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Essay

Law Review and Finding a Place in the Academy

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To answer the question of how my membership on law review influenced my career as a legal academic is to tell a singular story. It is singular not because it contains only one idea, but because it is not universal. I cannot offer a generalizable account of law review's influence on others because I carry only my own. I do not doubt that others would tell different stories if offered the space to do so, but here I am, so this is the story I can tell.

I entered law school at the University of Texas in 1994. As a first-generation law student, I knew few lawyers and had little understanding of what law school would entail. I had gone to law school because I was tired of watching the people I knew get crushed under the weight of what I perceived to be broken criminal and civil legal systems. I wanted to understand those systems and the law that animated them, but I also wanted to push back as if my enrollment in law school would allow me to place my body and mind between the defendant facing sentence, the woman left with vanishing (though now that seems quaint) reproductive rights, and the immigrant spending a lifetime hiding from "la migra." I imagined being a lawyer would render me more than an advocate but a superhero of sorts, who by virtue of hanging out a shingle or visiting a marginalized community or jail, could fix things. Law school (and understanding law), I reasoned, would answer what those "things" were or how the fix might occur. It was all the stuff of white girl, liberal fantasies, but I believed I could do it as I espoused my faith in

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process and redemption on my law school application and eagerly enrolled myself at The University of Texas.

The night before classes were scheduled to start, an acquaintance from college, who was enrolled in my class, invited me over for dinner. That evening, sitting beside the pool at his apartment, he asked me if I was going to try and make Law Review. I had no idea what he was talking about. In retrospect, judging by his question, perhaps he didn't either. Regardless, in May, I spent the precious time I had after first year exams and before I began my summer job as a clerk in the Rio Grande Valley at Texas Rural Legal Aid working on my submission for the write-on competition. Looking back, it is a blur. I do not remember what I wrote or even what the topic was. What I do know is at some point later that summer my parents received a call—I had provided my parents' number as I had no cellphone—telling them that I had made law review. They called me perplexed with the news (they had no idea what the caller was talking about) and were even more perplexed at my delight. I still didn't quite know what law review was, but I knew I had won a law school prize. What I didn't fully understand was that I was also beginning a journey that would change me in ways I had not quite expected. From clerk to public interest lawyer to academic, between change reads and Bluebooking, I found friendships that have lasted long past law school, learned a lot about esoteric topics (and a few I carry with me even today), and carved out a place for myself in the academy because I had trouble seeing myself and the reasons I went to law school in many of the articles I read as a student and beyond. Law review changed me. And in the process, I hope, it made me push back on siloed visions of who speaks on the pages of the Texas Law Review and other similar journals, and what they get to say. This piece is the story of that change.

I should back up. To read the opening paragraph one might be left with the impression that membership on the Texas Law Review created a catharsis or an epiphany (depending on your perspective). To claim this would be to overclaim. Law review was part of a larger moment for me. My membership created opportunities for me, taught me a lot about editorial processes, and served as a reminder that I was a law outsider. The last of these is the focus for this essay, not because it is the most important or because it stands alone (you'll see in a moment it doesn't), but because I believe there are other rooms in which to reminisce fondly about law review. Here, I want to speak more honestly about my experience because that experience, as an outsider, has influenced me most as a scholar, teacher, and advocate.

I am hardly the only professor to identify as a law outsider. Professor Patricia Williams's work in particular resonates with my own conception of this identity, even though I do not share all the affinities or experiences she

claims.¹ Williams describes her experience as one of a literal handful of women of color teaching in the legal academy in the 1980s. When I entered law school in 1994, while roughly half my class was female, I had one female law professor my first year and it was her first year teaching. For all her earnestness and knowledge, she lacked the gravitas of my male professors, all of whom were white, older, and post-tenure.² That I couldn't imagine myself a law professor then, therefore, may come as no surprise. But beyond that, I couldn't even imagine myself as a lawyer. The cases I read were often written by male judges, and women only appeared occasionally when they were injured on train platforms, were negligent mothers or wives, or were disbelieved as rape victims. Whatever their details, they were the people to whom law applied, not who made law. The two female Supreme Court justices at the time were held out as role models, but they were two of nine in a judiciary dominated by men. And both were appointed in my lifetime. With this educational perspective, few lawyer role models, and no female lawyer role models in my life, being a lawyer and a "legal thinker" was an identity that existed in realms beyond my own. "Making law review" signified my membership in a club of the elite. My first-year grades, and whatever I had written in the write-on competition, qualified me. This mattered in terms of opportunities. I enjoyed a robust Fall on-campus interview schedule and the choice of law firms all over the country. And my professors noticed me, some likely for the first time, as I met with them in an effort to identify candidates to advise me on my note. It also mattered because for the first time in my legal career I was exposed to the academy, not in terms of professors in my classroom or in the law school building, but in the world of "the legal academy" beyond.

That world was more difficult to navigate than I had imagined. However foreign the landscape of the law school classroom had felt my first year, law review reinforced a sense that there were people and stories the law could acknowledge and others who stood on the outside looking in—subject to law but not a meaningful part of its construction. The first three or four articles I worked on failed to capture my imagination or speak to any of the reasons I had gone to law school. Looking back, I cannot remember them. I am sure they were well-written and important pieces. I also recognize that what interests me personally is not actually (and thankfully) a standard for an article's acceptance. That their precise discussion now evades my memory is likely more a testament to my lack of focus or understanding than the articles themselves. This is the academic way of saying "it was me, not them" that rendered them immemorable. And, at the end of the day, my failure to remember these early pieces is insignificant to this piece. What matters more is what I

1. See generally, Patricia J. Williams, *On Being the Object of Property*, 14 SIGNS 5 (1988).

2. This is not a criticism of her but is merely the reality. She was a new, Latina teacher with no tenure and no history at the law school.

do remember (in part because I kept a list): none of the first pieces I worked on were by women, and all the authors I cite checked and dutifully found pin cites for were white law professors at elite institutions.

This should come as no surprise. An overview of law review statistics from a few decades ago, or even today, reveals a dominance of white male authors on the pages of law reviews, particularly elite ones like the *Texas Law Review*.³ After all, white men dominate the pool of those most likely to submit—professors.⁴ And as Professor Meera Deo notes, the COVID-19 pandemic exacerbated the submissions gap with fewer female professors submitting work for publication across disciplines in 2020.⁵ For a first-generation, female law student trying to navigate the spaces of the legal academy, though, this reality was jarring.⁶ Simply put, just as I could not find myself at the front of the classes I attended or in the cases I was reading, I could not find myself in the articles I was asked to edit. When I raised the issue of why I was only editing pieces by men, the answer I received was near uniform: first, the *Texas Law Review* did have some pieces by female authors (I just had not received them) and second, articles were accepted based on merit not the author's identity or perspective.

The first response was objectively true. There were in fact several articles in the volume written by female authors, though they were not the majority. The second response was more fraught. On its face, the proposition is undoubtedly valid: precious article slots in a volume are earned, not given. Yet, implicit in that statement was what I had felt since the moment I entered law school: that what a woman might have to say in her article—or what a piece that considered the perspectives of those I went to law school to represent—lacked sufficient merit to earn that space in the academy. Even as male colleagues were friends and supportive, my female colleagues and I discussed the lack of women both in the academy, and in our year, on law review—particularly in leadership positions. We were led by male Editors-in-Chief and Managing Editors throughout our tenure on law review. In the past, there were women at the top of the masthead (there's a woman there on the very volume this Essay is part of), and women served in executive positions. But, during my days in the *Texas Law Review* office, being a woman meant

3. See e.g., Jean Stefania, *The Law Review Symposium Issue: Community of Meaning or Re-Inscription of Hierarchy* Symposium on Legal Scholarship, 63 U. COLO. L. REV. 651, 661 (1992).

4. See e.g., Richard K. Neumann Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEGAL EDUC. 313, 325 (2000); Shontee M. Pant, *Calculating the Gender Gap in Legal Scholarship: An Empirical Study*, 65 ST. LOUIS U. L.J. 199, 200–01 (2020).

5. Meera E. Deo, *Investigating Pandemic Effects on Legal Academia*, 89 FORDHAM L. REV. 2467, 2469 (2021).

6. Others have noted that even as law schools equalized male and female enrollment, white men in particular tended to feel most comfortable in the law school setting. See Nancy E. Dowd, Kenneth B. Nunn & Jane E. Pendergast, *Diversity Matters: Race, Gender and Ethnicity in Legal Education*, 15 U. FLA. J.L. & PUB. POL'Y 11, 26 (2003).

not occupying the corner editorial office. This echoed what we saw in the articles we worked on, the cases we read, and those who taught us. Women in these positions of power were rare finds. And this rarity perpetuated and drove a construct of law that belonged only to some. If women could not “earn” a space at the editorial table or on the bench, they would not be present when decisions were made on articles or cases. And judgments of the merit of an idea—whether in an article or a judicial opinion—would bear the perspective of those who had decision making power. In real terms, it meant and continues to mean that over one half of the population that is consigned to live under the law do not write it or interpret it.

In this, the story of how I “fit” in the legal profession shifted. My sense of being an outsider began to be defined less in terms of my family’s socio-economic, educational, or geographic status and more in terms of my gender identity. I found myself actively seeking out female mentors—at the law school and beyond. They directed me to the likes of Patricia Williams, Martha Minow, Mary Joe Frug, Mari Matsuda, Kimberlé Crenshaw, Robin West and others who offered an education on feminist legal theory and critical race theory. They told me stories of their own careers and offered guidance. And they supported me when I chose to write my note from a feminist perspective. In addition, I found male professors, many at the University of Texas, who offered support and mentorship.

I also found myself challenging professors more often in class and in my role on law review. To my surprise, even my most conservative male professors were willing to engage in discussions, even if they did not always “buy” into my argument. When one professor suggested, after a particularly heated discussion on whether women shared similar economic and career interests as their male counterparts, that I consider a career in the legal academy, I held the idea in the back of my head and wondered if I could be the woman in the front of the room for some future version of myself who was trying to find her space in the legal academy.

After years of practice as a criminal defense lawyer, I made the decision to enter the legal academy, first as a clinician and then as a doctrinal professor. I carried with me not only years of experience in a courtroom but also a pedigree bolstered by membership on law review. What my resume did not show was that law review had not just taught me how to edit and write better, it had also galvanized my sense that to belong in the legal academy I had to find the spaces that the women who came before me had described. Once I had carved a nook to reside in, I had to open spaces for others—not just women, but others who could not find themselves or their lived experiences in the words they read in casebooks or law review articles.

All this may sound overly critical of law review and overly self-aggrandizing. It is not meant to be either one. I cannot claim that I have perfectly reconstructed my classroom or my scholarship to reflect the world around

me. Instead, both are works in progress that constantly evolve as new perspectives are shared by colleagues, students, and my community. My time on law review, for all its imperfections, was also critical to my development as a lawyer, academic, and person. My life on law review became a forum for mentorship—filling gaps law school left for first-generation law students like myself. Fellow law review members offered outlines and course advice; they guided career decisions and encouraged me to apply for the judicial clerkship that set me on a path to become a public defender. That I criticize law review here is not meant to be a condemnation of the institution but to ask the genuine question I asked when I began as a new member: where and how do different stories of the law fit in and what obligation does law review have to open spaces to those stories. Put in a larger context, as the nation ponders reform across civil⁷ and criminal⁸ legal systems, and law reviews expand

7. See, e.g. Daniel Wilf-Townsend, *The Urgent Need for Civil Justice Reform*, BOSTON REVIEW (Apr. 21, 2020), <https://bostonreview.net/law-justice/daniel-wilf-townsend-urgent-need-civil-justice-reform> [https://perma.cc/YZ3Q-FZTN].

8. See, e.g. Melissa Chan, *From Easing Drug Laws to Increasing Police Oversight, Criminal Justice Reform Won Big in the 2020 Election*, TIME (Nov. 5, 2020), <https://time.com/5907794/2020-election-criminal-justice/> [https://perma.cc/6CXS-PXF5]; Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> [https://perma.cc/28C3-MULE].

their membership⁹, leadership¹⁰, and authorship¹¹ to include those previously underrepresented, what stories are told, who is included and excluded, and why?¹²

9. See Paul Willison, *Rethinking the Writing Competition: Developing Diversity Policies on Law Journals After FASORP I and II*, 71 CASE WEST. RESERVE L. REV. 351, 383–85 (2020); Claire E. Parker, *Law Review Inducts Most Diverse Class of Editors in History*, THE CRIMSON (Sept. 6, 2016), <https://www.thecrimson.com/article/2016/9/6/law-review-inducts-most-diverse-class/> [https://perma.cc/7U3V-AMN7]

(noting “[f]or the first time in the publication’s nearly 130-year history, the Harvard Law Review inducted a group of editors this year whose demographics reflect those of their wider Law School class—including the highest-ever percentages of women and students of color.”). Some law reviews have adopted explicit policies on diversity, see, e.g., *Diversity*, CAL. L. REV., <https://www.californialawreview.org/about/diversity/> [https://perma.cc/PW6C-CVPT] (describing the California Law Review’s diversity policy); *Diversity*, GEO. L. J., <https://www.law.georgetown.edu/georgetown-law-journal/about/prospective-members/diversity/> [https://perma.cc/KSY7-FQUJ] (describing the Georgetown Law Journal’s policy on diversity). Such policies are not without controversy, see Karen Sloan, *Appeals Court Backs NYU Law Review in Challenge to Diversity Policy*, REUTERS (Aug. 25, 2021), <https://www.reuters.com/legal/legalindustry/appeals-court-backs-nyu-law-review-challenge-diversity-policy-2021-08-25/> [https://perma.cc/TN62-M4GD]

(describing a legal challenge to NYU Law Review’s diversity policy for members).

10. 2020 marked the first year that women topped the masthead at all top law reviews. See Erin Spencer Sairam, *First All-Women Class of Top Law Journal Editors Leaves Behind a Byline and Legacy*, FORBES (Feb. 11, 2020), <https://www.forbes.com/sites/erinspencer1/2020/02/11/first-all-women-class-of-top-law-journal-editors-leaves-behind-a-byline-and-legacy/?sh=3ef54a08758e>; Ann E. Marimow, *For the First Time, Flagship Law Journals at Top U.S. Law Schools Are All Led by Women*, WASH. POST (Feb. 7, 2020), https://www.washingtonpost.com/local/legal-issues/for-the-first-time-flagship-law-journals-at-top-us-law-schools-are-all-led-by-women/2020/02/07/b4d3bc64-4836-11ea-bc78-8a18f7afcee7_story.html [https://perma.cc/T7CG-ACKU]. Duke Law even hosted an event celebrating this achievement, see *Duke Law Hosts DC Event Honoring Women’s Advancement in Legal Profession and at Helm of Journals*, DUKE LAW NEWS, (Feb. 5, 2020), <https://law.duke.edu/news/duke-law-hosts-dc-event-honoring-womens-advancement-legal-profession-and-helm-journals/> [https://perma.cc/L5WB-WLW2].

11. Just as journals have developed policies around diversity of membership, so too have they developed policies around diversity of authorship, see, e.g., *Diversity*, NW. U. L. REV., <https://northwesternlawreview.org/about/diversity/> [https://perma.cc/W2YK-THXP] (describing the Northwestern University Law Review policy on diversity of scholarship) and *Diversity*, NOTRE DAME L. REV., <http://ndlawreview.org/diversity/> [https://perma.cc/HP4Y-HK92] (describing the Notre Dame Law Review’s policy on diversity of scholarship). For a study describing the importance of such policies, see generally Adam Chilton, Justin Driver, Jonathan S. Masur & Kyle Rozema, *Assessing Affirmative Action’s Diversity Rationale*, 122 COL. L. REV. (forthcoming 2022), <https://ssrn.com/abstract=3856280>.

12. Other questions could be added to this list: why does law review membership remain predominately white even as gender barriers have been broken down significantly? Why, given the increase of women in leadership positions on law review, do female authors still lag behind? The precise answers to these questions may be difficult to pinpoint with any accuracy. However, ideals of “good legal scholarship” may take more than expanding membership or naming women to leadership positions; it may require a recentering of what law is meant to do and how it should be discussed. This begs the question, should law reviews carry power to drive such discussions of law? Others have written of the power of particular articles to drive judicial opinions and other scholarship in ways that I suspect few non-flagship publications do. John S. Dzienkowski, *A Century of Texas Law Review Scholarship*, 100 TEXAS L. REV. (forthcoming Feb. 2022). What remains unanswered is what role *ought* law reviews play?