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Jo Ann Palchak

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A LEGAL ROOM OF ONE'S OWN

I told you in the course of this paper that Shakespeare had a sister; but do not look for her in Sir Sidney Lee's life of the poet. She died young – alas, she never wrote a word . . . Now my belief is that this poet who never wrote a word and was buried at the crossroads still lives. She lives in you and me, and in many other women who are not here tonight, for they are washing up the dishes and putting the children to bed. But she lives; for great poets do not die; they are continuing presences; they need only the opportunity to walk among us in the flesh. This opportunity, as I think, it is now coming within your power to give her . . . For my belief is that if we live another century or so – I am talking of the common life which is the real life and not of the little separate lives we live we live as individuals – and have five hundred a year and rooms of our own; if we have the habit of freedom and the courage to write exactly what we think; if we escape a little from the common sitting room and see human beings not always in relation to each other but in relation to reality . . . then the opportunity will come and the dead poet who was Shakespeare's sister will put on the body which she has so often laid down.¹

Jo Ann Palchak*

I would like to briefly frame what Catharine MacKinnon's work has meant for me and what it has empowered me to do in my walk in the law.

On February 24, 1989, an article by Tamar Lewin in *The New York Times* bore the following headline, "Job Offer to Feminist Scholar May Mark Turn."² The article described a brilliant law professor from Yale Law School who had "received widespread praise for the theoretical work that helped transform sexual harassment from a fact of workplace life into a recognized form of sex discrimination." The article described how, despite a significant body of work and activism, Professor MacKinnon was not yet tenured. During the previous ten years, the scholar and lawyer had taught at seven different law schools. Professor MacKinnon was quoted as saying that she was pursuing other " 'models of scholarship than the traditional one.' "³

As someone who recalls reading about her work those many years ago, I can say that Catharine MacKinnon's activism made some in academia nervous. Good. The ivory tower is better when its foundations are rattled. But not everyone was afraid of this Virginia Woolf. The University of Michigan Law School reached out to her with a tenured position that year. One might ask what made Michigan different. The article

1. See VIRGINIA WOOLF, A ROOM OF ONE'S OWN 113-14 (Harcourt, Inc. 1989) (1929 Copyright renewed 1957 by Leonard Woolf).

* Jo Ann Palchak is an associate with the law firm of Zuckerman Spaeder, LLP. Ms. Palchak practices white-collar, criminal defense, and appellate law.

2. Tamar Lewin, *Job Offer to Feminist Scholar May Mark Turn*, N.Y. TIMES, Feb. 24, 1989, at B5.

3. *Id.*

quoted Lee Bollinger, then the dean of the law school, who said, “that as faculty members read more of her work, they became more impressed with her scholarship . . . ‘and the quality of her mind.’ ”⁴ What really struck me was the statement from Professor Joseph Weiler, then head of the appointments committee, who said that reading her scholarship had been a “transformative experience” not only for him but for the entire faculty.⁵ Transformative.

The American Association of Law Schools recently had as its theme the idea of lawyers as agents of change. The annual conference, titled “Transformative Law,” celebrated the “citizen-lawyer” who works for the common good of society. This was something Catharine MacKinnon understood and acted upon forty-plus years ago. This career approach excluded one from academia at that time. Its practitioners paid a price for pursuing “other models of scholarship.”⁶ Catharine MacKinnon has been so prolific and so path-breaking that her work has frequently been lifted by or attributed⁷ to others. Her work has become part of our history, a jurisprudence correcting gender inequality domestically and internationally. Her legacy, our benefit.

Recognizing how she has transformed the world for others, I came here to talk to you about how her work, her personhood, and our friendship has transformed the space I live, work, and play in, and what this transformation has meant to me as a person and a lawyer.

For those of you who are not old enough to remember what law and society were like before Catharine MacKinnon, it is a bit of a challenge to adequately convey the scope of what she has created. Her work truly is “a construction,” in the law and in our lives. She created it out of whole cloth under the most hostile conditions. I think of her construction by analogy to architecture, as it transforms work-life “space,” by creating a structure that did not exist before.

In *A Timeless Way of Building*, Christopher Alexander discusses how certain buildings have a quality that cannot be named.⁸ Alexander invites us to think about entering a building and feeling at home in it, or the peace of stepping out into a courtyard where the sun has warmed the bricks.⁹ Alexander examined how patterns of form and behavior resonate within us and connect us to the spaces we inhabit and to each other. Consider that, just as patterns in architecture influence our behavior (e.g., how a room with a window causes us to want a chair to sit and enjoy the view),¹⁰ patterns in society influence our social behavior (e.g., an exploitive sex industry nurtures an objectified sexuality that enjoys it). Dr. MacKinnon recognized patterns of gender inequality intertwined in the architecture of law and society and began to deconstruct both. She wrote legislation, she created new causes of action and brought cases, she published

4. *Id.* (quoting Lee Bollinger).

5. *Id.*

6. *Id.*

7. For example, *The New York Times* recently attributed her work to Professor Rhonda Copelon in the latter’s obituary and refused to correct the error. See David Hevesi, *Rhonda Copelon, Lawyer in Groundbreaking Rights Cases, Dies at 65*, N.Y. TIMES, May 8, 2010, at N25.

8. CHRISTOPHER ALEXANDER, *THE TIMELESS WAY OF BUILDING* 19-54 (1979).

9. *Id.* at 25.

10. *Id.* at 111.

books and articles, she filled auditoriums, she marched, and she sacrificed. Changing society's gender architecture is a colossal project. It is still underway, thankfully, and doing it personifies the transformative lawyer.

When I first encountered her work in the late 1980s, I was in undergraduate studies. While not obviously exploited, I recognized that if any woman was exploited, we all were exploited. Professor MacKinnon explained that we do not get a pass just because it isn't us at the moment. We are all in this together. And in this space, with the quality that cannot be named alive and well within me, I need to thank and honor my friend properly.

Catharine, first, your books, your work, and your tireless and timeless way of building always inspire me. Because of you, their quality has a name with real meaning in a new common language between people who will not be property or exploited.¹¹ Such names include equality, humanity, compassion, relentless courage (as in up-all-night-long-working for the common good), unrelenting brilliance, and love of the equal. I stand in the space you have built. There is a gate, a walkway where the sun warms the pavement. You are there inviting everyone, not just women, to use the space for whatever great thing they are meant to do. Your ideas and work created out of thin air a legal "room of one's own" to live, work, and play in.¹² Its graceful yet gritty legal architecture, sensitive to both personhood and government, is a space that grows and expands to protect much like U.S. Constitution should. You have constructed a unique, boundless space of equality that exists in often hostile territory, growing more unfettered each day as its inhabitants are freed of the encumbrances that bind them. I recognize it in the courtroom, in the class room, especially I feel it among the socially disenfranchised. It moves everyone.

Every day I am grateful for the potential of the expanse of what I will do and can do in a space that did not exist before you. You changed the legal landscape, you changed academia, you changed domestic law, you changed international law, you changed social norms, and you created words that became conversations (often heated ones) that then brought about new patterns of behavior — at the price of years of your life.

In the space you created in my life, I now practice law. You are a magical architect because what you have built in your work grows on its own. It will not be contained in any spot set aside for it. This is the timeless way of building. Each day, I ask myself, what will I do with this space today?

11. For example, Dr. MacKinnon asks us to consider whether women are, in fact, actually human beings within the context of the Universal Declaration of Human Rights. CATHARINE A. MACKINNON, ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES 41 (2006) ("If women were human, would we be a cash crop shipped from Thailand in containers into New York's brothels? Would we be sexual and reproductive slaves? Would we be bred, worked without pay our whole lives, burned when our dowry money wasn't enough or when men tired of us, starved as widows when our husbands died (if we survived his funeral pyre), sold for sex because we are not valued for anything else? Would we be sold into marriage to priests to atone for our family's sins or to improve our family's earthly prospects? Would we, when allowed to work for pay, be made to work at the most menial jobs and exploited at barely starvation level? Would our genitals be sliced out to "cleanse" us (our body parts are dirt?), to control us, to mark us and define our cultures? Would we be trafficked as things for sexual use and entertainment worldwide in whatever form current technology makes possible? Would we be kept from learning to read and write?") (internal citations omitted).

12. See WOOLF, *supra* note 1.
