Introduction

THE CONTENT, METHOD, AND EPISTEMOLOGY OF GENDER IN SOCIOLEGAL STUDIES

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This Special Issue of the *Law & Society Review* devoted to gender and sociolegal studies focuses on one of the major political movements and intellectual challenges to the social sciences in the last years of the twentieth century.[1] The collection of articles explores some of the controversies that a focus on gender has raised and provides an opportunity to assess what we have learned so far. It can also help us in setting an agenda for further exploration and elaboration of the themes that a focus on gender has introduced. While this group of articles could not in the available space represent the whole of this complex and wide-ranging field,[2] it offers a clear picture of the rich and varying work in sociolegal writing that has been inspired by the scholarly and political interest in gender.

In this introduction, we provide a framework for understanding how the focus on gender goes beyond simply adding another variable to the empirical study of law and legal institutions. As the articles in this issue illustrate, an explicit focus on gender (as contrasted with the implicit study of gender by universalizing male experience) reveals new understandings, causing us not simply to add to our accumulated knowledge about sociolegal phenomena but also to rethink some of our theoretical frameworks and sources of hypotheses and to explore the deeper epistemological questions of how we know what we know and what we use to validate our knowledge. In the words of one feminist theorist, to focus on gender is to question everything (de Beauvoir 1949).

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[1] Earlier efforts in other fields to explore the meaning of socially contructed gender have included, e.g., Kandal 1988; Smith 1987; Stacey and Thorne 1985; *Gender and Society*; the *Psychology of Women Quarterly*; Peplau and Conrad 1989; Collier and Yanagisako 1987; and a variety of field review essays in the journal *Signs*.

[2] Other topics include, for example, legal concerns affecting reproduction, pornography, power imbalances in dispute revolution, and divorce reform.

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THE MEANING OF GENDER

Women historically have been excluded from the making and interpretation of legal rules and roles as well as from the study of legal institutions (see Menkel-Meadow 1987).[3] As women began to enter more fully into participation both in the legal system and in the academy, they, as well as feminist men, noticed some of the absences and distortions in what we call knowledge about the law and legal institutions. These observations, which occurred throughout the 1970s and 1980s in virtually all fields of inquiry, including not only history, literary criticism, and the humanities but the conventionally labeled "hard" sciences[4] as well, have caused an outpouring of new questions for social research.

One of the most provocative concerns that crosses all of these fields is the meaning of gender itself. As we go to press with this Special Issue, lively disputes about the meaning and significance of gender continue apace, and we cannot even freeze this intellectual moment to find a unified conception of gender in the articles presented here.

Nevertheless, it is important in understanding the intellectual context of these articles and the larger issues in which they are situated to look at some of these points of contest and multiple understandings. First, the focus on gender has developed against a backdrop that failed to take into account the role of gender in all previous knowledge. That is, work presenting useful generalizations about human behavior has usually taken the "male" point of view as the norm—whether that male point of view comes from the predominantly male social scientists or lawyers developing those generalizations, or because the phenomenon studied (e.g., judicial behavior) or the actors (e.g., police officers) have been principally male. To make gender an explicit subject or object of study reveals that much of what we have generalized about may be more limited[5] to particular populations than we think.

Second, there is a danger that, once operationalized, gender becomes a not too subtle code for "woman"—that is, the "gender" problem is the woman problem, just as the "race" problem is the black problem, as if whites had no race. If the absence, exclusion, or oppression of women has caused us to look at factors affecting women's participation in legal institutions, we must also look to

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[3] Women, of course, have always been subjected to legal rulings and statuses.

[4] We must even question the origins and evolution of masculine terms and metaphors in scientific inquiry (see Keller 1985). Why is a science "hard"? Can women be "hard" scientists? Why is social science "soft"?

[5] This recognition is currently reforming medical research as well as other aspects of human inquiry. For example, most of what we know about heart disease (the famous "Framingham studies") is based on male subjects (Moore 1989).

understand how gender systems operate to construct "malestream" or masculinist norms.

These inquiries are important because the construction of gender is itself a topic that sociolegal studies should address. In the pages that follow, we see a variety of operational definitions of gender. At its simplest and easiest to measure, gender is simply biological sex as determined by chromosomal structure or anatomy. But even this notion is subject to scholarly dispute, for social researchers have shown that gender is socially constructed out of cultural meanings as well as biological sex. As the anthropologists among us know, there are culturally determined roles, such as *berdache*[6] among some Native American groups, that fail to conform to rigid sex stereotyping. Whether a male or female will conform to expected sex roles in any culture varies with a host of cultural incentives and disincentives, not to mention legal statuses and sanctions.

Feminists in all fields, including biologists (Fausto-Sterling 1985; Bleier 1984), sociologists, and psychologists are currently debating just what it means to be "engendered." For some, gender is virtually all social construction, and that construction is the construction placed on one gender by the other. Thus, women, as defined by men, are objects of their sexual desires (MacKinnon 1989), potentially pregnant beings or mothers (Eisenstein 1988), or simply "other" or derivative of what is male and normative (Pateman 1988; Henderson 1991). For many feminists, the categories of both male and female are more complex, context-varied expectations of complementary but different attributes and behavior. In the words of one classic text, gender refers to "socially learned behaviors and expectations that are associated with members of a biological sex category. Gender is an acquired identity" (Andersen 1988:48). Thus, to focus on gender in sociolegal studies is not simply to add another variable and stir—the variable itself needs to be studied and understood.

In its most recent and perhaps most controversial formulation, gender has been subjected to the deconstruction of postmodernism, leaving some to wonder "is there any there there?"[7] If gender is so dramatically affected by social construction and the mixtures of

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[6] *Berdache* is the practice, observed in some Native American communities, of "socially sanctioning individuals to assume gender roles opposite to that which they were originally assigned" (Kessler and McKenna 1978:24). Most commonly observed were men performing female roles, but the reverse also occurred. There is no evidence that these individuals were necessarily homosexual or ambiguous with respect to biological sex. Kessler and McKenna's ethnographic study of the transformation from one sex to another by transsexuals illustrates the interactive roles of biological sex and cultural gender. This may be somewhat analogous to what we are learning about the interaction of biological and environmental or situational factors in the etiology of disease.

[7] Apologies to Gertrude Stein, who originally spoke these words about Oakland, California, although she might just as well have said them about gender, being herself an example of postmodern sexual identity. Apologies as well

other social attributes (among them race, ethnicity, sexual orientation, and class) as well as by the individual variations we feel within ourselves about our gender roles, there may be no gender subject to study at all (Flax 1989; Gagnier 1990; Villmoare 1991). To quote another poet, the center will not hold long enough for us to operationalize it and study it interacting with more dependent[8] variables.

Yet problematic as a definition of gender may be, all the authors in this issue, as part of a growing tradition of exploring the significance of gender, have chosen some way of defining their subject and moving on to examine its interaction with aspects of the legal system. We invite you to consider how each researcher solves this problem of definition and operationalization and how alternative constructions might change the research questions and findings.

THE SIGNIFICANCE OF GENDER THEORY

From the first wave of feminist theory and activism concerned primarily with developing arguments for inclusion in the traditionally male-dominated power structure of society, differences in approach and rationale have characterized both feminist intellectual work and social and political activism. Arguing that women would function as men did in these settings, women lawyers (Morello 1986) and scientists (Rosenberg 1982; Schiebinger 1989) stressed their sameness to men. Others argued that women would bring valuable differences and, with time, would purify the polity by bringing to the suffrage women's particular morality (Dubois 1978) or that women would make better doctors because of their ability to nurture (Morantz-Sanchez 1985). Differences were stressed that would supplement, if not correct, a male-constructed world in specified ways.

These dilemmas of "the difference that gender difference makes" (MacKinnon 1987; Rhode 1990; Eisenstein and Jardine 1985) have been with us since gender was first noticed. Yet, like a camera that can be focused to take a long shot or a close-up, differences and similarities between the genders can be either foreground or background. Similarly, the researcher with his or her microscope or variable labeling strategies chooses whether to focus on similarities or differences and whether to take binary cuts at phenomena or employ multidimensional scales. These choices of emphasis in theoretical frameworks and methods clearly affect choice of subject, findings, and conclusions.

How gender is theorized about is itself contested (Hirsh and Keller 1990). For example, several of the articles in this issue ex-

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to Stewart Macaulay, who has already used these words in connection with sociolegal studies (1984).

[8] The pun is absolutely intended.

plore the themes of women as active agents in their social condition or as victims of patriarchal dominance (Ford; Goodman et al.; Rapaport; Villmoare). Other competing theories include attempts to locate a single image or source of gender roles and oppression—woman as object, woman as mother/whore, man as hunter, woman as gatherer, woman as nature, man as culture (Rosaldo and Lamphere 1974). Other dualisms that characterize the significance of gender in social and legal life have included versions of the "separate spheres" doctrine, taken from women's history, which assigned women to the home and private sphere while assuming that men made their mark in the public sphere. These complementary but often symbiotic relations between the spheres, alternatively characterized as family and market (Olsen 1983), are often enforced by the limitations of a binary legal system.[9]

As more recent and perhaps more diversified theorists have observed, these dualities in theoretical practice, while useful heuristically, have tended to reinforce those very binary categories and relationships that gender theory was hoping to deconstruct politically. In reinforcing these categories that set men and women in opposition, this practice has also left unexplored the many variations within those groups, not only in the now commonly cited forms of race, class, and sexual orientation but also in the crossover values between the genders that are evident when distributions of attributes and achievements are measured (Maccoby and Jacklin 1974; Epstein 1988).

STAGES OF GENDER THEORY

It is too early to give a full intellectual history of gender theory, but a brief chronological review provides some important insights. The elaboration of the disputed meanings of gender reveals a rich accumulation of new understanding of a complex phenomenon rather than a set of polarized arguments. In its first stage, gender theory sought to explore the commonalities or sameness of the genders, in reaction to the often contradictory claims made about the differences between the sexes as a ground for exclusion. For example, arguments excluding women from the legal profession were that they were too delicate and timid for that profession and, at the same time, that their competition would upset their husbands and ruin the tranquility of the family (*Bradwell v. Illinois* 1873). Thus, the desire to be included led to theory, as well as ide-

[9] For example, the two feminist historians who testified in *EEOC v. Sears* (1987) were forced by the demands of the legal paradigm to take opposing positions on whether women chose or were discriminated against in applying for higher-paying sales jobs (see Milkman 1986; Scott 1988; Schultz 1990). Although law often demands a choice between two opposing outcomes, this demand has even more problematic consequences when the binary concept of gender is involved. In fact, choice and discrimination may reinforce each other.

ology, committed to arguing for an equality based on sameness, a search for a gender of one based on the male norm.

In its second stage, gender theory was forced to confront some differences that could not be erased by a foreground of sameness. Pregnancy was the leading, but not the only, example.[10] Many women engaged in the then-radical move of demanding that differences be noted and even appreciated as sometimes superior to the generally accepted male norm, thus demanding that two genders be accorded recognition. Theorists and empiricists, as well as political activists, did and do vary in the degree to which they claim female qualities as superior to male attributes. Carol Gilligan's (1982) work on the different modalities of moral reasoning girls and boys applied on Kohlberg's moral development scale is often misunderstood as seeming to prefer an "ethic of care" to an "ethic of justice" and associating each of these rigidly with only one gender (Williams 1989). The critique of this second stage of "difference" theory, stated most often as a fear of "re-essentializing" gender and serving to justify sex-stereotyping treatment, has been accompanied by a critique that urges us to explore the differences within gender, such as race, class, and sexual orientation (hooks 1981).

From an attempt to deal with this gender differentiation, a third stage of gender theorizing can be identified, often called the "postmodernist turn," which seeks to decenter and destabilize any unrealistic attempt to homogenize the genders in opposition to each other, as well as to recognize the multiple and context-dependent experience of gender identity within each individual (Gagnier 1990).[11] So when deconstructed by race, class, sexuality, and social role, gender no longer is binary but instead suggests not one or two genders but an almost infinite variety of variations. In many respects, this third stage (most certainly not the last) is most compatible with the kind of inquiry with which sociolegal research is quite familiar. How does the significance of gender vary in law and legal institutions? Under what conditions?

These stages need not be viewed as oppositional. As any field develops, it builds on the propositions and claims of earlier stages. Yet taking gender seriously in social inquiry may require that all these stages of development continue to flourish and stimulate one another. To the extent that some in the world still see gender differences and use them to create categories of different treatment,

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[10] A variety of distinct physical differences were elaborated as possible exceptions to the equality of the Equal Rights Amendment in the classic exposition of its modern meaning (Brown et al. 1971). See *California Federal v. Guerra* (1987) and Littleton (1987) for efforts to transcend these dilemmas by arguing for an equality of "working parents" rather than "workers" or "pregnant women" and an ethic of an "acceptance of difference." Cf. Williams 1982.

[11] Postmodernist feminism is now firmly a school of Anglo-American feminism (see, e.g., Hawksworth 1989), but it is also much influenced by French feminism (see, e.g., Marks and de Courtivron 1981; Moi 1986).

whether explicitly or unwittingly (but with similar effect), we will continue to study whether there are differences and whether they are meaningful in particular contexts. At the same time, we need to explore how gender, however conceptualized, interacts with other social identities and whether it makes a difference, socially or legally, who does the characterizing. As one commentator has put it, "what we lack . . . is a theory that recognizes gender variations without enforcing them" (Freedman 1990:257).

With all the complexities that the meaning of gender and the significance of gender theory entail, gender, it seems to us, is an important and salient category for sociolegal analysis. Men and women persist in attaching radically different meanings to the same events, such as rape (Sanday 1990), and to the same institutions, such as marriage and the family (Johnson 1988). Women are still disproportionately poor, subjected to abuse and domestic violence, and underrepresented in important legal and political positions. Sociolegal scholars need to uncover explanations for these situations from both sides of the gender divide (if we can be binary for a moment). Our ability to find meaningful ways to transcend these gender gaps will require acts of interpretation, translation, and participation by both genders, with the diversity of experience and interpretive frames that a diversified scholarly community can provide.

GENDER AND SOCIOLEGAL STUDIES

As the articles in this issue illustrate, when traditional sociolegal questions are examined taking into account the spectrum of gender theories explored above, there are a variety of consequences for what we know about law and legal institutions.

A. The Content of Our Knowledge—Theory and Data

By explicitly studying gender and its interactions with sociolegal phenomena, we increase our collective knowledge of the operation of legal institutions and the social networks in which they are embedded, illuminating patterns of social behavior that elsewhere one of us has labeled "Durkheimian epiphanies" (Menkel-Meadow 1990). Just as Durkheim, using aggregate data to trace the different meanings of suicide for men and women, found that men and women experience and react to family life differentially, in this issue John Hagan, Marjorie Zatz, Bruce Arnold, and Fiona Kay find from their application of Marxist, postindustrial, and human capital theory to changes in the structure of the legal profession that such changes are having differential effects on male and female lawyers. Thus, using gender as an explicit focus of analysis supports the predictions of normal theory that law practice will be less and less concentrated in an ownership class and also illustrates how gender itself provides its own class formation that may

facilitate the structural differentiation of the profession. Women, as recent entrants to a male-dominated profession, may easily be used to fill an increasing employee class (especially if their life-cycle constraints operate to prevent a male-defined total commitment model to work). Hagan et al. also demonstrate both the power of gender (given increasing mobility of all lawyers, male lawyers still do disproportionately better at achieving partnerships in all spheres of practice) and the variations within gendered activity (women do worse at achieving partnerships in the smallest firms, raising interesting questions about the relationship of critical mass in the development of legal and gender cultures).

Similarly, Jane Goodman, Elizabeth Loftus, Marian Miller, and Edith Greene's study of the valuation of wrongful death damages for men and women decedents demonstrates the power of lay legal decisionmakers' gender stereotyping. Note, however, that male and female jurors may not value men's and women's lives differently, as both male and female jurors seemed equally likely to devalue women's lives in arriving at appropriate amounts of money to compensate for the loss of male and female spouses, even when both genders earned equivalent incomes. Thus, focusing on the gender impact within a commonly studied sociolegal subject—jury behavior—reveals the profoundly gendered assumptions of human worth in our society and demonstrates the beliefs and assumptions of our society about the value of women's work and the assumptions of women's economic dependency.

An explicit focus on gender often reveals that gender relationships do not operate in the predicted directions, that gender does not always conform to stereotyped expectations. In Susan Miller and Sally Simpson's study of attitudes toward formal and informal sanctioning in courtship violence, men and women do not always respond in predictable ways. As women become more cynical about formal sanctioning, it may be men, not women, who expect greater sanction likelihood and severity. But at least within dating (as contrasted to marital) relationships, women may be more likely to take action (whether seeking sanction or terminating the relationship) than those who assume women seek to preserve relationship would expect (males assumes that women don't leave).

These studies illustrate forcefully how a second stage of gender theory has made us more sensitive to contextual variations within gendered realities. Violence in dating relationships may be responded to differently than in marital or more long-term relationships, and gendered responses are also filtered through race, class, and other factors, among them a history of exposure to abuse.

In addition to telling us how gender operates within the extant theoretical frames of our field, studying gender patterns often reveals how we must modify our theories or empirical propositions—in at least two ways. First, generalizations may have to be

modified to account for gender differences. Rosemary Gartner and Bill McCarthy's study of femicide reveals that although aggregate data seem to show similarities in rates of growth of the killing of men (homicide) and women (femicide), women are at greater risk in private, domestic locations, in proximity to presumed loved ones. Both theoretical and policy work on the nature of killing will have to reflect these historically and spatially contingent variations in killing. A theory of humanicide then will have to account for differences in the ways men and women are victimized in murder.

Second, a whole theory or set of generalizations or propositions may have to be drastically altered to account for gender relationships. Elizabeth Rapaport's study of women on death row demonstrates that, contrary to popular and some scholarly opinion, women are not disproportionately "favored" in not receiving the death penalty. The frequency of death sanction is consistent with the frequency with which women commit the crimes that are punishable by death. As Rapaport's study of the death penalty and gender discrimination makes clear, locating gender difference in who receives the ultimate punishment tells us what our society values or fails to value by the amount of legally sanctioned opprobrium that is leveled against particular crimes. Women are less likely to receive the death penalty because they are more likely to commit domestic crimes, which, in turn, are less likely to receive the ultimate sanction. Thus, gender discrimination in the imposition of the death penalty appears to operate against victims, since women are more likely to be murdered in domestic situations, and these murders are less likely to be punished with the death penalty. To the extent that this pattern reveals a patriarchal bias toward punishing economic and stranger killings more severely than intimate killings, we may need to reconsider our policies about what crimes our society does and should abhor in terms of formal sanctioning.[12] Rapaport's work starkly calls on us to reconsider the conventional justifications for the distinctions between crimes of "cunning" versus crimes of "passion."

As Gayle Binion's review essay in this issue makes clear, some of the most foundational theory that informs our thinking about sociolegal phenomena must be subject to radical revision when we include both genders. Carole Pateman's (1988) exploration of the male canon of social contract theorists exposes how the politico-social contract (which is said to have created our state and public institutions) was preceded by a sexual contract based on male domination. Thus, to fully understand the basis of our beliefs in democracy and the allocation of public and private responsibilities,

[12] We, like Elizabeth Rapaport, do not urge that death penalty discrimination be remedied by equalizing the killing of "more wretched sisters" (Rapaport 1991:368) but rather note what these data reveal about our underlying values in the criminal justice system, with their full gendered impact.

as well as the influence of contract theory in all legal relationships, we must comprehend the full implications of the silent assumptions in such theories.

In her review of Susan Moller Okin's (1989) similar work on the foundational political theorists, Binion reminds us that justice must be learned about in all of our institutions, including the hierarchical relationships existent in most families. Thus, a focus on gender relationships here speaks directly to those of us who study socialization processes, reminding us that socialization for understanding legal and lawlike institutions occurs in both public and private spheres. We learn about rules and governance in both arenas. The work of political theorists like Pateman and Okin ask us to think about how foundational theory in sociolegal studies[13] might have to be revised if gender were to become a central focus of analysis.

In addition to giving us new propositions and new theories to test, an explicit focus on gender may help us to ask different questions of our material. As feminist social scientists and epistemologists (Nielsen 1990; Harding 1987) have noted, if we begin to ask questions of the sociolegal system *from the perspective of women*, we may find ourselves asking different questions. While David Ford's study begins as a more traditional look at why some battered women choose not to cooperate in prosecution of their abusers (an important evaluative question for the criminal justice system), he hears in the voices of his respondents a different way of characterizing the intervention of the criminal justice system in the domestic violence area. These women do not view themselves as "dropping" their criminal charges; rather some of them use the criminal justice process as a way of gaining leverage to ameliorate their situations, facilitating negotiated solutions that might go beyond what a criminal court could accomplish. Ford's work is important in helping us see how significant our own preconceptions are in interpreting data. Some read the story of dropped charges as an ongoing account of passivity, dependence, and despondency. But when women's voices are heard above the conventional categories of strategic action and "manipulation" of the system, other readings may cause us to reconsider both the theoretical and policy implications of these different stories.

B. Method and Epistemology

The issues that feminists have raised with respect to the exclusion of women and other disadvantaged groups from the scientific and scholarly communities go beyond the important questions of professional presence and representation, in all facets of sociole-

[13] We do not pursue here the controversial question of whether there are foundational or basic science propositions particular to sociolegal studies; see, e.g., Friedman 1986.

gal work, as researchers as well as victims, perpetrators, jurors, witnesses, and lawyers. As part of the second stage of gender theory, feminists and other excluded groups[14] have argued that exclusion of whole groups has limited the theory making and data collection that are essential to all science. Tracking the stages of development of gender theory generally, Sandra Harding has developed three epistemological positions that derive from the inclusion of women or other excluded groups (Harding 1986, 1987, 1991).

The first, feminist empiricism, is represented in most of the works in this issue. Feminist empiricism grants that our understanding of the scientific methods as applied to social science is basically sound but has excluded women theorists, women data collectors, and, often, women subjects of research. Thus, with a correction for a misogynist bias, we can learn about gender and sociolegal institutions by asking questions that concern women, by looking for gender variations in our data, and by being certain that interpretations of data are subject to multiple-gendered investigator perspectives (Westkott 1990; Cook and Fonow 1990; Eichler 1988). Thus, we would look at how women are both victims and agents of their roles in legal institutions, ask how particular rules or practices pattern women's behavior, and consider whether women are advantaged or disadvantaged by such treatment. We would ask how a particular theory or approach responds to women's experiences. Much of this can be done with the tools we already have.

A second school of thought, labeled the "standpoint" epistemology, argues that women (and other excluded groups) have access to a different realm of knowing about the world because their experience of oppression or domination provides a double-lens or bilingual understanding of the multiple levels on which social and legal activities are conducted. To put it in sociolegal terms, women and other excluded groups may be more likely to study "both up and down" from their particular vantage points as participant observers in a greater range of places. A more controversial, and now largely discredited, argument has claimed that women researchers are more likely to know more from the qualitative, researcher-in-same-plane-as-researched place of study (Stacey 1989; Peplau and Conrad 1989).[15]

The feminist standpoint epistemology is congruent with those

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[14] While this Special Issue focuses specifically on gender, many of the issues discussed here have been raised increasingly by other excluded groups of theorists and knowers, too (see Harding 1991), most notably in the current debates within critical race theory about racial epistemology (see Kennedy 1989; Johnson 1991).

[15] Standpoint epistemology actually has several strands, including not only exclusion, outsider, "stranger" perspectives but also a more specific argument that women are closer to "natural" or everyday life (see Smith 1987), that women "know" more from having to mediate among and between the dif-

modern critiques of the sciences that have caused us to more fully recognize the social situatedness of all of our work (Berger and Luckmann 1966). These developments, including interpretivist critiques of quantitative science and cultural criticism of literary analysis, have challenged canonicity in literature, periodicity in history, and even objectivity in natural science. The argument here is not to throw out all of our categories but to realize that our categories are social constructions and we make them at particular moments in history to respond to questions we raise for particular reasons. This, of course, includes feminist analysis, which has also developed at a particular time in history to raise and respond to particular questions. Self-reflexivity has always been part of good science; in that sense the feminist standpoint critique is nothing new (Levine 1990).

Yet it is important to realize that different questions do emerge from different standpoints and from looking for data "in all the right places." As Adelaide Villmoare's essay informs us, if we really listen to women's voices, to their everyday voices, we will learn that women do think of rights as things that matter, that affect their lives and their practices. Researchers interested in the influence of legal rights might do well, then, to pay particular attention to everyday understandings of rights—whether conceived of as formal law or other forms of entitlements. Thus, paying attention to other standpoints and voices does affect the research we do.

Standpoint epistemology often raises the question of relativism and validation, leading some to move to Harding's third identifiable epistemological stance, a postmodern conception of knowing, often expressed as a deep cynicism about whether universal generalizations are ever truly verifiable. If we listen to Villmoare's women's voices, how can we narrate their tales without categorizing and characterizing them in some way? Many feminists have argued for the self-validating method of consciousness raising, letting women's experience be the arbiter of truth[16] (MacKinnon 1987); others have focused on the partiality or positionality of knowing (Bartlett 1990).

More recently, Sandra Harding has argued that reconstituted science can be validated by subjecting the social situatedness or "cultural background assumptions" of scientific propositions to the same scientific verification as is required of the more obvious "findings" of research—what she calls "strong objectivity" (Hard-

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ferent aspects of our culture, and from women's socialization that produces different ways of knowing (Belenky et al. 1986); see generally Harding 1991.

[16] This, of course, tends to beg the question of how to reconcile different, indeed contradictory, experiences such as of employer and domestic servant (Rollins 1985), heterosexual women and lesbians, abused women and happily married women, mothers and child-free women, teacher-student and all the other locuses of women's differences.

ing 1991:149). By focusing on such excluded groups as women and racial minorities, both as subjects of study and as researchers we will explore the assumptions, distortions, and absences created by "mainstream" white masculinist science simply by bringing to the foreground what has not been considered before. In Harding's terms, both the "macro tendencies in the social order, which shape scientific practices" and the formation of scientific questions must be subjected to the same scrutiny and causal analysis (Where did this question come from? Who is studying it for what reason?) as the "micro processes of the laboratory" (ibid.). This form of strong objectivity promises a contextually richer account of how questions are framed and studied and provides a greater opportunity for falsification because of its historical and situated particularity. It is simply "good" science, in Harding's terms. In one sense, such strong objectivity is a product of postmodern multiple consciousness. It does take account of the relation between the subject and object of research and acknowledges the dialectic inherent in that relationship. In sum, it should encourage a certain amount of scientific care and human humility in all of our research.

As the articles of this issue demonstrate, it is possible to ask new questions, query new subjects, reinterpret secondary data, and provoke new thoughts by doing so. What the articles may not resolve is how competing visions of reality may be reconciled. Will it be possible to define rape, domestic violence, and pornography so that both men and women will "know it when they see it?" How will the smaller numbers of male attorneys who increasingly control the human capital of law firm partnership be persuaded to share their interests with more recent entrants to the legal profession? How should we correct different valuations of intimate versus stranger or social versus economic crimes? The issues raised by these articles demonstrate that we have scientific as well as political and policy choices to make when gender becomes the focus of serious social-scientific inquiry. These gender gaps in law, scientific knowledge, and lay understandings will most likely be bridged only if the makers, participants in, and interpreters of law, legal institutions, and everyday activity are drawn from both genders in all their diversity. This is our major hope for crafting a joint culture in which all genders (and human beings) can expect to experience justice and safety.

Just as Durkheim was able to "transcend" his gender by analyzing (in what seems a particularly feminist interpretation)[17] women's experience of family life and suicide, we are encouraged by the presence of both genders among our authors raising the questions that gender presents to our field. We may be unreconstructed positivists, but we believe that the articles in this issue illustrate

[17] See Kushner 1990 for a modern elaboration and critique of the gender aspects of suicide studies.

that rigorous social-scientific inquiry about how gender affects and is affected by sociolegal institutions and behavior can result in new insights and contributions to the incremental way in which knowledge is developed.

GENDER AND THE SOCIOLEGAL AGENDA

Gender is a social category, serving as a marker of some people's experience. But it also serves as a metaphor for asking us to think about assumptions or exclusions from our work. If many nonfeminists now see the gender absences in their work, whites and Anglos should also explore the racial/ethnic assumptions in their descriptions of social and legal reality. Although it will have to serve as another special issue for another day, race and ethnicity as markers of sociolegal reality are as controversial and socially contested as gender.[18]

Researchers in sociolegal studies not only need to determine if there are women's concerns but also to take them more seriously. "Women's issues"—among them, domestic violence, victimization, legal agency, family, divorce and child law reform, participation in the legal profession—all are among the topics that have been of special interest to sociolegal researchers. But taking gender seriously as a subject of inquiry should cause us to reconceptualize some of our theory, develop new "midlevel" propositions about human behavior and to look more critically at our methods of study and sources of verification.

As the articles in this issue and elsewhere make clear, there are vast numbers of issues awaiting further exploration. Are there separate "male and female legal cultures," whether illustrated by Gilligan's work and follow-up studies about moral reasoning, or by the plethora of work on rape and the gendered interpretations of sexual behavior? Will changes in the social stratification of legal institutions continue to operate differentially so that even if women enter the profession, they will continue to be segregated within it? Will women learn to use the criminal justice system to satisfy their needs and will the system respond to new demands and reforms? Will women be able to affect the way both criminal and civil justice systems stereotype them? Are lay or professional decisionmakers (such as judges) more or less likely to stereotype? How do law, lawlike rules, and legal symbols[19] help create gender identities? Does law help or hinder women's (and others) quest for

[18] Some would argue that conceptions of race and ethnicity and Eurocentrism in our social science practices are even more contested and problematic than gender. See, e.g., Gates 1986; Said 1978; Collins 1990; Haraway 1989; Harding 1991; Amin 1989.

[19] Gayle Binion's review (1991) of the legal surname issue, significant in the early days of the women's movement, is a powerful reminder of the importance of naming and symbols for constructing legal and social inequalities.

equality?[20] How does law legitimate or dismantle domination? How do excluded groups adapt formal legal processes to meet their basic needs? How does law create classes within genders to categorize and control interests and resistance?

These questions are difficult to operationalize. They are more complex and textured than the current impasses in feminist legal theory—going beyond legal and strategic questions of equality and gender neutrality and difference. Because sociolegal inquiry is not limited to the study of doctrine but reaches out broadly to the social forces and institutions that construct our legal consciousnesses, ideologies, and identities, it is likely that sociolegal studies will have much to say about these issues in the years to come. We hope that this Special Issue encourages, provokes, and stimulates new questions, new studies, and new students.

The dilemmas raised here and whenever these issues are discussed not only require rigorous study but also implicate policy decisions that are made every day and political choices that institutional, as well as individual, actors must face. As the initial interest in gender theory reminds us, these are political questions with real consequences for real people. As Lynne Henderson's review essay reminds us, the destabilization of social and legal life created by the feminist critique is deeply threatening to everyone, challenging roles and conceptions that people hold most dear. That we care so deeply about these things should tell us that they are important to explore, understand and, in many cases, change. The directions of change should be well informed by the increasingly complex meanings of gender that have emerged from our political and scholarly struggles.

REFERENCES

AMIN, Samir (1989) *Eurocentrism*. New York: Monthly Review Press.

ANDERSEN, Margaret L. (1988) *Thinking About Women: Sociological Perspectives on Sex and Gender*. 2d ed. New York: Macmillian Publishing Co.

BARLETT, Katherine (1990) "Feminist Legal Methods," 103 *Harvard Law Review* 829.

BELENKY, Mary Field, Blythe McVicker CLINCHY, Nancy Rule GOLDBERGER, and Jill Mattuck TARULE (1986) *Women's Ways of Knowing: The Development of Self, Voice and Mind*. New York. Basic Books.

BERGER, Peter L., and Thomas LUCKMANN (1966) *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*. Garden City, NY: Doubleday.

BINION, Gayle, (1991) "On Women, Marriage, Family and the Traditions of Political Thought," 25 *Law & Society Review* 461.

BLEIER, Ruth (1984) *Science and Gender: A Critique of Biology and Its Theories on Women*. Elmsford, NY: Pergamon Press.

——— (ed.) (1988) *Feminist Approaches to Science*. New York: Pergamon Press.

[20] One feminist sociologist of law has recently decried the legal system as being "juridogenic" (causing harm as it attempts to right wrongs) for women. Smart 1989:12.

BROWN, Barbara A., Thomas I. EMERSON, Gail FALK, and Ann E. FREEDMAN (1971) "The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women," 80 *Yale Law Journal* 871.

COLLIER, Jane, and Sylvia YANAGISAKO (1987) *Gender and Kinship*. Stanford, CA: Stanford University Press.

COLLINS, Patricia Hill (1990) *Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment*. Boston: Unwin Hyman.

COOK, Judith A., and Mary Margaret FONOW (1990) "Knowledge and Women's Interests: Issue of Epistemology in Feminist Sociological Research," in J. M. Neilsen (ed.), *Feminist Research Methods*. Boulder, CO: Westview Press.

BEAUVIOR, Simone de (1949) *The Second Sex*. New York: Knopf.

DUBOIS, Ellen (1978) *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America 1848–1869*. Ithaca, NY: Cornell University Press.

EICHLER, Margrit (1988) *Nonsexist Research Methods*. Boston: Allen & Unwin.

EISENSTEIN, Hester, and Alice JARDINE (eds.) (1985) *The Future of Difference*. New Brunswick, NJ: Rutgers University Press.

EISENSTEIN, Zillah (1988) *The Female Body and the Law*. Berkeley: University of California Press.

EPSTEIN, Cynthia Fuchs (1988) *Deceptive Distinctions: Sex, Gender and the Social Order*. New Haven, CT: Yale University Press.

FAUSTO-STERLING, Anne (1985) *Myths of Gender: Biological Theories About Women and Men*. New York: Basic Books.

FLAX, Jane (1989) *Thinking Fragments: Psychoanalysis, Feminism and Postmodernism in the Contemporary West*. Berkeley: University of California.

FORD, David A. (1991) "Prosecution as a Victim Power Resource: A Note on Empowering Women in Violent Conjugal Relationships," 25 *Law & Society Review* 313.

FREEDMAN, Estelle (1990) "Theoretical Perspectives on Sexual Difference: An Overview," in D. Rhode (ed.), *Theoretical Perspectives on Sexual Difference*. New Haven, CT: Yale University Press.

FRIEDMAN, Lawrence (1986) "The Law and Society Movement," 38 *Stanford Law Review* 763.

GAGNIER, Regina (1990) "Feminist Post-Modernism: The End of Feminism or the Ends of Theory," in D. Rhode (ed.), *Theoretical Perspectives on Sexual Difference*. New Haven, CT: Yale University Press.

GARTNER, Rosemary, and Bill McCARTHY (1991) "The Social Distribution of Femicide in Urban Canada, 1921–1988," 25 *Law & Society Review* 287.

GATES, Henry Louis, Jr. (ed.) (1986) *"Race," Writing and Difference*. Chicago: University of Chicago Press.

GILLIGAN, Carol (1982) *In a Different Voice: Psychological Theory and Women's Development*. Cambridge, MA: Harvard University Press.

GOODMAN, Jane, Elizabeth F. LOFTUS, Marian LEE, and Edith GREENE (1991) "Money, Sex, and Death: Gender Bias in Wrongful Death Damage Awards," 25 *Law & Society Review* 263.

GORDON, Linda (1988) *Heroes of Their Own Lives: The Politics and History of Family Violence: Boston 1880–1960*. New York: Viking Books.

HAGAN, John, Marjorie ZATZ, Bruce ARNOLD, and Fiona KAY (1991) "Cultural Capital, Gender and the Structural Transformation of Legal Practice," 25 *Law & Society Review* 239.

HARAWAY, Donna (1989) *Primate Visions: Gender, Race and Nature in the World of Modern Science*. London: Routledge.

HARDING, Sandra (1986) *The Science Question in Feminism*. Ithaca, NY: Cornell University Press.

——— (ed.) (1987) *Feminism and Methodology: Social Science Issues*. Bloomington: Indiana University Press.

——— (1991) *Whose Science? Whose Knowledge? Thinking from Women's Lives*. Ithaca, NY: Cornell University Press.

HAWKSWORTH, Mary (1989) "Knowers, Knowing, Known: Feminist Theory and Claims of Truth," 14 *Signs* 533.

HENDERSON, Lynne (1991) "Law's Patriarchy," 25 *Law & Society Review* 411.
HIRSH, Marianne, and Evelyn Fox KELLER (eds.) (1990) *Conflicts in Feminism*. London: Routledge.
HOOKS, bell (1981) *Ain't I A Woman? Black Women and Feminism*. Boston: South End Press.
JOHNSON, Alex M., Jr. (1991) "The New Voice of Color," 100 *Yale Law Journal* 2007.
JOHNSON, Miriam M. (1988) *Strong Mothers, Weak Wives*. Berkeley: University of California Press.
KANDAL, Terry (1988) *The Women Question in Classical Sociological Theory*. Gainesville: University Presses of Florida.
KELLER, Evelyn Fox (1985) *Reflections on Gender and Science*. New Haven, CT: Yale University Press.
KENNEDY, Randall (1989) "Racial Critiques of Legal Academia," 102 *Harvard Law Review* 1745 (1989).
KESSLER, Suzanne, and Wendy McKENNA (1978) *Gender: An Ethnomethodological Approach*. Chicago: University of Chicago Press.
KUSHNER, Howard (1990) "Women and Suicide in Historical Perspective," in J. M. Nielsen (ed.), *Feminist Research Methods*. Boulder, CO: Westview Press.
LEVINE, Felice (1990) "Goose Bumps and 'the Search for Signs of Intelligent Life' in Sociolegal Studies: After Twenty Five Years," 24 *Law & Society Review* 7.
LITTLETON, Christine (1987) "Reconstructing Sexual Equality," 75 *California Law Review* 1067.
MACAULAY, Stewart (1984) "Law and the Behavioral Sciences: Is There Any There There?" 6 *Law and Policy Quarterly* 149.
MACCOBY, Eleanor Emmons, and Carol Nagy JACKLIN (1974) *The Psychology of Sex Differences*. Stanford, CA: Stanford University Press.
MacKINNON, Catharine A. (1987) *Feminisim Unmodified*. Cambridge, MA: Harvard University Press.
——— (1989) *Toward a Feminist Theory of the State*. Cambridge, MA: Harvard University Press.
MARKS, Elaine, and Isabelle de COURTIVRON (1981) *New French Feminisms*. New York: Schocken Books.
MENKEL-MEADOW, Carrie (1987) "Excluded Voices: New Voices in the Legal Profession Making New Voices in the Law," 42 *University of Miami Law Review* 29.
——— (1990) "Durkheimian Epiphanies: The Importance of Engaged Social Science in Legal Studies," 18 *Florida State Law Review* 91.
MILKMAN, Ruth (1986) "Women's History and the Sears Case," 12 *Feminist Studies* 375.
MILLER, Susan L., and Sally S. SIMPSON (1991) "Courtship Violence and Social Control: Does Gender Matter?" 25 *Law & Society Review* 335.
MOI, Toril (1986) *Sexual/Textual Politics*. London: Methuen.
MOORE, Thomas J. (1989) "The Cholesterol Myth," *Atlantic Monthly*, September, 37.
MORANTZ-SANCHEZ, Regina (1985) *Sympathy and Science: Women Physicians in American Medicine*. New York: Oxford University Press.
MORELLO, Karen Berger (1986) *The Invisible Bar: The Women Lawyer in America*. New York: Random House.
NIELSEN, Joyce McCarl (ed.) (1990) *Feminist Research Methods: Exemplary Readings in the Social Sciences*. Boulder, CO: Westview Press.
OKIN, Susan Moller (1989) *Justice, Gender and the Family*. New York: Basic Books.
OLSEN, Frances (1983) "The Family and the Market: A Study in Ideology and Legal Reform," 96 *Harvard Law Review* 1497.
PATEMAN, Carole (1988) *The Sexual Contract*. Stanford, CA: Stanford University Press.
PEPLAU, Leticia Anne, and Eve CONRAD (1989) "Beyond Non-sexist Research: The Perils of Feminist Methods in Psychology," 13 *Psychology of Women Quarterly* 379.

RAPAPORT, Elizabeth (1991) "The Death Penalty and Gender Discrimination," 25 *Law & Society Review* 367.
RHODE, Deborah L. (ed.) (1990) *Theoretical Perspectives on Sexual Difference*. New Haven, CT: Yale University Press.
ROLLINS, Judith (1985) *Between Women: Domestics and Their Employers*. Philadelphia: Temple University Press.
ROSALDO, Michelle Z., and Louise LAMPHERE (eds.) (1974) *Women, Culture and Society*. Stanford, CA: Stanford University Press.
ROSENBERG, Rosalind (1982) *Beyond Separate Spheres: Intellectual Roots of Modern Feminism*. New Haven, CT: Yale University Press.
SAID, Edward (1978) *Orientalism*. New York: Random House.
SANDAY, Peggy (1990) *Fraternity Gang Rape: Sex, Brotherhood, and Privilege on Campus*. New York: New York University Press.
SCHIEBINGER, Londa (1989) *The Mind Has No Sex? Women in the Origins of Modern Science*. Cambridge, MA: Harvard University Press.
SCHULTZ, Vicki (1990) "Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument," 103 *Harvard Law Review* 1750.
SCOTT, Joan (1988) "Deconstructing Equality-Versus-Difference: Or, The Uses of Poststructuralist Theory for Feminism," 14 *Feminist Studies* 33.
SMART, Carol (1989) *Feminism and the Power of Law*. London: Routledge.
SMITH, Dorothy (1987) *The Everyday World as Problematic: A Feminist Sociology*. Boston: Northeastern University Press.
STACEY, Judith (1989) "Can There Be a Feminist Ethnography?" 11 *Women's Studies International Forum* 21.
STACEY, Judith, and Barrie THORNE (1985) "The Missing Feminist Revolution in Sociology," 32 *Social Problems* 301.
VILLMOARE, Adelaide (1991) "Women, Differences, and Rights as Practices: An Interpretive Essay and a Proposal," 25 *Law & Society Review* 385.
WESTKOTT, Marcia (1990) "Feminist Criticism of the Social Sciences," in J. M. Nielsen (ed.), *Feminist Research Methods*. Boulder, CO: Westview Press.
WILLIAMS, Joan (1989) "Deconstructing Gender," 87 *Michigan Law Review* 797.
WILLIAMS, Wendy (1982) "The Equality Crisis: Some Reflections on Culture, Courts and Feminism," 7 *Women's Rights Law Reporter* 175.
WISHIK, Heather (1985) "To Question Everything: An Inquiry into Feminist Jurisprudence," 1 *Berkeley Women's Law Journal* 64.

CASES CITED

Bradwell v. Illinois, 16 Wall. 130 (1873).
California Federal Savings & Loan Association v. Guerra, 479 U.S. 272 (1987).
EEOC v. Sears Roebuck & Co., 581 F.2d. 941 (D.C. Cir. 1987).