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Foreword

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FOREWORD

TRACEY JEAN BOISSEAU*

This review, like the scholarly symposium on which it is based, marks the establishment of a new field of gender studies: women's legal history.

I am especially gratified to see this issue published as well as a new gathering of women's legal scholars come together to share their work so soon following the conference held at the University of Akron this time of year in 2008. As I'm sure many of you have noticed, the last three years has witnessed an outpouring of scholarship on women's legal history.

Although key texts establishing a foundation for our work are several decades old now and include the research of such luminaries in this field as historians Linda Kerber and Joan Hoff, and feminist legal scholars such as Martha Fineman, Drucilla Cornell, Martha Minow, Patricia Williams, and Frances Olsen, until recently, their work often remained moored exclusively in *either* History journals and departments *or* law schools and reviews.

What we are seeing now is the confluence of two disciplines that should have been talking to each other for a long time now, but for the most part have only been talking past one another.

For the first time, historians have been reading the work of legal scholars and legal scholars have come to see historical research as relevant to their teaching and their thinking about the law. In no field is this happening as rapidly and with such pronounced effect as in the area of feminist studies. There are now multiple blogs, online archives, museum exhibits, listservs, publications, and of course conferences bringing feminist historians and feminist legal scholars together: what we are witnessing is the institutionalization of a new field.

The Symposium on Women's Legal History: A Global Perspective, held at the Chicago-Kent College of Law in October of 2011 represented a great leap forward in this process and brings an important dimension of global studies to what has been fairly parochial in its

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parameters. Much of what has been achieved in women's legal history scholarship has taken the nation-state—narrowly defined—as our unit of study. I include Tracy Thomas and my recent collection of essays, *Feminist Legal History* (New York University Press, 2011), in that category. In our volume the United States is our unnamed location; its national time span of slightly more than two centuries is our unsaid temporal frame. Given the fluid relationship between legal systems and the states they serve, this is not unexpected. One can see why legal studies might be one of the fields more wedded to the nation-state in that, apart from international law, law-making occurs within national borders.

But, the problem with taking this at face value is that we fail to appreciate exactly that fluid link between law-making and State formation. Inasmuch as the State remains the invisible fence hemming in our research, it often remains unproblematic and unaccounted for. An unquestioned assumption that the nation-state is our default unit of analysis does little to encourage us to analyze the State as a legal apparatus and encourages us to ignore an international context that necessarily impinges upon law-making and judicial decisions—even if only implicitly. Reading the law across national boundaries not only provides us with points of comparison but new viewpoints from which to perceive the operations of laws in societies in which we are enmeshed and therefore all too familiar. By rendering the law less natural and more strange, comparative legal studies serves the same purpose as historicization of the law—allowing us to see the law as made rather than simply inherited.

This is all the more true and germane for feminist legal studies and feminist scholars bent on unpacking the law and legal institutions to show how gender works on and through the law. As feminists we recognize that women's relationship to the State is and has long been a problem. If we feminist legal scholars do not, through a broadening of our vision, attempt to account for just how much, why, and with what implications for women, this is so we risk more than mere parochialism, we risk failing to account for the way women have been positioned outside of and antithetical to states and have been used by nation-states to shore up national hegemonies. We miss the forest for the trees.

By encouraging and valuing research such as that included in this special issue of the Chicago-Kent Law Review and first presented at the Symposium on Women's Legal History—Global Perspectives, we have

the privilege and opportunity to remedy much of the blinkered narrowness that has characterized women's legal scholarship in the past.

I congratulate those who helped to make this symposium and law review a reality.

