

Spring 1995

Feminist Scholarship Review

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Feminist Scholarship Review

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In 1917, Belva Ann Lockwood was the first woman to be admitted to argue cases before the U.S. Supreme Court. She began her fight for women's rights with her work advocating the passage of a bill granting female government employees equal pay for equal work.

Feminist Scholarship Review



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Feminist Scholarship Review

is a project of the Trinity College Women's Center

Table of Contents

Letter From the Editor

Women's Center: Reviewed Sources

Dr. Noreen Channels on Gender Equity in the Legal Profession

Trinity College Library: Additional Sources

Women's Center: Additional Sources

To the Readers of Feminist Scholarship Review:

When I start to read an article that bears upon the law (or, rather THE LAW, as I seem to envision it), I balk. I tell myself that this is an ignorant bias, but still, I stop reading. I have a million things to do all of a sudden that will take up my allotted reading time, and I simply have to get to them. Upon reflection, I could create an impressive list of reasons for my unreasonable reaction that I have always thought of as having to do with rules rather than with the people subjected to those rules. Not to mention an outlook on life supported by THE LAW that depends more on where we've been (what else does "precedent" mean?) than on where we're headed. As with other topics covered in FSR, however, I have come to appreciate the value of this subject and have, hopefully, begun to create for myself a different mindset that will be broader and more informed than my preceding one. Through the articles reviewed, I have come to see the workings of the law as a method for expressing the assumptions and myths of our culture. I have come to think of "precedent" as "archetype". I have, as we all do, translated the topic into my own terms and then been able to use its distinct perspective to inform and challenge my own ideas.

Some readers, like me, will have to translate the topic in some personal way in order to read further in this issue. Others may already have an interest in the law in general, and still others may want to know more about resources that delineate the effect of the law on women. Whatever your status, however, this issue of FSR is worth exploring, based on the fact that we, as people, as Americans, as women, are subject to specific laws and to the reach of The Law. Based on the knowledge that, as a minority group, women are often demeaned, if not victimized outright by those who purvey the law. Based on the actuality that we live in a legalistic society and, as such, that avoidance of the topic will likely perpetuate our status as potential victims of something we do not understand.

Perhaps most important of all, though, we should be willing to explore the topic of women and the law based on the idea that, rather miraculously, considering the essentially conservative attitude of the legal outlook, the constant backward glance of those who pursue it, dramatic social change has often been effected in that very medium. How does that happen? Not by wearing the blindfold. Not by avoidance of the issues at hand. Not without information. So--read on!



--Deborah Rose O'Neal

Women's Studies International Forum, 17:4, 1994, pp. 345-356

Jocelyne A. Scutt, "Judicial Vision: Rape, Prostitution and the Chaste Woman"

As I read this article, I found I was more grateful than usual for the synopsis which appears at the beginning of the text. Unlike the article which follows, the synopsis (at least the first one-third of it) is clear, brief and sequential. On the other hand, it is similar to the article, in that it is made provocative through the use of constant interrogation of the implied reader and in that it shows its bias through the use of colorful invective. For example, statements accusing the judges who rendered the decisions in question of being "...unable to tell the difference between sex-with-consent and sex-without-consent" seem deliberately skewed and are patently untrue. The article is strewn with such comments. Why would an author who seems intelligent enough to discuss a topic on its merits choose to employ such manipulative techniques? (I use the author's method of questioning the implied audience in order to give myself the opportunity to answer my own question.) My best guess is that Jocelyne Scutt has an axe to grind, a goat to get, an awareness to raise. She grinds hers and gets mine, to be sure. And, whether I agree with her or not, my own awareness of the cultural biases of the law as expressed through its practitioners is enhanced, and my understanding of the nature of rape itself, is stimulated and honed.

All right, Readers. Are you at least mildly confused by now? Do you wish I'd get to the point, or perhaps explain the point I haven't yet gotten to? This is exactly how I felt reading Jocelyne Scutt's article. But, never fear, I'll summarize for you. The article "Judicial Vision: Rape, Prostitution and the 'Chaste Woman'" discusses two 1991 Australian judicial decisions which imposed less severe penalties on men convicted of raping prostitutes than would have been imposed for rape of any other victim. These decisions proceeded on the assumption that forced sexual assault on a sexually experienced woman has a less severe psychological effect on that victim than it would have had on a "happily married [i.e. "chaste"] woman." On appeal, the penalty for raping the women was increased. The appeal judge redefined the act as one of violence rather than sex and took into account the psychological damage that fear engenders in such a situation. This increase in penalty, however, is not enough for Scutt who decries the judge's lack of agreement with her own specific stance, a stance which you can (possibly) ascertain if you read the article.

Though the article has its weaknesses, it has some definite strengths, the most important of which is that it made me carefully consider such diverse topics as the proper resolution for perpetrators of crimes involving rape, the function of public outcry and its relationship to the formation of public policy, and more. This article, though rambling, is worth struggling through, if nothing more than for the ripples it is likely to set up in the reader's consciousness. Is that clear?

--Deborah Rose O'Neal

Sexual Violence: Our War Against Rape by Linda Fairstein, 1993

Linda Fairstein's book Sexual Violence-Our War Against Rape is a straightforward and easy to read account of the changes made within the legal profession and the law itself in the past twenty years. Fairstein graduated from the University of Virginia Law School in 1972 and began to work for the District Attorney's Office in New York County, dealing especially in sexual assault and rape cases. At that time, it was rare for a woman to get so prestigious a position and even rarer that she work with such a sensitive topic. This book charts the progress of the law in sexual assault and rape cases against the backdrop of Fairstein's own career in the male dominated legal profession. Sexual Violence uses Fairstein's own struggles to demonstrate the progress women have made in the legal field within the last twenty years. The primary focus of the book, however, is the progress of the law in these very sensitive matters. Fairstein does this by using many personal accounts of real life cases she has handled, and how justice was served in each. These cases make the book easy to understand because the reader can see how the law works under specific circumstances. In addition, the personal accounts of the cases give the reader a taste of what the victims and their lawyers deal with, and therefore the reader understands how the law works in each case.

The personal side of the cases causes the reader to be sympathetic to the victim of each case. This personal touch brings the tragedy of the victim out and makes the severity of sexual assault and rape real. The reader does not have to be a legal expert to get a better understanding of the legal issues in sexual assault and rape cases from Sexual Violence. Sexual Violence charts the vast progress that has been made in the law in the past twenty years, but also demonstrates that there is still much progress to be made. Linda Fairstein has retained her faith in the system after seeing much hardship; this is perhaps the most refreshing and inspiring aspect of the book.

--Descera Daigle

"Japan's 1986 Equal Employment Opportunity Law and the Changing Discourse on Gender," by Barbara Molony, SIGNS Winter 1995

Molony's article is a thorough examination of Japan's Equal Employment Opportunity Law (EEOL), implemented in 1986, and its effect on employed women. Several times while reading the article I paused and noted the remarkable similarities between women's struggle for equality in both the Japanese and American labor markets. Aside from the specific details and insights Molony provides the reader about gender/employment relationships in Japan, this piece clearly illustrates the growing global movement for women's equality in the workplace, while also exposing the barriers that consistently hinder women's progress in the male-dominated employment sphere.

The Japanese image of working women is definitely shifting from undesirable minority to contemporary professional woman. While legislation like the EEOL aids in legitimizing this enhanced image of Japanese women, Molony is quick to point out that it is far from a flawless statute. To begin with, the law includes no sanctions against employers who violate the law by discriminating against women in the workplace! It struck me as ironic, to put it mildly, that discriminators do not receive so much as a scolding, considering the EEOL was created to deter discriminating employment tactics, not to harbor offenders. For obvious reasons, then, the majority of feminists have opposed the passing of this bill, demanding greater protection for women than its apparently "empty" promises. But upon a closer look at the history of big business in Japan, it becomes clear that the passage of the law itself was a vital milestone in gender equity. Prior to its passing, many Japanese intellectuals argued that an equal employment law such as the EEOL would be a stealthy infringement of Western beliefs that could devastate Japanese customs. Some went so far as to predict that such a bill could destroy the nation.

With such disparate views of men and women prevalent in Japanese society, it is no wonder that the EEOL is not an exemplary model of equity legislation. Molony finds substantial holes in the bill, especially regarding the need for motherhood protection.

Molony observes that the EEOL's maternity considerations leave much to be desired. Previously, many of the workplace protections Japanese women had won had been based on the concept of maternal needs and protection. Motherhood protection was important because "it was the only significant body of law dealing with women and work." Upon the EEOL's passing, however, many of these gains were lessened if not entirely nullified. Many feminists believe that the EEOL gives far too little consideration to male-female differences, and this fact gives employers all the more reason to conclude that these obvious differences (including motherhood) should keep women out of the workplace. Feminists attempting to secure greater protection for women had often built their arguments around the concept of "motherhood," but the EEOL left little latitude for this approach.

Barbara Malony's article about employment law in Japan is a wonderful resource for an examination of Japanese contemporary media images of women, the changing meanings of motherhood, and the process by which the EEOL came to be. Malony examines the issues from a variety of angles and is quick to cite recent studies as testimony to her arguments. As an American woman with little previous insight into the cultural norms and equity laws of Japan, "Japan's 1986 Equal Employment Opportunity Law and the Changing Discourse on Gender" presented an articulate and thoughtful argument to me, demonstrating how the gendered division of Japan's workplaces remains very problematic for Japanese women under the EEOL.

---Jennifer Guy

Dr. Noreen Channels on Gender Equity in the Legal Profession

On April 4, as a part of the Spring 1995 Lunch Series' informal lectures and discussions sponsored by the Women's Center, Trinity Sociology Professor Noreen Channels gave a presentation on gender issues in the legal profession. Dr. Channels' discussion focused on her research on the subject of gender biases in the legal profession, which was sponsored by the Connecticut Bar Association. Her extensive study, which spanned two years, uncovered statistical data that confirm and legitimize every feminist's lurking fears regarding gender inequality in the legal profession.

Dr. Channels and her colleagues examined 600 men and 650 women in private, corporate, government and miscellaneous legal areas, and incorporated their responses to a survey on gender issues among legal professionals. The results paint a picture of an occupation riddled with male domination, control and preference. One of the study's most positive conclusions finds that male and female attorneys are involved with comparable cases and clients. But this is where the gender symmetry ends abruptly. The final report to be published in upcoming months will show that women in the legal profession are considerably less likely to be considered in decision-making and are given fewer administrative responsibilities (input in hiring, policy-setting, etc.) than their male counterparts. Sizeable proportions of women attorneys believe that they have been personally disadvantaged on the job, often citing pay, opportunity for advancement and salary (if this last area concerns you now, just read on). In a current professional climate filled with subtle gender inequalities, consider that three quarters of the women surveyed stated that they had been made uncomfortable by some form of sexual harassment *in the past year!* Equally if not most disturbing is the income discrepancy between women and men in the legal profession. Channels found that in upper-level private practices, women make an average of **\$23,000** less annually than their male peers.

After affirming women's inferior treatment in legal areas, Dr. Channels went on to discuss possible explanations for the disparity. Key in her argument was the organizational issue of gender equality. Channels observed that inequality is part of the structure of the legal organization, and often this plays itself out similarly in the before-mentioned situations. She addressed issues traditionally important for women in law, such as family issues (including parental leave) and part-time work availability, as well as their accompanying stigma.

While Dr. Channels's study shows that there is much to be desired for women in the legal profession, it is an invaluable study in that it confirms through empirical evidence what had been previously only popular belief. Such concrete data is imperative not only to proving the prevalence of gender inequality in professional environments, but also for providing the background necessary to combat this often-silenced issue. A dynamic speaker, Dr. Channels' presentation proved to be an valuable demonstration of the continuing need for vigilance in the drive for gender equity in the workplace.

Examining Women's Legal Issues Through Public Documents

Balancing work and family responsibilities is a daily struggle for men and women. Would employer granted leaves help? Should the government be involved? What are the current laws and what do they mean for you? Public documents will help you sort through the issue from a lay persons perspective.

The most recent federal law enacted is the Family and Medical Leave Act of 1993 (FMLA) which became effective for most employers August 5, 1993. FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave each year for specified family and medical reasons including birth or adoption of a child, health care for an immediate family member (spouse, child, parent) or personal medical reasons. To become acquainted with FMLA provisions see U.S. Department of Labor "Program Highlights" L1.88:93-24 or Public Law 103-3-- February 5, 1993.

Public hearings provide testimony from various persons and organizations who speak to an issue from their expertise and experience. There have been hearings on parental and medical leave since 1985. The Subcommittee on Children, Family, Drugs and Alcoholism, Senate Labor and Human Resources Committee (Y4.L11/4:S.hrg 103-18) and the Subcommittee on Labor-Management Relations, House Education and Labor Committee (Y4.ED8/1:103-1) sponsored hearings held specifically on the 1993 Act. At these hearings parents who had lost their jobs when asking for leave, the President of American Academy of Pediatrics, representatives from the Women's Legal Defense Fund, Businesses for Social Responsibility, the Society for Human Resources Management, Service Employees Union, the U.S. Department of Labor, and various Senators all spoke to the importance of granting family and temporary medical leave. There are also minority views on the Family and Medical Leave Act of 1993 included in the Senate Committee on Labor and Human Resources Report(Y1.1/5:103-3).

For over 70 years the Women's Bureau of the U.S. Department of Labor has been a strong voice for working women implementing national programs and policies, developing local initiatives and disseminating information and publications. Recently they have been given special attention to the balancing of work and family responsibilities. They turn their attention to pregnancy discrimination in a publication part, their "Know Your Rights" series (L36.102:R44/Pregnan). This document discusses unfair treatment situations, what federal and state laws say, what steps to take if you are discriminated against, and where to get help.

Despite the passage of a federal act, state maternity and family leave laws remain important because a few offer broader coverage or special provisions not found in the federal law. They vary widely. For a summary of the jurisdictional difference see [State Maternity/Family Leave Law](#) (L36.102:L48). Here the various state laws are presented in narrative and table format and the appropriate enforcement state agencies to contact are listed.

If you are interested in seeing how other countries address the problem of balancing family and work see Work and Family: the Child Care Challenge in Conditions of Work Digest (volume 7, issue 2). Twice a year the International Labour Office in Geneva publishes reference sources for anyone interested in working conditions and the quality of working life. Over 350 institutions from all regions of the world, including government agencies, employers' organizations, trade unions, research institutions and university departments participate in a clearinghouse on conditions of work and publish Conditions of Work Digest. After an overview of world trends this issue describes the legal provisions and national policies for individual countries and the standards and policies of different international organizations.

The Family and Medical Leave Act of 1993 recognizes the responsibility government plays in easing the daily struggle of men and women to balance their families and work. Parental leave is certain to be a legal and political issue for some time. Public documents will keep you informed.

--Linda McKinney

Women's Center: Additional Sources

ART
OUR OWN
BUSINESS
THE SIDE

You Need
Know

cohol,
ress and
ck Women

icious
iners
Minutes

Doing the Deal

IS THE MOST POWERFUL SISTER IN HOLLYWOOD? P. 60

On the Cover:
Mary J. Blige,
Queen of
Hip-Hop Soul



CELEBRATE
25
 years
 of
 ESSENCE

ESSENCE

VOLUME 25/NUMBER 11

MARCH 1995

FEATURES

DOLORES ROBINSON: DOING THE DEAL 60
 One of Hollywood's hottest deal makers for the stars. By Nikki Grimes

PROUD MARY 64
 Multiplatinum hip-hop siren Mary J. Blige just wants to keep it real. By Deborah Gregory

STARTING YOUR OWN BUSINESS ON THE SIDE GUIDE 71
 This pullout guide will help you keep your day job while pursuing your dreams. By Valerie Vaz

IT AIN'T NECESSARILY SO 79
 Why you shouldn't believe half of what you hear. By George E. Jordan

DRINKING AGAIN? 84
 Alcoholism among women is on the rise. A look at those who drink too much. By Diane Weathers

BEAUTY

A CUT ABOVE THE BEST 11
 A hairstylist-turned-realtor enjoys a new look for a new lifestyle.

ROOTS: NEW WAVE LENGTHS 14
 Choice cuts that deliver glam from 9 to 5 and beyond.

SHORT TAKES 20

ANSWERS 22

PRODUCTS: BOTTLED EMOTIONS 24

FASHION

STYLE: BARBARA BATES: DESIGNING WOMAN 28

BLACK POWER 89
 Top corporate executives offer strategies for success. (And they look good too!) By Sarah Ferguson

CONTEMPORARY LIVING

SPECIAL CAREER SECTION

LIFESTYLE: YOUNG AND WORKING IT! 99
 Our 1995 career guide will open your eyes to a huge world of different options. By Leslie Shields

FOOD: COOKING UNDER PRESSURE 108
 Stock your kitchen with ingredients to make easy and healthy meals on the go. By Jonell Nash

RECIPES: BUSY WEEKDAY MEALS 114

PARENTING: COPARENTING WITH YOUR EX 118

DEPARTMENTS

LETTERS 8

HEALTH

Prevention Emergency Contraception 30

Between Us 34

ESSENTIALS Spring shape-ups, networking news, a spa special and more! 36

CAREERS: GAZETTE Time-management tips; "do it" with art; career check-out for college seniors 42

INTERIORS An Obsession Confession 48

BROTHERS Lies in Love 50

PEOPLE George C. Wolfe, *Blackgirl*, Tracy Carness, *Ntozake Shange*; new books 52

IN THE SPIRIT Born to Win 59

SHOP 136

GRAFFITI 138

HOROSCOPE Pisces 140

BACK TALK Letter From a Conservative 144



Pamela Neferkara stands on her own in cool, corporate classics.



ON THE COVER: What's the *HIP*? Mary J. Blige is revolutionizing the music industry with her bluesy, soulful, "round-the-way girl Bava"! Photographer, Matthew Jordan Smith. Hair, Keenya Mandlin for Supreme Styles Salon, Decatur, Georgia. Makeup, Sam Fine for Revlon. Makeup from Revlon ColorStyle's Marooned Collection, featuring Compositions Long-Wearing EyeColor in Tealberries, Soft Color Powder Blush in Pure Plum and Color-Enriched Lipstick in Ebony Berry. Manicurist, Firoze for Jam Arts, N.Y.C. Shirt, Atsuro Tayama at Kashiyama. Earrings, ring, Robert Lee Morris. Watch, GUESS Watches. Bracelet, Ihan-Oded for The Alicia Bleier Collection. Stylist, Elaine Wallace. Coordinator, Sandra Martin. **ON THIS PAGE:** Photographer, Ruvan Afanador. Hair, Zianni Coats, N.Y.C. Makeup, Tony Marshall, N.Y.C. Navy chalk-striped suit, Augustus. French-cuff shirt, Marsina. Earrings, Christopher Phelan. Necklace, Erwin Pearl. Watch, Christopher Phelan. Tie, Augustus. Blazer, Prada. Blouse, Prada. Shoes, Walker. Suit, Saks.

Women's Center: Additional Sources

VOLUME 17 NUMBER 6 1994

WOMEN'S STUDIES INTERNATIONAL FORUM



PERGAMON

CONTENTS

- STANLIE M. JAMES 563 Challenging patriarchal privilege through the development of international human rights
- BETTY HEARN MORROW 579 A grass-roots feminist response to intimate violence in the Caribbean
- THALATHA SENEVIRATNE
JAN CURRIE 593 Religion and feminism: a consideration of cultural constraints on Sri Lankan women
- HELEN J. MULLER 609 Women in urban Burma: social issues and political dilemmas
- JOAN HOFF 621 Comparative analysis of abortion in Ireland, Poland, and the United States
- SUE ALEXANDER 647 Gender bias in British television coverage of major athletic championships
- SUE ALEXANDER 655 Newspaper coverage of athletics as a function of gender
- TAMARA JACKA 663 Countering voices: an approach to Asian and feminist studies in the 1990s
- BOOK REVIEWS**
- FRANCINE D'AMICO 673 *Global Gender Issues* by V. Spike Peterson and Anne Sisson Runyan, *The Morning After: Sexual Politics at the End of the Cold War* by Cynthia Enloe, and *A Chorus of Stones: The Private Life of War* by Susan Griffin
- SARA ROY 675 *Women in the Middle East: Realities and Struggles for Liberation* edited by Haleh Afshar, and *Arab Women: Old Boundaries, New Frontiers* edited by Judith E. Tucker
- ELIZABETH ÈTTORRE 675 *Women Drug Users: An Ethnography of a Female Injecting Community* by Avril Taylor

(Continued on inside back cover)

(Contents—continued from outside back cover)

- MARY MONTAUT 676 *Appeal of One Half the Human Race, Women Against the Pretensions of the Other Half, Men* by William Thompson and Anna Wheeler, edited by Marie Mulvey Roberts, and *A Blighted Life: A True Story* by Rosira Bulwer Lytton, edited by Marie Mulvey Roberts
- WENDY HOLLWAY 677 *Wild Desires and Mistaken Identities: Lesbianism and Psychoanalysis* by Noreen O'Connor and Joanna Ryan
- KATHY MUNRO 678 *On the Edge: Women's Experiences of Queensland* edited by Gail Reekie
- ROSALIND EDWARDS 679 *Motherhood and Modernity: An Investigation into the Rational Dimension of Mothering* by Christine Everingham
- MAGGIE GUNSBERG 680 *Gendering the Reader* edited by Sara Mills
- 681 Biographical Statements
- I Feminist Forum: News, Conferences, Reports
- XXIII Volume 17 Contents and Author Index

INDEXED/ABSTRACTED IN *Av Press Ind.*, *Amer Hist & Life*, *Ann Guide Wom Perio US/CANADA*, *Research Alert*®, *ASSIA*, *Br Hum Ind.*, *Current Contents/Social & Behavioral Sciences*, *Social Sciences Citation Index*®, *Fem Perio*, *Hist Abstr.*, *PsycINFO*, *Psychol Abstr.*, *Sociol Abstr.*, *Stud Wom Abstr.*

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361



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Women's Center: Additional Sources

WINTER 1995

VOLUME 20

NUMBER 2

SAW

JOURNAL OF WOMEN IN
CULTURE AND SOCIETY

THE UNIVERSITY OF CHICAGO PRESS

CONTENTS

- Madhu Dubey 245 Gayl Jones and the Matrilineal Metaphor of Tradition
- Barbara Molony 268 Japan's 1986 Equal Employment Opportunity Law and the Changing Discourse on Gender
- Abigail B. Bakan and Daiva K. Stasiulis 303 Making the Match: Domestic Placement Agencies and the Racialization of Women's Household Work
- Elizabeth Alexander 336 "We Must Be about Our Father's Business": Anna Julia Cooper and the Incorporation of the Nineteenth-Century African-American Woman Intellectual
- Harriet Evans 357 Defining Difference: The "Scientific" Construction of Sexuality and Gender in the People's Republic of China

REVIEW ESSAYS

- 395 MATERNITY AND MOTHERHOOD: RECENT FEMINIST SCHOLARSHIP
- Ellen Ross 397 New Thoughts on "the Oldest Vocation": Mothers and Motherhood in Recent Feminist Scholarship
- Alice Adams 414 Maternal Bonds: Recent Literature on Mothering

BOOK REVIEWS

- Valerie Traub 428 *Daughters, Wives, and Widows: Writings by Men about Women and Marriage in England, 1500-1640* edited by Joan Larson Klein; *Fashioning Femininity and English Renaissance Drama* by Karen Newman; *Staging the Gaze: Postmodernism, Psychoanalysis, and Shakespeare's Comedy* by Barbara Freedman

- George Lipsitz 432 *No End to Her: Soap Opera and the Female Subject* by Martha Nochimson; *Screen Memories: The Hungarian Cinema of Marta Meszaros* by Catherine Portuges; *Make Room for TV: Television and the Family Ideal in Postwar America* by Lynn Spigel
- Joyce Zonana 436 *Victorian Women Poets: Writing against the Heart* by Angela Leighton; *Victorian Sages and Cultural Discourse: Renegotiating Gender and Power* edited by Thais E. Morgan; *Rewriting the Victorians: Theory, History, and the Politics of Gender* edited by Linda M. Shires; *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* by Judith R. Walkowitz
- Tracy C. Davis 441 *Upstaging Big Daddy: Directing Theater as If Gender and Race Matter* edited by Ellen Donkin and Susan Clement; *Acting Out: Feminist Performances* edited by Lynda Hart and Peggy Phelan
- Robin Dizard 444 *Betrays of the Body Politic: The Literary Commitments of Nadine Gordimer* by Andrew Vogel Ettin; *Protest and Possibility in the Writing of Tillie Olsen* by Mara Faulkner; *Toni Morrison's World of Fiction* by Karen Carmean; *The Voices of Toni Morrison* by Barbara Hill Rigney
- Sonya O. Rose 448 *Threads of Solidarity: Women in South African Industry, 1900-1980* by Iris Berger; *The Most Difficult Revolution: Women and Trade Unions* by Alice H. Cook, Val R. Lorwin, and Arlene Kaplan Daniels; *Sweatshop Strife: Class, Ethnicity, and Gender in the Jewish Labour Movement of Toronto, 1900-1939* by Ruth A. Frager; *Maid in the U.S.A.* by Mary Romero; *Beyond the Typewriter: Gender, Class, and the Origins of Modern American Office Work, 1900-1930*

SUSAN
FALUDI on
Faux
Feminists

Women's Center: Additional Sources

Ms.

Shere

Her Reports

Hite

on Sex Sparked a
Revolution in the
Bedroom.

IS

Now She Takes On
the Family . . .

Back

An Exclusive Excerpt

from Her
Controversial
New Book.



FEATURES

COVER

Bringing Democracy Home

An exclusive excerpt from *The Hite Report on the Family* 54

"I'm Not a Feminist, but I Play
One on TV" Susan Faludi exposes
the faux feminists 30



The Last of the Shakers? by *Suzanne Skers* 40

Photo Essay *Sisters of the South* 46

NEWS

INTERNATIONAL

The Globetrotting Sneaker by *Cynthia Enloe* 10

Dispatches 16

Canada: An All-Women Union Under Fire by *Anne Kershaw* 18

Update on HIV/AIDS and Women 18

U.S.

How One Town Took On the Religious Right and Won by *Sarah Henry* 86

Did Joycelyn Elders Ever Stand a Chance? by *Judy D. Simmons* 90

Newswatch 93 • *Clippings* by *Kate Rounds* 94

BOOKS

The Past as Prologue by *Elaine Tyler May* 68

Bold Type: Z. Budapest: Witchy Woman by *Jennifer Baussgardner* 73

International Bookshelf 72 • *Reviews* 74

FICTION AND POETRY

Fiction *Overpowering Joy* by *Karen Heler* 62

Poetry *The Doctor's Widow* by *Leah Fritz* 23

Poem for the New York "Times" by *Jane Jordan* (inside back cover)

ARTS

Has Performance Art Lost Its Edge? by *Elizabeth Zinner* 78

Artwatch by *Jennifer Baussgardner* 84

HEALTH

STDs: What You Don't Know Can Hurt You

by *Hilary Hinds Kinsey* 24

Health Notes 24

DEPARTMENTS

Editorial *The Good/Bad Mother* by *Marcia Ann Gillespie* 1

Letters 4

Prison *Whose Life Is It, Anyway?* by *Margaret Klee* 20

Guest Room *False Advertising* by *Laura Hershey* 96

No Comment (back cover)

SNAPSHOTS

Coya Ariichoker 29 • *Desiray Bartak* 77



The Women of Books

Women's Center: Additional Sources

Vol. XII, No. 6

March 1995

74035 \$2.00

Inside:



Children playing in a Gaza street, one of many photographs in *A Voice of Reason: Hanan Ashrawi and Peace in the Middle East*, a new biography by Barbara Victor; Sara Roy reviews it, p.26.

- ◆ Shelley P. Haley finds two new books by Black feminist theorist and teacher bell hooks both liberating and exhilarating, p.10.
- ◆ Charlotte Brontë made art out of the unpromising materials of her life: Nancy Mairs reads Lyndall Gordon's new biography of the "passionate" novelist, p.5.
- ◆ Buddhism and feminism seem unlikely companions, but a review of writing on women in Buddhism past and present, East and West, shows otherwise: Scrinity Young looks at four new books on the subject, p.28.
- ◆ How do we increase public understanding and concern for the real lives of poor women? *The Color of Welfare* traces the racism built into the history of programs for the poor, while *Natalie on the Street* tells the story of one homeless woman: Ann Withorn reviews them in the context of the current assault on welfare, p.23.

and more...

Birds without nests

by Nan Levinson

Women in Exile, by Mahnaz Afkhami. Charlottesville, VA: University Press of Virginia, 1994, 208 pp., \$35.00 hardcover, \$12.95 paper.

"My earliest memories are of unrest and chaos," says Ho Ngoc Tran, a doctor, who flees Vietnam in 1978, trusting her life to smugglers with a boat and eventually making her way to Chicago. When her youngest child dies at sea of dehydration, she buries him on an unmarked island, sewing her diamond ring—all she has of value—into his sleeve. "So it is just a story that ends here," she says. She cannot return.

Awakened by the KGB at five a.m. on July 20, 1980, Tatyana Mamsova is allowed to pack two suitcases before she is escorted onto a plane for Austria. As the first feminist kicked out of the Soviet Union, she is quickly awarded star status with its attendant press conferences, speaking tours and publishing opportunities that would have earned her a lifetime of official harassment at home. She relishes the irony, but misses Leningrad and the smell of Russian grass and won't know either again for over a decade, because she cannot go home.

Maria Teresa Tula, born to bone-grinding poverty in El Salvador, works with the human rights group Comadres. After her husband is assassinated, she is arrested, raped, beaten to deafness in one ear and imprisoned. On her release in 1987, she bribes her way out of the country with her two youngest children, walks across the desert into the US and applies for political asylum, which, six years later, still hasn't come. "We live like birds without nests," she says, "because we can't be in our own country."

These are women in exile, pulled up by their hair and deposited, their roots dangling, in some foreign land to reinvent themselves and their lives. They and nine others have told their stories to Mahnaz Afkhami, who fashioned the hours of talk into a dozen chapters that make up *Women in Exile*, a sad, lovely, horrifying, heroic book.

continued on p.3



CONTENTS

- 1 Nan Levinson • Women in Exile by *Mahnaz Afkhami*
- 4 Letters
- 5 Nancy Mairs • Charlotte Brontë: A Passionate Life by *Lyndall Gordon*
- 6 Ellen Ross • American Mom: Motherhood, Politics, and Humble Pie by *Mary Kay Blakely*; Mother Journeys: Feminists Write About Mothering edited by *Maureen T. Reddy, Martha Roth and Amy Sheldon*
- 7 Sheila Bienenfeld • Subversive Dialogues: Theory in Feminist Therapy by *Laura S. Brown*; Women in Context: Toward a Feminist Reconstruction of Psychotherapy edited by *Marsha Praver Mirkin*
- 10 Shelley P. Haley • Teaching to Transgress: Education as the Practice of Freedom and Outlaw Culture: Resisting Representations by *bell hooks*
- 11 Ellen Cronan Ross • Under My Skin: Volume One of My Autobiography, to 1949 by *Doris Lessing*
- 13 Lila Abu-Lughod • Feminists, Islam, and Nation: Gender and the Making of Modern Egypt by *Margot Badran*; The Women's Awakening in Egypt: Culture, Society, and the Press by *Beth Baron*; Women in the Middle East: Image and Reality *MERIP Pamphlet Series*
- 14 Gillian Gill • Conceived with Malice: Literature as Revenge in the Lives and Works of Virginia and Leonard Woolf, D.H. Lawrence, Djuna Barnes, and Henry Miller by *Louise DeSalvo*
- 16 Sonia Jaffe Robbins • Autobiography of a Face by *Lucy Grealy*
- 17 Ninotchka Rosca • Palpong Sisters by *Cleo Odzer*
- 18 Karen Rosenberg • "They couldn't take our thoughts": a conversation with *Ceija Stojka*
- 20 Joanne M. Braxton and Julia K. Braxton • School Girls by *Peggy Orenstein*; Failing at Fairness: How America's Schools Cheat Girls by *Myra and David Sadker*
- 22 Angelika Bammer • Concert by *Else Lasker-Schüler*
- 23 Ann Withorn • Natalie on the Street by *Ann Nietzsche*; The Color of Welfare: How Racism Undermined the War on Poverty by *Jill Quadagno*
- 24 Emily Toth • Patsy: The Life and Times of Patsy Cline by *Margaret Jones*; Dolly: My Life and Other Unfinished Business by *Dolly Parton*
- 25 Emily Bass • Women Lawyers: Rewriting the Rules by *Mona Harrington*
- 26 Sara Roy • A Voice of Reason: Hanan Ashrawi and Peace in the Middle East by *Barbara Victor*
- 27 Stephanie Slowinski • Two Poems
- 28 Serinity Young • Lives of the Nuns: Biographies of Chinese Buddhist Nuns from the Fourth to Sixth Centuries by *Kathryn Ann Tsai*; Women Under the Bo Tree: Buddhist Nuns in Sri Lanka by *Tessa Bartholomew*; Passionate Enlightenment: Women in Tantric Buddhism by *Miranda Shaw*; Meeting the Great Bliss Queen: Buddhists, Feminists and the Art of the Self by *Anne Carolyn Klein*
- 29 Carole M. Counihan • A Hunger So Wide and So Deep: American Women Speak Out on Eating Problems by *Becky W. Thompson*
- 31 Books Received

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*“ The law changes and flows like water,
and ... the stream of women’s rights law has
become a sudden rushing torrent.”*

--from the Introduction, *State-By-State Guide to
Women’s Legal Rights* , 1975