
Feminist futures

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What research and or political issues are currently important for feminist legal studies and what issues need to be addressed by feminist legal studies in the future? Responding in a meaningful way to these questions posed by the *feminists@law* Editorial Board has been much more difficult than I thought it would be when I was approached initially. Why? Is it because there are so many issues that are important and that need to be addressed that I don't know where to start? Or is it that there are still after so many years of feminist struggle so many important and urgent issues? Or is it because the important and urgent issues seem to be getting more by the day? It is probably all of the above. I was asked to respond specifically from my perspective, so below I tentatively raise a few issues that are pertinent in post-apartheid South Africa in my view.

Let me start by again noting the difficulty. The continuing socio-economic inequality of women should be high if not the priority on the agenda. Similarly the extreme sexual violence against women and girls and the high incidence of rape of women and girls should be taken seriously when considering feminist research and politics. The particular plight of black women, of women infected with HIV/ AIDS and of gay women should be recognised in terms of socio-economic inequality as well as sexual violence and rape. But restating these problems and repeating the ongoing devastation in the face of a seeming progressive constitution and constitutional court has been done and will add nothing new to feminist legal studies in South Africa or elsewhere. A more important task – because this has been on the agenda – could be to do more analysis of the reasons for the failure. And here from my own perspective as an academic working at a university my suggestion for feminist legal studies (and also for *feminists@law*) is twofold. Firstly I would like to see feminist research seeking for the ideal of justice, even though it is unattainable. This search for justice is one that encompasses an involvement with norms and ideals, not merely numbers, measures and statistics. Secondly, feminist politics in my mind could benefit by exploring the notion of an 'ethics of discomfort.' I elaborate briefly on both suggestions below following Marianne Constable's 'Nietzsche, nihilism, and the social scientification of law' (1994) and Michel Foucault's 'For an ethics of discomfort' (1997).

As already noted I am treading on thin ice – how could I, given the already mentioned state of devastation, argue for what may seem as a purely abstract, theoretical and idealistic research path and given the precarious position of women as political agents suggest an embrace of discomfort? Constable (1994) responds to the influence of sociology on legal theory in the US. Space does not allow me to repeat her argument in any detail. However, to my mind Constable's argument has important implications for feminist research and the future of feminist research and I will take out only what I regard as the most pertinent for my tentative suggestions concerning feminist legal

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research. Constable follows Nietzsche's history of metaphysics as told in *Twilight of the Idols* (1889) in which he illustrates how through various phases (Platonism, Christendom, Kantianism and utilitarianism) the 'real' or 'true' world has been replaced by a world of phenomena, one that is observed and described according to empirical precision. Translating this into legal research one finds a similar shift from questions posing 'what should the law be?' and 'why should one obey the law?', 'ought questions', to questions posing 'what is law?', 'why do individuals and groups obey the law?', typical 'is' questions (Constable 1994: 555). Like Nietzsche, Constable's concern is that in observing the apparent we are not more focused on material issues linked to the ideal and the just, but those also disappear: 'We have abolished the real world: what world is left? The apparent world perhaps. ... But no! with the real world we have also abolished the apparent world' (Constable 1994: 552).

Constable's argument amounts to much more, but bringing this to bear on my suggestion here: I am not sure that all the focus on the material situation of women (as if such a situation can ever be grasped and described fully), albeit meticulously measured and described, contributes to the *ideal* of justice. Rather, I would urge questions of the *ought to be* of woman's being and becoming. Practically this does not mean that feminists should discontinue gaining facts and information about women's lives, but we should acknowledge the ethical limit of these attempts and strive to do more of the difficult, conceptual and less certain work. Sometimes as feminists we should refuse to engage in another counting exercise, of being counted by others but also of counting and measuring ourselves. Feminist legal studies should be careful not to accept an understanding of law and specifically feminist jurisprudence that amounts to 'sociological knowledge as the truth about law ... Sociology – whether as science or as interpretation, as law or as philosophy – speaks the truth of positive law in the language of belief and appearance, the language of "legitimacy", "values", "norms", "distribution", and "policy" – from which justice and the "true" world disappear' (Constable 1994: 588). Toward the end of the 1994 article Constable asks, 'what world is left ... what remains?' (588) The danger for law and also feminist legal studies is for 'the law of sociology ... to become absolute command. ... Sociological law threatens to be the consummation of Nietzsche's history of metaphysics: the permanent transfiguring or becoming of absolute subjectivity' (Constable 1994: 590). However, she ends with the possibility of hearing 'something other than the law of sociology shows itself' (590). Feminist legal research should be concerned with this 'other', with the possibilities of a world that remains, with other kinds of subjectivity.

If the research path tentatively suggested for feminism is one engaged with the other of legal positivism, what kind of politics could feminists engage in? In a short essay responding to a book by Jean Daniel (*The Era of Ruptures* 1979) Foucault comments on change, identity, and the Left. He notes that Daniel takes a turn from the question the Left has been asking for a long time, 'We exist but who are we?' Daniel's proposition is that 'Those who understand that it is necessary to wrest oneself from conservatism in order to be able to, at the very least, exist, and in the long term, not be completely dead, what must they be, or rather what must they do?' (Foucault 1997: 126). What is significant for feminist politics is the call for a critical distance and reflection. We might experience 'a globalization of the economy', 'a globalization of political consciousness' but not 'a universalization of political consciousness' (Foucault 1997: 125). It is Foucault's recall of Merleau-Ponty that I find suggestive for a feminist politics: 'Never consent to be completely comfortable with your own

certainties. ... One must clearly feel that everything perceived is only evident when surrounded by a familiar and poorly known horizon, that each certitude is only sure because of the support offered by unexplored ground. The most fragile instant has roots. There is here a whole ethics of tireless evidence that does not exclude a rigorous economy of the True and the False; but is not reduced to it either' (127).

Feminist scholars should continue to be concerned with women's material circumstances – poverty, sexual violence, discrimination on account of race, sexual orientation and HIV status. But we should also do more than merely describing the social phenomena and accepting policy and reform as enough. Questions related to the 'ought', an active interest in what remains after or behind sociological description linked to a politics and ethics that accept the limits of evidence and embrace discomfort might disclose previous paths and directions again for present and future research and politics.

References

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