

1988

Correspondence

Peter M. Shane

Michael Levin

Follow this and additional works at: <https://scholarship.law.umn.edu/concomm>

 Part of the [Law Commons](#)

Recommended Citation

Shane, Peter M. and Levin, Michael, "Correspondence" (1988). *Constitutional Commentary*. 843.
<https://scholarship.law.umn.edu/concomm/843>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Constitutional Commentary collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

CORRESPONDENCE

We have long been envious of journals like The New York Review of Books, in which letters to the editors (and authors' responses) are regular features. The format is liberating, and the letters are often more pungent than the articles. You know the type: "The kindest interpretation of Professor Goldbrick's review of my New Theory of Cultures is that he did not read the book, which would be understandable in view of his well-known incapacity for sustained thought." The prospect of similar exchanges among law professors was so tantalizing that we wondered occasionally whether we could somehow manufacture a dispute, just to get things started.

The problem has now been solved. We have received a bona fide letter, and a response by one of our book reviewers. The topic—are you surprised?—is feminism, and the letter is in response to a book review in our last issue, by Professor Michael Levin, a philosopher at CCNY whose own book on feminism is reviewed in this issue.

* * *

To the editors:

There is precious irony in the opening paragraph of Michael Levin's review of two books by Catharine MacKinnon and Linda J. Nicholson. "It is an open secret," Levin says, "that academic feminism is held to standards that are considerably more relaxed than those governing other forms of scholarship. . . . In a grand gesture of intellectual affirmative action, the predominantly male academic establishment continues to allow feminists to get away with anything." These sentences contain three assertions—all ludicrous, in my view—two of which are supported by no evidence and one supported only by Levin's negative view of the books he is reviewing.

The first assertion is that the male academic establishment indulges lower standards in feminist scholarship than in other forms of scholarship. Except that he does not like two books, however, Levin does not back this up. He couldn't. Whatever school of thought one picks—law and economics, Federalist Society, mainstream liberalism, Critical Legal Studies—the drivel quotient is simply too high to be outpaced by feminism. Conversely, the number of important contributions to legal thought that are informed by feminist insight is both impressive and increasing.

The second assertion, implied by the phrase "open secret," is that Levin's view is a predominantly held perception of the facts. Within the confines of Levin's office, this may be true. Beyond that, he is likely to find a range of opinion more varied, more nuanced, and usually less dismissive.

The third assertion, also implied by the phrase "open secret," is that those who know Levin's truth are somehow inhibited in expressing it. If there is any reticence in the antifeminist camp to bad-mouth feminism publicly, I have not noticed it. Indeed, as the tone of Levin's article attests, it is evidently possible for an antifeminist academic to pass off a kind of smug know-nothingism as moral courage, a stance no one would attempt if he thought his similarly prejudiced readers would be reluctant to come to his defense.

Levin, of course, is entitled to think whatever he wants of MacKinnon and Nicholson, and, depending on your journal's reputational concern, you are free to publish it. I think we should worry, however, about sneering as a form of academic discourse.

Sincerely,

Peter M. Shane
Professor of Law
The University of Iowa

Michael Levin replies:

Material cited within my review by itself substantiates the charges that so disconcert Professor Shane. That feminists are held to lower standards of argument (to say nothing of taste) is shown by MacKinnon's dithyramb on masturbation:

Playboy's articles push their views, including their views of the First Amendment, in an expressly sexualized context, and at the same time those articles serve to legitimize what their pictures do to women. Masturbating over the positions taken by the women's bodies associates male orgasm with the positions expressed in the articles. Ever wonder why men are so passionate about the First Amendment? . . . I must also say that the First Amendment has become a sexual fetish through years of absolutist writing in the melodrama mode in *Playboy* in particular. You know those superheated articles where freedom of speech is extolled and its imminent repression is invoked. Behaviorally, *Playboy's* consumers are reading about the First Amendment, masturbating to the women, reading about the First Amendment, masturbating to the women.

This is the sort of stuff—my review gives numerous other examples—that Shane says is comparable in silliness to all of the other schools of legal thought. Is it really that bad in the law schools? Could a man conceivably succeed in publishing under a

reputable imprimatur a parallel account of women using dildoes while reading the Equal Rights Amendment? The drivel quotient may be high elsewhere, but in "feminist scholarship" it approaches unity.

That male academics are aware of the shortcomings of the feminist scholarship they praise is evident from Professor Shane's own failure to contest any of my attributions to MacKinnon and Nicholson, or to defend any of the nonsensical claims so attributed. Better to speak vaguely of "important contributions" than invite derision by agreeing with something feminists actually say.

On inhibition: not only do scholars find it next to impossible to publish works critical of feminism, the various professional academic associations have issued guidelines banning "sexist language" (and hence "sexist" thought) objectionable to feminists. If this is not an attempt to stifle criticism, what is?

I have encountered many academics who share Professor Shane's mindset. They feel that feminism is a good thing, with its heart in the right place, while dismissing book after wretched book by feminists themselves as somehow "not typical." It doesn't matter if feminists say that all men are rapists, that the penis is an optical illusion, that motherhood is like urination—feminism is still in essence wonderful. Such a position is obviously unfalsifiable, and to be treated as a symptom rather than a belief.