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THE LAW REVIEW SYMPOSIUM: A HARD PARTY TO CRASH FOR CRITS, FEMINISTS, AND OTHER OUTSIDERS

JEAN STEFANCIC*

INTRODUCTION

In a symposium on legal scholarship in the spring of 1992, I published what appears to be the only—or at least the main—article in the legal literature about symposium publishing. In *The Law Review Symposium Issue: Community of Meaning or Re-Inscription of Hierarchy?*¹ I examined the increase of symposium issues and offered some theories on what that rise means. I also explored who publishes in these issues, what they are about, and whether they are qualitatively stronger or weaker than regular or mixed issues in these same reviews. I also discovered that certain writers tend to appear together, particularly in symposia in the top reviews, and that women and minorities were generally poorly represented. I now revisit my article to explore a slightly different hypothesis from those I investigated in 1992.

Over the past ten years or so, outsider scholarship has been proliferating. Members of critical legal studies (“CLS”) have been exploring legal indeterminacy, the structure of western capitalism, and deconstruction.² Feminists have been addressing such issues as patriarchy, pornography, gender discrimination, and the role of women in legal education,³ while critical race theorists (“CRT”) have been developing such concepts as interest convergence, intersectionality, and the social construction of race.⁴ Often, the work of these scholars has appeared in top law reviews whose editors seem to find these approaches provocative and intriguing. In this article I investigate the extent to which critical authors and legal feminists have been pub-

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1. Jean Stefancic, *The Law Review Symposium Issue: Community of Meaning or Re-Inscription of Hierarchy?*, 63 COLO. L. REV. 655 (1992).

2. GARY MINDA, *POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY'S END* (1995).

3. See, e.g., *FEMINIST LEGAL THEORY* (D. Kelly Weisberg ed., 1993).

4. See RICHARD DELGADO, *CRITICAL RACE THEORY: THE CUTTING EDGE* (Richard Delgado ed., 1995); Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 VA. L. REV. 461 (1993).

lished, not in the usual mixed issues of law reviews, but in symposium issues on particular topics. My beginning supposition or hypothesis was that symposium issues would show a lower representation of outsider scholars than non-symposium issues of law reviews. I suspected this for a number of reasons: the social dynamics of group or collaborative efforts, which by and large tend to be more conservative than individual efforts; the sometimes greater role of faculty in selecting symposium topics and authors; and the operation of what in my first article I termed "the sociogram" (the surprising frequency with which certain authors appeared together—often in symposia relatively devoid of women or critical writers).

As I discuss more fully in Part III, my hypothesis turned out to be true, but with an important qualification. Outsider scholars did appear less frequently in symposium issues than their numbers and overall rate of production would lead one to predict.⁵ But they also appeared more often than mainstream scholars in symposium issues with a critical, social-progressive, or forward looking/law reform bent. There thus appears to be limited assimilation, with an element of ghettoization. Symposium editors tend to overlook outsider scholars, except when the subject or study concerns race, leftist politics, or gender. Part I of this article explains my methodology. Part II lays out my findings, and discusses what they mean. Part III offers a few suggestions for law review boards interested in bringing outsiders' insights into the group of articles contained in a typical symposium dealing with mainstream legal subjects, such as jurisprudence or tort reform.

I. METHODOLOGY

The symposia in my survey were published in the top twenty law reviews⁶ during the years 1982 to 1992, the range of years captured by the Shapiro and Lindgren surveys featured in this volume. Using the *LEXIS* database, I compiled a printout of every law review citation that contained the words "symposium," "colloquy," "colloquium," or "special issue" for the years 1982 to 1992. To make sure that I included "renegade" symposia—those that are not listed as such in the law review—I examined the table of contents for every issue of the top twenty law reviews from 1982 to 1992. All additional symposia

5. See the contributions in this issue by Fred Shapiro and James Lindgren, showing that minority and feminist scholars have entered the ranks of the most-cited and prodigious writers.

6. See Janet M. Gumm, *Chicago-Kent Law Review Faculty Scholarship Survey*, 66 CHICAGO-KENT L. REV. 509 (1990).

thus discovered were added to the master list. I then created a table which included the year of the issue, the law review, the symposium title, and the author's name. Using bibliographies of critical legal scholars, feminists, and critical race theorists, as well as common knowledge, I identified each outsider scholar and arranged these data into columns which became my basic database for research and analysis.⁷

II. FINDINGS

The top twenty law reviews published 141 law review symposia during the years 1982 to 1992. Of those, 43 contained a critical legal studies author, 41 a feminist writer, and 26 a critical race theory scholar. In total there were 88 critical legal studies authors represented, 68 feminists, and 46 critical race theorists. The following tables indicate the distribution of authors, year by year.

1982

Law Review	Symposium	# of CLS Authors	# of Feminist Authors	# of CRT Authors
California	Perspectives on Family Law	0	1	0
Cornell	Restatement Second of Contracts	0	0	0
Michigan	Articles on Corporate and Organizational Crime	0	0	0
Minnesota	Governance of Public Enterprises	0	0	0
Pennsylvania	The Public-Private Distinction	5	0	1
Texas	Law and Literature	1	0	0
UCLA	Dames & Moore v. Regan	0	0	0
Vanderbilt	Crisis in the Criminal Justice System: Myth or Reality?	0	0	0
Virginia	In Honor of Justice Lewis F. Powell, Jr.	0	1	0
William & Mary	Legal History	1	0	0

1983

California	1982 Merger Guidelines	0	1	0
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7. Regarding my methodology: I eliminated the following—anniversary issues (unless they had a discernible thematic focus); surveys of developments in the law of particular states; tributes (except for those honoring Supreme Court justices and containing substantial articles); and symposia containing only a single article. With respect to authors, I excluded authors whose primary discipline is not law, as well as students and law clerks. As for feminists, I included in this category only authors whose main body of scholarship deals with work affecting women. Women who are members of critical race theory were entered only in that one category, even if some of their work had a feminist cast (in other words, each author was placed in only the category deemed most representative of the author's work). If an author appeared twice in a symposium, for an article and also a comment on the article of another contributor, I counted the author only once.

Cornell	Economic Recovery Tax Act of 1981	0	0	0
Michigan	Articles and Commentary on Equality	0	0	0
Minnesota	The New Deal And Its Legacy	0	0	0
New York University	The Passage of Time: The Implications for Product Liability	0	0	0
Northwestern	Freedom of Expression: Theoretical Perspectives	0	0	0
UCLA	Litigation in America	4	0	0
Vanderbilt	New Technology in the Communications Industry: Legal Problems in a Brave New World	0	0	0
Virginia	Biomedical Ethics	0	0	0
William & Mary	Water Rights	0	0	0
Yale	Legacy of the New Deal: Problems and Possibilities in the Administrative State, Pt. 2	3	1	1

1984

California	The Religion Clauses	0	0	0
California	Berkeley Law Centenary Lectures	0	0	0
Cornell	National Security and Civil Liberties	1	0	0
Cornell	The Revolution in Residential Landlord-Tenant Law: Causes and Consequences	0	0	0
Stanford	Critical Legal Studies	8	0	0
Texas	A Critique of Rights	6	0	0
University of Chicago	Conceptual Foundations of Labor Law	0	1	0
Vanderbilt	Winds of Change in Wills, Trusts, and Estate Planning Law	0	1	0
Virginia	Contemporary Problems in Securities Regulation	0	0	0
William & Mary	Scientific Evidence	0	0	0
William & Mary	Defamation and the First Amendment: New Perspectives	0	0	0
Wisconsin	Anorexia Nervosa	0	0	0

1985

California	Alternative Compensation Schemes and Tort Theory	1	1	0
Columbia	Law and Economics	1	0	0
Cornell	Preclusion in a Federal System	0	1	0
Harvard	Tax Transitions	0	0	0
Iowa	International Law and World Hunger	0	0	0
Minnesota	Semiconductor Chip Protection Act of 1984 and its Lessons	0	0	0
Southern California	Interpretation	3	0	0
Stanford	The Law Firm as a Social Institution	3	1	0
Stanford	Historical Perspectives on the Free Press	0	0	0
Texas	The Emergence of State Constitutional Law	0	1	0

Texas	Revised Model Business Corporation Act	0	0	0
Texas	Education	0	0	0
UCLA	Gerrymandering and the Courts	0	0	0
Vanderbilt	Bankruptcy	0	0	0
William & Mary	National Security and the First Amendment	1	0	0
Wisconsin	Law, Private Governance and Continuing Relationships	4	0	0
Wisconsin	American Legal History	2	1	0

1986

California	New Perspectives in the Law of Defamation	1	0	0
Michigan	Law and Community	1	1	0
Northwestern	Freedom of Association	0	1	0
Southern California	Legal Implications of Human Error	0	0	0
Stanford	National Labor Relations Act After 50 Years	0	0	0
University of Chicago	Litigation Management	0	1	0
Vanderbilt	State and Local Taxation	0	0	0
Virginia	Administrative Procedure Act: A Fortieth Anniversary Symposium	0	0	0
William & Mary	Religion and the State	1	0	0
William & Mary	Seventh Anglo-American Exchange: Judicial Review of Administrative and Regulatory Action	0	0	0

1987

California	Anticipating Antitrust's Centennial	0	1	0
Columbia	Kantian Legal Theory	1	0	0
Cornell	Bowsher v. Synar	0	0	0
Harvard	One Hundredth Anniversary of the Harvard Law Review	0	0	1
Iowa	Affirmative Action	1	0	0
Iowa	In Celebration of the Bicentennial of the Constitution	0	1	0
Iowa	Jurisprudence	0	0	0
New York University	Papers Presented at the Airlie House Conference on the Antitrust Alternative	0	1	0
Northwestern	Roberto Unger's Politics: A Work in Constructive Social Theory	1	1	2
Texas	Does Constitutional Theory Matter?	1	0	0
UCLA	Clinical Education	0	0	0
UCLA	Melville B. Nimmer Symposium	0	0	0
Vanderbilt	Privatization of Prisons	0	0	0
William & Mary	1787: The Constitution in Perspective	4	0	1

1988

Columbia	Jurisprudence of Takings	0	1	0
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Cornell	Federalist Society Sixth Annual Symposium on Law and Public Policy: The Crisis in Legal Theory and the Revival of Classical Jurisprudence	1	0	0
Harvard	Supreme Court Appointment Process	0	0	1
Michigan	Patterson v. McLean	2	0	0
Northwestern	Law and Social Theory	1	0	0
Pennsylvania	Limitations on the Effectiveness of Criminal Defense Counsel: Legitimate Means or "Chilling Wedges?"	0	0	1
Southern California	Judicial Election, Selection, and Accountability	1	2	1
Stanford	Gender and the Law	0	1	0
Texas	Human Voice in Legal Discourse	0	1	0
Texas	Academic Freedom	1	0	1
University of Chicago	Law and Political Culture	1	0	0
Vanderbilt	Modern Practice of Law — Assessing Change	0	0	0
Virginia	Theory of Public Choice	2	0	0
Wisconsin	Risks and Rewards of Regulating Corporate Takeovers	0	0	0
Yale	Republican Civic Tradition	1	2	2

1989

California	Law, Community, and Moral Reasoning	0	0	0
Cornell	Regulation of Secondary Trading Markets: Program Trading, Volatility, Portfolio Insurance, and the Role of Specialists and Market Makers	0	0	0
Iowa	Rhetoric and Skepticism	0	0	0
Iowa	The Sherman Act's First Century: A Historical Perspective	0	0	0
Michigan	Legal Storytelling	1	2	5
Pennsylvania	Webster v. Reproductive Health Services	0	2	0
Pennsylvania	Arms Control Treaty Reinterpretation	0	0	0
Southern California	The Works of Joseph Raz	0	0	0
Vanderbilt	State of the Union: Civil Rights	0	1	0
Virginia	Law and Economics of Bargaining	0	0	0
William & Mary	American Constitutional Tradition of Shared and Separated Powers	0	1	0
Yale	Popular Legal Culture	3	0	1

1990

Harvard	Responses to Randall Kennedy's "Racial Critiques of Legal Academia"	0	0	5
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Pennsylvania	Article III and the Judiciary Act of 1789	0	0	0
Southern California	Renaissance of Pragmatism in American Legal Thought	2	5	3
Texas	Texas Constitution	0	0	0
University of Chicago	Administering the Administrative State	0	0	1
Vanderbilt	Law, Literature, and Social Change	0	1	1
Virginia	Reproductive Technology and Reproductive Rights	0	0	0
William & Mary	The Bill of Rights at 200 Years: Bicentennial Perspectives	0	0	1
Wisconsin	Continuing Evolution of American Community Property Law	0	1	0

1991

California	Civil Rights Legislation in the 1990's	1	0	2
Harvard	Bicentennial of the Bill of Rights	0	0	0
Iowa	Voices of Women: A Symposium on Women in Legal Education	0	6	0
Michigan	One Hundred Years of Uniform State Laws	0	0	0
Michigan	The New Public Law	2	0	0
New York University	Centennial Celebration: A Tradition of Women in the Law	0	4	1
Northwestern	Substance and Enforcement of Securities Fraud Provisions	0	0	0
Pennsylvania	Critique of Normativity	2	1	1
Southern California	Biomedical Technology and Health Care: Social and Conceptual Transformations	0	2	0
Stanford	Women of Color at the Center	0	0	4
Texas	New Financial Products, the Modern Process of Financial Innovation, and the Law	0	0	0
Texas	Beyond Critique: Law, Culture, and the Politics of Form	5	1	2
University of Chicago	Approaching Democracy: A New Legal Order for Eastern Europe	0	0	0
Virginia	"Democracy and Distrust": Ten Years Later	1	0	0
William & Mary	Free Speech and Religious, Racial and Sexual Harassment	0	1	0
Yale	International Law	0	0	0

1992

Cornell	Federalist Society Fifth Annual Lawyers Convention: Individual Responsibility and the Law	0	2	1
Iowa	HIV Infection Among Women of Reproductive Age, Children, and Adolescents	0	0	0
Iowa	Corrective Justice and Formalism: The Care One Owes One's Neighbors	2	0	1

Minnesota	Hearsay Reform	0	0	0
Pennsylvania	Law and Policy of Health Care Rationing: Models and Accountability	0	0	0
Southern California	Federal Sentencing Articles	1	0	0
Southern California	Gender, Race, and the Politics of Supreme Court Appointments: The Import of the Anita Hill/ Clarence Thomas Hearings	0	8	4
Stanford	A Tribute to Justice Thurgood Marshall	1	1	0
UCLA	The Robert Alton Harris Execution	0	0	0
UCLA	Contemporary Issues in Administra- tive Adjudication	0	1	0
University of Chicago	The Bill of Rights in the Welfare State: A Bicentennial Symposium	0	3	0
Vanderbilt	A Reevaluation of the Canons of Statutory Interpretation	2	0	0
Virginia	Law and Economics of Intellectual Property Law	0	0	1
Virginia	Is Pragmatism Useful?	0	0	0
Yale	Punishment	0	0	0

These figures bespeak a remarkable degree of underrepresentation: the median number of outsider scholars in a typical symposium on a standard legal subject is zero. When one broadens this survey to include all symposia—including those on race, sex, or leftist politics—the median number increases to barely one. For purposes of comparison, consider that most annual volumes of a top law review containing four to six non-symposium (mixed) issues include at least three articles by non-mainstream writers out of about fifteen articles and essays.

III. DISCUSSION AND RECOMMENDATIONS

The representation of each group of outsider scholars varies from the others; therefore it is necessary initially to discuss each group separately.

A. *Critical Legal Studies*

Representation of critical legal scholars in symposia rose steadily until 1984 and 1985, after which it began to decline. In 1982, three symposia featured a total of seven critical legal studies authors. By 1984 and 1985, the numbers increased to fifteen authors for each year. By 1992, there were only four symposia, but now the total number of critical legal scholar authors had dropped to six. CLS writers appear, for the most part, in symposia dealing with critical subjects; only a

sprinkling appear in symposia dealing with mainstream subjects such as the First Amendment.

B. Feminist Legal Scholars

Feminists trailed CLS by a slight margin. In 1982, only two feminist authors appeared in two symposia. However representation during the next ten years increased, so that by 1992, five symposia featured fifteen feminists. As with CLS scholars, part of the explanation for the increase in representation of feminist legal scholars may lie in the increase in numbers of symposia dealing with feminist issues. The greatest proportion of feminist authors still occurs in symposia dealing with issues of gender, reproduction, women's voices, women of color, and discrimination. However, many symposia dealing with traditional legal issues such as corporate law, estate planning, and administrative law also feature one or more feminist scholars. As the reader will see by inspecting the table under the "Feminist" column, there seems to be a trend toward inviting representation of feminist scholarship in even the most traditional symposia.

C. Critical Race Theory

Critical race theorists are by far the least represented of all outsider scholars in top law review symposia. However, there is a trend toward greater representation of CRT writers. In 1982, one critical race theorist appeared in one symposium. In 1992, seven appeared in four symposia. Though this demonstrates an increase, there were no critical race theorists represented during 1984, 1985, and 1986. Only since 1987 has their participation begun to increase. As with feminist legal scholars, critical race theorists have the highest representation in symposia dealing with issues of race and social justice. The increase of writers of this persuasion is almost completely explained by the increase in symposia dealing with critical-race issues. Very few CRT writers are invited to participate in symposia on non-race issues. In summary, I found that symposium issues of the top law reviews contained a smaller representation of critical, critical race, and radical feminist authors than one would expect based on their relatively strong showing in publishing in top law reviews generally. Of the three outsider groups, CLS authors did best in this respect, critical race theorists worst. All three groups, of course, were well represented in symposium issues dealing with subjects close to those groups' central focuses on race, class, gender, and politics. For out-

sider scholars, then, symposium parties are markedly harder to crash than ordinary (mixed-issue) ones.

Why might this be so? A number of possibilities come to mind. Symposium issues may have a higher degree of faculty domination than mixed-issue ones. Local faculty may have suggested the topic in the first place, and may also have played a role in the selection of the authors to be invited. To the extent that most law schools have relatively few women faculty or faculty of color, the influence of faculty in symposium publishing may work against outsiders, as local, well-respected male faculty nominate topics dear to their hearts as well as contributors whom they have known through law school circles for a long time. It may also be that publishing a symposium issue requires a group—typically, the law review will designate a committee to explore topics, communicate with authors, and shape the issue. Group dynamics are frequently more conservative than individual ones, and so outsider scholars may end up excluded simply because three out of five members of a committee never think of them. (In a mixed issue, this may happen as well, but the committee will at least have on hand the attractive article written, for example, by the CLS scholar to counter any tendency to want to replicate familiar themes).

Finally, it might be that outsider scholars do not take the initiative in the way more mainstream scholars do in suggesting possible symposium topics to law reviews. Outsider scholars may be so busy with the work of mentoring, achieving tenure, and writing their own articles and books that they do not have the time and energy for institutional politics and bridge building to the law reviews that their more established colleagues do. Whatever the reason, the low participation of CLS, feminist, and critical race scholars in symposium issues should be cause for concern. Each of these schools has much to say about meat-and-potatoes legal issues such as tax reform, tort law developments, the future of the First Amendment, and other issues that receive symposium treatment. Outsider scholars can challenge orthodoxy and present new points of view that can help a symposium achieve real bite.

What can editors do to increase representation of outsider scholars in symposium issues? They may ask members of their faculties familiar with those genres, or consult bibliographies of feminist and critical race thought for names of potential contributors. If they have recently published an outsider author in one of their mixed issues, they can simply give him or her a call and ask for suggestions of names of scholars who might be invited to participate. These efforts should

repay themselves in the form of symposia containing better balance and attention to the emerging issues and viewpoints that the outsider scholars are well-equipped to bring.

