

BETWEEN LEGAL STUDIES AND FEMINISM

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What turned some Berlin law students into feminists? What were the origins of the "feminist jurisprudence project" at the Humboldt University in Berlin? The answers undoubtedly lie, in part, in the deficiencies in both social life and subject matter faced by women studying law in Germany. In order to explain the origins and subject matter of the feminist jurisprudence project, this article will provide an overview of the curriculum, the university situation, and the disadvantages faced by women law students in Germany.

A. *Historical Development of the Study of Law in Germany*

German women have been admitted to universities since 1909. However, for many years they were not admitted into legal professions, either because they were not permitted to take the final exam (known as the "state exam"), or because, after taking this test, they were not admitted to the preparatory training necessary to advance into a profession such as that of attorney.

Once women in other countries (such as France, Switzerland and England) gained the right to work as lawyers, German students also insisted on attacking the "arguments" brought against their employment in legal professions—for example, that women could not make objective, rational decisions.¹ Finally, on 11 July 1922, the Law on Admission of Women to Offices and Professions in Law took effect. The first female lawyer was admitted to practice on 7 December 1922 in Berlin, and the first female judge in Germany took up her post in 1924.

These achievements were quickly forgotten during the Nazi reign of terror. Justified in part with the argument that women in the legal system stole men's livelihoods, women were forced out of the field. Female judges were shunted into departments in which they no longer appeared in public, or were immediately fired. Even in the final years of the Nazi regime, when women were obligated to perform heavy labor, the legal system remained free of

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¹ Annelies Kohleiss, *Frauen in und vor der Justiz*, KRITV 115, 118 (1988).

women.² After 1936, the only possibility for women to work in the legal field was to take the place of a male member of the profession who had been conscripted into the military. Women frequently took men's place in this way.³ However, they lost their position upon the man's death.

Reservations about women in the legal system did not disappear with the end of the war. Still, more and more women gradually entered the field, particularly as the number of female law students continued to grow. The percentage of women university students in general increased steadily until 1972, then underwent a period of decline. In 1988, in West Germany, it stood at 55.3%. Over half of all women who graduated high school hoped to attend the university. Law is one of the most popular subjects among women, ranking second on the list of desired subjects.⁴ Thus in the 1991-92 winter semester, 41.6% of all students registered to study law were women.⁵

Unfortunately, and unlike other courses of study, this large number of female students is not reflected in a large number of female assistants, lecturers and professors. In 1991, in the former West Germany, only 10 women held the highest-level university posts, so-called "C-4" professorships. Thus the university landscape in general is shaped like a pyramid; while the base consists of equal numbers of female and male students, the number of women falls as one moves up the university hierarchy, so that at the top, in 1989, there were only 2.3% female professors against a predominance of 97.7% male professors.⁶ Almost everyone encountered by women during their university education is male.

Thus we have not been involved in the legal system for very long, and we would be lying if we said we experienced no discrimination, especially at the university level.

B. *The Road to Studying Law and the Structure of Legal Studies*

To be admitted to university studies (such as law) in Germany, all students require an *Abitur*, a certificate of completion of a col-

² *Id.* at 122.

³ *Id.* at 123.

⁴ Sigrid Metz-Göckel, *Frauenförderung und Quotierung an den Hochschulen - Fortschritt oder Rückschritt auf dem Weg zur Gleichstellung der Geschlechter*, in ERICA BOCK-ROSENTHAL, FRAUENFÖRDERUNG IN DER PRAXIS. FRAUENBEAUFTRAGTE BERICHTEN 78, 81 (1990) (essay in a collection by women's commissioners on the practical results of affirmative action for women).

⁵ HASSELS & HOMMERICH, FRAUEN IN DER JUSTIZ. It should be noted that, in Germany, there is no exact equivalent of the U.S. undergraduate degree. Students immediately specialize and eventually take their degrees in one or two subjects, of which law may be one.

⁶ Metz-Göckel, *supra* note 4, at 78, 81.

lege preparatory high school. The grade on the *Abitur*—an average of grades achieved on comprehensive school leaving exams—determines how soon a student may begin studying at a university. If the grade is low, the student may have to wait out a semester or more, bridging the interval with work, time abroad, or study in other departments. The *Abitur* grade also determines whether a student will be admitted to the university of his or her choice. Since 1992, a central government office has been in charge of distributing university assignments. A student may specify a preferred university, but if too many applicants request a certain university, the *Abitur* grade becomes the deciding factor in whether she will be assigned her university of choice. However, once accepted to a university, a student may swap her place with someone assigned another university in order to get into her university of choice.

Additional qualifications or qualities, such as the LSATs in the United States, are not prerequisites for studying law in Germany. This is both positive and negative for aspiring law students. While many would welcome a limitation of admissions to an endurable number, under the current system everyone has a chance to study.

The required course of study is geared toward eight semesters, during which students take both required courses and electives. The main teaching method is the lecture, in which 300 or more students in a single semester listen to a professor's presentation. There is little place in these lectures for students' questions, as the lecture format is unsuited for them. Questions regarding subject matter can be posed in small study groups held by professors' assistants, accompanying their lectures during the first four semesters. A study group generally consists of twenty students who come together mainly to solve cases involving the subject matter and ask questions. The student generally gets to know fellow students in these study groups, the people she will spend the most time with during her studies. Other than seminars and the exercise groups described below, these are the only types of classes in which students are actively involved, for there are no moot courts or the like; only in such classes can they learn about themselves, because they are forced to take a position—that is, to express their opinion as to how a case should be resolved.

Generally students attend only two seminars in the course of their studies. These are offered by professors on subjects not treated in the required classes, but of great interest nevertheless because they involve current events, for example, or are relevant to legal practice. "Exercise groups" are the classes in which students take tests—that is, solve cases. If they pass the tests, students re-

ceive certificates of attendance known as *Scheine*. These are also given for seminars and the term papers or oral reports required for them. The *Scheine* earned over the years of study must be submitted when registering for the first state exam at the state testing office. To be allowed to take the exam, a student must also have completed a three-month internship of her own choosing (for example, in court), under the supervision of a member of the legal profession.

To be prepared for the state exam, experience in solving cases is necessary. Thus universities offer examination preparatory courses to students, and there are also many private firms that—for a not-insignificant fee—specialize in review courses that teach students how best to take the tests. Still, the failure rate on the state exam averages around 30%; German students are generally not used to taking major tests, as these are not part of university education.

The existence of these review courses is an excellent indicator of the deficiencies of legal education; for a number of reasons, including the huge number of students, free universities are unable to prepare their students sufficiently for the exams, and the gap is bridged by private firms. But this occurs financially at the expense of the students or their parents, who must pay for the review course. Thus whether one receives a good legal education is a financial question even in a system of free education.

Students have several chances to take the exam. In recent years, conservative governments have tried to reduce the length of study by encouraging students to take the exam earlier. As welcome as this may be, it also means that university education is now geared toward preparing students for the state exam as quickly as possible. The result is that only the “mainstream” is taught, with little time remaining for more comprehensive learning. Students whose records indicate a length of study significantly above the norm no longer have very good chances on the job market. The dilemma arises that on the one hand, employers seek “well-rounded” lawyers, but on the other, those who extend their studies longer than supposedly necessary in order to devote themselves to marginal areas or special interests are considered unwilling to work.

Once the first state exam is passed, a practical training period of two years follows, during which the student gains experience in various obligatory and elective positions (for example, a civil court, an administrative agency, a criminal court or prosecutor's office). This part of the educational process ends with a second state exam.

Unlike legal education in the United States, the entire course of legal study in Germany is geared toward training students for the position of judge, even if graduates later choose other positions, such as attorney, prosecutor, diplomatic service, administrative work or in-house counsel for a large corporation or bank. Thus students are taught, and learn, how a judge would decide a case. In German we purposely used the male form of the word "judge," because, despite the highly-praised objectivity of legal training, which is supposed to be crucial in deciding a case, critical examination reveals that legal education, with its scholarly opinions, reflects a judge's views as a white, male Christian.

Thus the motivation of many women to study law faces a serious test during the first year of university. We are aware of no studies examining why so many women are interested in studying law, but, based on statements by fellow students, we can describe their motives as follows: a desire to help, a secure job for the future, social respect, and an attempt to achieve a share in male power. Undoubtedly some of these motives are identical to those of men. However, because we are taught to think like judges, taking sides is not a skill embraced in our legal studies. We never learn to represent one side, the client, in legal disputes—even though, in practice, most law students become attorneys, and many women would like to learn how to represent women. Instead, there is constant reference to the aforementioned objectivity, even though this much-touted objectivity often seems to work to the disadvantage of the weaker party when it is the dominant standard.

The view of future judges, which is the focus of our education, is directed strongly in one direction by university training: toward the prevailing opinion, which, in part because of the traditions of legal training and the apparatus of justice, is a male opinion. Only students with sufficient initiative of their own can really work with law creatively by the time they graduate—for example, if they have taken the courses in feminist legal theory at the Humboldt University (to be discussed, *infra*) or other non-mainstream seminars that show how law can be very different from the prevailing view. Here they not only learn what the professor dictates, but also how to look critically at whether it is really objective, neutral and just⁷ when male views are always determinative.

⁷ Susanne Baer, *Objektiv-neutral-gerecht? Feministische Rechtswissenschaft am Beispiel sexueller Diskriminierung im Erwerbsleben*, 2 KRIT. VIERTELJAHRESSCHRIFT FÜR GESETZGEBUNG UND RECHTSWISSENSCHAFT 154 (1994).

C. *General Situation of Women Studying Law*

As far as discrimination against women at universities, German and American experiences are similar; however, we will present some German examples. The data used refer to various universities in both Berlin and the rest of Germany.

One of the outstanding characteristics of legal education in Germany is that it is a popular subject.⁸ Two to five hundred students per semester—the number in the entire school can be extrapolated from this—taught by 20-30 professors inevitably creates an atmosphere of anonymity. The universities do not have the money to offer sufficient classes, so that courses with 100-400 students are the rule. Small groups are found only in the study groups (discussed, *supra*), but some universities offer them only to students in the early semesters. This is particularly problematic for women because it worsens the specific problems to be discussed *infra*, as well as the discrimination through massive competition among students and completely insufficient attention from teachers.⁹

Because of the historical tradition in which women were only admitted to legal study and professions very recently, the stereotype still exists, in certain respects, that women are not suited to legal studies. More recently, an additional fear of competition has arisen among both male professors and students. They continue to employ structural as well as personal methods of exclusion to prevent women from successful participation in studies. It is still the case that women, despite their large presence as some 50% of all students, are barely visible in either the subject matter or the classes themselves.

D. *Ignorance of Women and their Experiences in Subject Matter*

To illustrate the ignorance of women and their special experiences in the subject matter taught in law school, we offer briefly the results of a 1977 study which, in the experience of the authors, remains disturbingly up to date.¹⁰ The study examined how women were presented in civil law cases in German legal textbooks. The authors drew shocking conclusions about the way German law-

⁸ Frithjof A. Maennel, *STUDIUM DER RECHTSWISSENSCHAFTEN* 14 (1994).

⁹ MONTANA KATZ & VERENA VIELAND, *UNI-KNIGGE FÜR FRAUEN* 114 (this is a translation of KATZ & VIELAND, *GET SMART! A WOMAN'S GUIDE TO EQUALITY ON CAMPUS* (1988), with German examples and information added by Sabine Klein-Schonnenfeld, a lawyer and social scientist and the director of the Office Against Sexual Discrimination at the University of Bremen).

¹⁰ Franziska Papst & Vera Slupik, *Das Frauenbild im Zivilrechtlichen Schulfall*, in UTE GERHARD & JUTTA LIMBACH, *RECHTSALLTAG VON FRAUEN* 199 (1988).

yers see women, ways that are still accepted today. This is problematic because the classic cases studied for exams most probably influence lawyers' later world views and legal decisions.¹¹

Textbook cases were characterized by an underrepresentation of women. Over sixty percent of all cases involved only men. It is easy to understand the motivational problems this raises for female law students, problems not experienced by their male colleagues. When women do appear in cases, a sexually-associative content is involved in one third of the cases.¹² This borders on discrimination not only against women as a whole, but specifically against women law students.¹³ In 65.8% of the cases, women were defined solely through their relationships to men; in only 30% were they represented as independent actors. Only 27.5% were employed, generally in typical underprivileged women's jobs such as secretary.¹⁴

This absence of women in the legal subject matter treated, along with the fact that the number of female professors remains far too low, leads to a lack of role models for female law students, and is undoubtedly at least partly responsible for the unsatisfactory situation of women at the university.

E. Problems Women Encounter at the University

In 1992, a study was published examining the special situation of women at universities that, among other things, referred to the gender-specific difficulties and hardships experienced by women. A countrywide survey of various universities and departments yielded an interesting picture of the comparative self-perceptions of male and female students in various departments. In its most interesting finding, the study revealed that all the difficulties and hardships experienced by women at universities came together for women studying law.¹⁵

Thus 62% of the female law students questioned had some or great difficulty speaking up in class discussions, compared with only 39% of male students. The author blamed this on open or

¹¹ *Id.* at 204.

¹² Examples include the following, *cited in id.* at 208-09: "Roland S., a soldier, is seeking a blond at B's dating service for leisure-time activities" ("for leisure-time activities" is a common euphemism for sex); "General manager Glühwein is taking a vacation from his family with his mistress."

¹³ It is, after all, law students who are constantly confronted with this material and must solve such cases as part of their regular studies.

¹⁴ Papst & Slupik, *supra* note 10, at 210-13.

¹⁵ Johann-Ullrich Sandberger, *Studentinnen*, 8 HEFTE ZUR BILDUNGS- UND HOCHSCHULFORSCHUNG 55 (1992) (study by a working group in the social science department of the University of Constance).

subtle gender discrimination by professors and fellow students. The tendency was to take women's statements less seriously than those of male students.¹⁶ From our own experience, we can confirm that women's responses are often used by professors as an opportunity to make jokes, which tend to be laughed at primarily by men.

Competition among students also becomes a hardship experienced by women more intensely than by male students. Fifty-five percent of all female law students felt competition is a typical feature of law school and have great problems with this, while only 1/3 of all male students saw this as a hardship. One reason for this is female socialization, which does not fortify women for competition, but in fact does precisely the opposite.¹⁷ However, difficulties in speaking up in class also depend on the relationship between the professors and students. Forty-five percent of female law students had some or great problems with professors.¹⁸ They were not asked the nature of these problems; however, it is highly probable that they include the lack of personal attention resulting from the large number of students.

A further hardship for law students lay in the disproportionate fear of examinations suffered by 44% of women and only 22% of men. The same percentage of women doubted they would succeed in their studies, which the author of the study blamed on women's lack of self-confidence.¹⁹ However, given the 30% failure rate on the first state exam, such doubts might also be seen as an acknowledgment of reality. Even years later, every female lawyer can tell of the blocks and burdens caused by the fear of tests, a result of the exams' exaggerated demands and the quantity of subject matter (all eight semesters of study, as no tests are given earlier).

F. *Women's Motivations in Seeking an Academic Career*

Because women are not encouraged, most have lost their intellectual self-confidence by the end of their studies. Thus a study by the University of Tübingen²⁰ found that 61% of all female students possessed a low level of intellectual confidence. The deficiencies during studies results in low motivation among female law students

¹⁶ *Id.* at 19.

¹⁷ *Id.* at 17.

¹⁸ *Id.* at 19.

¹⁹ *Id.* at 22.

²⁰ Gesine Küspert, *Studieren—was dann? Zur Situation studierender Frauen an der Uni Tübingen*, DOKUMENTATION EINER TAGUNG DER FU BERLIN "STUDENTINNEN IM BLICK DER HOCHSCHULFORSCHUNG" 70-71 (1992) (documentation of a conference at the Free University of Berlin on "Female Students from the Perspective of Research on Universities").

to pursue academic careers at universities, or even work toward doctorates, so that the number of female teaching and research assistants to professors is rarely more than 20%. This attitude can be traced mainly to a lack of role models resulting from the dearth of female professors, and consistent support for women in this area would be a significant step towards improving the study situation.

However, the difficulty of combining career and family probably plays a major role here. Only 10% of female students desire full-time careers; the remainder would prefer to work only part time if they have children, which, incidentally, is what most male students expect of their partners.²¹ However, opportunities for part-time work in academia are practically non-existent.

G. *Situation of Students from the Former East Germany*

Because of Berlin's special situation, we will briefly discuss the situation of female eastern German students at western German universities. The Free University of Berlin (FU Berlin) and the Technical University of Berlin (TU Berlin), both in what used to be West Berlin, were already *de facto* western universities. Because Germany has a completely different legal system from that of the former East Germany, the law department at East Berlin's Humboldt University was dissolved and reestablished; all positions were newly filled, almost exclusively with male professors from West Germany.

Eastern and western behavioral patterns were researched for the TU Berlin; the authors of this article can confirm from their own experience that they apply to the Humboldt University as well. Eastern German women in particular view the "mass study" situation in the west ambivalently, as a balancing act between freedom and chaos. In the west, personal responsibility for structuring one's own studies is a fundamental difference from East Germany; eastern German women students tend to adhere to the prescribed course of study, leading them to put greater pressure on themselves to achieve—something not observed in male students from the east. This is also, unfortunately, accompanied by skepticism with regard to discussion classes not required for the exams.²² Interestingly, the proportion of women in law, economics and social sciences among eastern German students is 20% higher than among western German students.

²¹ Sandberger, *supra* note 15, at 34.

²² Uta Dobrinkat-Otte, *Zur Situation ostdeutscher Studentinnen an einer westlichen Universität*, in *DOKUMENTATION EINER TAGUNG DER FU BERLIN, "STUDENTINNEN IM BLICK DER HOCHSCHULFORSCHUNG"* 183-84 (1992).

Contacts between western and eastern German students remain a significant issue. To some extent, different backgrounds and experiences continue to cause cultural and substantive difficulties in understanding one another. Still, at the Humboldt University, more so than at the FU, mutual interest and willingness to deal with each other seems to be the prevailing atmosphere. Both universities now offer classes on issues involving East German law.

H. Discrimination against Women in Legal Studies

Having listed some difficulties that can be seen as involving more of the social side of studies, we will now describe some examples of direct or indirect discrimination.

I. Discrimination in Grading

A case of direct discrimination against women is the fact that written work by women receives lower grades. Experience shows that papers receive better grades when the person giving the grade believes the paper was written by a man and not a woman. In particular, women often are at a disadvantage when grades are given based on subjective points of view, rather than according to a purely numerical scheme.²³ This subjective type of grading is unfortunately the rule in legal testing, as grading is based on case solutions, legal writing and arguments, which can only be judged subjectively.

While discrimination is difficult to prove here, one female Afro-German law student seems to have succeeded. Her case appeared in all the Berlin newspapers and will therefore be sketched briefly here. The case can be found in a study commissioned at the FU by the women's commissioner (whose function will be described below) in 1994.²⁴ The fact that this study was commissioned at all gives some indication of the extent of the discrimination.

A male student had asked the woman to lend him her take-home paper on public law. He copied it almost word for word. He passed; she failed. She submitted her next paper, in civil law, under three different names—those of a German man, a German woman, and her own foreign-sounding name. The German man passed, the German woman was never graded, and she herself failed. She repeated the experiment several times; the results were

²³ KATZ & VIELAND, *supra* note 9, at 113.

²⁴ Sylvia Lange, *Diskriminierung von Frauen in Prüfungssituationen*, 2 INNENANSICHTEN, SCHRIFTENREIHE DER FRAUENBEAUFTRAGTEN DER FREIEN UNIVERSITÄT BERLIN 42-43 (1994).

the same. Aside from gender discrimination, ethnic discrimination might have played a part here, but she herself felt discriminated against primarily as a woman. It is also interesting that she was unsuccessful in her attempt to make an appointment to discuss the situation with the dean of the department or the president of the FU. Only when the media stepped in did the president promise an investigation. Nevertheless, demands that the process be made more anonymous by requiring only identification numbers were rejected as unnecessary. On the contrary, at almost the same time a decision was made that papers could only be submitted along with a copy of the student's ID card.²⁵

Because of such discrimination, women have been expected to do better in law studies in order to receive the same degree of recognition. This increased level of achievement has led to consistently better exam results by female law students in comparison to their male colleagues. Several years ago, this led to a suggestion by a state supreme court judge that, contrary to traditional practice, exam grades should no longer be the decisive criterion for entry into legal careers, as otherwise there was danger of a "feminization of the legal profession."²⁶

J. Indirect Discrimination against Women

A case of indirect discrimination is § 57(b) (6) of the Federal University Law, which requires that a maximum of only four years may pass between earning a degree and acceptance of a position as assistant to a professor (normally held by doctoral candidates). Women often do not go directly from the university into academic careers, preferring to practice first and acquire a doctorate later, or, after having postponed children in order to study, to start a family. While they are then free to begin a doctorate, lack of access to positions as assistant means they will not be earning money during this time, thus making the process far more difficult. Because the normal female career path does not conform to the four-year limit, the law represents indirect discrimination against women.²⁷

K. Sexual Harassment

Finally, we must mention discrimination against women through sexual harassment. On inquiry, the women's commissioners for the law departments at both the FU and the Humboldt Uni-

²⁵ *Id.*

²⁶ KATZ & VIELAND, *supra* note 9, at 114.

²⁷ *Id.* at 158.

versity said they had so far received no personal complaints. Unfortunately, this fact does not mean that no female law students have been victims of sexual harassment. A quantitative and qualitative study carried out at the FU for the entire university found that half of all women at the FU had at some time been harassed. This included administrative staff; however, the group most frequently involved included women between nineteen and twenty-five years of age who had been at the university less than five years. The harassers were fellow students as well as superiors or teachers. Most cases occurred during discussions between students and professors in professors' offices, as well as during daily routine in these offices for student assistants and staff.²⁸ For many women, consequences included delaying or ending their studies, changing universities, abandoning career plans if they involved university positions, and loss of trust in their own abilities and acceptance as scholars.²⁹

Because of these deficiencies in legal studies, affirmative measures to promote women continue to be necessary. Two of these will be discussed below: first, the institution of the "women's commissioner," and second, the student initiative that led to creation of the feminist jurisprudence project at the Humboldt University.

L. The Situation at the Humboldt University

The situation of women at the Humboldt University is no different from other universities in Germany. Almost half of all students, 46.76%, are women. Of the students employed part-time by professors, almost 50% are women. But as soon as we begin to speak of qualified positions that could act as springboards to university careers, women are clearly underrepresented. Only 15.5% of doctoral candidates working as assistants to professors are women. The nadir is reached with only 7.5% female professors.

The absolute underrepresentation of women contrasts starkly with the results they achieve on the first and second state exams; particularly on the second state exam, these results are significantly higher than those of their male colleagues. But in the appointment of research and teaching assistants, the professor's discretion in choosing staff plays a crucial role (along with grades and publi-

²⁸ CHRISTINE FARBER, REPORTS BY THE WOMEN'S COMMISSIONER OF THE FU 1991-93 92 (1993) (these are the collected reports of the Women's Commissioner at the Free University of Berlin). The threshold for harassment was physical contact or an offer of sex.

²⁹ Kristine Dreyer & Claudia Toelle, *Quantitative Befragung von Studentinnen zur Auswirkung sexueller Belästigung durch Dozenten*, 6 "INNENANSICHTEN." SCHRIFTENREIHE DER FRAUENBEAUFTRAGTEN 61 (1994).

ocations). Every assistant works for a specific professor and is appointed by that professor; no one else has a say in the decision. This encourages professors to create personal power bases, promoting their assistants through an old-boy network. This professorial discretion is thought to be protected by the freedom of scholarly research and teaching anchored in Art. 5 (3) of the Basic Law. Only when professors and administrative employees are appointed is a women's commissioner for the law department allowed to participate.

1. The Women's Commissioner

This brings us to the complicated system of women's commissioners, a controversial achievement of the women's movement. It was introduced in order to attain women's equality with men. Women's commissioners are found at the national, state and local level. There is controversy within the women's movement over whether this institutionalization effectively serves the goal of advancement of women, or whether the very existence of women's commissioners relieves the state of any further responsibility.³⁰

The Humboldt University has its own central, self-administered women's commissioner. In addition, the various departments have so-called decentralized women's commissioners. There are three in the law department—one women's commissioner for the students, one for professors' assistants, and one for the administrative staff. The three take turns in the full-time position, so that the person to approach is different each semester. Only the women's commissioner for students is truly active at present; the women's commissioners for professors' assistants and the administrative staff took on the work because "somebody had to." The three rotate the job of full-time commissioner, meaning that women's interests are not always equally represented.

The most important task of the full-time women's commissioner is participation in personnel decisions involving professors and administrative staff. She has the right to make recommendations on the membership of the appointments commissions (which announce openings and appoint professors) and the announcements and appointments themselves, and may also take part in meetings of the appointments commission.

In addition, the women's commissioner is represented at faculty meetings at which important departmental decisions are

³⁰ Kristina Brümmer, *Ordnungsfaktor oder Gegenmacht? Frauenbeauftragte an den Hochschulen*, 2 FORUM RECHT 46 (1994).

made, and also takes part in meetings of women's commissioners from all departments from Berlin and the neighboring state of Brandenburg. She also holds office hours for students; these are used mainly to ask general organizational questions, for example on day care for students' children.

On the basis of the affirmative action guidelines applying to the entire university, the student women's commissioner is presently drafting an affirmative action plan for the department; its most important provision would be to make the number of women professors, professors' assistants, and part-time employees gradually proportional to the number of women students. In a demonstration of how deeply rooted discrimination against women is at universities, the Faculty Council refused to cooperate in developing this affirmative action plan. Not even letters from the women's commissioner asking for data on distribution of positions between men and women were initially answered by most professors. Only after long discussion was the women's commissioner able to gain access to such data, without which she could not have developed such a plan.

During this discussion on a future affirmative action plan, law professors claimed that the university's guidelines for women's advancement, which urgently require such plans, did not apply to them. Other professors were not even familiar with the longstanding provisions of the Berlin University Law requiring that women with equal qualifications receive preferential treatment in hiring; they suggested such preferred hiring as a substitute for the affirmative action plan.

Thus the mere existence of a women's commissioner does not lead to a change in the situation for women. The commissioner will not be taken seriously until the department adopts strict requirements that, for example, mandate hiring women. That is why introduction of an affirmative action plan for women is so controversial in our department. Every two years, the women's commissioner issues a report to which the Faculty Council must respond; thus introduction of an affirmative action plan for women would require direct action by the department. At other universities, this pressure to act is increased by linking allocation of additional funds to the department to implementation of an affirmative action plan for women.

Thus the institution of women's commissioner can be summarized as follows: the benefits for women outweigh the danger that the commissioner's existence will relieve the university of further responsibility, so long as the women's commissioner has sufficient

authority and the opportunity to take part in university decision-making bodies or a veto on their decisions.

2. The Feminist Jurisprudence Project at the Humboldt University

Because of the situation of women in our department on the one hand and the content of legal studies on the other, a group of woman law students came together in the summer semester of 1993 to organize a seminar that would deal in some fashion with women and law. We wanted to compensate for the fact that existing feminist theory had not yet gained access to legal doctrine, and that law did not respond to the life experiences of women. An additional reason was the contrast between the number of female law students and the fact that women rarely appeared as active parties in legal cases.³¹

We took our proposal to a professor in our department, who supported it and asked his assistant, Ulrike Merger, to teach the seminar.

3. Outline of Discussions in the Seminars on American and German Legal Theory

During the first semester, we read both American and German texts on feminist legal theory. Carol Gilligan's theory of morality in "A Different Voice" was particularly controversial, while most students applauded Catherine MacKinnon's "Feminism Unmodified." Because Professor MacKinnon was at the time a guest of the Institute of Advanced Studies in Berlin, we had a chance to discuss her theories of pornography and power, hierarchy, and women's "victim status" with her personally. We took Frances Olsen's "The Myth of State Intervention in the Family" as a basis for discussing the public-private dichotomy.³²

In a section entitled "Equal Rights or Special Rights for Women?" we read texts by Luce Irigaray of France, Andrea Maihofer and Ute Gerhard of Germany, and Rossana Rossanda of Italy. Generally the seminar participants did not support special rights for women; we tended to advocate constitutional reforms and quotas to achieve equal rights.

In the second half of the seminar, we concentrated on the legal situation of women in Germany. Themes included reform of

³¹ Franziska Pabst & Vera Slupik, *Das Frauenbild im zivilrechtlichen Schulfall*, KRITISCHE JUSTIZ 242 (1977).

³² Professor Frances Olsen also visited as a guest professor in 1995. We are grateful for her consistent support of the feminist law project at the Humboldt University.

the criminal law on sexual violence (marital rape became a crime in Germany only this year), domestic violence (using DAIP in the U.S.A. as a basis), and employment discrimination against women through wages and pensions as well as sexual harassment.

In the course of these two seminars, there were often vehement discussions as to whether to exclude men from participation. This controversy ended for the time being when we were told we had no legal basis for such exclusion. Because our project was fighting for recognition and survival, we accepted this situation. However, as time went on, it became clear that the interest of the few men involved did not go so far as to take part regularly in the seminar for an entire semester, so that male participants remained an exception.

4. Institutionalization of the Project and Further Seminars

The two seminars on feminist legal theory, oriented around the topics described above, continue to be offered regularly. In addition, the Humboldt University law department now offers colloquia on various related issues. We are currently discussing whether to make feminist legal theory a special elective that may be chosen from among 10 possible electives and would become one of four topics that can be included on our state exams; or whether we should concentrate on ensuring that feminist thinking is integrated in all subjects.

Even though we have been unable, as yet, to catalyze any deeper change in the overall curriculum at the Humboldt University with our feminist law project, many of the seminar participants say that dealing with feminist legal theory has increased their motivation to study law. The feminist legal critique corresponded more with their own views on the function and functioning of law and suggested new professional opportunities. In the legal department at the Humboldt University, the project's lectures and seminars have met with great interest. For the first time, feminist legal theory has been institutionalized at a German university.