

might have been, law remains thoroughly spooked by the jurisprudential phantoms of what it could and should never be. A more appropriate response to such jurisprudential fantasising is not awe-induced toleration, but a defiant and decisive act of ghost busting. The time has come to break free of all ghosts or, if that is not possible, to opt for ghosts that are more, not less conducive to a democratic imagination.

## GENDER ISSUES

### Women in legal education: what the statistics show

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What can statistics derived from publicly available data establish about how women are being treated in legal education? This study is an attempt to find out. Its goal is to collate into one coherent picture the most significant data presently available. The statistics predict that women will very soon constitute the majority of law students nationally. For the most part, statistics that could illuminate whether women are being treated fairly after admission are not publicly available. There is one significant exception. Although women who apply for admission to law schools have higher undergraduate grade averages than men who apply to law schools, that differential reverses in the first year of law school, and men suddenly receive higher grades on average than women.

The statistics show that women are not applying for tenure-track jobs at rates that equal their presence in the cohorts from which law faculty are initially hired. A woman applying for a tenure-track job does not have a statistically better chance of being hired than a man does and might have statistically worse odds. At the point of hiring, men receive a higher percentage of the associate professor appointments, while women tend to be appointed at the assistant professor rank. The available statistics suggest that women achieve tenure at lower rates than men. And there is evidence that women are paid less than

similarly qualified men within the same status and at the same experience levels. Perhaps the starkest finding is that everywhere in legal education the line between the conventional tenure track and the lesser forms of faculty employment has become a line of gender segregation.

It appears that as a group, women get better grades than men in undergraduate school and worse grades than men in law school. The data suggest that many women are not performing as well as they could be or should be in the current legal education environment. The grade gap is undoubtedly more pronounced at some law schools than others. A statistical picture of law school deans and faculties is much less promising than the composition of law school student bodies.

Although we do not know the exact dimensions of the gap, it is clear that women are applying for law school teaching jobs at a disproportionately smaller rate than would be expected from their presence in the population from which applicants for law faculty jobs are generally drawn.

Although the statistics of law school employment are gradually improving, the rate of change has become much slower than is generally assumed. In fact the rapid progress of earlier years has now become so slow that, if practices do not change, it will be a very long time – decades, in fact – before a substantial improvement could be noticeable. If all of these things were remedied – if women were to apply for faculty jobs as frequently as men do, if they were hired as frequently and at the same ranks as men, and if they were tenured as often as men – progress would not be as slow as it is now, but it would not break speed limits either, simply because faculty vacancies will not be abundant in the near future.

The line between the conventional tenure track and lesser forms of faculty employment has become a line of gender segregation. Wherever jobs exist off the conventional tenure track, women are being hired into them at very high frequencies, and at those same schools proportionately fewer women are being hired onto the conventional tenure track.

What could be causing the difference in tenuring rates? Academics comfort themselves that they live in a meritocracy, but all four traditional tenure criteria (scholarship, teaching, collegiality, and service) are so subjective that except in extreme cases a tenuring authority can rationalise any result it wants.

Of the four traditional tenure criteria, collegiality may be the most problematic for women. The practical definition of collegiality differs, of course, from faculty to faculty. At some schools, a candidate is uncollegial only if the candidate's personality makes it difficult for others to do their work. But at others, an uncollegial candidate is one who has not formed bonds with the tenured faculty that the latter find pleasing. In addition, there is evidence that at least some academics are unable to avoid undervaluing professional work once they know it was done by a woman – a problem that can affect not only tenuring rates but also hiring and job status decisions.

The statistics suggest that many law schools individually and legal education generally could profit from reflective self-examination. The statistics create the impression that women are welcome in legal education in subservient roles but otherwise are greeted, at best, with ambivalence. In the next few years, we will discover the extent to which that impression continues to be accurate.

### Working out women in law schools

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21 *Legal Stud* 1, 2001, pp 116-136

Although well over half of law undergraduates are women, in nearly all law schools they are likely to encounter more male lecturers than women. Few of them will meet a woman law professor and even fewer will see a female head of department. Compared with their male counterparts, fewer women students and academic staff will go on to the top of their profession. There is clear evidence that women of all ranks in universities are paid less than their male counterparts. The university sector as a whole is only slowly coming to recognise that some proactive policies might be