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What Work of Feminist Legal Scholarship Over the Past Twenty Years Has Been Influential or Important to You, and Why?

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Book Reviews/ Chroniques Bibliographiques

What work of feminist legal scholarship over the past twenty years has been influential or important to you, and why?

The call for paragraphs generated many different kinds of responses. It was a treat reading the different approaches and having an occasion to listen in as others reflected on the question. In their own voices, here are a variety of the responses.

Parmi toute la recherche féministe en droit produite au cours des dernières vingt années, quel texte a été le plus important pour vous ou encore, lequel vous a le plus influencé, et pourquoi? L'invitation à rédiger des paragraphes en réponse à cette question a généré une grande diversité de textes. Ce fut un réel plaisir de lire les différents choix et d'avoir l'occasion d'être à l'écoute alors que d'autres réfléchissaient sur la question posée. Voici un éventail de ces réponses, rédigées chacune dans sa propre voix.

I would have to say anything written by Ngaire Naffine, Carol Smart, and Lauren Snider, as their works are provocative, risky, and guaranteed to push your thinking about women, feminism, and the law onto a whole new terrain.

Elizabeth Comack
Sociology, University of Manitoba

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“Oh well,” said Mrs. Hale’s husband, with good natured superiority, “women are used to worrying over trifles.”

—From Susan Glaspell’s *A Jury of Her Peers*¹

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1. Glaspell, Susan. “A Jury of Her Peers,” in Linda Ben-Zvi ed., *Susan Glaspell: Essays on Her Theatre and Fiction* (Ann Arbor, MI: University of Michigan Press, 1995), 76.

Thinking about teaching Feminist Legal Theory for the first time was not at all trifling. It was about as far away from the whip-creamy dessert as torts is from tortes. It was downright daunting and I needed help. How would I draw my students in? What would my starting point be? All I could think of was a short story I had read while a law student—*A Jury of Her Peers* by Susan Glaspell. Glaspell wrote this story in 1927, at a time when women were not allowed to sit on juries or have a voice in the legal system. The women in Glaspell's story had no choice but to separate themselves from the law and make a series of connections to understand what had happened, despite the men's extreme lack of confidence that they could do so.

Glaspell's work of feminist legal scholarship is important to me because her characters impressed upon me how hard it is to battle the positivist notion of law expressed by Mrs. Peters that "the law is the law" as well as for demonstrating how culpable women can feel for not coming to assist their neighbours—for letting Minnie Foster "die for lack of life." The women in *A Jury of Her Peers* had a fundamentally different approach not only to the duty of care and the reasonable person but also to the understanding of the falsity of law's convictions than is demonstrated in torts texts. It is this approach that I knew I wanted to convey to my new students. Most importantly, Glaspell's story helped me channel my feminist law professors (now, happily, my colleagues) while planning my first Feminist Legal Theory ovular (not seminar). I remembered Anne McGillivray's insistence that literature has much to contribute to law, and I benefited directly from Karen Busby's willingness to share her course syllabus. In turn, my students read Susan Glaspell's wonderful story of courageous women and heard a story about how Canadian feminist legal scholars go out of their way to assist their neighbours.

Jennifer L. Schultz
Law, University of Manitoba

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We were asked to write a short paragraph about feminist scholarship that we have found influential. Not all "eureka" moments come from reading feminist analyses. My own occurred during a presentation at a Law and Society meeting held in May 1988 at the University of Windsor. It was the first time that I had encountered the phrase "male hegemony," and I was so intrigued that it sent me scurrying to do more research. That was my epiphany.

Winnie Holland
Law, University of Western Ontario

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Antjie Krog, *Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa*²

South Africa is an ongoing source of critical inspiration for me. It is a braid of our possibilities—a road not taken, a future imperfect, and a parallel universe of our constitutional democracy. *Country of My Skull*, by Antjie Krog, examines the South African Truth and Reconciliation Commission (TRC) process through the eyes of a poet-writer-journalist. Her vocal fluidity between poetry and prose mirrors her successful struggle to sculpture multiple points of resonance for the reader. In this text, it is emotion that roots revelations, and it is insight into the waking dream of a nation for justice beyond the strictures of law.

Antjie Krog's own relationships are harrowed by her experiences as a participant-observer of the TRC. Her commitment to engaged observation gives voice to diverse perspectives where adherence to tenets of objectivity would have been more partial. She speaks justice to power by honouring those who made naked their pain in the fragile hope of a future peace. In this book about another/not-me, I was denied all pretension.

Joanne St. Lewis
Faculty of Law, University of Ottawa

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When I came to Osgoode Hall Law School as a mature student in 1993, I was a veteran of many activist movements and well-versed in feminist theory. The first works on feminism and law that gripped me were Shelley Gavigan's "Law, Gender, and Ideology" and Mary Jane Mossman's "Feminism and Legal Method: The Difference It Makes."³ Those articles provided a connection between real-world feminism and legal studies that I had not expected to find in a law school. They fired my imagination and presented me with intellectual challenges that continue to inform my scholarship and my teaching.

Karen Pearlston
Faculty of Law, University of New Brunswick

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2. Antjie Krog, *Country of My Skull: Guilt, Sorrow, and the Limits of Forgiveness in the New South Africa* (New York: Times Books, 1998).
 3. Shelley Gavigan, "Law, Gender, and Ideology," in A. Bayefsky, ed., *Legal Theory Meets Legal Practice* (1988), 283; and Mary Jane Mossman, "Feminism and Legal Method: The Difference It Makes" (1986) 3 *Australian Journal of Law and Sociology* 30.

Hilary Charlesworth, Christine Chinkin, and Shelly Wright, "Feminist Approaches to International Law"⁴

While feminist theory had profoundly impacted many academic fields, it was only in the early 1990s that feminist scholars turned their attention to international law. The 1991 article by Hilary Charlesworth, Christine Chinkin, and Shelley Wright in the *American Journal of International Law* was the first treatment of the subject, and it remained the broadest feminist critique of international law for many years to follow. Charlesworth, Chinkin, and Wright described the feminist approach in international law as a "project to expose the gender bias of apparently gender neutral rules." Their work revealed international law as a thoroughly gendered system. Their critique broke new ground, and many of their assertions have been repeated by feminists many times since.

Nicole LaViolette,
Faculty of Law, University of Ottawa

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Even as a member of the breed of white, male law teachers I could not but be impressed by the writing of Professors Christine Boyle, Katherine Lahey (with S. Salter), and Mary Jane Mossman in volume 23 of the 1985 *Osgoode Hall Law Journal*.⁵ Therein, they analyzed the current scholarship in criminal law and procedure, corporate law, and property law respectively and in no uncertain terms castigated the output for its "maleness of language and narrowness of focus." They were absolutely correct.

Edward Veitch
Law, University of New Brunswick

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When I look back to my early publications as a feminist legal academic, the influence of Carol Smart's *The Ties That Bind: Law, Marriage and the Reproduction of Patriarchal Relations*⁶ is manifest. This work took me beyond a study of how family law either reflected or influenced social relations towards a more complex exploration of the ideological role of law.

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4. Hilary Charlesworth, Christine Chinkin, and Shelly Wright, "Feminist Approaches to International Law" (1991) 85(4) *American Journal of International Law* 613-45.
 5. Christine Boyle, "Criminal Law and Procedure: Who Needs Tenure?" (1985) 23 *Osgoode Hall Law Journal* 427; Katherine Lahey and Sarah Salter, "Corporate Law in Legal Theory and Legal Scholarship: From Classicism to Feminism" (1985) 23 *Osgoode Hall Law Journal* 543; Mary Jane Mossman, "Toward 'New Property' and 'New Scholarship': An Assessment of Canadian Property Scholarship" (1985) 23 *Osgoode Hall Law Journal* 633.
 6. Carol Smart, *The Ties That Bind: Law, Marriage and the Reproduction of Patriarchal Relations* (London: Routledge and Kegan Paul, 1984).

Smart taught me to go beyond the concrete result of a case—for instance, whether a mother was awarded custody or not—and to explore instead the terms on which the case was decided. Smart's work has also influenced my work on same-sex marriage: she cautions that marriage might not be retrievable by feminists and that the power struggles found within marriage might resist amelioration by modest reforms. Marriage as an ideological "enclosure" prioritizes coupledness as a norm against which all else is measured. It also becomes the privileged context for the reproduction of children. These insights that Smart offered in 1984 (at 142–6) remain of crucial importance today.

Susan B. Boyd

Chair in Feminist Legal Studies; Law, University of British Columbia

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Chandra Mohanty's book *Feminism without Borders: Decolonizing Theory, Practicing Solidarity*⁷ was really helpful for me to get out of the "essentialism dilemma." While acknowledging women's different voices, she argues for a strategic essentialism. This is especially significant for an activist feminism in the global context. Of course, eco-feminist works, which establish a connection between the oppression of women (and all Others) and the exploitation of nature, were absolutely critical to my take on international environmental law. Some of the most significant works for me include Vandana Shiva's *Staying Alive* (although that is not the only one!), Mary Mellor's *Feminism and Ecology*, and a brilliant collection of essays entitled *Women, Environment and Sustainable Development: Towards a Theoretical Synthesis* (1994), edited by R. Braidotti and others.⁸

Then again, reading Judith Butler's *Gender Trouble*⁹ for the first time a few months ago was a transformative experience!

Annie Rochette

Law, University of New Brunswick

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When I was doing the criminal law course in law school, the 1975 *R. v. Morgentaler* decision¹⁰ was too recent to be included in the casebook. As I was copying it for myself in the library's stuffy photocopy room,

7. Chandra Mohanty, *Feminism without Borders: Decolonizing Theory, Practicing Solidarity* (Durham: Duke University Press, 2003).

8. Vandana Shiva, *Staying Alive* (London: Zed Books, 1989); Mary Mellor, *Feminism and Ecology* (New York: New York University Press, 1997); and R. Braidotti et al., eds., *Women, Environment and Sustainable Development: Towards a Theoretical Synthesis* (London: Zed Books, 1994).

9. Judith Butler, *Gender Trouble* (New York: Routledge, 1990).

10. *R. v. Morgentaler*, [1976] 1 S.C.R. 616.

a waiting student commented, somewhat impatiently and very disdainfully, that I would never read the case. He was wrong. I read it and wept for women whose lives were oftentimes distorted and sometimes truncated by the limits on their capacity to determine for themselves whether and when to have children. I was not happy at law school and I left law practice once I had completed the bar admission process. Working in the legal milieu began to seem possible again in part because of the decision in the 1988 *Morgentaler* case,¹¹ particularly Justice Bertha Wilson's concurring reasons for decision. Elsewhere, I have critiqued the liberal ideal of individualism that informs Wilson J.'s argument, which is also vulnerable to challenge because of its essentialism. Nonetheless, it was astonishing and exciting that a Supreme Court of Canada justice would state, without apology, that "it is probably impossible for a man to respond, even imaginatively," to the dilemma of the pregnant woman whose circumstances make the pregnancy something to fear rather than to celebrate. We still struggle to ensure that women have access to timely abortions performed by qualified professionals in a safe and supportive setting, but in a world with more space for doing so.

Margaret McCallum
Law, University of New Brunswick

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My book *The Taking of Twenty-Eight: Women Challenge the Constitution*¹² is the gripping story of how women's groups rewrote and revised section 1 and section 15 to be as inclusive as possible and inserted section 28 (the Canadian equivalent of the failed Equal Rights Amendment). It is a lively romp through the halls of power. Many of the women involved in that original lobbying effort are still active today in promoting equality. Although *The Taking of Twenty-Eight* is out of print, it is still widely cited in legal papers about the interpretation of equality rights.

Penney Kome, Canadian journalist and author
Calgary, Alberta

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Michelle Boivin, «Le féminisme en capsule: un aperçu critique du droit»¹³

Très peu de textes juridiques francophones (aucune monographie) visent à expliquer le féminisme à partir d'un objectif pédagogique. C'est pourquoi le

11. *R. v. Morgentaler*, [1988] 1 S.C.R. 30.

12. Penney Kome, *The Taking of Twenty-Eight: Women Challenge the Constitution* (Toronto: Women's Press, 1983).

13. Michelle Boivin, «Le féminisme en capsule: un aperçu critique du droit» (1992) 5 *Revue Femmes et Droit* 357.

texte de Michelle Boivin, une des premières femmes à avoir fait de la recherche et enseigné le féminisme en droit au Québec, «Le féminisme en capsule: un aperçu critique du droit», publié dans la présente revue en 1992, me semble marquant pour la réflexion féministe sur le droit au Québec. Ce texte a été écrit à la suite d'une présentation qu'a fait un petit groupe de professeures féministes au Conseil des doyens et des doyennes des facultés de droit du Canada en 1990 sur les principes de base du féminisme appliqué au droit.

Le texte se divise en deux parties. La première partie aborde les fondements du féminisme. Elle donne une définition du féminisme, traite de la méthodologie, aborde des concepts de base tels le sexisme, la misogynie, le patriarcat, l'androcentrisme, le genre. Dans la deuxième partie, l'auteure traite de l'occultation des femmes dans la langue, dans l'enseignement du droit comme professeures et comme étudiantes et dans les écrits. Elle termine sur une note plus positive en recensant les percées du féminisme en droit. Elle se concentre alors sur les grands arrêts de la Cour suprême touchant les femmes. L'auteure annonce des thèmes qu'elle abordera plus tard. Ainsi, elle écrira sur la féminisation de la langue¹⁴ et sur l'enseignement dans les facultés de droit¹⁵.

L'auteure réfère à des écrits en sciences sociales et en droit, francophones et anglophones. Fidèle à la tradition féministe, elle fait le lien entre la théorie et la pratique féministes.

Le texte, particulièrement la première partie, demeure pertinent en raison de ses qualités pédagogiques. Même s'il n'aborde pas tous les courants féministes, il démontre la richesse de la réflexion féministe et les grands enjeux. Quant à la deuxième partie, elle a une valeur historique. Elle trace un portrait de la présence des féministes dans les facultés de droit du Québec à cette époque et permet de mesurer le progrès qui a été accompli. On peut cependant s'inquiéter aujourd'hui du peu de relèbe, dans les facultés de droit du Québec, en recherche et en enseignement concernant les questions de genre.

Louise Langevin

Faculté de droit, Université Laval

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I would like to talk here about gratitude—a gratitude formed from ideas for the writers and thinkers that have come before me, whose voices informed my early years as a doctoral student: Catharine MacKinnon,

14. Michelle Boivin, «La féminisation du discours : le pourquoi» (1997) 9 *Revue Femmes et Droit* 235.

15. Michelle Boivin, «L'apport potentiel des émotions à l'enseignement du droit ou Du cerveau pris isolément à la personne intégrée et intègre» (2001) 13 *Revue Femmes et Droit* 225.

Zillah Eisenstein, Gerda Lerner, Elizabeth Spelman, bell hooks. I would like to acknowledge the many Canadian novelists and poets whose work I use to open my imagination before writing.

Books are like scripts in my writing—which is not to say they firmly control every scene. On the contrary, certain books have served as characters to my plot, as voices in my narrative, as sustenance to my ideas. Books have informed my sense of women, my sense of law, my sense of academe, my sense of myself as a writer. They share some characteristics. All are imaginative. All are well written. And all have withstood the test(s) of time.

I wish in this short tribute to thank the authors for the richness, the depth, and the sheer promise that their words have delivered to me in the past fifteen years of my career—Patricia Williams's "The Alchemy of Race and Rights" and "The Rooster's Egg"¹⁶ for forcing me to see how definitions of property include women's bodies; Linda LeMoncheck's "Loose Women, Lecherous Men"¹⁷ for a nuanced understanding of feminisms relative to issues of sex and sexuality; Karlene Faith's particularly Canadian "Unruly Women"¹⁸ for the social construction of women's lives that happens through law; and Margrit Shildrik's "Leaky Bodies"¹⁹ for her complete understanding of how women's lives bleed into law.

For these books, their authors, and the many that have gone before, which have sunk into my consciousness so well that I now think of them as "my own," I am sincerely grateful.

Gayle MacDonald

Sociology, St. Thomas University

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There have been many "eureka" moments for me but, arguably, the most important one was my introduction to law and feminism in the early 1980s. Carol Smart's work on (family) law²⁰ was especially influential in shaping my embryonic feminist perspective. Her research, which brilliantly highlighted the gendered nature of social and legal regulation of "the family," the complicated relationship between regulation and control, and the contradictory and uneven development of law, was immensely

16. Patricia Williams, "The Alchemy of Race and Rights," in Patricia Williams, ed., *The Alchemy of Race and Rights* (Cambridge: Harvard University Press, 1991); and "The Rooster's Egg," in Patricia Williams, ed., (Cambridge: Harvard University Press, 1995).

17. Linda LeMoncheck, *Loose Women, Lecherous Men* (New York: Oxford University Press, 1997).

18. Karlene Faith, *Unruly Women* (Vancouver: Press Gang Publishers, 1993).

19. Margrit Shildrik, *Leaky Bodies* (New York: Routledge, 1997).

20. See, in particular, Carol Smart, *The Ties That Bind: Law, Marriage and the Reproduction of Patriarchal Relations* (London: Routledge and Kegan Paul, 1984).

important to me in gendering my own research on family courts. Shelley Gavigan was the first Canadian feminist scholar to exert a defining influence on my thinking about law. She not only pointed me to Smart's work but her own incisive analyses of abortion regulation/control in Canada also helped me to conceptualize the ideological dimensions of law and to understand the importance of locating forms of law (and state) in historical and cultural context.²¹

Dorothy Chunn

School of Criminology, Simon Fraser University

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When I became vice-dean and then dean there were pieces that I read and re-read, looking for a blueprint on how to get administration right—or at least not wrong. While no one article offered up a list of dos and don'ts, several were crucial to trying to figure out how to do feminist administration. Some of the ones that I most relied on were Sheila McIntyre, "Gender Bias within the Law School: 'The Memo' and Its Impact"; Patricia J. Williams, "Crimes without Passion," in *The Alchemy of Race and Rights*; Tariq Alvi, Rose Boyko, Lilian Ma, Wade MacLauchlan, Patricia Monture, Yvonne Peters, and Joanne St. Lewis, "Equality in Legal Education: Sharing a Vision ... Creating the Pathways"; Patricia Monture-OKanee, "Ka-Nin-Geh-Heh-Gah-E-Sa-Nonh-Yah-Gah"; and Claire Young and Diana Majury, "Lesbian Perspectives," in The Chilly Climate Collective, eds. *Breaking Anonymity: The Chilly Climate for Women Faculty*.²² There are many others to which I could refer and which I studied for the sometimes-concealed map that they provided. We often read these pieces to see ourselves and our experiences reflected there. I have read them in this way too. Yet they point the way to what legal education should be and to what law school administrators should aspire to achieve. I think that the authors

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21. See, for example, Shelley A.M. Gavigan, "On 'Bringing on the Menses': The Criminal Liability of Women and the Therapeutic Exception in Canadian Abortion Law" (1986) 1(2) *Canadian Journal of Women and the Law* 279–312; Shelley A.M. Gavigan, "Women and Abortion in Canada: What's Law Got to Do with It?" in Heather Jon Maroney and Meg Luxton, eds., *Feminism and Political Economy: Women's Work, Women's Struggles* (Toronto: Methuen, 1987), 263–84.
 22. Sheila McIntyre, "Gender Bias within the Law School: 'The Memo' and Its Impact" (1987–8) 2 *Canadian Journal of Women and the Law* 362; Patricia J. Williams, "Crimes without Passion," in Williams, *supra* note 16; Tariq Alvi, Rose Boyko, Lilian Ma, Wade MacLauchlan, Patricia Monture, Yvonne Peters, and Joanne St. Lewis, "Equality in Legal Education: Sharing a Vision ... Creating the Pathways" (1992) 17 *Queens Law Journal* 174; Patricia Monture-OKanee, "Ka-Nin-Geh-Heh-Gah-E-Sa-Nonh-Yah-Gah" (1993) 6 *Canadian Journal of Women and the Law* 119; and Claire Young and Diana Majury, "Lesbian Perspectives," in The Chilly Climate Collective, eds. *Breaking Anonymity: The Chilly Climate for Women Faculty* (Waterloo: Wilfred Laurier University Press, 1995) at 345.

mean us to read them in this way. Law schools, professors, vice-deans, and deans still have much to learn from them.

Sanda Rodgers

Faculty of Law, University of Ottawa

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It is easy for me to identify the work of feminist scholarship that has proven most influential in my life. In fact, it may be easier for me than most for I can reflect and say that but for Constance Backhouse's *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Osgoode Society, 1991),²³ I would not have ended up in law school and, further, may not have chosen my "home" at the University of Ottawa Faculty of Law. I was a graduate student in history at the University of Manitoba when Connie visited to offer a lecture based on her then recently published book. As so often happens when one meets one's heroine and has a life-transforming moment, I remember that day well while Connie does not...at all. I applied for law school soon after her lecture, inspired by her commitment to an interdisciplinary view of law, history, and women's studies. *Petticoats and Prejudice* made me see the women she described as real people, affected by laws and constrained by their time, just as women are today. Her narratives draw one in, telling the simple, tragic, and powerful stories of women's lives, elevating forgotten heroines so we can all remember and learn. *Colour-Coded: A Legal History of Racism in Canada, 1900–1950*²⁴ is a continuation of the case-method that made *Petticoats and Prejudice* so compelling. Both books bring context to the law in a way that beautifully illuminates the often heart-breaking ways that law impacts on the lives of our least-fortunate citizens. It is not surprising, given her highly developed sense of compassion, that Connie took up the challenge of bringing the lives of her subjects to our attention in such an intimate fashion. When I was searching for a place to call my own as an academic, Connie's presence at the University of Ottawa was definitive. I knew her gentle sense of humour would see me through both teaching and writing challenges. I sensed that her compassion and energy would sustain, encourage, and support me, and I was right. In the introduction to *Petticoats and Prejudice*, Connie seeks to reclaim a feminist definition of "heroine." When I consider her influence on my career and my life, I proclaim, with as much feminist bluster as I can muster, that she remains one of my own personal heroines.

23. Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth Century Canada* (Toronto: Osgoode Society, 1991).

24. Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900–1950* (Toronto: University of Toronto Press, 1999).

In recent years, Connie Backhouse's guiding force has played another pivotal role in my life, by way of introducing me to my writing buddy, Diana Majury. All of Diana's work is extraordinary for she offers careful, introspective, and unique reflections on human rights and equality law. My favourite piece is Diana Majury, "The Charter, Equality Rights, and Women: Equivocation and Celebration."²⁵ This work beautifully summarizes twenty years of equality jurisprudence, offering very personal insight into the triumphs and failures of feminist activism. It illuminates a myriad of problems that feminists must address in our evolving efforts to make section 15 really work for disadvantaged groups. While the article is fabulous and deserves credit for its substance, it is for me, like the famous United States Supreme Court case *United States v. Carolene Products*,²⁶ best known now for "footnote 4" wherein the court hinted for the first time that a more stringent standard of judicial review might be appropriate for suspect legislative classifications. Diana's piece is most meaningful to me because of a footnote—a pre-footnote acknowledgment really, wherein Diana thanks me as her "writing buddy." Connie orchestrated my introduction to Diana, a partnership that has immeasurably improved every piece of writing and speaking I have engaged in as an academic (in addition to producing two co-written works). Diana's writing is always deeply layered, and she is known to devote as much time and thought to her own lengthy footnotes, many of which could take the reader in unexpected and fascinating tangents. Diana's generosity as friend and colleague is legendary in the women's community, as evidenced by the number of women who claim pieces of her time, spirit, intellect, and good humour. I am thankful to both Connie Backhouse and Diana Majury for the years of inspiring work they have offered feminists and the years of friendship they have offered me.

Daphne Gilbert

Faculty of Law, University of Ottawa

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Remembering Favourite Feminist Legal Scholarship

—Among Friends Collective (Constance Backhouse, Doris Buss, Rosemary Cairns Way, Daphne Gilbert, Nicole LaViolette, Diana Majury, Elizabeth Sheehy, and Ellen Zweibel)

In the spring of 2005, the women law professors at the University of Ottawa and Carleton University were delighted to receive a notice titled *Canadian*

25. Diana Majury, "The Charter, Equality Rights, and Women: Equivocation and Celebration" (2002) 40 Osgoode Hall Law Journal 297.

26. *United States v. Carolene Products*, 304 U.S. 144 (1938).