

## TECHNOLOGY

[no material in this edition]

## WOMEN'S ISSUES

### Touching the elephant: perceptions of gender issues in nine law schools

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Of the 33 reports on gender bias in the courts that were produced before 1990, none studied gender bias in the practising legal profession or the law schools, although some had indicated that unfair treatment of women may be traced to law schools. A committee was established to investigate gender bias in the nine law schools in Ohio. Its goal was to determine whether the percentages of women students and faculty who perceived gender-bias problems were large enough to warrant action by legal educators to minimise the disadvantages of gender difference. This article reports the research methodology adopted by the committee and the results yielded.

The committee reviewed the literature on gender issues in legal education in determining the methodology to be used in the study. From this review it formulated a list of problems that women in law schools experience, such as the 'chilly climate' caused by the male characteristics and values that pervade the law school classroom and the campus. Much of the literature explored the female-male differences, in particular the notion that women are relationship-oriented, connoting an inclination towards nurturing, sensitivity and caring, whilst men are rights-oriented, typified by assertiveness and an argumentative, confrontational and

adversarial nature. Reports of law students were reviewed, revealing that traditional legal education was a process of rigorous exclusion of feelings and personal beliefs. Women and minority group women were less likely to participate in class as the agenda is set by and run by white middle-class males. Women repeatedly found law school classrooms more alienating than men did.

The committee decided that its goal was to document by way of survey the extent to which gender bias was perceived as actually occurring in Ohio law schools. For the study 800 males and 800 females were selected at random to be surveyed and 296 females identified by their law schools as minority women were also surveyed. The survey itself had 100 questions covering many aspects of students' lives and experiences. The responses were analysed under four major topics: (1) career plans, (2) demographics, (3) academic environment of respondents, including sexual or racial discrimination and sexual harassment, and (4) actions and perceptions of the respondents. The committee's conclusion from the student survey was that women law students bear more burdens and evidence less self-confidence than men in ways that are consistent with the literature reviewed. Minority women showed a pattern of greater sensitivity to differential treatment on the basis of gender and race, indicating a multiplied effect of disadvantage due to the intersection of race and gender. The final conclusion of the committee was that it should be within the educational mission of law schools to improve the educational experience for women.

The committee also surveyed law teachers. This survey was divided up into three topic areas: (1) integration

of professional and family life, (2) relationships with others, and (3) hiring and promotion. The committee concluded that women faculty members were in a 'triple bind' situation: the first bind being the less assertive nature of women; the second bind being that when women are assertive they are disadvantaged for displaying behaviour that is valued in and inherent in men and not women; and the third bind is that a percentage of men believe the promotion standards for women are lower. Law schools should study and discuss the burdens particular to women and the reduced opportunities for promotion available to them.

Research into the reasons behind the differences needs to be performed. The relatively lower participation rate of women in class discussion could be due to the Socratic method used in law schools and students may feel more comfortable with a teacher of the same gender. The author's hypotheses for the male/female differences revealed by the surveys are first, that women continue to feel like outsiders in a profession which remains predominantly male and second, that more women than men exhibit relationship-oriented behaviour.

### Contextualising the debate: how feminist and critical race scholarship can inform the teaching of employment discrimination law

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A rich body of literature has been created over the last ten years addressing how feminist and critical race theory can inform law school pedagogy. Of special use are those articles which illustrate how the substance of core courses can be

rethought. Such scholarship is exciting as it challenges the notion of the assumed neutrality of the law. As yet no articles on the teaching of employment discrimination law from a feminist and critical race theory perspective have been written.

The rationale behind the use of a feminist or critical race perspective is to challenge and expose the unstated curriculum, which at worst sends a message to women and minorities that their concerns are not pertinent to the study of law. Such an approach can contextualise employment discrimination and help students appreciate that abstract legal principles have concrete consequences for specific groups of employees. Furthermore, a curriculum that incorporates diverse perspectives may create more sensitive and caring practitioners.

One argument for changing the traditional law school courses is that those courses often operate in a vacuum, without reference to the economic, social or psychological context. The casebooks on employment discrimination law are similarly acontextual. For example, Friedman and Strickler's book discusses the arguments for and against comparable worth of men and women in the workplace in two sentences and cites a dozen articles from law reviews. Such acontextual presentation leaves students to ponder exactly how large the problem is. Another textbook which did attempt to contextualise the law contained within was found to be in need of an update as it was published in 1987, earlier than many of the feminist and critical race readings.

In rethinking the employment discrimination course, four contexts were identified: (1) economic, (2) psychological, (3) sociological and (4) theoretical. Within each

perspective there are sub-perspectives.

The economic context can be used to assess the purpose and effectiveness of the anti-discrimination laws. The two main issues are the occupational segregation and the earning gap between white men and those of other groups.

The psychological aspects of racism can be explored from the perspective of the damage that it causes to the self-esteem of the subject or the subjective perception of the white majority. The reason for putting the law in a psychological perspective is to show students that regulation is needed and the limitations of anti-discrimination laws. This perspective can be clearly illustrated by having litigants to employment anti-discrimination suits come to the class and give a first hand account of the experience. Additionally, assigning critical scholarship readings on the topic will assist students in contextualising the law.

Many commentators have noted that sociological factors that have a white male bias can affect the progress of protected groups. Sociological factors typically affect young minority women and professional women and go part way to explaining the occupational segregation of white males from other groups.

The theoretical context is derived from the traditional Fourteenth Amendment equal protection analysis. Many feminists have argued that the equality concept is bias against women as men represent the standard against which women are measured. Affirmative action discussions may be used and centre around the concept that affirmative action is anti-meritocratic, is reverse discrimination, produces unqualified

and undeserving workers and stigmatises its beneficiaries.

**Feminist perspectives on the ideological impact of legal education upon the profession**  
(The ideological impact of legal education upon the profession - a series of essays)

K T Bartlett

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Feminists are those who think critically about the role that gender plays in existing social, political and legal arrangements. This article, however, focuses not on 'the' feminist perspective on the ideological impact of legal education upon the profession but on the different feminist perspectives. The focus is on two feminist perspectives: the 'different voice' perspective and the dominance or non-subordination perspective. These perspectives help to expose the links between legal education and gender ideologies in the profession that are not easily revealed by equality principles with which most practising attorneys would be familiar.

The primary commitment of different voice theory is to identify those characteristics and values of women that are different and undervalued in society and either to promote affirmatively or revalue those characteristics. Existing values are questioned. It is contended that women's values are superior to those of men and society would be improved if women's values were more highly prized. Legal education places male ideals, such as individual performance, competitiveness and autonomy above the equivalent female ideals of group process, cooperation and collective learning. Legal education encourages the ability to take any side and argue any point of view, thereby excluding any