

摘 要

女性主義法學是當代法學的一種人文運動，她的特色包括解構和去中心化的思維、研究取向，以及對正義和人性化的社會抱持不變的期待和信心。本文從法哲學的角度，探討女性主義法學運動在當代發生的背景，並分析她的主要論述內容，包括她對傳統自由主義和人文主義的反省和批判，以及她對法學基礎研究帶來的衝擊和貢獻。直到今天，女性主義運動已經歷經二個階段的轉折，而邁入了第三個階段的發展，維繫女性主義運動的性別論述，大致可以回溯到一九四九年代，法國思想家西蒙波娃（Simone de Beauvoir 1908-86）出版《第二性》（*Le Deuxième Sexe*）開始，女性主義運動由此進入一個新的時期，她結合社會抗爭和運動潮流中逐漸壯大的性別意識，開始伸入學院論述，揭開一波又一波女性主義論述發展的序幕。經過第一階段的女權運動，大約一九七〇年代以後，女性主義和法學結合，女性主義法學開始萌芽。本文以此為重點，說明、分析了過去三十多年間，當代法學的女性主義運動三個主要論述方向，藉此勾勒女性主義法學發展的面貌，包括她與當代其他思潮，如自由主義、基進主義、情慾主義、酷兒理論、性別表意理論、精神分析、女性主義倫理學、法律與文學運動等結合、互動創造出的各種新的論述，以為深入了解她們的限制和可能性，提供一個分析的角度和基礎。

Abstract:

The feminist movement of jurisprudence has originated from the second wave of the feminist movement since 1970s. Its struggle for gender and sex equality within legal institutions as well as throughout social and cultural ideologies is not an overarching theoretical approach, but a collection of themes, ideas and arguments. Nonetheless the different legal feminisms have concerned with the gendered discourses in the jurisprudence and ongoing projects of legal

reforms. They can be traced back to the date as the famous French feminist Simone de Beauvoir published her *Le Deuxième Sexe* in 1949, when the world women movement attended its new age: It was no longer a “mere” powerful social movement but has become one important participant in academic, theoretical discourses.

This paper will provide a historical analysis of the contemporary feminisms of jurisprudence from the perspective of philosophy of law, focusing upon reconstruction of their development and impact on legal reforms and theories. It seeks to convince scholars and activists of political and legal reforms, especially those who are interested in the debates of gender and justice, of the importance of a historical, contextual understanding of the particular feminist arguments. What is offered here is no more than a first attempt to draw together important and common themes of the legal feminisms, as articulated in past and present debates. In doing so, it will engender a deeper understanding both of the limitations and implications of legal feminisms as part of our modern and postmodern heritage, and the new art of creative reasoning.