

2015

An Introduction to the Women in Law Symposium

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Recommended Citation

Thomas, Tracy, "An Introduction to the Women in Law Symposium" (2015). *Con Law Center Articles and Publications*. 14.

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AN INTRODUCTION TO THE WOMEN IN LAW SYMPOSIUM

*Tracy A. Thomas**

People commonly say that women's equality has been achieved. Indeed, they tire of continuing refrains and complaints to the contrary. On the surface, many formal barriers to women's equality have been eliminated, including laws of voting, marital property, employment, and education. Yet these laws are not fully and adequately enforced, thus the problems persist. Moreover, these laws based solely on formalism fail to appreciate the complex, indirect, and persistent patterns of discrimination and the structural contributing causes.

This collected symposium gives context and definition to these continuing problems of sex discrimination. The included articles pull back the curtain to provide examples of how and why sex discrimination still exists. The articles go deeper, fleshing out persistent notions of gender as subordinate, exploring the public perception of gender in appearance of femininity and masculinity. They illustrate the tangible legal results of these gendered notions to legal issues as varied as forced sterilization of the mentally disabled, equal employment, or the criminalization of prostitution.

Maritza Reyes begins the symposium with her article, *Professional Women Silenced by Men-Made Norms*.¹ Her article discusses sexual harassment and explores why few professional women, particularly women of color, report workplace abuse.² Her goal is to identify professional norms and structural challenges that make it difficult for professional women to speak out against injustice and oppression.³ These professional norms include workplace bullying and women's

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1. Maritza Reyes, *Professional Women Silenced by Men-Made Norms*, 47 AKR. L. REV. 897 (2015).

2. *Id.* at 912-13.

3. *Id.* at 898.

aversion to professional suicide.⁴ The challenges include judicial animosity from a bench dominated by older, male, corporate judges, and cultural pressures to remain loyal to men of a shared minority race or culture.⁵ Reyes inserts her perspective as a Latina feminist to deepen our understanding of the silent, yet complex nature of workplace harassment.⁶

The next article similarly exposes the subtle, indirect behaviors that fuel gender discrimination in the workplace. Andrea Schneider and Gina Brown explore the hidden gender bias in selecting mediators and neutrals in their article, *Gender Differences in Dispute Resolution Practice: Report on the ABA Section of Dispute Resolution Practice Snapshot Survey*.⁷ Their empirical study, based on a survey of lawyers, investigated the reasons for the relatively low rate of women selected as neutrals.⁸ They discovered that women are rarely chosen for arbitration and mediation for male-dominated subjects like commercial, finance, and construction, but are more equally selected in family and small claims disputes.⁹ The authors also discovered that women were more likely to be chosen if lawyers used objective lists of qualified neutrals rather than relying on networking.¹⁰ They conclude that this behind-the-scenes operation of gendered assumptions about male topics and roles continue to disadvantage women in the workplace, and that affirmative action for proportional selection of women is required.¹¹

This symposium then delves more deeply into these societal gendered assumptions and behaviors with Peggy Li's article, *Physical Attractiveness and Femininity: Helpful or Hurtful for Female Attorneys*.¹² Li explores the issue of what women lawyers wear.¹³ As she explains, sometimes women are counseled to tone down feminine appearance, by not wearing nail polish, pink blazers, or dangling earrings, in order to fit in to the masculine legal world.¹⁴ At other times,

4. *Id.* at 938.

5. *Id.* at 943, 958.

6. *Id.* at 921.

7. Gina Viola Brown and Andrea Kupfer Schneider, *Gender Differences in Dispute Resolution Practice: Report on the ABA Section of Dispute Resolution Practice Snapshot Survey*, 47 AKR. L. REV. 975 (2015).

8. *Id.* at 976.

9. *Id.* at 986-87.

10. *Id.* at 995.

11. *Id.*

12. Peggy Li, *Physical Attractiveness and Femininity: Helpful or Hurtful for Female Attorneys*, 47 AKR. L. REV. 997 (2015).

13. *Id.* at 998.

14. *Id.* at 998-99.

they are told to wear skirts, reminiscent of a Mad Men era of female propriety—and subordination.¹⁵ Li explores this double bind for women lawyers demanding they present an appearance of masculine competence and feminine likeability.¹⁶ She uses social science research to explore how a woman's physical attractiveness and femininity affects others' perceptions of her.¹⁷ The harm, she argues, is that these appearance standards reflect the hierarchy and stereotypes of a male profession and can lead to employment discrimination against women.¹⁸

Julia Ernst continues this analysis of gendered societal expectations and how they influence the operation of the law in *Women in Litigation Literature: The Exoneration of Mayella Ewell in To Kill a Mockingbird*.¹⁹ Ernst offers a law and literature approach in the context of this famous novel that follows lawyer Atticus Finch as he defends a black man unjustly accused of raping a white woman in the 1930s racist South.²⁰ Finch indicts the woman, Mayella, for inciting the incident and for failing to come forward with the truth.²¹ Ernst takes the perspective of Mayella herself—a victim of domestic violence and incest by her father.²² She emphasizes society's protection of the male family prerogative through privacy norms and the exclusion of women as jurors in the legal system.²³ The fault, Ernst argues, belongs not with Mayella, but with her father, and the gendered social and legal system that protected him.²⁴ Her reexamination of *To Kill a Mockingbird* offers an understanding of women victimized by violence in the home and their social isolation and economic dependence.²⁵ Understanding gender in this way, she argues, helps appreciate the social context of domestic violence, and why women's behavior does not always match societal expectations as Finch demanded.²⁶

John Kang then looks at the other side of the gender coin by exploring the meaning of manliness in *The Soldier and the Imbecile*:

15. *Id.*

16. *Id.* at 1008.

17. *Id.* at 999.

18. Li, *supra* note 12, at 999.

19. Julia Ernst, *Women in Litigation Literature: The Exoneration of Mayella Ewell in To Kill a Mockingbird*, 47 AKR. L. REV. 1019 (2015).

20. *Id.* at 1019-20.

21. *Id.* at 1023.

22. *Id.* at 1020.

23. *Id.* at 1045.

24. *Id.* at 1053.

25. Ernst, *supra* note 19, at 1033-34.

26. *Id.* at 1048.

*How Holmes's Manliness Fated Carrie Buck.*²⁷ Kang, like Ernst, takes a familiar narrative and examines it from the perspective of a different gendered actor. Kang's context is the case of *Buck v. Bell*, which upheld the eugenics laws that supported mandatory sterilization of the mentally disabled, like eighteen-year-old Carrie Buck.²⁸ He takes the perspective of the famous Judge Oliver Wendell Holmes, who authored the majority opinion in the case.²⁹ He argues that Holmes was influenced by his own sense of manliness garnered from his personal experiences as a soldier.³⁰ Holmes discounted the perceived inequities to Carrie Buck by contrasting the relatively mundane sacrifice of her procreative abilities for the public welfare to the more significant citizen sacrifice of a man giving his life as a soldier.³¹ Gendering the nature of the individual sacrifices for the public good allowed Holmes to discount the harm to Buck and uphold the invidious laws.³²

The symposium then globalizes the ideas of gender and the law, turning to the issue of legalizing prostitution. In *Ill-Conceived Laws and Exploitative State: Toward Decriminalizing Prostitution in India*, Yugank Goyal and Padmanabha Ramanujam argue in favor of decriminalizing prostitution.³³ They explain that countries are considering legalizing prostitution to protect the health and safety of sex workers, and, like other legalization movements such as for marijuana, to profit from the revenue generated.³⁴ The authors provide an international perspective of legal approaches to prostitution, including countries that have outlawed some aspects of sex work, and those like the United States who have outlawed it completely (except in Nevada).³⁵ Feminists have debated whether prostitution is immoral because of men's systemic domination of women, or whether prostitutes should be given legal rights recognizing their full agency.³⁶ The authors here support their argument for legalizing prostitution in India with theories grounded in feminism, contract theory, social norms, public health, and

27. John Kang, *The Soldier and the Imbecile: How Holmes's Manliness Fated Carrie Buck*, 47 AKR. L. REV. 1055 (2015).

28. 274 U.S. 200, 207 (1927).

29. Kang, *supra* note 27, at 1055.

30. *Id.* at 1056.

31. *Id.* at 1058.

32. *Id.* at 1070.

33. Padmanabha Ramanujam and Yugank Goyal, *Ill-Conceived Laws and Exploitative State: Towards Decriminalizing Prostitution in India*, 47 AKR. L. REV. 1071 (2015).

34. *Id.* at 1073.

35. *Id.* at 1074.

36. *Id.* at 1117.

game theory.³⁷ Ultimately, they challenge the institutionalization of prostitution and its denial of rights and protections to sex workers.³⁸

Together, the articles in this symposium provide illustrations of the broad diversity among issues of women and the law today. This scholarship explores individual and often unconscious behaviors, while also analyzing systemic institutional behavior and explicit personal assumptions. It reaches from the daily minutia of what women wear to the global questions of women's agency and empowerment. At their core, these authors ask the gender question, regardless of context. Whether the legal issues are one of employment or criminality or public welfare, they pull out the gendered strands to examine the issue anew. Women's substantive inequality today is more complex. And more complex and varied work is needed to expose and explain the implications of these gendered laws and norms to society.

37. *Id.* at 1091, 1095, 1100, 1108, 1112.

38. *Id.* at 1120.