

Book Review

Ulrike Schultz, Gisela Shaw, Margaret Thornton, and Rosemary Auchmuty eds., *Gender and Careers in the Legal Academy*, Oxford, England: Hart Publishing, 2021, pp. 569, \$160 (hardcover), available in e-book form.

Reviewed by Cynthia Grant Bowman

In the past three decades, a fair amount has been published about how women are doing as law professors in the United States,¹ but not so much about other areas of the world. This book—the third in a trilogy about women in law (the first two volumes covering women in legal practice and as judges)—remedies that gap in the literature and does so in a very comprehensive fashion. Its editors are all members of the pioneering generation of women law professors, now all aged seventy-plus.² The twenty-eight chapters cover nineteen countries in all, extending beyond the usual United States, United Kingdom, Australia, and Canada. Because the local authors invariably begin with a description of the system of legal education in their countries, the book provides a useful short course in comparative legal education in addition to a history of the progress of women into the ranks of the legal professoriat. The comparison goes much beyond the simple distinction between legal education in civil and in common law systems to explore the vast array of ways in which the legal academy is structured throughout the world, the different hierarchies within it, varying teaching methods, and the local culture, all with the goal of showing how they present problems for women law teachers. The volume also includes a very informative introduction and summary of its themes by Ulrike Schultz, although it can't substitute for the extensive detail and thick description of the chapters that follow. The introductory chapter also includes a useful table of the years in which women were first admitted to law school,

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1 See, e.g., Marina Angel, *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1 (2000); Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth about Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 280–82 (1997); Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J. L. & FEMINISM 333 (1996); Deborah Jones Merritt, *The Status of Women on Law School Faculties: Recent Trends in Hiring*, 1995 U. ILL. L. REV. 93 (1995); Deborah J. Merritt, Barbara F. Reskin & Michelle Fondell, *Family, Place, and Career: The Gender Paradox in Law School Hiring*, 1993 WIS. L. REV. 395.

2 GENDER AND CAREERS IN THE LEGAL ACADEMY v (Ulrike Schultz et al. eds., 2021).

graduated, were admitted to the bar, entered the judiciary, and became law professors in twenty-six countries.³

The book is organized under a series of themes, beginning with a section of reports on gender in the legal academy in seven countries or regions (Germany, the United Kingdom, Quebec, Brazil, Ghana, India, and Argentina) and a second, somewhat similar, section detailing the history of women as law professors in another four countries (the Czech Republic, Scotland, China, and the Philippines). Each of these chapters typically contains a description of legal education in the place under consideration, a history of women's entry into law teaching there, and a discussion of how they are faring now. The third section discusses "firsts," that is, the women who first broke into law teaching in another eight countries (Belgium, the Netherlands, Finland, Estonia, Australia, the United States, Egypt, and Kuwait). One can get tired of reading stories about "firsts," but those collected here are particularly interesting because of their diversity. They illustrate many common but also many unique obstacles faced by women trying to enter the legal academy in a variety of settings, some of them little studied (e.g., Estonia, Finland, Egypt, and Kuwait).

I also found the chapter about the first law teachers in the United States to be illuminating, although I have read a great deal on the subject. It focuses on Barbara Nachtrieb Armstrong, who taught labor law and family law at Berkeley's Boalt Hall beginning in 1935 (and was a drafter of the Social Security Act of 1934). But the author precedes Armstrong's story by challenging her generally accepted status as the first woman teaching law in the United States.⁴ She points out that the "real first" was an African American woman, Lutie Lytle, who taught briefly at Central Tennessee College Department of Law in 1898. In addition, Ellen Spencer Mussey and Emma Gillett taught at the all-women's Washington College of Law, which they founded in 1898 when women were excluded from legal education elsewhere.

The following section, Part IV, consists of two personal narratives. The first is by Celia Wells, who came from a working-class family in England and taught law, often as the first woman professor, at a variety of law schools in England and Wales starting in 1986; she relates her story to her family's class, cultural, and Communist political background. The second narrative is by a Canadian woman law professor, Mary Jane Mossman, who sued Osgoode Hall Law School in 1987 after she had applied for the deanship but was passed over for a man. She describes both the "herculean obstacles" she faced and the substantial hardships any woman daring to participate in a gender discrimination lawsuit has to undergo.

Part V is titled "Feminism and the Legal Academy." It includes a chapter about Olive Stone, who became a lecturer at the London School of Economics in 1950 and contributed to the reform of the law of matrimonial property; a

3 *Id.* at 9–10.

4 *Id.* at 358–61.

chapter describing the three waves of women entering the legal academy in Australia (1967–1987, 1988–2008, and since then); and the only other chapter in the book about the United States other than the history of Barbara Nachtrieb Armstrong described above. This chapter, written by Carrie Menkel-Meadow, describes the types of feminist legal theory introduced by women law teachers, categorizing them as formal equality, difference feminism, multicultural feminism, and postmodern feminism. She implies that they followed one another chronologically. I would differ with her characterization somewhat. All of these schools of feminist legal theory, although perhaps introduced in the order Menkel-Meadow describes, coexisted thereafter and continue to do so, enriching one another. There are still formal equality feminists in the legal academy. Robin West and Martha Fineman may have epitomized difference feminism; but they are still actively contributing to feminist legal theory, and their work has absorbed and developed in light of the contributions of multicultural feminists. In other words, it is far from a story of one school succeeding another; anyone teaching feminist jurisprudence in the United States today must discuss all of these strands of theory, and more. Menkel-Meadow most significantly omits the tremendous—indeed, pathbreaking—contribution that Catharine MacKinnon has made to the development both of feminist jurisprudence and the law throughout the entire period discussed. Whether one refers to it as radical feminism, dominance feminism, or simply, as MacKinnon prefers, equality theory, this school of thought has been exceptionally influential from very early on—that is, at least since 1979, when *Sexual Harassment of Working Women: A Case of Sex Discrimination* was published—to the present, and it deserves separate treatment.

Inclusion of this one chapter on feminist legal theory in the United States is problematic. Because the country chapter authors do not describe the theories women law professors may have developed in their settings, it gives the impression that only those in the United States contributed distinctive theories about women and law, which were perhaps exported to other settings. I am sure this was not the impression the editors meant to give. Asking the authors of each country chapter to comment briefly on the contributions women law professors have made to legal theory in their own contexts might have yielded interesting insights.

The final section of the book consists of two essays under the topic “Reflections on Masculinities and Femininities in the Legal Academy,” both written by British authors. I found this section somewhat less interesting than the rest. The first chapter treads the well-trodden path of describing law and legal thinking as inherently masculine in various aspects, the lawyer and law professor as corresponding to a male model, and the ways in which law school hierarchies are scaled according to gendered perceptions of what constitutes quality. True, but not new; the title enticed me to expect more. The second chapter describes a controversy that broke out at one English law school over the naming of a student journal “The Reasonable Man” after the lengthy period during which such a concept has been challenged by feminists.

Interesting, but not, in my opinion, revelatory of deep insights, except for providing yet another example of the persistence of opposition to women and feminism in the legal academy.

Overall, *Gender and Careers in the Legal Academy* is a good example of what is now called transnational feminism, which Chandra Mohanty describes as follows:

This [feminist] solidarity perspective requires understanding the historical and experiential specificities and differences of women's lives as well as the historical and experiential connections between women from different national, racial, and cultural communities [It] potentially counters [Eurocentric and relativist or postmodernist] logic by setting up a paradigm of historically and culturally specific "common differences" as the basis for analysis and solidarity⁵

In line with this goal, this book of edited chapters reveals a number of common factors affecting women who enter the legal academy regardless of the many different contexts in which they live. It also decenters the United States and Western Europe as the subjects of study. There are only two chapters about the United States; only Germany is represented from the nations of Western Europe; and other regions of the world, as well as smaller and rarely studied countries, replace the usual suspects (the six articles about Australia are an anomaly).

There is almost universal agreement among the authors of the country chapters (with the possible exception of the authors of the chapters on Scotland and Israel) that the legal academy is an unfriendly environment for women, one in which they find it difficult to succeed. One after another notes that law schools are male-dominated, characterized by substantial gender gaps in compensation, and stratified by gender both vertically (with women at the lower ranks of the hierarchy and men at the higher ranks) and horizontally (with women likelier to teach certain subjects, like family law and legal writing, and men likelier to teach subjects associated with more prestige, like constitutional law). Although these themes appear repeatedly, the way these universals appear in particular contexts is key to understanding how to address the problems they present. This is supplied by the thick descriptions contained in so many of the country articles.

Women appear to have entered the legal academy in three waves almost everywhere. The group of women who entered first often did not recognize, or denied, gender discrimination, and they tended to ascribe their own success to luck or to having an influential male mentor rather than to their own qualities. Some of these women steered away from gender-related subjects and reforms and resisted identification as feminists. Other very early female law professors,

5 CHANDRA TALPADE MOHANTY, *FEMINISM WITHOUT BORDERS: DECOLONIZING THEORY, PRACTICING SOLIDARITY* 242, 244 (5th ed. 2003).

however, such as Inkeri Anttila in Finland,⁶ Vera Poska-Grünthal in Estonia,⁷ and Aisha Rateb in Egypt,⁸ became involved in major legal reforms benefiting women, such as reform of family and property law, and advocated political changes advantageous to women. Anttila, for example, contributed to the development of a social welfare state in Finland.

The second wave of women entering the legal academy accompanied historical events that opened it up. In the United States, the United Kingdom, and Australia, for example, this corresponded to more general civil rights revolutions, which effected legal changes facilitating women's right to equal access to schools and professions. In the United States, women streamed into law schools as students, then into law firms, and later into the legal academy as teachers after the equal opportunity initiatives in the 1970s and 1980s and the lawsuits that followed.⁹ In the Czech Republic and China, this wave corresponded to the installation of communist regimes in each country in the late 1940s. The new governments changed laws to emphasize gender equality, made higher education free, and in many circumstances provided child care and other social supports for women entering the workplace. In both countries, the structure of higher education was also modified to make it less hierarchical, doing away, for example, with the chair system in the Czech Republic and replacing it with departments.

The third wave, in which we now find ourselves, is a kind of stalling or backlash to this progress; several authors in the volume refer to the current phase as "post-feminist."¹⁰ This wave reflects the neoliberal turn taken by universities, which has given rise to a kind of hypercompetitive "meritocracy" accompanied by intensified demands for scholarly production and, some contend, gendered perceptions of quality. Ph.D.s have become almost universally required for entry-level positions. Women, although they may now succeed in gaining entry-level positions, are still much more heavily represented on the lower rungs of the professorial ladder and dominate nontenured positions, such as those in clinics and legal writing programs in the United States. Positions based on short-term contracts, without the possibility of tenure, have increased dramatically.

The historical and cultural circumstances in which women have attempted to enter the legal academy have been very significant causes of their failure

6 GENDER AND CAREERS IN THE LEGAL ACADEMY, *supra* note 2, at 304-05.

7 *Id.* at 315.

8 *Id.* at 381-82.

9 See Cynthia Grant Bowman, *Women in the Legal Profession From the 1920s to the 1970s: What Can We Learn from Their Experience about Law and Social Change?*, 61 ME. L. REV. 1, 13-15 (2009); Cynthia Grant Bowman, *The Entry of Women into Wall Street Law Firms: The Story of Blank v. Sullivan & Cromwell*, in *WOMEN AND THE LAW STORIES* 415-52 (Elizabeth M. Schneider & Stephanie M. Wildman eds., 2011).

10 GENDER AND CAREERS IN THE LEGAL ACADEMY, *supra* note 2, at 458 (Margaret Thornton); 499 (Carrie Menkel-Meadow).

to thrive in different contexts and in different ways. For example, family responsibilities are cited everywhere as making success problematic for women, but these differ by context. Norms of motherhood and of women's role within the family confront all working women in one way or another, but they present particularly negative factors for women seeking success as law professors in the Philippines and China. In the Philippines, motherhood is surrounded by a culture of "marianismo," and mothers' working is not supported by many husbands.¹¹ In contemporary China, cultural and traditional beliefs suppressed during the early years of the communist state now make it difficult for female law professors. The traditional household division of labor consigns most domestic tasks to women, supported by continuing cultural beliefs in the inferiority of women and a disjuncture between their image and that of a successful lawyer.¹² Since the regime has cut back on social supports, free child care is no longer available, making full-time work hard to manage for women with children. Of course, this is also the case almost everywhere except in Scandinavia and some nations of Western Europe.

A whole set of problems also arises in connection with the unique structure of the legal academy in various countries, causing women not to thrive as law professors. In Germany, for example, education in general remains very classical in nature, and it requires a lengthy period of qualification to enter the professoriat. It typically takes six years to gain the requisite doctorate degree and an additional six years to complete the "habilitation," both of which require the production of 500- to 1000-page books.¹³ Thereafter, positions in the academy come up infrequently; and to apply for a chair, one must be willing to move to another university. Yet the years during which women bear children and care for them during early childhood coincide with the lengthy period of qualification for admission to the legal academy, and they are typically not free to move their families at will to apply for a chair elsewhere. Moreover, Ulrike Schultz, author of the chapter on Germany as well as of the introductory chapter, points out that the traditional mode of instruction, with large lectures and charismatic and authoritarian professors, is not an ideal setting for women, who prefer smaller and more participatory instructional settings.¹⁴

Different types of problems arise in countries where law teaching has been considered basically part time, such as Ghana and the Philippines. Law teaching does not pay well enough to support a family in either country, so professors are expected to practice law at the same time. Combining both teaching and law practice with domestic labor is very difficult and may lead many female law graduates to choose legal practice instead, as a path in which they can earn a higher income. (This is also true in Germany during the

11 *Id.* at 260-61.

12 *Id.* at 243-45.

13 *Id.* at 50-51.

14 *Id.* at 55.

lengthy period of qualification, during which income is insecure and jobs in public service or business settings provide better returns.¹⁵) In the Philippines, women have come to prefer part-time law teaching because they can manage to combine that with some private practice and not be required to fulfill the newly imposed expectations of research and publication for full-time law professors.¹⁶ Nonetheless, they need supportive spouses and the ability to hire caregivers in order to succeed. Even so, part-time work is not a route to rising within the law school hierarchy, leading authors of the chapter on the Philippines to recommend moving away from part-time law teaching, paying professors better, and giving them research support as well.¹⁷

Not many of the chapter authors offer specific proposals for how to change the legal academy to make it friendlier to women. A few offer suggestions—for example, measures to address income insecurity where law teaching is either part time or requires an extremely long qualification period.¹⁸ Structural reforms in the university system would clearly be of help in countries such as Germany.¹⁹ And so would provision of subsidized child care by universities in countries where it is not provided by the state. I believe that embracing more realistic standards for entry-level hires in U.S. law schools would also be beneficial. After spending a decade working full time while raising children, I had virtually no publications when I applied for a position as a law professor. I would never have been hired under today's standards, but institutions took a chance on me and colleagues helped me to develop by the time I came up for tenure. We shall never know how many talented law teachers and scholars have been lost when this path was foreclosed.

I do not feel sanguine that the proposals set forth in the preceding paragraph will be effectuated very soon. This leaves me with the general conclusion with which I have ended many articles about women and the problems they face in various areas of life: that it will require both cultural and structural changes to remedy the situation. In this instance, what is required are cultural changes at the level of the family, university, and society, structural changes in law schools, and major political changes to provide family support systems. After thirty-three years of teaching law, I must confess to being out of ideas about how to change the masculine culture of law schools, except to hire more women and get them into positions of power. I used to think that when older faculty retired, that would solve the problem, but I am no longer so sure; I encounter younger male colleagues who share many problematic attitudes with previous generations.

15 *Id.* at 53.

16 *Id.* at 255.

17 *Id.* at 264.

18 *See, e.g., id.*

19 *Id.* at 59.

Things have definitely improved since 1988 when I began teaching, but inequities remain. In 2020, more than half of law students in the United States were women.²⁰ Although this has been so for quite a while, the percentage of women law professors reported at some 200 U.S. law schools in 2020 varied from 22.9% to 64.9% (at CUNY School of Law), with the majority falling in the thirtieth and fortieth percentiles and the percentages at the most prestigious law schools in the low thirties (e.g., ranging from 31.2% at the University of Chicago to 35% at Yale, with Harvard in the middle at 33.1%).²¹ The American Bar Foundation's *After Tenure* report stated that about 28% of senior professors in 2007–2008 were women, and many of them expressed complaints about being overburdened with committee work and advising and being denied various benefits given to male faculty.²² By 2016, 30% of the deans at ABA-approved law schools were women, double the number in 2006.²³ So some things are gradually changing, although we have not achieved genuine equality and it will take a long time to reach it at the current pace of change.

Although salaries are notoriously secret at private law schools (information about them is available at public universities), recently a number of courageous women law professors filed complaints with the Equal Employment Opportunity Commission, alleging that they were paid less than their male counterparts. After investigation by the EEOC, the complaints then went to federal court.²⁴ Most of these suits were settled. But we now know that it is not uncommon to pay women anywhere from \$20,000 to as much as \$80,000 less than men at the same rank. A recent study based on reanalysis of the raw data from the *After Tenure* project confirmed that tenured women receive lower compensation than male law professors, even after controlling for a variety of factors, such as their credentials; the gap was even wider for women of color.²⁵

20 *Statistics: Various Statistics on ABA Approved Law Schools*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/legal_education/resources/statistics.html.

21 *See 2020 Raw Data Law School Rankings*, PUBLIC LEGAL, www.ilrg.com/rankings/law/1/desc/FacultyWomen.

22 ELIZABETH MERTZ ET AL., *AFTER TENURE: POST-TENURE LAW PROFESSORS IN THE UNITED STATES* 57 (2011), http://www.americanbarfoundation.org/uploads/cms/documents/after_tenure_report_final_abf_4.1.pdf.

23 Cynthia L. Cooper, *Women Ascend in Deanships as Law Schools Undergo Dramatic Change*, ABA PERSPECTIVES, July 9, 2016), https://www.americanbar.org/groups/diversity/women/publications/perspectives/2016/summer/women_ascend_deanships_law_schools_undergo_dramatic_change/.

24 Stephanie Francis Ward, *Recent equal pay lawsuits by female law professors has shined a light on academic compensation process*, ABA JOURNAL (Oct. 1, 2020), <https://www.abajournal.com/magazine/article/a-recent-spate-of-gender-discrimination-and-equal-pay-lawsuits-filed-by-female-law-professors-has-shined-a-light-on-the-otherwise-opaque-academic-compensation-process>; *see also* Paula A. Monopoli, *The Market Myth and Pay Disparity in Legal Academia*, 52 IDAHO L. REV. 867 (2016) (discussing the lawsuits against the University of Texas and University of Denver law schools).

25 Christopher J. Ryan & Meghan Dawe, *Mind the Gap: Gender Pay Disparities in the Legal Academy*, GEO. J. LEG. ETHICS, 34 GEO. J. LEG. ETHICS 567 (2021).

Reports of “tenuring gaps” by gender in law schools have also surfaced.²⁶ Women of color have a particularly difficult time being both hired and promoted.²⁷ They also face unique obstacles and stresses in the legal academy. One study based on interviews with ten prominent African American women law professors revealed a hostile environment, including presumptions of their incompetence by both students and fellow faculty, which made them feel disempowered and marginalized.²⁸ Although women made up 51.8% of all new hires in 2007–2008, they held a lopsided 59.5% of non-tenure-track positions, without job security and often at lower pay.²⁹ Women are concentrated in legal writing, clinical, and professional skills training, and those positions are not given the prestige or the pay they deserve.³⁰

I want to close by returning to the claim made repeatedly by authors in this volume that we are in a new phase of discrimination against women law professors, one caused by changing conditions in universities and law schools, changes in line with a neoliberal corporatization of the university. Just as women were finally being allowed in, the rules changed. Law firms also made similar changes after women broke down the doors that previously excluded them—lengthening billable-hour expectations, for example, so that sixty and more hours per week are required to fulfill them, making work at a corporate law firm exceedingly difficult to combine with the family responsibilities many women shoulder.³¹ This was a general secular change, of course, so can one call it discrimination? I think so. First, I would note that the general neoliberal model for economy and society is in fact patriarchal. It assumes that workers will be able to give up to 24/7 to their work life, tolerate changing hours from day to day, and move when the employer’s needs require. Just as Catharine MacKinnon pointed out long ago, the ideal worker in our society is a man.³² That worker requires a wife, one who can take care of all the tasks required for everyday life as well as care for both the older and younger generations. So even if this discrimination was not conscious or intentional, it has had a disparate impact on women. The effect has been a stalled revolution on the road to women’s equality.

26 Richard K. Neumann, Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEG. EDUC. 313, 357 (2000).

27 MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* (2019); Meera E. Deo, *Intersectional Barriers to Tenure*, 51 U.C. DAVIS L. REV. 997 (2017).

28 See, e.g., ELWOOD WATSON, *OUTSIDERS WITHIN: BLACK WOMEN IN THE LEGAL ACADEMY AFTER BROWN V. BOARD* 49–64, 81–89 (2008).

29 See, e.g., Marjorie E. Kornhauser, *Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender Among Law Professors*, 73 U.M.K.C. L. REV. 293 (2004).

30 See, e.g., Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU. L. REV. 99 (2009).

31 See Fiona M. Kay & John Hagan, *Cultivating Clients in the Competition for Partnership: Gender and the Organizational Restructuring of Law Firms in the 1990s*, 33 LAW & SOC’Y REV. 517, 548–49 (1999).

32 See, e.g., Catherine A. MacKinnon, *Difference and Dominance*, in FEMINISM UNMODIFIED 37 (1987).

Is this a result of a backlash against the many gains women had made in attaining access to the public sphere, a reflection of a sense of threat by those who fear being displaced? One cannot escape comparison to the antiracist revolution, which has essentially stalled since the civil rights movement and the achievement of formal legal equality half a century ago. With minor advances and less overt discrimination, African Americans are still largely segregated in housing, education, occupations, and income class. They are also subject to lethal violence by the police. Many interpret the excessive violence of recent racist movements as a sign of white men's fear of being displaced.³³ Maybe the resistance of male law professors is similar.

I see the race and gender discrimination that persists in the legal academy today more as a continuation than as a backlash or a phase. With respect to gender, the disclosures of the #MeToo movement have startled me with their extensive depictions of a strand of deep and continuing misogyny, not only in the United States but in most countries of the world. Misogynists, like racists, use whatever tool is at hand to protect their dominant position and their power. So I am less optimistic than others may be about transforming the legal academy or any other institution into a genuinely equal environment for women and minorities until much broader social and economic changes occur. Law schools exist within our society and are constrained by economic pressures within it. Incremental changes may occur, largely when women in power demand them, but we should not expect genuine equality until and if much broader transformations occur in our society and economy. Thus I remain a long-range optimist about equal status for women in the legal academy, but a short-run pessimist.

Gender and Careers in the Legal Academy provides a valuable resource for anyone wanting to explore these questions. It is certain to become an important reference for understanding the unequal position of women law teachers throughout the world. For many countries, such as Estonia and Kuwait, this may be the *only* source of information on this topic. Yet unless we understand this phenomenon, both in its diverse localized manifestations and the deeper underlying forces that may be common in many different contexts, we cannot work intelligently and effectively to change it.

33 Tom Jacobs, *A Fear of "White Extinction" Is Provoking Racial Bias among American Whites*, PACIFIC STANDARD, (June 3, 2019), <https://psmag.com/news/a-fear-of-white-extinction-is-provoking-racial-bias-among-american-whites>; Hui Bai & Christopher M. Federico, *Collective Existential Threat Mediates White Population Decline's Effect on Defensive Reactions*, 23 GROUP PROCESSES & INTERGROUP RELATIONS 361 (2019).