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TO DO IS TO BE

ZANITA E. FENTON*

TO DO is my favorite verb second only to TO BE. In this case, they are sometimes the same, and sometimes one road that leads to the other. From a feminist perspective, it is most often action that defines self, while simultaneously it is how we each define self that determines our actions.¹

TO DO is the ultimate objective of feminism, feminist theory, feminist critical theory, critical race feminism, the women's movement, or any other relevant label or manifestation of working towards improvement of the lives of all women. Action and the activist spirit are at the core of this goal.

"To Do Feminist Legal Theory," is a remarkable project. I must, just as other commentators on this symposium do, congratulate and applaud Professor Maria Grahn-Farley for the work she does and the inspiration to others she provides. Professor Grahn-Farley exemplifies exactly that which she has inspired. That is, her own theories and writing,² how she chooses to teach in a non-hierarchical fashion, and her daily actions in how she chooses to live her life serve as the best example of what it means "To do feminist legal theory."

Her inspiration has resulted in this symposium of work that deals with so many of the themes, approaches and theories that have developed over time in "doing feminist theory," while also managing to bring fresh perspective and individual nuance. The freshness in approach reminds us to be inclusive in expanding feminist thought and theory and to listen to voice at every opportunity presented. In commenting on this symposium I will discuss one approach, the narrative form, and one theme, violence.

In this symposium, the authors DO in several ways, including thinking,

* Associate Professor of Law, Wayne State University Law School; A. B., Princeton University, 1990; J.D., Harvard Law School, 1993. I thank Maria Grahn-Farley for being the inspiration behind this collection of works and being the driving force behind its publication. I thank all of the authors of this symposium for their hard work and congratulate the commentators for supporting their efforts. Finally, I congratulate the members of the *Cardozo Women's Law Journal* for having the wisdom and foresight in publishing this symposium.

¹ My use of "to do" and "to be" as mutually affirming is an obvious take off the famous musings of the 17th century French philosopher Renee Descartes' "I think, therefore I am." RENÉ DESCARTES, A DISCOURSE ON METHOD AND MEDIATIONS ON FIRST PHILOSOPHY 18 (Donald A. Cress trans., Hackett Publishing 4th ed. 1999) (1924).

² See, e.g., Maria Grahn-Farley, *The Law Room: Hyperrealist Jurisprudence & Postmodern Politics*, 36 NEW ENG. L. REV. 29 (2001); Maria Grahn-Farley, *Not For Sale! Race & Gender Identity in Post-colonial Europe*, 17 N.Y.L. SCH. J. HUM. RTS. 271 (2000).

theorizing, discussing, and finally writing about subjects and experiences important to the lives of women. Writing is an act of creating voice and resistance. As Professor Grahn-Farley puts it, "Feminist Legal Theory is in itself an act of solidarity."³ I believe that solidarity is the essence of feminism: solidarity found in common experiences, common needs, and common ideals, even in the face of difference between individuals. The written narrative, used to some extent by all the contributors to the symposium, is one of the hallmarks of feminist legal theory. The telling of the real acts and experiences of real individuals, whether of the story-teller, an individual known by the author, or a person created from the collective experiences of many in a given situation allows the act to go beyond the writing and the telling. The Narrative conveys meaning from which a new analysis or interpretation may be realized.⁴ The writing of it enables the reader to examine what has been "done," what needs to be done, and how the author thinks we should go forward to accomplish what needs to be done.

Maria-Victoria Castro in describing her path navigating cultural experiences in her self-actualization⁵ and Ekee Ehrlich in accounting how traditional conceptualizations of work excluded her because of a common and natural life experience (pregnancy),⁶ appear to be the most directly personal in their writing. Jacqueline Mertz in discussing her activities with the Native American Defense Committee⁷ and Jessica Dayton in describing her experiences working in a confidential shelter for battered women and children,⁸ speak of their own real actions as the subject of their writings.⁹ Kimberly Charles in discussing the strictures of Fundamentalist Christianity,¹⁰ Diane Gentry in describing the potential injustice in the structure and application of Title VII,¹¹ and Pantea Javidan in describing how the

³ Maria Grahn-Farley, *Foreward to To Do Feminist Legal Theory*, 9 CARDOZO WOMEN'S L.J. 197 (2003).

⁴ See Zanita E. Fenton, *Mirrored Silence: Reflections on Judicial Complicity in Private Violence*, 78 ORE. L. REV. 995 (1995). In *Mirrored Silence*, I insist that because of the authority that comes with the positions, judges have a responsibility to write the stories of women in abusive situations precisely to allow new analyses and interpretations.

⁵ See Maria-Victoria Castro, *La Mujer Argentina Que Soy Yo/The Argentinean Woman That I Am*, 9 CARDOZO WOMEN'S L.J. 321 (2003).

⁶ See Ekee Erlich, *Caution: Men at Work*, 9 CARDOZO WOMEN'S L.J. 409 (2003).

⁷ See Jacqueline Mertz, *Women Of Color—What Their Voices Teach Us*, 9 CARDOZO WOMEN'S L.J. 205 (2003).

⁸ See Jessica Dayton, *The Silencing of a Woman's Choice: Mandatory Arrest and No Drop Prosecution Policies in Domestic Violence Cases*, 9 CARDOZO WOMEN'S L.J. 281 (2003).

⁹ Writing narrative also goes beyond the intellectual tasks of thinking of writing by describing actual physical activities. I deliberately divide action into the categories of intellectual and physical for the sake of understanding. This is not to say that thinking and writing are not physical acts or that acts such as walking or picketing do not require the intellect or reason.

¹⁰ See Kimberly Charles, *Sexism is a "Family Value"*, 9 CARDOZO WOMEN'S L.J. 255 (2003).

¹¹ See Diane Gentry, *Title VII Limitations—Keeping the Workplace Hostile*, 9 CARDOZO WOMEN'S L.J. 393 (2003).

inconsistency between statutory rape and child prostitution law serves to further exploit children,¹² identify problems that need to be addressed. These narrative accounts ensure that we understand what is at stake.

An undercurrent, if not explicit, theme of violence is discussed throughout this symposium. I say this because the manifestations of violence are on a continuum – from the conceptual and the visceral to physical pain and destruction.¹³ Though some may say that this position is an overstatement, it is the full range that conditions, permits, and perpetuates oppression. Responding to the various forms of violence are a key objective of feminists, as exhibited by this symposium.

Appropriately, there is a chapter on Intimate Violence where Marnie Franklin and Jessica Dayton discuss aspects of Domestic Abuse.¹⁴ In addition, the backdrop of Jacqueline Mertz's discussion is the story of Yvonne Wanrow,¹⁵ a well-known story of domestic abuse, and the backdrop of Marie Galanti's discussion is the recently well-publicized story of the murder of five children by their mother, Andrea Yates.¹⁶ Discussions of private violence are important not only because they are literal and severe forms of violence, but also because the threat of violence and its realization are at the heart of oppression. Once we understand its essence, the various forms of oppression seem more connected as does the need to counter all forms of oppression.

One form of oppression addressed by the symposium participants is the "forced fit" of the traditional roles imposed upon women. This concept is addressed most deliberately by Victoria Alexeeva in recounting the history of women's arrested progression towards inclusion into the practice of law,¹⁷ and Autumn Mesa's description of gender hierarchy at the entry point to the legal profession, law school.¹⁸

And finally, just as feminism attempts to counter male norms and gender hierarchies in combating oppression, many of the participants go further to challenge mainstream feminism and feminist theory by insisting that it be more inclusive of identities, realities, agendas and solutions. When we acknowledge that the threat of violence and its realization is common to

¹² See Pantea Javidan, *Invisible Targets: Juvenile Prostitution, Crackdown Legislation, and the Example of Californian*, 9 CARDOZO WOMEN'S L.J. 237 (2003).

¹³ Fenton, *supra* note 4, at 1011-41; see also ELAINE SCARRY, *THE BODY IN PAIN: THE MAKING AND UNMAKING OF THE WORLD* (1985).

¹⁴ See Marnie J. Franklin, *The Closet Becomes Dark for the Abused: A Perspective on Lesbian Partner Abuse*, 9 CARDOZO WOMEN'S L.J. 299 (2003); Dayton, *supra* note 8.

¹⁵ See Mertz, *supra* note 7.

¹⁶ See Marie Galanti, *The Andrea Yates Trial: What is Wrong With this Picture?*, 9 CARDOZO WOMEN'S L.J. 345 (2003).

¹⁷ See Victoria Alexeeva, *Images of Women Lawyers: Over-Representation of Their Femininity in Media*, 9 CARDOZO WOMEN'S L.J. 361 (2003).

¹⁸ See Autumn Mesa, *A Woman's Climb Up the Law School Ladder*, 9 CARDOZO WOMEN'S L.J. 379 (2003).

the various forms of oppression, it may be possible to find common experience, empathy, and sometimes shared solutions. Jacqueline Mertz challenges us to consider and include racial perceptions; Marnie Franklin and Elisa Laird both challenge heterosexuals to learn from gay and lesbian experiences.¹⁹ They challenge us to listen and learn from more than just ourselves. When commonality cannot be found, feminist theory can be brave enough to acknowledge and embrace difference so as not to further marginalize and oppress. Feminism should and can be broad enough to encompass a variety of races, ethnicities, and cultures, religions and faiths, sexual identities, and even genders.

Acts of oppression, including violence, are acts that have the potential to define us, as individuals, as communities. Such acts require counteracts, which need not be in kind, but do strive to define self independent of the external pressures. The participants demonstrate that these acts may be in giving voice through storytelling, in writing as an act of resistance, and in the physical acts in both personal resistance and in the activist's cause. In the "doing" we chose to define ourselves independent of the definitions of us by others.

¹⁹ See Mertz *supra* note 7; Franklin, *supra* note 14; Elisa Laird, *The Law is Straight and Narrow, How American Courts Define Families*, 9 CARDOZO WOMEN'S L.J. 221 (2003).