

Nigel Sutton

**Redressing the Imbalance of Over Two Millennia: Feminist
Legal Theory as a Core Subject of Law School and the use of
the Feminist Narrative in Legal Education and Law**

LLM RESEARCH PAPER

LAWS 547: FEMINIST LEGAL THEORY

LECTURER: ESTAIR VAN WAGNER

FACULTY OF LAW

TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MAUI



VICTORIA
UNIVERSITY OF WELLINGTON

2016

<i>I</i>	<i>Introduction</i>	1
	<i>A Essay Outline</i>	1
	<i>B Foundational Premises Upon Which this Essay is Based</i>	3
	<i>i) Carol Gilligan’s ‘Ethic of Care’ and “Amy’s Webb’</i>	3
	<i>ii) Ann Scales Male ‘Ethic of Rights’ Versus Female ‘Ethic of Care’</i>	3
<i>II</i>	<i>Feminist Legal Theory Defined</i>	5
<i>III</i>	<i>Legal Education In New Zealand</i>	7
	<i>A How Female Law Students Found Law School in the 1990s and 2000s</i>	7
	<i>B My Political and Legal Education at Victoria University in 2004/2000s</i>	9
	<i>C Law School Curriculum Reform Debate</i>	10
<i>IV</i>	<i>Glass Ceiling for Women</i>	10
<i>V</i>	<i>Narrative Methodology, Feminist Legal Theory & Legal Education</i>	12
	<i>A What is Narrative Methodology?</i>	12
	<i>B Critiques of Narrative Methodology in Legal Education</i>	14
	<i>C How Can Feminist Legal Theory Use Narrative Methodology?</i>	15
<i>VI</i>	<i>Imagine Feminist Legal Theory as a Compulsory Subject</i>	17
<i>VII</i>	<i>The Value of Telling Stories</i>	18
<i>VIII</i>	<i>Case Outlines: From Historical New Zealand to Current Global Examples</i>	21
	<i>A R v Nepia</i>	21
	<i>B R v Rerekura</i>	22
	<i>C Brock Turner – Convicted Sexual Felon</i>	23
	<i>D Justice Robin Camp Presiding Over a Rape Trial</i>	24
	<i>E In Anybody Listening?</i>	25
<i>IX</i>	<i>The First Step to Creating a More Inclusive Legal Paradigm</i>	25
<i>X</i>	<i>Appeal to Educators</i>	28
<i>XI</i>	<i>Victoria University Law School: 2016 Where are we now with FLT?</i>	29
<i>XII</i>	<i>Conclusion</i>	30
<i>XIII</i>	<i>Bibliography</i>	32

Abstract

The foundations of law are fundamentally patriarchal. This means that many of the stories told in courts and legal forums are male stories. To redress over two millennia of patriarchal voices in the law, we need to make proactive normative changes to the law. The key argument in this essay is that we need to make Feminist Legal Theory (FLT) a compulsory core subject in undergraduate legal education. As part of teaching FLT, I promote the use of narrative methodology. By marrying narrative method with FLT, the feminist legal narrative is created. Drawing on feminist narratives from law schools, as well as my experience as an undergraduate, I recount universally unhappy tales with legal education. In developing this subject as a necessary core element of legal training, I seek to have a more feminine voice enter the law. Criminal case outlines are used to illustrate the point of how women's voice can be obscured or not heard by judges, even when eloquent. By developing skills of listening, narrative methodology and alternatives to adversarial dispute resolution, it is hoped women will be able to have their stories heard in a new way. Once women have created bigger more women-centric spaces in the law, then hopefully they can open up the way for others who feel "outsiders" before the law. Through FLT education the goal is to challenge and educate those who will wield the power of the law and have them consider the law through the ever-present issues of gender and sexuality. Feminist educators are encouraged to inject their personal narratives into their teaching. Finally, I consider the distance between current availability of FLT for students at Victoria University and my goal of compulsory FLT.

Word length

The text of this paper (excluding abstract, table of contents, footnotes and bibliography) comprises 9043 words.

Subjects and Topics

Jurisprudence and Feminist Legal Theory (FLT)
Importance of Legal Narrative for FLT and other "outsiders"
Critiques of Narrative Methodology
Critiques of FLT as a Compulsory Subject
Legal Education
Critiques of Legal Education
How to Improve Legal Education with FLT

I Introduction

A Essay Outline

This essay begins in Part II with a definition and brief overview of Feminist Legal Theory (FLT). Academic articles exploring the experience of female law students illustrate that while the number of female law students was increasing during the 1990s and 2000's, these women did not necessarily find law school welcoming.¹ Next, I reference my own political and legal education at Victoria University as an undergraduate between the years 2002-2006, to demonstrate the male-defined paradigms that were being perpetuated. In Part IV, statistics examining the under-representation of women in the higher legal roles in New Zealand are briefly discussed, to show that despite the research behind this paper spanning the past 30 years or so, the issues of gender inequality that are highlighted remain current problems.

The cornerstone of my argument is this: we need to educate law students differently than we do currently. I contend that all law students ought to be required to complete FLT as a core academic subject. Teaching FLT as a core paper could begin a transformation in legal education and hopefully in legal practice that could have widespread benefits to law and society. Our doctrinal focus in New Zealand no more provides the industry "baby lawyers" than would an education that adopted a more holistic and critical legal education, or at least one that demanded one course in FLT.² A core curriculum that mandated FLT as compulsory would be at least as robust, and arguably considerably more so than the current curriculum. This is because FLT forces students to think in a way that is beyond and even critical of the legal status quo. It has students of privilege

¹ See generally Leah Whiu "A Maori Women's Experience of Feminist Legal Education In Aotearoa" (1994) 2 Waikato Law Review 161-169; Carmel Rogers "How Legal Education Will Assault You as a Woman" (1993) 23(2) VUWLR 167; Caroline Morris "A Mean Hard Place? Law Students Tell It As It Is" (2005) 36(2) VUWLR 197-228.

² See Spiegelman, Paul J "Integrating Doctrine, Theory and Practice in the Law School Curriculum: The Logic of Jake's Ladder in the Context of Amy's Web" (March/June 1988) Journal of Legal Education 38(1/2) 243-270 at 244 where he highlights a critique from Donald W Jackson that law school "fails to produce competent lawyers".

hear the stories of outsiders, and it makes "better lawyers for tomorrow".³ In examining the notion of compulsory FLT I outline what narrative methodology is and why it may be a useful legal tool when combined with FLT, or even potentially being a methodology used in all legal teaching to varying degrees. In creating this fusion, students learn about the feminist legal narrative and how this type of narrative may be helpful in humanising and personalising women interacting with the law. I link two historic New Zealand criminal case law examples with two contemporary criminal cases from the global stage, to demonstrate the discursive power of law and how even a strong feminist legal narrative can be ignored. The idea of developing the narrative methodology in law students is that law graduates will then have better-developed ability to tell their clients' stories to judges, juries and wherever else their advice is sought.⁴ In making a subject such as FLT compulsory, it might also force students to examine their position, privilege and worldview, in a manner possibly not previously done.⁵ In discussing these ideas, I articulate the common criticisms of narrative methodology, which to an extent mirror those opposed to FLT as a core subject, and I respond to these arguments.

In Part XII I return to the issue of FLT at Victoria University in 2016 and beyond. This partial focus on New Zealand university legal education is an attempt to add something to the limited discourse in this area. It is also a response to the other students in my FLT postgraduate class; they have articulated an interest in New Zealand feminism. Given the cultural difference within Western feminisms⁶ their interest is relevant and not overly well served. This work is constrained by its use of secondary sources and a lack of time to conduct primary research into how women are experiencing legal education at Victoria Law School today. It is now twelve years since Caroline Morris published her study that

³ Cain, Patricia "Teaching Feminist Legal Theory at Texas: Listening to Difference and Exploring Connections" *Journal of Legal Education* 38(1/2) (March/June 1988) 165-181 at 179.

⁴ The distinction of "law graduate" from "lawyers" is deliberate because just as many law graduates do not become lawyers they still often inhabit the world of power and naming. Jobs such as policy analysis and legislative drafting demonstrate the discursive power that can exist in many places.

⁵ KC Worden "Overshooting the Target: A Feminist Deconstruction of Legal Education" (1985) 34 *American University Law Review* 1141-1156 at 1151.

⁶ See Margaret Davies *Asking the Law Question* (2nd ed, Lawbook Co: Sydney, 2002) 233-249 at 234.

did not reveal overly positive experiences from women at Victoria Law School.⁷ It would be worthwhile updating this study to see if anything has improved.

B Foundational Premises Upon Which this Essay is Based

i) Carol Gilligan's 'Ethic of Care' and 'Amy's Webb'

Carol Gilligan introduced this notion of an 'ethic of care' when she critiqued Lawrence Kohlberg's stages of moral development. Gilligan challenged the idea that "abstract reasoning and universal norms" which tended to be used by males was superior to valuing care and relations with others, which tended to be female traits.⁸ This "different voice theory" is a school of feminist thought that acknowledges women's gender differences from men's. Tracing Gilligan's work Peter Spiegelman introduces the notion of "Amy's Web" which signifies the interconnectedness and the relationships between things that women see. In contrast men's logic and rationalism is linked to Jake's Ladder. It is not that there is no place for the male voice, but we need to inject the law with far more ethic of care and "Amy's Web" perspectives if the law is to aim at justice for all. This essay utilises this idea of an ethic of care and Amy's Webb.

ii) Ann Scale's Male 'Ethic of Rights' Versus Female 'Ethic of Care'

Ann Scales provides the notion that boys are raised to be independent of their mothers and develop an 'ethic of rights' which values the preservation of individual autonomy. This rights viewpoint developed in boys opposes the relationship valuing 'ethic of care' developed in girls. To Scales, there is no compromise solution. The male "'rights-based' approach is incompatible with the female 'ethic of care' and therefore must go".⁹ I do not take anywhere such an absolutist position as Scales, but I do think that there is space for the law to evolve with an 'ethic of care' that is mostly not currently present. KC Worden argues "In fact, the entire adversarial system itself is a classically 'male voice' approach

⁷ Caroline Morris "A 'Mean Hard Place'? Law Students Tell It As It Is" (2005) 36(2) VUWLR 197-228.

⁸ Margaret Davies "Law's Truth and the Truth About the Law Interdisciplinary Refractions" in Margaret Davies and Vanessa E Munro (eds) *The Ashgate Research Feminist Legal Theory* (Ashgate Publishing: Surrey, 2013) 68-81 at 68.

⁹ Ann Scales (1986) cited in Ngaire Naffine (eds) "Feminist Excavations" in *Law and the Sexes Explorations in Feminist Jurisprudence* (Allen & Unwin: Wellington, 1990) 1-24 at 11.

to dispute resolution".¹⁰ I also strongly question the adversarial model and believe that it is architecturally unhelpful supporting and perpetuating a competitive rather than a just legal environment.¹¹

While postmodern feminism has admitted a more developed and nuanced legal reality than arguing that the law is entirely male, the law is still predominantly patriarchal.¹² Law, legal reasoning and jurisprudence are predominantly male constructions.¹³ Ngaire Naffine offers us this critique:¹⁴

While law purports to deal in abstract individuals, in truth it has a preferred person: the man of law, the individual who flourishes in, and dominates, the type of society conceived by law.

KC Worden writes¹⁵

The subjugation of the 'female voice' in law seems to me a result of the fact it has been predominantly men who have created and perpetuated the belief clusters which form the legal system.

The debate over the relevance of the legal narrative generally, will be outlined,¹⁶ with this essay proceeding from the premise that the legal narrative is a valuable tool for feminist legal approaches.¹⁷ Further foundational premises are that it "is possible to adopt, for

¹⁰ Worden above n 5 at 1147.

¹¹ See Spiegelman, above n 2 at 246-247. Citing Leonard Riskin, The "Lawyers standard philosophical map" is based on an adversarial relationship between parties to a dispute and assumes that the dispute can be resolved by application of a general rule of law, without considering either the possibility that the parties may be able to find a cooperative solution that benefits both or that the dispute is unique and not apt to fit any general rule".

¹² See generally Worden above n 5; see also Davies above n 8.

¹³ Leslie Bender "From A Gender Difference to Feminist Solidarity: Using Carol Gilligan and an Ethic of Care in Law" (1990) 15 Vermont LR 1 at 17.

¹⁴ Naffine above n 9 at 22.

¹⁵ Worden above n 5 at 1148.

¹⁶ Contrast Heather McDonald "Law School Humbug" (1995) Autumn City Journal 1-14 with Scott Ihrig, "Sexual Orientation in Law School: Experiences of Gay, Lesbian, and Bisexual Students" (1996) 14 Law & Ineq J 555-586.

¹⁷ See generally Patricia J Williams *The Alchemy of Race and Rights: Diary of a Law Professor* (Harvard University Press: Cambridge, Massachusetts, London, 1991) at 8, "I would like to write in a way that reveals the intersubjectivity of legal constructions, that forces the reader both to participate in the construction of meaning and to be conscious of that process".

some purposes, a political identification with others (such as other women) while still working towards a destabilisation and alteration of these identity categories".¹⁸ In other words, this essay premises itself upon the idea that despite the many other categories women inhabit, for legal analyses sometimes the category "women" is useful and even vital.¹⁹ Also, the constructionist position that power is polymorphous and all pervasive underpins this work. Reality, and in particular legal reality, is created through discourse.²⁰ The power of naming and classifying something as legal and illegal, (or worthy of being studied at law school), has been and is predominantly the domain of privileged members of the patriarchy.²¹

These underlying premises are not in themselves uncontroversial, but this work originates from a position that assumes language is integral to the dispersion of power. As the legal system is a system of authority and control, a mode of organising society, then "the stories that judges tell" determine peoples' lives.²² By bringing FLT and narrative methodology into mainstream legal education, I seek to expand the range of stories the law can tell and hear.

II Feminist Legal Theory Defined

FLT is a school of jurisprudential thought. However, such description does more to limit than to explain what it is. Professor Catharine MacKinnon has offered this useful definition of FLT:²³

It is a multi-faceted approach to society as a whole, an engaged discipline of a diverse reality with both empirical and analytic dimensions, explanatory as well as descriptive aspirations, and practical as well as theoretical ambitions. Because it must consider not only existing law and reality, but women's exclusion from life and

¹⁸ Davies above n 6 at 233, 249.

¹⁹ Bender above n 13 at 28. Contrast McDonald above n 16 at 6.

²⁰ Lucinda M Finley Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning" (1989) 64 Notre Dame L Rev 886 at 888.

²¹ Bender above n 13 at 17-18 "Patriarchy is the domination of culture and society by men".

²² Regina Graycar "The Gender of Judgements: Some Reflections on Bias" (1998) UBC Law Rev 1-21 at 13.

²³ Catharine MacKinnon "Feminism In Legal Education" (1989) 1 Legal Educ Rev 85-95 at 85.

scholarship, and because nothing that happens to a woman or a man is presumed exogenous to it, feminism is perhaps less about “one thing” than any other approach to legal scholarship.

Within FLT there are several (many?) subdivisions or intersections and while they can be grouped together under the overarching title of FLT, this attempt to categorise in a reductionist manner is a recurrent critique of male legal approaches.²⁴ The endless reductionism, simplification and strained analogies as though all factual matrix can be distilled into one of a few bounded rationalist analytical frameworks, restrains the real potential of the law.²⁵

Within feminist jurisprudence²⁶ exist voices that do not wish to be absorbed under such an all-encompassing name. Some lesbians have felt excluded from feminist legal theory,²⁷ and others have consciously excluded themselves.²⁸ Lesbian jurisprudence attempts to disquiet and unsettle the “basic assumptions and prejudices of mainstream feminisms”.²⁹ Women of colour have pursued their own jurisprudence through tools evolved from critical race theory and poetry,³⁰ and out of discontent with the silence that purely gender-defined feminisms have required.³¹ Post-modernist feminists such as Margaret Davies seek the inclusion of different feminisms, but not in a manner that supports the deception that the “dominant paradigms are larger than the various criticisms

²⁴ Williams, above n 17 at 6-7.

²⁵ Fran Olsen, *The Sex of Law* (unpublished manuscript on file with the author) in Carrie Menkel-Meadow “Portia in a Different Voice: Speculation on a Women’s Lawyering Process” (1985) *Berkeley Women’s LJ* 39 at 44.

²⁶ See Robson “Lesbian Jurisprudence” (Colombia University Press, Colombia, 1998) 448-452 at 449. “Jurisprudence is actually patriarchal jurisprudence and therefore not legitimate as universal jurisprudence”. See also Davies above n 6 at 203, where she describes as illusory the approach that makes patriarchal legal theory the general category, of which feminism is a subset, of which minority feminism are further subsets”.

²⁷ Stewart, at 830.

²⁸ Davies above n 6 at 212.

²⁹ Robson at 449.

³⁰ Finley above n 20 at 904 quoting Audre Lourde “‘poetry is not a luxury’ but an essential means of expression, of self-articulation and definition, of survival” [especially for women of colour].

³¹ Davies above n 6 at 204; see Finley above n at 904.

which have been developed in response to them”.³² Davies understands that the multiplicity of approaches and viewpoints her approach allows, is not necessarily harmonious (nor I would argue, at times even entirely comprehensible), but she believes “the plurality of methods allows for sustained critique and collectively promotes political shifts in thinking”.³³ Until feminist jurisprudence emerged in response to mainstream jurisprudence, the law lacked much, if any, feminist focus. Any stories the law told about women were generated within and by the patriarchy. What was absent, or silent, or silenced, was women’s stories and those that did not fit within the patriarchal paradigm. The multiplicity of narratives and theories that have emerged from the feminist movement(s) is testimony to the need to have these voices heard and their stories told.³⁴

III Legal Education In New Zealand

A How Female Law Students Found Law School in the 1990s & 2000s

The rapid growth and production of feminist legal theory, philosophy and critique of the status quo since the first “incitement to discourse”³⁵, proves that women needed no second invitation. As FLT solidified and gained momentum, there was an “influx of female law students into law school”³⁶, so that by October 2004 “female students comprised 65% of the law student body at VUW”.³⁷ Women were (and are) seeking legal

³² Davies, above n 6 at 203.

³³ Davies, above n 8 at 71.

³⁴ Menkel-Meadows above n 25 at 50.

³⁵ See generally Michelle Foucault, *The History of Sexuality* (Vol 1, Random House: New York, 1978) 17-35 where he discusses the polymorphous, all-pervasive nature of power and how power is wielded through discourse. Foucault introduces the notion of “incitement to discourse” which in simple terms, means, the more we talk about something the more we breathe life into that thing. This essay is premised on the idea that if we teach FLT to all students, then we breathe life and incite discourse about female oppression before the law, and what can be done to address it.

³⁶ Morris, above n 1 at 197. Written by Caroline Morris (not then ‘Dr’ Morris) during my time as an undergraduate law student at Victoria, I concur with the overall view in her article. Despite being a mature student, for me, Victoria Law School was a “mean hard place” and lonely, elitist, privileged and heteronormative.

³⁷ Morris, above n 1 at 201.

knowledge and education.³⁸ However, the three New Zealand journal articles about being a woman at law school in New Zealand, from around this era, are unflattering.³⁹ Some female law students found Victoria Law School to be a “mean hard place”.⁴⁰ Carmel Rogers wrote in 1993 “for a woman to write about legal education at Victoria ... is an inevitable blasphemy – an undressing of male academic reverence right down to its exposed, shivering sanctimoniousness”.⁴¹ Rogers’ article was written to tell readers “how legal education will assault you as a woman”.⁴² A year later in 1994 Leah Whiu wrote of how as a Maori woman she was culturally invisible in her feminist legal education class at Waikato University.⁴³

Being wheeled out, here is our native girl! An exhibit. And a sentence or two is trotted out, mentioning Maori women. For of course not to would be a political no-no. And you write one maybe two paragraphs about us in your paper which your network will publish, buy and use in their writing; while I sit here everyday amongst you, invisible it seems.

Whiu identifies that her struggle necessarily takes account of the feminist struggle. She writes, “I can’t ignore patriarchy in my struggle. Yet you can and do ignore the “colour” of patriarchy, the cultural specificity of patriarchy. And in doing so you ignore me”.⁴⁴ From this, we can see that legal education was exclusive, even a subject such as feminist

³⁸ Max Towley “Equal Numbers of Female, Male Lawyers for the First Time” 10/5/2016 Radio New Zealand <<http://www.radionz.co.nz/news/national/295517/equal-number-of-female,-male-lawyers-for-first-time>>.

³⁹ There does not appear to be anything published in New Zealand on this subject, since this time.

⁴⁰ Morris, above n 1.

⁴¹ Rogers, above n 1 at 167.

⁴² Rogers, above n 1 at 167.

⁴³ Whiu above n 1 at 165. Eight years later I commenced my legal education at Victoria. As a gay man it was characterised by invisibility and little if any “gay voice” being present in lectures, tutorials or readings. I was particularly upset when for weeks my Bill of Rights class discussed the *Quilter v Attorney-General* [1998] 1 NZLR 523 case about a lesbian couple seeking the legal right to marry, without any real thought about the human rights of the applicants. This was both a lack of narrative methodology and also total doctrinal focus with no critical analysis as to what ought to have happened, just focus on what the judges said. I often wonder if my empathy with the feminist struggles is because I am an outsider. I know what it is to feel oppression and to have to operate within a heteronormative system. This allows me to also see the patriarchy, racism, discrimination, privilege and class. It does not mean that these things are all of my experience, but living as an outsider gives a different kind of access to understanding these things than not. See Davies above n 8 at 68-69 for an outline of “Standpoint Theory”.

⁴⁴ Whiu above n 1 at 168.

legal education was not considering intersections of oppression and was itself an agent of oppression.⁴⁵

These articles were both written over twenty years ago and during that time FLT has opened its doors to much wider possibilities. As to whether Whiu's criticisms have been authentically addressed, remains unclear. In 2004 Caroline Morris conducted a survey of Victoria Law School Students, Morris concludes "It also seems that the increased numbers of women attending law school has had little impact on the negatively gendered nature of the experience".⁴⁶ This does tell us that ten years on from Whiu's article, things were not a whole lot better for women at law school.⁴⁷

B My Political & Legal Education at Victoria University in 2004/2005

As a second year Political Science undergraduate I studied a course, with an accompanying textbook of the same name: *International Relations in Political Thought*. In this course, the main political thinkers from 5BCE through until the late 1800s were surveyed. The three male professors who had compiled the book had not included a single women thinker or philosopher in nearly the two millennia spanned. In 2005 I studied jurisprudence as part of my undergraduate law degree. Once again there seemed to be no room for female ideas as we studied the concepts of Dworkin⁴⁸ (and not feminist Andrea Dwokin!⁴⁹), Raz,⁵⁰ Kelsen⁵¹ and Hart⁵² – all men. Feminist jurisprudence was

⁴⁵ See Worden above n 5 at 1152 where she writes, "My point is simply that 'male voice' tyranny runs very deep. Even when doing feminist critical theory it is often difficult to break free from years of internalized socialization".

⁴⁶ Morris above n 1 at [220]. Morris' study was substantial with 533 respondents.

⁴⁷ Morris above n 1 at [220].

⁴⁸ See generally Ronald Dworkin "The Model of Rules I" in *Taking Rights Seriously* (Harvard University Press: Cambridge, Massachusetts, 1978) 14-45.

⁴⁹ Julie Bindel "What Andrea Dworkin, the Feminist I Knew, Can teach Younger Women" (30 March 2015) *The Guardian* <<https://www.theguardian.com/commentisfree/2015/mar/30/andrea-dworkin-the-feminist-knew-teach-young-women>>.

⁵⁰ See generally J Raz "Legal Positivism and the Sources of Law" in *The Authority of Law* (Oxford University Press, Oxford, 1983) 38-52.

⁵¹ See generally Brian Bix "Hans Kelsen's Pure Theory of Law" in *Jurisprudence: Theory and Context* (2nd ed, Sweet & Maxwell: London, 1999) 51-59.

discussed in the later part of the course and was largely dismissed as marginal and niche. It was described as prone to radical positions and internal factions and we were assured it would not be part of the course assessment. It can seem almost petty to assert that it was (nearly) all men we studied in both these courses, as this may have just reflected the period covered. However, this was 200 level political science and 300 level legal education at Victoria University. Male lecturers, without any representation of female thinkers, academics and philosophers, were telling history, politics and law in a ‘male voice’. If there really were no women political or legal scholars whose voices could be recalled from during these past centuries, then that only further cements the argument that “men have made the legal world”.⁵³ Postmodern feminism has allowed for a less absolutist position, regarding law as the site of many intersecting interests and voices. However, while this approach is convincing and more acknowledging and descriptive of the multiple realities and lifestyles people have, there is also the fact that legal and political education has not necessarily sought to hear female voices, let alone intersecting voices. Just over a decade ago I experienced two courses, one political science course devoid of female position or voice, and the other Jurisprudence, with FLT compartmentalised as not important enough to assess.⁵⁴

C Law School: The Curriculum Reform Debate

General criticisms of contemporary legal education range from it having an “intermediate level of abstraction” meaning it is neither theoretical nor practical, through to it neglecting “emotions and values”.⁵⁵ Other challenges include that legal education “indoctrinates students in the politics of hierarchy and subordination”⁵⁶ and that the law is “too adversarial, [it] neglects cooperative modes of interaction”.⁵⁷ Indeed, there is an ongoing conflict in legal education “between theorists, who want to move toward more

⁵² See generally HLA Hart “Postscript” in *The Concept of Law* (2nd ed, Oxford University Press: Oxford, 1997) 250-276.

⁵³ Davies, above n 6, at 198.

⁵⁴ To balance this critique it must be noted that the lecturer highlighted that FLT was available as a complete course, which is why it was only briefly traversed.

⁵⁵ Spiegelman above n 2 citing Roger Cramton at 244.

⁵⁶ Spiegelman, above n 2 citing David Kairys at 245.

⁵⁷ Spiegelman, above n 2 citing Derek Bok at 245.

sophisticated abstraction, and practice-oriented teachers, who want to move toward more concrete learning”.⁵⁸ This is the curriculum reform debate in a nutshell. However, while my argument for compulsory FLT could be seen as me taking sides with the theorists, my position is broader in that I am seeking to develop practical skills with narrative methodology while offering more subversive theory than many students may otherwise encounter in legal education. Indeed, there is an argument for narrative methodology to be used (as appropriate) in all legal subjects to remove the abstraction of much legal teaching and connect it to real examples.

IV Glass Ceiling for Women

While “women law graduates have outnumbered men for more than a decade” this has not translated into women being well represented in higher legal positions around New Zealand.⁵⁹ Fewer than one in five Queen’s Counsel are women and the judiciary also demonstrates this glass ceiling for women. The obvious retort to this point is that the Chief Justice, Dame Sian Elias, is a woman. Unfortunately, this argument is actually indicative of the reality that a woman in a senior role actually often reduces rather than increases the likelihood of another woman holding a top position in the same organisation.⁶⁰ The judiciary exemplifies this with 29.9% of judges being women, as of 9 November 2015.⁶¹ Justice Susan Glazebrook details how real gender disparity in the judiciary is, and how this disparity is also seen in many other countries.⁶² In 2010 Jane Glover wrote of the situation in New Zealand⁶³

⁵⁸ Spiegelman, above n 2 at 245.

⁵⁹ Towley above n 38.

⁶⁰ Alexander C Kaufman “Once A Company Has One Woman Executive it’s Harder for Another to Get Another Top Job (10 April 2015) The Huffington Post <http://www.huffingtonpost.com/2015/04/08/women-executives_n_7025720.html>; Farida Jalalzai “Shattered, Cracked or Firmly Intact: Women and the Executive Glass Ceiling Worldwide (May 2013) Oxford Scholarship Online DOI:10.1093/acprof:oso/9780199943531.001.0001.

⁶¹ Geoff Adlam “New Zealand’s Judiciary and Gender (11 November, 2015) Law Society <<https://www.lawsociety.org.nz>>.

⁶² Justice Susan Glazebrook “Looking Through the Glass: Gender Inequality at the Senior Levels of New Zealand’s Legal Profession (16 September 2010) <<https://www.courtsofnz.govt.nz/speechpapers>>.

⁶³ Jane Glover “Women on the Bench” New Zealand Lawyer (16 April 2010) <<http://www.nz.lawyer magazine.co.nz>>.

Assuming most judicial appointments are made when applicants have around 15-20 years' experience, judicial appointments made over the last five years should comprise roughly equal numbers of men and women. This has not proved to be the case.

That women are still eclipsed by a two-to-one ratio to men in the judicial ranks in New Zealand influences all of the judiciary and case law development. We all know that superior courts create case law precedent.⁶⁴ With this ratio of men to women judges, even when there is a woman on a judicial bench she is likely to be outnumbered by male judges, meaning that her voice may fall into the minority. This is particularly important in matters where gender is at issue. This point can be dismissed as overly essentialist and as presupposing that all women judges automatically represent the interests of women and gender. Despite the validity of both these potential dismissals of my point, they do not undermine the question of why the numbers simply do not add up?

V *Narrative Methodology, Feminist Legal Theory & Legal Education*

A *What Is Narrative Methodology?*

The legal narrative uses subjective analysis with the storyteller often providing vulnerable insight into her or his character and situation. In doing so, the storyteller seeks to generate empathy and understanding. Through employing the legal narrative, it is hoped that feminists will enable "paradigm shifting".⁶⁵ When Patricia Williams released her groundbreaking book employing narrative methodology, *The Alchemy of Race and Rights*, she "invented a whole new genre of writing".⁶⁶ Williams argues "Most scholarship in law is like the old 'math': static, stable, formal – rationalism walled against chaos".⁶⁷

⁶⁴ See Peter Spiller *Dispute Resolution in New Zealand* (Oxford University Press, Oxford, New York, 1999) at 161. "New Zealand judges are unlikely to depart from precedents that have been repeatedly followed, even when they disapprove of or doubt the precedent".

⁶⁵ Jean C Love "The Value of Narrative Scholarship in Teaching" (1998) 2 J Gender Race & Just 87 at 91.

⁶⁶ Barbara E Johnson cited in Williams, above n 17 at back cover.

⁶⁷ Williams above n 17 at 6.

In breaking the silence, many feminists utilised legal narrative methodology as a reaction to the lack of female voice they experienced in the law.⁶⁸ Narrative methodology could arguably be infused to varying degrees into all legal courses. It would contextualise and exemplify abstract legal concepts. Patriarchal legal approaches bounded in rationalism, which aim to contain and control irrespective of the actual people or events involved need to be subverted with more sophisticated and nuanced legal approaches.⁶⁹ We need to change and expand the range of stories told and heard in the legal setting. The evolution of new legal understandings and methods will require both imagination and new stories to be told.⁷⁰ One key method to potentially affect change is the use of the legal narrative and teaching of the relevance and importance of narrative methodology, in subjects such as FLT. Perhaps having a degree of narrative methodology infused into all legal teaching, rather than FLT being compulsory is the more likely scenario. However, it is important that narratives are not only from the dominant paradigm, if narratives are to have their true value. Feminist and otherness narratives have the potential to sow developmental seeds in the minds of law students before they (most likely) enter professions of influence, in a manner that status-quo reinforcing narratives, may not. By teaching all law students FLT and narrative use, it will provide a forum for women's and other's legal stories to be told and it will also help to develop new legal ways of knowing and being.⁷¹

Scott Ihrig endorses the teaching and using of narratives in legal education as being:⁷²

... vital to legal education itself. The narrative is uniquely suited to enable students to conceptualise materials, to challenge assumptions about the law and its impact on individuals and to prepare for the practice of law upon graduation.

⁶⁸ Finley above n 20 at 888.

⁶⁹ See generally Spiller above n 63 at 161; Williams above n 17 at 12-13.

⁷⁰ See generally Spiller above n 63 at 40-90.

⁷¹ See generally Deborah Tannen *The Argument Culture: Moving From Debate to Dialogue* (Random House, New York, 1998). American linguist Professor Deborah Tannen considers the price of combative, debate oriented, adversarial culture and acknowledges the benefits of evolving alternative forms of dispute resolution that encourage communication rather than competition.

⁷² Scott N Ihrig "Sexual Orientation in Law School: Experiences of Gay, Lesbian, and Bisexual Students" (1996) 14 Law & Ineq J 555 at 566.

While the telling of personal stories “should [not] supplant rigorous legal analysis”⁷³, nor that such “pedagogical techniques are appropriate in every class”⁷⁴, it is a methodology that may help to transform some of the patriarchal normative constructs of the law.⁷⁵ Peter Spiller writes that narrative methodology has had some success in dispute resolution and in jurisprudential academia but as yet is under utilised.⁷⁶ Spiller also highlights how rationality being given primary status in Western culture causes problems in negotiations and how narratives can help in such cases.⁷⁷

B Critiques of Narrative Methodology in Legal Education

Those who prefer a rational science compared to a social science approach, critique the use of narrative methodology as un-academic and lacking in rigour. Legal narrative theory is critiqued as relying too much on qualitative information. It is argued, “no academic standards exist for analyzing narratives”⁷⁸ and that they are overly subjective, which raises “questions of authority and credibility”⁷⁹. Williams does not care for such critique and responds defiantly “Subjective position is everything in my analysis of the law”.⁸⁰ Moreover, when dealing with inherently normative domains, and inherently values’-based subjects, the criticism of excessive subjectivity seems to be rather more about an objection to the character of that subjectivity, than to subjectivity *per se*.

Heather MacDonald sees the legal narrative movement as representing “a dangerous flight from reason and logic in favor of emotion”. She argues, “there are no limits on what constitutes a relevant story” and she regards such teaching as academic self-

⁷³ Cain above n 3 at 180.

⁷⁴ Cain above n 3 at 180.

⁷⁵ See generally Davies above n 8 at 69 “...although feminism has developed many effective critiques of law’s truths, it has been less successful, and even conceptually thwarted, in its efforts to develop a solid basis for the normative reconstruction of law”.

⁷⁶ Spiller above n 63 at 70-73.

⁷⁷ Spiller above n 63 at 40.

⁷⁸ Ihrig, above n 71 at 565; see also Love above n at 88-90; see also Heather McDonald “Law School Humbug” (1995) autumn City Journal 1-14.

⁷⁹ Ihrig above n 71 at 565.

⁸⁰ Williams above n 17 at 6.

indulgence, which while it is influential on students, it is practically useless. Unlike MacDonald, Caroline Morris is not opposed to legal narratives, but she does observe:⁸¹

While [auto]biography provides a valuable narrative, it is by its nature an intensely personal form of reportage. Moreover, it is more often than not assembled after the fact, with all the associated potential for revisionism, danger of dramatic embellishment and risk of memory gaps that inhere in this method.

The feminist legal narrative is not a ‘cure all’, for if it was it may have succeeded by now. In summing up the key argument for narratives MacDonald wrote (disapprovingly) in 1988 “The antidote to male legal stories is ‘counter-stories’ by women and minorities”.⁸² However, the narrative is part of a matrix, part of a wider response; it is not singularly determinative. This shows that the idea of narrative methodology as a means to change the law has been around for some time, but has yet to be fully realised.⁸³ I believe making FLT compulsory at law school would be a significant normative step for legal feminism and women.

C How Can Feminist Legal Theory Use Narrative Methodology?

Many of the systems, processes and structures that dominate and pervade the legal system have been produced by more than two millennia of male political and legal philosophy. It is, therefore, essential to tell women's stories.⁸⁴ By making the telling of women’s stories important and opening to an "ethic of care", the law will begin to be reshaped.⁸⁵ Whether we call this an “ethic of care” and associate it with feminine qualities, or refer to it as “Amy’s Web” and associate it with a feminine perspective - “it is the value system the image of Amy’s Web represents that has been undervalued”.⁸⁶ Feminist perspectives and narrative methodology are parts of that undervalued system. We need to teach law

⁸¹ Morris above n 1 at [198].

⁸² MacDonald above n 16.

⁸³ Davies above n 8 at 69. Perhaps the full realisation of narrative methodology is that aspects of it are incorporated into all law courses to move beyond teaching in the abstract. Also it ought to be noted many academics already use narrative methods.

⁸⁴ Finley, above n 20 at 908.

⁸⁵ Davies, above n 6 at 230.

⁸⁶ Spiegelman, above n 2 at 246.

students more than how to “function in such an abstract combative world”.⁸⁷ The law needs to “concentrate on context” and look to teaching students as much about negotiation, mediation and cooperative problem solving as it does about adversarial battles.⁸⁸ In reality, we need to acknowledge, “our world is both competition and cooperation” and we need to teach law students accordingly. We currently seem to focus on competition in the majority of legal education, which means we need to add cooperation and contextual narratives to enhance and develop the law. Making FLT a compulsory core subject with a focus on narrative methodology would be a solid step on this path. Alternatively seeking to ensure a degree of narrative methodology being used in many or all law courses along with feminist perspectives being offered in each course would be another approach as opposed to compartmentalising FLT as a stand-alone course. Both approaches have many potential complications. Lack of staff buy-in and students’ complaints as to career relevance, are just two of many issues that would arise initially. In some respects the only way to motivate resistant staff to accept compulsory FLT might be to explain that the other alternative was to have them each infuse some feminist theory and narrative methods into their law classes, if FLT did not become mainstreamed.

The current law school education is not the positive and empowering experience that it has the potential to be. Spiegelman offers this scathing critique on the failure of law school education:⁸⁹

In intellectual terms, the emphasis on abstract logic restricts not only the breadth and sophistication of students’ analyses but also their ability to relate theory to practice.

In practical terms, the lawyers we turn out are seriously handicapped by an overly adversarial perspective that misses opportunities for cooperative resolution.

While Spiegelman is coming from a US perspective and the article was published eighteen years ago, this argument could be made today about New Zealand legal education. He goes on to highlight that law is already very much more than court and that traditional case method falsely perpetuates the notion that “law is what appellate courts

⁸⁷ Spiegelman, above n 2 at 249.

⁸⁸ Spiegelman, above n 2 at 249.

⁸⁹ Spiegelman, above n 2 at 251.

say it is”.⁹⁰ Spiegelman makes a convincing argument that “the overwhelming majority of disputes never get to court, and those that do are usually settled without trial or court ruling”.⁹¹ He asserts “we need to shift the focus from being on what judges say onto the work of lawyering”.⁹² He sees theory and practice being symbiotic, rather than in competition with each other. Spiegelman is looking “to find ways to make practice illuminate theory”.⁹³ He seeks to turn legal problems around from their usual focus by asking students, for example, how the plaintiff might have avoided a dispute in a certain case. The idea with such an approach is to link expansive, holistic thinking “to the wheel of rigorous analysis by requiring them to identify the critical elements of applicable law and the essential facts as they formulated their responses”.⁹⁴

VI Imagine Feminist Legal Theory As A Compulsory Subject

The very fact that the idea of compulsory FLT in undergraduate legal education is currently somewhat radical or extraordinary is arguably because of the patriarchal structures in which we all exist. We cannot see the alternative for we all inhabit a multilayered patriarchy, which makes it difficult to see beyond that. The law often does not have much space for stories that do not fit tidily into the patriarchal paradigm⁹⁵ and women have prescribed roles to play in the legal world.⁹⁶ This male architecture, which has pervaded the philosophies that have driven law and society, means that women are often not in positions to be the authors of important ideas. This issue links once again to the lack of gender balance in the higher ranks of the New Zealand legal profession. It is only relatively recently that a voice in a “higher register”, a more feminine voice, has been present in law and there is still much development of this feminine voice needed.⁹⁷

⁹⁰ Spiegelman, above n 2 at 256.

⁹¹ Spiegelman, above n 2 at 256.

⁹² Spiegelman, above n 2 at 260.

⁹³ Spiegelman, above n 2 at 261.

⁹⁴ Spiegelman, above n 2 at 256.

⁹⁵ See Bender, above n 13 at 17-18.

⁹⁶ Catherine A McKinnon *Feminism Unmodified Discourses on Life and Law* (Harvard University Press, Cambridge, (Mass), 1987) at 39.

⁹⁷ McKinnon, above n 23 at 39. See also Menkel-Meadow above n 25 at 50. “We cannot yet know what the consequences of women’s participation in the legal system will be”.

In combating the notion that going "to law school is learning to speak male as a second language, and learning it fluently", the feminist narrative offers new ways of considering the law.⁹⁸ Worden argues "I often find 'logical' analysis and discourse meaningless until it has been woven into the complex and amorphous plexus of personal significance".⁹⁹ This is because personal context and narrative matter in law, or they ought to and this is why narrative methods should be taught in FLT, or preferably be infused throughout legal teaching.

"To the extent that feminism is committed to the eradication of all forms of oppression other "outsiders",¹⁰⁰ or those who have "stories from the bottom"¹⁰¹ must also develop their narratives within the law. As the biggest group that can (arguably) be essentialised, women can help others to be heard by first demanding that their stories and voices are heard. Once women's voices find increased traction before the law so too will other voices and interests. The law needs to learn how to speak in a plurality of voices that reflects the varied interests of those communities it is supposed to serve.

VII The Value Of Telling Stories

Lawyers and law graduates need to learn how to tell their clients narratives in a manner that humanises and personalises them. In the cases of outsiders and otherness, in many cases involving women (and of course those involving men too), lawyers need to be able to provide rich context and factual position, if they are to truly serve their clients. These techniques have application from commercial through to criminal law. If lawyers and law graduates have developed the skills to tell narratives in a persuasive and convincing manner, then there is the possibility to move judges, juries and others wielding power,

⁹⁸ Sheila McIntyre, Address to 8th Annual Conference in Critical Legal Studies, Georgetown University Law Centre, Washington, DC (Mar 16-18 1984).

⁹⁹ Worden above n 5 at 1146.

¹⁰⁰ Love above n 64 at 87.

¹⁰¹ Mari J Masuda "Looking to the Bottom: Critical Legal Studies and Reparations" (1987) 22 Harv CRCL Rev 323, 324. "Looking to the bottom" refers to adopting the perspective of those who have been discriminated against.

even potentially creating a paradigm shift.¹⁰² We need to use well-told narratives to expose (amongst other things) rape myths, gender stereotypes and victim shaming. Patricia Cain writes:¹⁰³

In law school we are trained to build arguments. It is sometimes useful to tell stories. Later, when we build our arguments, we will have more stories upon which to draw. In a law school that is committed to student diversity, we ought to help create the space for our students to benefit from that diversity. We ought to encourage them to listen to one another.

We need to seek rich factual accounts from multiple sources when triangulating ‘truth’ and ‘facts’. We can lose sight of what happened when we reduce, decontextualise, rationalise and consider everything by comparing it to our experience. However, this has been and is much of the way of judicial thinking. Margaret Davies provides a careful deconstruction of the fallacies inherent in the notion of "a dominant [legal] truth".¹⁰⁴ Davies' assault on the objective ‘truth’ of law is welcome despite the fact that it has added further work for feminists: “Feminist legal theory has therefore not been able to rely simply on disproving ‘truth’, but has also had to find alternative truths with the power to reconstruct law”.¹⁰⁵ Science has moved ahead of the law, and our objective reasonable man has gained an amygdala, which can be hijacked ahead of any rational or reasonable thinking.¹⁰⁶ While it is outside of the scope of this discussion to further develop this idea, it suffices to say, that the illogic and fallacy of the objective reasonable person (man!) test and the subjectivity of objectivity have both been recognised.¹⁰⁷ Objectivity in law is of a very certain kind that is also inherently subjective. The point is that objectivity in law is very frequently such a construed notion that the objection of ‘excessive’ subjectivity is

¹⁰² Love, above n 64 at 91.

¹⁰³ Cain above n 3 at 176.

¹⁰⁴ Davies above n 8 at 69.

¹⁰⁵ Davies, above n 8 at 73.

¹⁰⁶ Diane Musho Hamilton "Calming Your Brain During Conflict" (22 December 2015) Harvard Business Review < <https://hbr.org/2015/12/calming-your-brain-during-conflict>>.

¹⁰⁷ Cynthia Hill “Sexual Bias in the Law School Classroom: One Student’s Perspective” (December 1988) 38(4) Journal of Legal Education 603-609.

hollowed out of any real meaning and is presented in the hope that the narrative approach so accused, is sufficiently self-conscious that it accepts the objection.

Immediately defenders of the status quo will argue that the courts do not have time to conduct such detailed factual and contextual analysis. Worden replies to this type of assertion:

There is no "essential" reason why the court cannot manage to recognize the contextual web within which a case takes place. My god, the court can put a price on the value of mental distress or the loss of one's body parts, but it can't manage to evaluate or consider the moral, political, and social fibers of legal issues?! Be serious.

There is also no reason why all law lecturers could not become familiar with narrative methodology so as to be able to use it appropriately. Others opposed may argue that such factual and contextual analysis is already achieved, but this position is difficult to sustain when you learn there are numerous examples of courts ignoring, or not having due regard to the context and/or the facts. Ruthann Robson writes:¹⁰⁸

My favourite example of a factually impoverished case is *People v Livermore*, in which the crime seemed to consist of noises inside a tent overheard by state troopers standing outside for ten minutes, until the troopers unzipped the door, shining flashlights to reveal two women lying on a cot "partially covered by a blanket". One needs a fair amount of lesbian imagination to provide sexual content, but whatever sexual content one supplies is conjecture. As one lesbian student asked, "So was she going down on her or were they finger fucking?"

It is all well and good to present the notion that lawyers must present their client's narrative, particularly those who work with "outsiders" to bridge the gap between the judge, jury and client, but where are these skills being developed?¹⁰⁹ Ideally such skills would be developed to varying degrees in all legal subjects with more critical legal subjects looking to narratives more directly and doctrinal "black letter" law bringing in narratives to add context and humanity to the subjects.

¹⁰⁸ Robson above n 26 at 222.

¹⁰⁹ Finley above n 20 at 910.

VIII Case Outlines: From Historical New Zealand To Current Global Examples

A R v Nepia

With the legal narrative, we hope that lawyers will humanise and personalise their clients, and make sure that the people involved do not become mere concepts in the minds of those wielding power.¹¹⁰ Academic, Elisabeth McDonald wrote of how the only voice of a woman who has been murdered by her jealous male lover might be that proposed by the prosecution and defence lawyers.¹¹¹ Often in such cases, there are no witnesses beyond the defendant.¹¹² The prosecuting lawyer in such instances speaks for the deceased. *R v Nepia* is a prime example of where this happened:¹¹³

There was nothing in the Crown case which provided any sufficient evidential basis for the defence of provocation but Mr Bungay, ... obtained an admission that there might have been some conversation between the accused and his wife before Miss Poots left at the request of the deceased to call the police.

Mr Bungay, the defense lawyer, obtained an admission of a possibility and using narrative ability built this into a defense for his client. This demonstrates the potential power of a convincing narrative.

Mr Nepia stabbed his ex-wife fourteen times. He alleges he did so after they had argued over their children and her having a new lover. The Court of Appeal ordered a retrial on the basis that the (then available) defense of provocation should have been left for the jury. In the retrial, Mr Nepia was successful in pleading provocation and therefore was convicted of manslaughter rather than murder. This story was a man's story told in a patriarchal reality. The court seemed deaf to the fact his wife had left Mr Nepia one year earlier and so any sudden provocation caused by her departure and alienating words could not have constituted the legal justification of provocation. Where was the story of his ex-partner whom he stabbed fourteen times? Or the fact that he left his children without their

¹¹⁰ Williams above n 17 at 7.

¹¹¹ Elisabeth McDonald "Provocation, Sexuality and the Actions of Thoroughly Decent Men" (1993) 9 Women's Studies Journal 126 at 131.

¹¹² McDonald above n 110 at 134.

¹¹³ *R v Nepia* [1983] NZLR 754 CA at 755.

mother, and by dint of doing so proved himself an unfit parent. With their mother dead and their father off to prison for "manslaughter" – this was a case of silences and absences, of male-defined reality, which did not tell the woman's story. Her corpse was unable to answer the reasons given in court by Mr Nepia and his lawyer, Mr Bungay. She had not been Mr Nepia's partner for one year and still he was allowed to claim to have been suddenly provoked.

I refer to Mr Nepia's partner as "she" and "her" – just as the Court of Appeal report referred to "her". She is referred to without name, pronouns of "she" and "her" are used. "She" is also referred to as his wife and as "the deceased". In reading the report "her" voice is silent, by reporting it in such a way her existence is reduced. She is not a woman with a name, but merely a corpse who provoked her ex-partner's homicidal rage.¹¹⁴

If you are going to be either of the lawyers telling the stories of what happened, defence or prosecution, providing possibilities for the jury to accept or reject, then it might be helpful if you have learned about and been trained in both the legal narrative methodology and FLT.

B R v Rerekura

In *R v Rerekura*¹¹⁵ Joseph Rerekura shot his partner Carol Ahipene through the head because she had told him to leave and that she could easily replace him with another man. In sentencing, the Court of Appeal concurred with the sentencing judge that Mr Rerekura was a "thoroughly decent man". Someone needed to ensure that Carol Ahipene's story was told and not silenced to the ludicrous outcome of Mr Rerekura being sentenced to six years for manslaughter. Apparently, Carol Ahipene had no autonomy or right to choose other than Mr Rerekura. She lost her life that day because Mr Rerekura went to his truck, got his hunting rifle and shot her through the head. There ended her story, her hopes and dreams vanished. Carol Ahipene may not have been using the most tact that day, but even

¹¹⁴ *R v Nepia* above n 112 at 75.

¹¹⁵ *R v Rerekura* (21 June 1988) WN CA 361/87.

in 1988, that ought not to have mitigated murder. It is unclear how much of her narrative was delivered by the prosecution, or whether the judges could even hear it anyway.

C Brock Turner – Convicted Sexual Felon

In a recent globalised case Brock Turner was given three months actual prison time (six-month sentence) for being caught in the act and convicted by a jury on three sexual assault charges on an unconscious woman. This is a chilling example of privilege and gender discrimination. In this case, the Santa Clara District Attorney described the victim impact statement as “the most eloquent, powerful and compelling piece of victim advocacy that I’ve seen in my 20 years as a prosecutor”.¹¹⁶ This powerful feminist narrative was heard by the public and the jury, but was not truly heard by the sentencing judge, even though he read parts of it out.¹¹⁷ The outcome was so appalling that this case sparked outrage across the United States and the planet, and it generated a law change in California.¹¹⁸ However, despite these after-effects, Judge Persky who was hearing the case could not seem to hear this eloquent female legal narrative. Regina Graycar discusses the fact that stories are limited in courtrooms. She writes, “There are any number of barriers to ... women’s stories being heard in courts and even if heard being given credibility and authority”.¹¹⁹ While this case has received tremendous public outrage and a law change, it also illustrates how individual judges wield power in any given case and their worldview can determine what they hear and understand, and therefore the outcome. This is the declarative power of the law - Judge Persky declared that prison “would have a severe impact on” Brock Turner.¹²⁰ He also declared that Brock had convincing character references, one the Judge quoted from a long time female friend of Brock’s, saying she would never have believed he would be in this position.¹²¹

¹¹⁶ New Zealand Herald “Victim’s Powerful Message to Rapist” (7 June 2016) H World <http://m.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=11651865>.

¹¹⁷ Susan Svrluga “Stanford Rape Case Judge Explains Controversial Brock Turner Sentence” (15 June 2016) The Independent <<http://www.independent.co.uk/news/world/americas/stanford-rape-case-judge-explains-controversial-brock-turner-sentence-a7083406.html>>.

¹¹⁸ New Zealand Herald above n 116.

¹¹⁹ Graycar above n 22 at 11.

¹²⁰ Svrluga above n 117.

¹²¹ Svrluga above n 117.

Judge Persky declared Brock was a person “who had done well in life until that night” all of which verbally set up the script for the soft sentence, which was given.¹²²

Margaret Davies introduces the notion of the declarative power of law and says that this is what makes legal truth, the power to declare that it is so.¹²³ In using the declarative power to determine the true facts of a case they create the story of what happened in any given case. In some instances, that which is determined to be the material facts of the cases may have little if any correlation with what occurred. In the examples outlined the woman’s voice was not heard, even when it was told in a powerful narrative, such as in the Brock Turner case.

D Justice Robin Camp Presiding Over A Rape Trial

Another recent case highlighting the stories a judge tried to tell in his courtroom got global attention recently when Justice Robin Camp from Canada¹²⁴

Reportedly berated the 19-year-old [rape] victim for not ‘closing her knees’ or putting her ‘ass in the sink’, told her ‘pain and sex sometimes go together’ and referred to her as the accused during the trial.

In this language, we can see the blatant misogyny inherent in everything Justice Camp said. His referral to the victim as the “accused” reveals hidden prejudice. Seemingly not so hidden when he did it again at his Canadian Judicial Council hearing.¹²⁵ Finley argues, “Careful attention to the language we use can reveal hidden but powerful assumptions framing the way people think about the world”.¹²⁶ The fallacy of the objectivity of judges is exposed in this stark example. Courtrooms are the realms of judges accepting and rejecting stories of ‘facts’. In the act of choosing what is believed and what is not, judges wield the declarative power of truth.

¹²² Srvluga above n 117.

¹²³ Davies above n 8 at 72.

¹²⁴ Paul Henry “Outrage After Judge Tells Rape Victim ‘Pain and Sex Go Together’” 9 September 2016) Newshub <www.newshub.co.nz/world/outrage-after-judge-tells-rape-victim-pain-and-sex-go-together-2016090820>.

¹²⁵ Robson Fletcher “Justice Robin Camp Tells Inquiry He’s Learned From ‘Hurtful’ Comments He Made at Sex Assault Trial” (9/9/2016) CBC News <<http://www.cbc.ca/news/canada/calgary/judge-robin-camp-inquiry-testifies-friday-1.3754972>>.

¹²⁶ Finley above n 20 at 887.

In the case of *R v Nepia* we see the defence lawyer using narrative creation to create reasonable doubt for his male client, while the voice of the murdered woman goes mostly silent. At times the feminist challenges seem insurmountable. While I enthusiastically promote wider use of narrative methodology in legal education and the compulsory learning of FLT, it seems at times that even the most potent narrative will not be heard.

*E Is Anybody Listening?*¹²⁷

It transpires that it is not only judges who do not listen but also that most of us are poor listeners.¹²⁸ This includes the twelve people on a jury, who I was suggesting a good narrative might help to educate or direct. We as Western humans with a strong sense of our own individuality and autonomy are not trained or socialised to listen carefully.¹²⁹ Patricia Cain asks her students to practice listening differently. She asks them to listen fully without discarding parts of each other's stories and not to compare or contrast herself or himself with the storyteller.¹³⁰ The techniques that FLT could develop in focusing on narrative methodology could include "listening to understand others (not merely to prepare a responsive argument)".¹³¹ This inability to fully listen to each other is another argument for infusing narrative methodology throughout all legal education and not simply compartmentalising it to FLT.

IX The First Step To Creating A More Inclusive Legal Paradigm

It can appear a radical call, the argument to have FLT as part of the core curriculum. An idea that is nothing more than a student construct for a FLT essay, a thesis, albeit somewhat unlikely. However, I am not alone, and I am not the first to posit an idea like

¹²⁷ See generally MJ Wheatley *Turning to One Another: Simple Conversations to Restore Hope to the Future* (Berrett-Koehler, San Francisco, 1999) 1-45 for a discussion on how humans, particularly in the West, have lost the ability to listen and how it is vital for us to regain our listening skills.

¹²⁸ See generally Wheatley above n 127.

¹²⁹ Spiller above n 63 at 40.

¹³⁰ Cain above n 3 at 171.

¹³¹ Spiegelman, above n 2 at 251.

this.¹³² “The London School of Economics recommended mandatory [gender] quotas in law”¹³³ asserting:¹³⁴

In the context of the failure of existing policies to tackle the over-representation of men in the upper echelons of the legal profession, we believe that anyone seriously committed to the gender injustice and equality must be prepared to consider a more radical approach.

I am however possibly the first to be so blatant as to propose compulsory FLT. While I have borrowed from an “ethic of care” and “Amy’s Web” I have not softened my point with metaphor, like these two authors chose. I have no evidence, as I cannot locate anywhere that requires FLT as a mainstream core subject, but I propose that if a law school were to try to do so, it would hit opposition.¹³⁵ This is once again reflective of the mainstream legal education. It allows FLT to be taught as a discrete elective but does not see how making it mainstream could both enhance and possibly even revolutionise legal education. The issue here is not that FLT is not available for students, it is that to redress two millennia of political and legal thought being predominantly in the hands and from the pens and mouths of men, it needs to be compulsory for all law students. The law presents as gender neutral when it is fact deeply gendered, and this pretence at neutrality actually supports the subordination of women.¹³⁶ Finley believes that “the language of neutrality itself is one of the devices for ... silencing” [women].¹³⁷

¹³² See Spiegelman, above n 2 at 252 who argues, “There is, then, a compelling case for changing the law school curriculum so that it affirms the values, insights, and skills associated with Amy’s Web”.

¹³³ The Guardian “LSE Study Calls for Gender Quotas To Place Women In Positions Of Power” (13/10/2015) The Guardian < <https://www.theguardian.com/uk-news/2015/oct/13/lse-study-gender-quotas-positions-power-women>>.

¹³⁴ The Guardian above n 133.

¹³⁵ See Towley above n 38 quoting Ursula Cheer the recently appointed first ever female Dean of Canterbury University’s Law School, where she highlights how she cannot get law firms to answer why they will provide, for example, an onsite gym for workers, but not a crèche. If Cheer cannot get an answer to this question, then my goal of imposing FLT as compulsory seems a distant hope.

¹³⁶ Naffine above n 9 at 3.

¹³⁷ Finley above n 20 at 896.

FLT needs to move beyond the realms of being studied by those who self-select to being a rigorous subject forcing law students beyond doctrine to contemplate different actors and intersections of law.¹³⁸ I have also outlined the idea that if not compulsory FLT, then we need to infuse narratives into all law courses with a focus on female and otherness narratives. We need many law students to experience “not being part of the privileged group”.¹³⁹ Perhaps this would allow those who have struggled with law school an opportunity to feel included. Or perhaps it would allow such outsiders to see where and how they might operate in the law. It would provide one forum where feminism was not an add-on. Doctrinal learning reinforces the legal system as it is and yet humans exist in an ever more rapid world. The transmission and dissemination of information and misinformation are as never before. This means that we need the law to open up to new ways of knowing and being. We need the law to develop in service to the people in our communities and not drive a predetermined path of limited understanding of sexuality, which in turn creates flawed doctrine and factually impoverished cases.¹⁴⁰ Most especially we need the law to redress the gender imbalance that is still perpetuated in many areas of its practice. This could start by educating all law students in FLT so that they have at least had to consider the law from a feminist position and grapple with the challenges this raises.

Would teaching simply one subject in FLT as core make that much difference? Maybe, maybe not, however, education is generally one of the fastest ways to affect people’s thinking and potentially change and open their minds. In many respects it would be preferable to have FLT taught as an aspect of each course and narrative methodology used in all courses. This would hopefully infuse these things into the law in a manner that a compartmentalised subject of FLT may not. However, as I have suggested many legal academics might not engage authentically with incorporating FLT and narratives into their courses. It is also true that if every law student is armed with narrative methodology, the legal playing field becomes more even again and those who do not care for outsiders

¹³⁸ See generally Robson, above n 26 at 215-219 where she discusses how she instills rigour into her courses and yet they travel a less doctrinal and more narrative path than many other law class subjects.

¹³⁹ Worden above n 5 at 1155.

¹⁴⁰ Robson above n 26 at 218, 222.

may use such methodology against them. The skillful telling of stories can be utilised against the oppressed as well as by the oppressed. However, it is the act of mainstreaming FLT that is being argued for. In itself, this would be a political act that would send a message that legal education is expanding and demanding more than doctrinal recall and abstract application. It would also affect staffing expertise requirements for law schools, as more lecturers would need to be versed in the discipline, or the point might be lost.

X Appeal to Educators

Patricia Cain says that educators ought to “Take risks. Tell your own stories and be willing to think out loud in class”.¹⁴¹ Professor Susan Estrich’s rape law conversations are given a very personal context when she begins by telling her narrative of when she was raped.¹⁴² Martha Mahoney asserts that if academics do not tell personal stories, it supports continuing social blindness about very important issues.¹⁴³ Carrie Menkel-Meadow references several feminist lecturers who provide “a real, concretized, contextualized, and experiential dimension” by teaching from cases that they have personally worked on. She endorses the notion of feminist law lecturers who humanise and contextualise their classroom discussions with personal stories.¹⁴⁴ Stephanie Wildman shares personal stories in her classroom in an effort to “empower the silenced”.¹⁴⁵ By normalising the feminist legal narrative, and mainstreaming FLT as a subject worthy of compelling students to take, then over time this would become the accepted norm.¹⁴⁶

In contrast to the idea of telling your own feminist story as a FLT lecturer is Ruthann Robson’s viewpoint. She describes it as “excruciatingly difficult” despite the fact that she

¹⁴¹ Cain above n 3 at 180.

¹⁴² Love above n 64 at 97.

¹⁴³ Martha Mahoney “Legal Images of Battered Women: Redefining the Issue of Separation” (1991) 90 Michigan Law Review 1 at 14.

¹⁴⁴ Carrie Menkel-Meadow “Feminist Legal Theory, Critical Legal Studies and Legal Education or ‘The Fem-Crits Go to Law School’”, (1998) 38 J Legal Educ 61 at 80.

¹⁴⁵ Stephanie M Wildman, “The Question of Silence: Techniques to Ensure Full Class Participation” (1998) 38 J Legal Educ 147, at 152.

¹⁴⁶ Compare Williams, above n 17 at 28.

has been “writing and teaching about sex and sexuality for years”.¹⁴⁷ Robson identifies that “when discussions are closely textual, based upon court cases, I am most comfortable. However, when the discussions contrast the court’s language with other texts or experiences, I am most guarded”.¹⁴⁸ However, whether it is something you delight in or shy away from, I invite you to consider the power of your own feminist narrative. In my own case, I would discuss what it means to be a gay man and a feminist and how I endeavour to inject feminist perspectives and those of “outsiders” into my work.

XI Victoria University Law School: 2016 Where are we now with FLT?

Victoria University appears to offer FLT now as an honours and masters only subject, further limiting access to this already niche area. In my current class, there are four women honours students and myself, a man who is a master’s student. No other master’s student on the coursework programme has felt it a subject worthy of study this year. By comparison, my smallest other two masters-only classes had seven students each and the combined honours/masters seminar I attended had eleven students. In our FLT class, the five of us with our lecturer, it feels intimate, subversive in its own right. Almost as if we ought not to be meeting at law school, a subversive discussion group that could foment into something even more dangerous, radical even. How can questioning the law from the angle of gender and sexuality (because while they are distinct, they are often inseparable in practical terms) be purposeful? Patricia Cain writes of how teaching her Feminist Legal Theory seminar is “so different from my other law teaching experiences and my students’ previous classes”¹⁴⁹ due to the “high level of trust” that was established.¹⁵⁰ It feels the same in our class, an ability to share things not revealed in other law classes.

It seems a pity that FLT is no longer even offered as a 300 level elective. In summer of 2005 when I studied it at 300 level it was quite well attended, with perhaps about 35 students, if I recall correctly. However, it was one of only three summer courses

¹⁴⁷ Robson above n 26 at 220.

¹⁴⁸ Robson above n 26 at 221.

¹⁴⁹ Cain above n 3 at 165.

¹⁵⁰ Cain above n 3 at 166.

available in 2005, which may well have buoyed the numbers up. Victoria University continues to offer FLT as an honours and masters level course in 2017. This commitment to running it may be challenged by low enrollments if the current intake is indicative.

XII Conclusion

This work can be easily dissected and critiqued on grounds of being essentialist; that I am a man and not a woman, and indeed that as a white gay man from a working class background who has 'risen' to a comfortable middle-class lifestyle, I live at a quite different intersection from women feminists. It can also be reduced as insignificant by virtue of being radical or strained in its arguments, with the patriarchy and the potency of the legal narrative for feminist purposes, being overdrawn. There is validity to all of these critiques and presumably others not yet imagined by me. Much of the work sourced is dated now, so surely things must be better? The recent case examples of Brock Turner from the United States and Justice Robin Camp from Canada, are extraordinary – the very reason they have attracted international media focus. Perhaps this in itself is progress; society can provide feedback when they think a judge is out of touch. My point is that this level of sexism and ignorance around crimes such as rape are still current and far too prevalent. While these examples are from overseas, it does not mean that this type of thing does not occur in New Zealand courts.¹⁵¹ Two historic cases have shown that it certainly did happen. So, while all of these and other critiques can be leveled at this work, it also hopefully does provide a direction for legal education that is beyond the mere curriculum reform debate of arguing over the necessity of teaching theory versus practice.

¹⁵¹ See generally Ian Steward “Comedian discharged over sex act on daughter” (2/9/2011) Stuff <<http://www.stuff.co.nz/national/crime/5555711/Comedian-discharged-over-sex-act-on-daughter>>. The trial judge said, “He’s a talented New Zealander. He makes people laugh and laughter’s a good medicine that we all need a lot of.” See also Belina Feek “Scott Kuggeleijn Rape Trial: Hung Jury, Cricketer Will Play When Season Begins” (3/8/2016) New Zealand Herald, http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11686573>, the August 2016 case of New Zealand team cricketer Scott Kuggeleijn where his lawyer took issue with the complainant’s court testimony that she was not able to offer any resistance and was not compelled to call for help as Kuggeleijn allegedly raped her in bed”.

FLT is not a core subject area such as crimes, torts, contract, public or property - simply because the current curriculum does not require it to be so. I have argued that to redress millennia of patriarchal dominance in law and politics, bringing FLT into the core compulsory education is a small step to help evolve legal education and the understanding of law graduates. This will in turn hopefully begin helping to develop more importance on both context and specific factual matrix through narrative methodology. I have encouraged educators reading this to tell their narratives, especially from feminist or “otherness” perspectives. The teaching of FLT will force law students to consider “otherness” and to apply law in a way that is beyond doctrinal problem questions.

There comes a time to draw a line and let the generations already entrenched in their positionalities remain where they are. We are best to attempt to influence and create normative changes in law at an educational level. If women’s narratives and those of others who suffer invisibility, ignorance and discrimination before the law can have their stories told, repeatedly, then they may be heard. This will take time to develop in much the same manner as women’s position in the law is taking time to develop.¹⁵² However, hopefully mandating FLT as compulsory will increase the often seemingly glacial progress of feminism in normative terms.

¹⁵² Menkel-Meadow, above n 25 at 50.

XIII BIBLIOGRAPHY

A Primary Sources

1 Cases

R v Nepia [1983] NZLR 754 CA.

R v Rerekura (21 June 1988) WN CA 361/87.

B Secondary Sources

1 Texts and Chapters in Books

Bix, Brian “Hans Kelsen’s Pure Theory of Law” in *Jurisprudence: Theory and Context* (2 ed, Sweet & Maxwell, London, 1999) 51-59.

Brown, Chris, Terry Nardin and Nicholas Rengger (eds) *International Relations in Political Thought* (Cambridge University Press, Cambridge, 2002).

Edward Clark “The Construction of Homosexuality in New Zealand Judicial Writing” (2006) 37 VUWLR 199-221.

Davies, Margaret *Asking the Law Question* (2ed, Lawbook Co, Sydney, 2002) 233-249.

Davies, Margaret “Law’s Truth and the Truth About the Law Interdisciplinary Refractions” in Margaret Davies and Vanessa E Munroe (eds) *The Ashgate Research Feminist Legal Theory* (Ashgate Publishing: Surrey, 2013) 105-123.

Dworkin, Ronald “The Model Rules of I” in *Taking Rights Seriously* (Harvard University Press: Cambridge, Massachusetts, 1978) 14-45.

Foucault, Michelle *The History of Sexuality* (Vol 1, Random House, New York, 1978) 17-35.

Freeman M D A “Nature of Jurisprudence” in *Lloyd’s Introduction to Jurisprudence* (7th ed, Sweet & Maxwell, London, 2001) 1-15.

HLA Hart “Postscript” in *The Concept of Law*” (2nd ed, Oxford University Press: Oxford, 1997) 250-276.

McKinnon, Catherine *Feminism Unmodified Discourses on Life and Law* (Harvard, Harvard College, 1987) 32-45.

Naffine, Ngaire “Feminist Excavations” in Ngaire Naffine (ed) *Law and the Sexes: Explorations in Feminist Jurisprudence* (Allen & Unwin, Wellington, 1990) 1-24.

Raz, J “Legal Positivism and the Sources of Law” in *The Authority of Law* (Oxford University Press, Oxford, 1983) 38-52.

Robson, Ruthann “Lesbian Jurisprudence” (Columbia University Press, Columbia, 1998) 448-452.

Spiller, Peter *Dispute Resolution in New Zealand* (Oxford University Press, Oxford, New York, 1999) at 40-90.

Tannen, Deborah *The Argument Culture: Moving from Debate to Dialogue* (Random House, New York, 1998).

Temple-Ralston, Dina *Justice on the Grass – Three Rwandan Journalists, Their Trial for War Crimes, and a Nation’s Quest for Redemption* (Free Press, New York, 2005).

Wheatley, M J *Turning to One Another: Simple Conversations to Restore Hope to the Future* (Berrett-Koehler, San Francisco, 1999) 1-45.

Williams, Patricia J *The Alchemy of Race and Rights Diary of a Law Professor* (Harvard University Press, Cambridge, Massachusetts, London, 1991) 1-263.

2 Journal Articles

Baker, J H “The Common Lawyers and the Chancery: 1616” (1969) *The Irish Jurist* 368-392.

Bender, Leslie “From Gender Difference to Feminist Solidarity: Using Carol Gilligan and an Ethic of Care in Law” (1990) 15 *Vermont LR* 1-48.

Cain, Patricia “Teaching Feminist Legal Theory at Texas: Listening to Difference and Exploring Connections” *Journal of Legal Education* 38(1/2) (March/June 1988) 165-181.

Finley, Lucinda M “Breaking Women’s Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning” (1989) 64 Notre Dame L Rev 886, 910.

Graycar, Regina “The Gender of Judgements: Some Reflections on “Bias”” (1998) UBC Law Rev 1, 13.

Hill, Cynthia “Sexual Bias In The Law School Classroom: One Student’s Perspective” (December 1988) 38(4) Journal of Legal Education 603-609.

Ihrig, Scott N “Sexual Orientation in Law School: Experiences of Gay, Lesbian, and Bisexual Students” (1996) 14 Law & Ineq J 555-586.

Love, Jean C “The Value of Narrative in Scholarship and Teaching” (1998) 2 J Gender Race & Just 87-97.

Mahoney, Martha “Legal Images of battered Women: Redefining the Issue of Separation” (1991) 90 Michigan Law Review 1-14.

Matsuda, Mari J “Looking to the Bottom: Critical Legal Studies and Reparations” (1987) 22 Harv CRCL Rev 323-324.

MacDonald, Heather “Law School Humbug” (1995) autumn City Journal 1-14.

McDonald, Elisabeth “Provocation, Sexuality and the Actions of ‘Thoroughly Decent Men’” (1993) 9 Women’s Studies Journal 126-146.

McDonald, Elisabeth “Special Feature: Contemporary Feminist Thought In Aotearoa/New Zealand Feminist Legal Theory in Aotearoa New Zealand: The impact of International Critical Work on Local Criminal Law Reform” (2014) 28 Women’s Studies Journal 68-87.

McKinnon, Catharine “Feminism in Legal Education” (1989) 1 Legal Educ Rev 85-89.

Menkel-Meadow, Carrie “Feminist Legal Theory, Critical Legal Studies, and Legal Education or “The Fem-Crits Go to Law School” (1988) 38 J Legal Educ 61-80.

Menkel-Meadow, Carrie “Portia in a Different Voice: Speculation on a Women’s Lawyering Process” (1985) Berkeley Women’s LJ 39, 63.

Morris, Caroline “A ‘Mean Hard Place’? Law Students Tell It As It Is” (2005) 36(2) VUWLR 197-228.

Rogers, Carmel “How Legal Education Will Assault You as a Woman” (1993) 23(2) VUWLR 167-175.

Speigelman, Paul J “Integrating Doctrine, Theory and Practice in the Law School Curriculum: The Logic of Jake’s Ladder in the context of Amy’s Web” (March/June 1988) Journal of Legal Education 38(1/2) 243-270.

Stewart, Miranda “Conflict and Connection at Sydney University Law School: Twelve Women Speak of Our Legal Education” (1992) 18 Melb U LR 828-850.

Whiu, Leah “A Maori Women’s Experience of Feminist Legal Education In Aotearoa” (1994) 2 Waikato Law Review 161- 69.

Wildman, Stephanie M “The Question of Silence: Techniques to Ensure Full Class Participation” (1998) 38 J Legal Educ 147-152.

Worden, KC “Overshooting the Target: A Feminist Deconstruction of Legal Education” (1985) 34 American University Law Review 1141-1156.

3 *Internet Materials*

Adlam, Geoff “New Zealand’s Judiciary and gender” (11 November 2015) Law Society <<https://www.lawsociety.org.nz>>.

Bindel, Julie “What Andrea Dworkin, the Feminist I knew, Can Teach Younger Women” (30 March 2015) The Guardian <<https://www.theguardiana.com/commentisfree/2015/mar/30/andrea-dworkin-the-feminist-knew-teach-young-women>>.

Feek, Belina “Scott Kuggeleijn Rape Trial: Hung Jury, Cricketer Will Play When Season Begins” (3/8/2016) New Zealand Herald, <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11686573>.

Fletcher, Robson “Justice Robin Camp Tells Inquiry He’s Learned From ‘Hurtful’ Comments He Made at Sex Assault Trial” (9/9/2016) CBC News <<http://www.cbc.ca/news/canada/calgary/judge-robin-camp-inquiry-testifies-friday-1.3754972>>.

Glazebrook, Susan “Looking Through the Glass: Gender Inequality at the Senior Levels of New Zealand’s Legal Profession (16 September 2010) <<https://www.courtsofnz.govt.nz/speechpapers>>.

Glover, Jane “Women on the Bench” New Zealand Lawyer (16 April 2010) <<http://www.nz.lawyer magazine.co.nz>>.

Jalalzai, Farida “Shattered, Cracked or Firmly Intact: Women and the Executive Glass Ceiling Worldwide (May 2013) Oxford Scholarship Online DOI:10.1093/acprof:oso/9780199943531.001.0001.

Kaufman, Alexander C “Once A Company Has One Woman Executive it’s Harder for Another to Get Another Top Job (10 April 2015) The Huffington Post <http://www.huffingtonpost.com/2015/04/08/women-executives_n_7025720.html>.

Musho-Hamilton, Diane “Calming your Brain During Conflict” (22 December, 2015) Harvard Business Review <<https://hbr.org/2015/12/calming-your-brain-during-conflict>>.

Steward, Ian “Comedian discharged over sex act on daughter” (2/9/2011) Stuff <<http://www.stuff.co.nz/national/crime/5555711/Comedian-discharged-over-sex-act-on-daughter>>.

Svrluga, Susan “Stanford Rape Case Judge Explains Controversial Brock Turner Sentence” (15 June 2016) The Independent <<http://www.independent.co.uk/news/world/americas/stanford-rape-case-judge-explains-controversial-brock-turner-sentence-a7083406.html>>.

The Guardian “LSE Study Calls for Gender Quotas To Place Women In Positions Of Power” (13/10/2015) The Guardian <<https://www.theguardian.com/uk-news/2015/oct/13/lse-study-gender-quotas-positions-power-women>>.

Towley, Max “Equal Numbers of Female, Male Lawyers for the First Time” 10/5/2016
Radio New Zealand <<http://www.radionz.co.nz/news/national/295517/equal-number-of-female,-male-lawyers-for-first-time>>.

Worden, KC “A Student Polemic” (1986) New Mexico Law Review
<http://lawschool.unm.edu/nmlr/volumes/16/3/10_worden_student.pdf>.