

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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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

needed before equal opportunities for women and other groups traditionally excluded from the portals are assured.

A survey conducted in 1997 in the UK revealed that of the 301 law professors in the UK, 43 were women, making up 14% of the total. Fifty-seven out of 83 law schools had no women professors at all and in only two law schools did women professors out-number men. Women entering the academic profession now will still find that they are in a minority, and most women law professors have spent most of their career in a very isolated position in most of their professional activities, whether within their academic departments, within their institutions, or in the wider world of their subject associations.

University teachers, at least in the UK, have only recently begun to examine who they are. It is somewhat ironic that notions of academic freedom and objectivity have tended to mask the need for analysis, rather than encourage self-reflection about the processes whereby individuals come to occupy their places in the academy. Also the university sector as a whole is only slowly coming to recognise that some proactive policies might be needed before equal treatment for women and other traditionally excluded groups are assured.

Many studies of the rise of women in professional work and changing perceptions of their roles reveal that women are concentrated in the less well-paid and lower status jobs. Within the university sector, women are concentrated in library, administrative and clerical posts, while women in academic positions are disproportionately on fixed-term contracts, and found at junior rather than senior levels. Three out of five UK law schools have no women professors, allowing them to reinforce their own prejudices and to continue to be blind to the possibilities of their world looking any different.

Direct and indirect patterns of discrimination include old boy networks, age barriers, discriminatory attitudes and practices. Examples are allocation of pastoral, administrative and teaching loads, and the prevalence of patronage. All of these are chalices of poison and they can also work

in several negative ways. These include overloading women with administration; leaving women to absorb pastoral work from less conscientious colleagues; or failing to allow for their attracting a disproportionate share of pastoral work through being perceived to be more accessible; and applying different standards to women who fail their obligations than to men. Women may be left with no time for, or be perceived as uncommitted to, research.

In universities and most of our social and political institutions power is held by men, and it is not surprising that the normative structures and rules within those institutions generally reflect and further the interests of those holding power in that system. It is within these broader cultural foundations that localised cultures and politics are played out and 'choices' are made. These include encouraging, mentoring and headhunting 'people like us'. The very qualities of competence, compliance and social immobility which are taken to be natural in women may also make them ideal candidates for filling out the base of the pyramid, providing the teaching commitment that the expanding

A number of obstacles to the development of equal opportunities policies in higher education have been identified: resources, work arrangements, training, recruitment and selection, targets, and attitudes and culture. While nearly all universities have equal opportunities policies, only a third have action plans to accompany those policies.

Leadership from the top emerges in a number of studies as a crucial factor in bringing equal opportunities compliance within the institution beyond mere lip service. A vice-chancellor committed to the value of diversity in the university can be very effective. But without support from the senior officers, it is extremely hard for committed individuals to make much progress.

Most of the women who work in university law schools are white, (very) middle-class and not all of them would identify themselves as feminists. It is unlikely these days that a suggestion that we teach a course in gender and law would be dis-

missed as laughable. But the major changes we have witnessed and experienced in the higher education sector in the last two decades have, paradoxically, both exposed and obscured previously hidden questions. Gender, ethnicity and disability are emerging more strongly but are none the less still often seen as someone else's problem. Universities are extremely hierarchical yet management is often indirect. Women are often strung between the poles of two 'greedy institutions', the family and higher education.

LAW TEACHERS

Legal scholarship blueprint

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What do you want to accomplish with the scholarship ingredient of your professional career? Were you to pose this question to your more experienced colleagues, any candid reply would acknowledge the so-called teaching-versus-scholarship debate – one of the most persistent and vexing issues in legal academia. The role of scholarship is misunderstood, or at any rate, law teachers have varying understandings of the *raison d'être* for legal scholarship.

The academic literature addresses the law teacher's scholarship responsibility. The common perception is that scholarship ranks first at upper-tier schools, teaching first at others. Put another way, we are all good teachers, but tenure is not necessarily determined by teaching accomplishments. One reason is that evaluating teaching is arguably more subjective than evaluating scholarship. A number of schools effectively delegate this part of the tenure evaluation process to the law reviews: you either publish or you don't, and the more publications, the better. Some schools may rely heavily on external scholarship review.

So where do you need to be in the scholarship debate? Know that new scholars are bound by local rules, a.k.a. 'the tenure plan'. If you are at least aware of the philosophical disconnect within our ranks, you will not be unduly surprised