practice reflect the experience of women; does it reflect or perpetuate the subordination of women – and what must be done to include women and to end that subordination: M.J. Frug, "Sexual Equality and Sexual Difference in American Law" (1992) 26 New Eng. L. Rev. 665 at 674. On theoretical perspectives, see S. Boyd and E. Sheehy, "Feminist Perspectives on Law: Canadian Theory and Practice" (1986) 2 C.J.W.L. 1; and note 5, *supra*.

[15]Translation: Feminism is a process. We must develop a sensitivity to the actuâl situation of women to understand subordination – a subordination that is political, economic, social and, of course, legal. The next step is to formulate the necessary answers. We must remember that women are not only identified by sex, but also by race, maternal language and other qualities.

"Woman" is what has been called a "social construct."[16] I prefer to think of it as a political construct, but regardless of nomenclature, the point is that it is not the reproductive capacity of women which is responsible for the subordination of women – but how that capacity has been reflected in social norms, political relationships, the law. As MacKinnon says, radical feminism talks of "the aspiration to eradicate not gender differentiation, but gender hierarchy."[17]

The social construct of being a woman might differ from woman to woman, on the basis of ethnicity, sexual orientation, language, physical or mental ability, or class; these characteristics will affect what the reality of being a woman in a particular place and at a particular time is like. Nevertheless, none of the other identities removes the identity of being a woman and experiencing some form of subordination because of that; nor does it need to deny commitment to change the world to end women's exclusion in whatever form it takes.

Feminism is a methodology, then, which begins with all these different experiences; explores our political, social, economic and legal structures and norms to discover how they reflect what happens to women, how they treat women and what they expect from women; and which then takes those structures and norms apart and reconstructs them so that the experience of women as defined by women, is reflected in them. We put the structures together again (where they still seem worthwhile), this time with the excluded experience included so that we can really say that whatever it is that we define as law, speaks to us all. Feminism, as a methodology, is premised on the assumption that the realities of women's lives have been excluded, deliberately or negligently, from those structures and norms. This exclusion has resulted in lack of power in naming, defining, shaping.

Because this is such a fundamental process, this transforming exclusion into inclusion – "other" into "norm" – it is not enough to nibble around the edges, not enough to scoop out part of it and fill the resulting space with "women's stuff," not enough "to-add-women-and-stir."[18] We have to rebuild, refashion, redevelop – and that is exactly what we are doing.

Let me talk now about how women have been able to reach the point of being able to say "we as women are going to undertake this re-examination and transformation of the society in which we live" – not just in law, but in history and

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[16]J. Lorber and S.A. Farrell, *The Social Construction of Gender* (Newbury Park, Calif.: Sage, 1991).

[17]C.A. MacKinnon, "Not by Law Alone: From a Debate with Phyllis Schlafly (1982)" in *Feminism Unmodified*, *supra*, note 4, 21 at 22.

[18]H.R. Wishik, "To Question Everything: The Inquiries of Feminist Jurisprudence" (1986) 1 Berkeley Women's L.J. 64 at 67.

political theory, psychology, philosophy and literature, and on and on in all the disciplines and manifestations of our lives.

For so long we were defined by someone else's history, someone else's record-keeping, someone else's definition of what was important. Our understanding of women (of ourselves), our knowledge of our actions, came primarily from what men said we were; we read histories written by men and rarely saw ourselves reflected in the most fundamental sense; we wondered where we were, why we were missing; we looked at art painted by men and wondered how that image of women in that art applied to us; we looked at almost everything in our world, and wondered why the women who were portrayed there seemed to live different lives, looked different, acted differently, from us.

The first step has to be the regaining of the power to identify ourselves. That is true of any people who insist on taking their rightful place. This is the act of regaining self-possession. One starts to do that by reclaiming one's own experience by, as has been said, making visible, making known, women's experiences.

Why does this matter? The strength to demand inclusion has to be based in a sense of community and continuity. We learned that we have been part of a community. We know that other women have felt the same way, that what had happened to us – our loss of self, our sense of displacement, our fear of falling short of the standards set – was not a result of some individual flaw, our own personal weakness; we learned that our anger and depression were not a reflection of a personal inability to cope with reality; we found that our isolation and our apparent lack of involvement in history (for instance) was a reflection of how little importance our lives, events, and responsibilities had been given by those who did not carry out those responsibilities (but did depend on them). Responsibility for daily life, the details of running the household, the holding together of the family, the patching up of the problems and the clothes and the stretching of the food, and the comforting of the sick and despairing were not deemed worthy of historical record. We found that the reason we could not cope with "reality" was because it was not *our* reality.[19]

Si l'on ne connaît pas sa propre histoire, on se sent isolé, sans communauté. En d'autres mots, on doît reclâmer l'histoire avant de se diriger dans l'avenir.[20]

Interestingly, when women started to delve into the past, they found that

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[19]D. Spender, ed., *Feminist Theorists: Three Centuries of Key Women Thinkers* (Toronto: Random House, 1983) at 2-3.

[20]Translation: If we do not understand our own history, we feel isolated, without community. In other words, we must reclaim history before directing ourselves toward the future.

women *had* recorded history, *had* written books and diaries, *had* developed theory, but that it had been submerged. It has been said that while men have constantly built on what has gone on before, women have experienced "cycles of lost and found again – and again."[21] We have found what was missing from the histories written by men. We have again established a new recording, a painstaking recreation of the past, one which will not be lost this time. None of us can move forward without knowing where we have been in the past – without having developed a sense of community with the people with whom we identify and whose lives have, in some important ways, resembled ours. When we found that we did, in fact, have histories or diaries, had recreated the world through art and literature, had tried to explain it through political theories, when we reclaimed all that, is it any wonder, then, that women choose the symbolic word "herstory" to differentiate what they have reclaimed from what has been called "history"? The word does mean something significant: it speaks about us in *our* language.

Women's identity and presence have been hidden through the use of language. My first real understanding of how emotive and volatile an issue this was came when I began teaching political science at a small university in North Bay, Ontario in 1975. I gently asked my students to use gender-neutral language – not to use "he" all the time (they used "she" only when they meant to talk only about women). It would never have occurred to them to call a man "she" (unless they wanted to insult him), but they had no trouble referring to a woman as "he." I wanted the students to put their minds to the fact that women were excluded *from* and to the goal of their inclusion *in* the political process. I simply pointed out that I did not like being excluded when they wrote about the political process. Some students gave little thought to the matter and just did what they were told (not necessarily the best ones). For some of the women students, in particular, this simple requirement of not assuming "he" included "she" was a liberating experience; they suddenly felt as if they were involved, identified and recognized, and not subsumed or made invisible. But there was another group. I had students complain to the dean and to myself about the way I was "shoving [gender-neutral language] down their throats."

I was astonished that something as self-evident and as innocent as simply asking that women be recognized caused such an uproar. I received explanations, and, of course, as a woman, I thought that perhaps I had not explained the need for gender-neutral language clearly enough.

I was very glad, therefore, that when I came to UNB seventeen years later to start my second teaching career – in law this time – to find that the gender-neutral language question was already resolved and that everyone understands how male-centred and presumptuous it is to include 50% of the population in the word used

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[21] *Supra*, note 19 at 4.

to describe the other half. It seems, however, that I have just narrowly missed the excitement, for the policy has been in place only in the last couple of years. I wondered why they needed a Chair. It had all been done. But I did not want to stop at something that had already been done. I started thinking again about language and how complicated it is.

The enormous resistance which has met, it seems, all efforts to include women through language, makes me appreciate even more this power of language – this ability to control expression, this ability to exclude or include at the stroke of a pen. And it makes me appreciate, too, the vigour with which the system language represents is maintained.[22]

Something happens when you start using gender-neutral or gender-inclusive language. You find that men and women are not interchangeable, after all. Sometimes, it makes no sense to talk about women in the same way as it does to talk about men. There is, in fact, a view which argues against gender-neutral language because it in effect swallows women. I need give only one example – one that commemorates that we are at another anniversary of the *Persons* case. After all, one would have thought "person" was gender-neutral; but it turned out that when women tried to gain admittance to the bars of the legal professions of Ontario, New Brunswick and British Columbia, and when women sought appointment to the Senate, some fairly significant "persons" thought that the word "person" did not include women; using "person" hid this exclusion.[23]

Language may thus act as a veil which obscures the real features of the face

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[22]The use of language in other contexts is equally instructive of the perceptions and standpoint of the user. For example, "the fact that we need to have modifiers such as 'working' or 'single' or 'welfare' for the supposedly neutral term 'mother' signifies that our cultural understanding of the unadorned word 'mother' is a woman who is married, being supported by her husband, and not working outside the home. This is the norm for 'mothers' – all other types of mothers are subtly deviant. Similarly, the use of the term 'minorities' to refer to people who actually collectively are the great majority of people in the world reflects and reinforces the deep and pernicious assumption in Western society that white people are the norm for humanity ... Similarly, the term 'gender' is too often taken to be a shorthand for 'women'. The body of law about gender discrimination is widely understood to involve 'women's issues' – thus reinforcing the understanding that 'man' is a genderless, standard creature who does not have to concern himself with gender issues. Given the way in which language creates meaning through differentiation, with 'man' as the linguistic stand-in for 'generically human,' 'women,' 'women's issues,' and 'women's perspectives' are understood as partial, both in the sense of being incomplete and being biased": L. Finley, "Breaking Women's Silences in Law: What Language Can We Use? The Dilemma of the Gendered Nature of Legal Reasoning" (1989) 64 Notre Dame L.Rev. 886 at 887.

[23]M.J. Mossman, "Feminism and Legal Method: The Difference it Makes" in M. Albertson Fineman & N. Sweet Thomdsen, eds, *At the Boundaries of Law* (New York: Routledge, 1991) at 283. Also see *In Re Mabel P. French* (1905), 37 N.B.R. 359 and the *Persons* case at the Supreme Court of Canada and Privy Council levels: *Re Section 24 of the British North America Act, 1867*, [1928] S.C.R. 2763 and *Edwards* v. *AG for Canada*, [1930] A.C. 124 (P.C.).

beneath it. Sometimes this occurs because in using "he," we too readily forget that we also (or ought also to) mean "she." But sometimes when we use "he" and "she," we hide the truth that this is something that happens almost entirely to women. The way we talk about violence does this, for example. It is true that both men and women suffer violence; it is true that men and women both commit violence. But the patterns of violence suffered and committed by women and by men are so different that to ignore the differences results in a false representation of what forms violence takes and its significance in our society.

The more accurate version of the truth is that far more men commit violence against women than the reverse, and that even when men endure violence, it is usually by other men. Sexual violence is committed almost entirely by men against women or against children (girls and boys). Using gender-neutral language distorts this reality. More significantly, it distorts the way violence serves as a pillar of patriarchy: violence in all its forms – sexual abuse, pornography, rape, sexual assault, prostitution, sexual harassment – are the means by which women are controlled and the hierarchical relations between women and men maintained. The pattern of men's and women's lives and the energy and time men and women give to thoughts of violence, to anticipating it, to shrinking from it, to changing their behaviour because of it, not to speak of responding to it, are sufficiently different that there are times it seems we are living in different worlds.

An emphasis on the importance of language also must not be allowed to obscure the biases in the assumptions underlying the law and how we teach it. Changes in language are a catalyst for the fundamental restructuring which will follow. Our revision of language has merely removed the veneer of universality of law and methodology. Indeed, no doubt some of the resistance to gender-neutral/gender-inclusive language has been by those who realized, rightly, that changes in language were only the precursor to more extensive transformation.

But let me return to the value of the development of the sense of community or communities among women. When women come to the law school today (and I speak of "law school" as a generic term), they can arrive with a sense of continuity and with the knowledge that their presence will be recognized. But that does not mean that there will not be other ways in which women's "otherness" will be communicated to them. There will still be reminders that they are considered by some to be there on sufferance and that they should remember their proper place.[24] The experience of being a woman in a law school, whether professor or student, may be a harrowing, painful, alienating one.

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[24]The classroom experience is often different for women than for men: see, for example, T. Lovell Banks, "Gender Bias in the Classroom" (1988) 38 J.Leg.Ed. 137; T. Scassa, "Violence Against Women in Law Schools" (1992) Alta L. Rev. 809 at 819-28.

Students often find a gap between what they are taught and what they experience. A student who is learning in one class what the law is on sexual harassment, may find herself the subject of innuendo and propositions by a professor in another. Another woman finds that the sexist comments of her colleagues in the class are of no concern to her professor who does not understand that they affect her ability to raise questions about how the law treats women. The women may find that they are treated as a cohesive group – "the feminists" (or even now, "the women's libbers"). The feminists find their comments are treated as interruptions of the study of "real" law.

Women professors recount stories of colleagues who demean their work to students, criticize their assignments if they are about women and imply – or worse state – that the feminist teacher is not capable of teaching "substance." We hear of pornography thrust under a female professor's door and graffiti written on the desk in a classroom used regularly by a female professor. Apart from such treatment, teaching as a feminist requires struggling with new ethical questions about teaching: for example, a professor wonders whether she is fuelling racism or sexism when she repeats comments a judge made and worries what it does for the atmosphere in the classroom.[25] In short, the experiences of women in the law school are little different in quality than our experiences in most other areas of our lives. The work which must be done in the law school is the same work which must be done everywhere.

In teaching from a feminist point of view, we are dealing with issues which may be very personal to the lives of our students; in dealing with feminist issues among the faculty, we may be dealing with issues that are very personal to faculty members. Issues relating to sex and race, for example, challenge how we have lived our lives; they are not abstract ideas, but, perhaps in law especially, go to the heart of the way we have learned to interact with each other. Feminism is a way of living; it *is* personal. It is not something we put on and take off as the spirit moves us. But that does not mean that we do not bite our tongues and clench our teeth on some occasions. We are saving ourselves until the right issue comes

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[25]On life at the law schools today, see S. McIntyre, "Gender Bias Within the Law School: 'The Memo' and its Impact" (1987-88) 2 C.J.W.L. 362; B. Feldthusen, "The Gender Wars: 'Where the Boys Are'" (1990) 4 C.J.W.L. 66; "Feminist Pedagogy: Critique and Committment [sic]" in T. Brettel Dawson, ed., *Women, Law and Social Change* (North York: Captus Press, 1990) at 386; "Seminar on Law in the University" (1989) 38 UNB L.J. 89, esp. at 157ff. Women who go to law school often find that to be successful, they must remodel themselves: D. Jack and R. Jack, "Women Lawyers: Archetype and Alternatives" in C. Gilligan, J.V. Ward & J. McLean Taylor, eds, *Mapping the Moral Domain* (Cambridge: Harvard University Press, 1988) at 263. But we do not know what women are "really" like – that is, we do not know what we would be like if we had not been oppressed by male ideology. We do know that some women (and some men) who are feminists think there may be a way to do things that more reflects a balanced life and more respect for the other participants in a "dispute" than does the traditional practice of law, among other things; but we must be careful not to replace one stereotype by another.

along. And we are never disappointed – it always does.

As feminists, we acknowledge we have a perspective; we expect colleagues with other ways of looking at the world to acknowledge that they, too, have a perspective which is based on the way the legal world and the rest of the world around it is ordered, and that the way the legal world is ordered affects people in very direct ways. In particular, it is necessary to remind the defenders of the *status quo* that what exists reflects a perspective, too.

Should we manage to sustain human life for another one hundred years, when our children and grandchildren and our great-grandchildren mark the second hundred years of life of this law school, I hope that the Mary Louise Lynch Chair of Women and Law will be a footnote to its history.[26] For if feminism is successful, women will not have continually to assert our place as autonomous participants, as creators; we will not be set aside as an exception to the mainstream, outside the "regular discourse"; we will not *need* "Chairs of Women and Law." Feminist issues and approaches will be recognized as legitimate, necessary and *normal* ways of teaching, learning and applying the law. In other words, feminist approaches will be taken for granted and will not have to be defended.

Pour appliquer le feminisme au droit, ce n'est pas nécessaire de repartir à zéro; mais, surtout, il faut que l'on examine tous les fondements du droit pour déterminer les expériences de la femme. Finalement, le droit sera définé par les expériences de l'homme et celles de la femme. Un droit qui est fondé sur la vie de l'homme, mais qui exclut celle de la femme n'est pas complète.[27]

Part of the feminist challenge is to make the law complete, to make it whole, to continue the weaving and never cut the thread: to sustain the life of change and increasing inclusiveness. That is the real vision with which I challenge you tonight. But I also say again that as women, we are not satisfied. We are going to keep making claims and we are going to keep expecting answers and responses. We are not going to turn back. We are here to stay.

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[26]I want to thank John Wilson for drawing out the implication of a "footnote" as that which underlies the current structure and is therefore significant.

[27]Translation: It is not necessary to start at the beginning again to apply feminism to law. We must, instead, examine the foundations of law to determine women's experience. In the end, the law will be defined by both men's and women's experiences. A system of law that is founded on men's life experiences and excludes those of women is not complete.