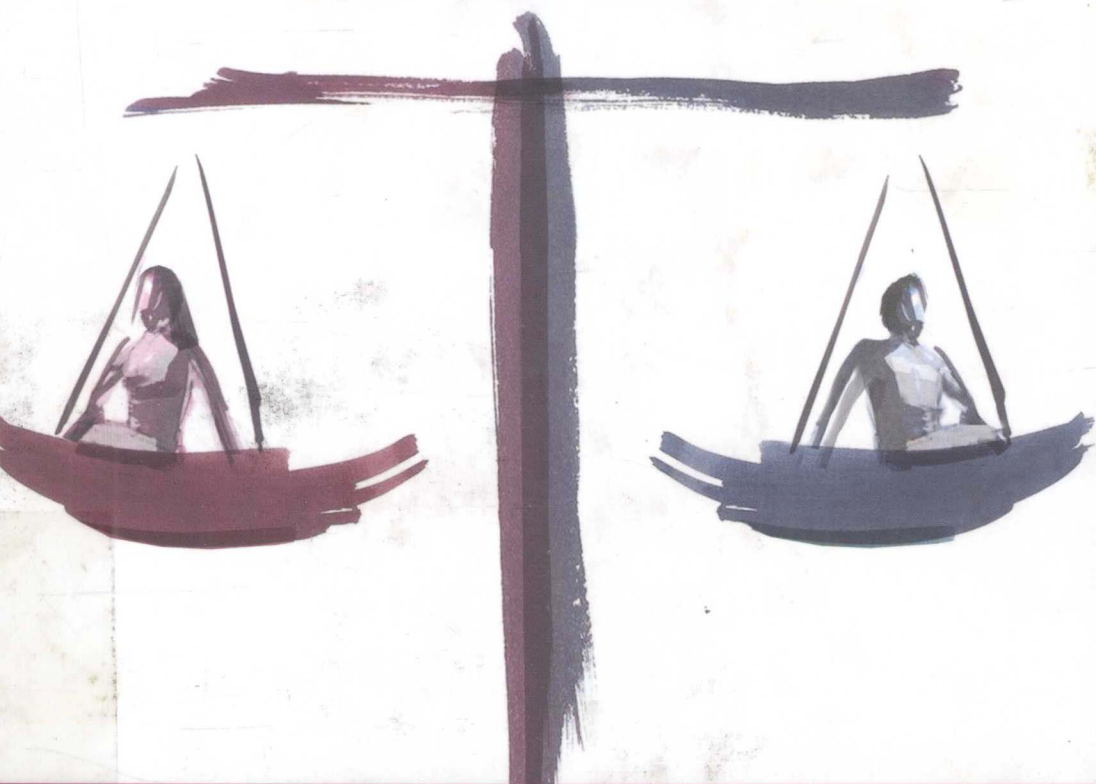


Gender and Judging

EDITED BY

Ulrike Schultz and Gisela Shaw



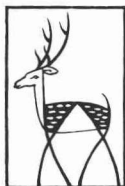
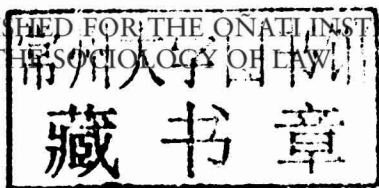
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Gender and Judging

Edited by
Ulrike Schultz
and
Gisela Shaw

Oñati International Series in Law and Society

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GENDER AND JUDGING

Does gender make a difference to the way the judiciary works and should work? Or is gender-blindness a built-in prerequisite of judicial objectivity? If gender does make a difference, how might this be defined? These are the key questions posed in this collection of essays, by some 30 authors, from 15 countries representing all five continents, whose answers draw on various theoretical approaches, including gender, feminist, and sociological theories.

The book's pressing topicality is underlined by the fact that well into the modern era male opposition to women's admission to, and progress within, the judicial profession has been largely based on the argument that their very gender programmes women to show empathy, partiality and gendered prejudice—in short essential qualities running directly counter to the need for judicial objectivity. It took until the last century for women to begin to break down such seemingly insurmountable barriers. And even then, there are a number of countries where even this first step is still waiting to happen. In all of them, there remains a more or less pronounced glass ceiling to women's judicial careers.

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Preface

Compiling a comprehensive international collection of contributions such as this one on the topic of ‘Gender and Judging’ represents a demanding task. The idea to set up a specific research group on the subject was born early in the new millennium. It was sparked off by the realisation of a striking difference between common law and civil law countries regarding not only women’s entry to and career progression within the judiciary, but particularly remarkable, the respective reception of this process. In common law countries (mainly the United States, the United Kingdom, Canada, Australia and New Zealand) the gradual increase in the number of women who made it to judicial office including the higher echelons has been accompanied by considerable media and political attention. By contrast, civil law countries that had actually seen a much earlier and more rapid access of women to such offices and where in countries such as France, Italy and the Netherlands, the share of women by now even exceeds that of men, there has been a marked absence of any real public interest in these developments.

This opens up a fascinating field of study for legal sociology around questions such as: what exactly are the processes that have taken place in the two judicial systems? What are their causes and effects? And what, more generally, can we learn from a comparative study of developments in common and civil law countries? This volume attempts to respond to this challenge.

Our work began with a first special session on ‘Gender and Judging’ at the 2006 Law and Society Association (LSA) meeting in Baltimore. This has been followed by a number of subsequent events: a conference for women lawyers in April 2007 organised by Beatriz Kohen in Buenos Aires; the large international socio-legal conference in 2007 in Berlin jointly organised by the LSA, the Research Committee on Sociology of Law (RCSL) and various national socio-legal organisations, where our five panels presented a total of 18 papers; the LSA conferences in Montreal (2008), Denver (2009), Chicago (2010) and San Francisco (2011); the RCSL conferences in Milan (2008) and Oñati (2009); the meeting of the RCSL Working Group for the Comparative Study of Legal Professions in Berder, France (2008) and in Paris (2010). All in all, this has added up to some one hundred papers on the subject of ‘Gender and Judging’, not including those presented at numerous national socio-legal conferences—overwhelming evidence of the topic’s profound and lasting interest to socio-legal scholars. In acknowledgment of this, the status of a Collaborative Research Network (CRN) of the LSA was conferred on our research group in 2008.

An international venture of this kind involving contributors from around the world requires a wealth of contacts and is the result of intensive networking. The ‘Gender and Judging’ project builds on the work of the Women and Gender in the Legal Profession Group. Established in 1994, this group can by now point to a range of publications, most prominently the collection *Women in the World’s Legal Professions*.¹ It is a sub-group of the RCSL Working Group on Legal Professions, which, for its part, can look back at a 30-year tradition of collaboration.

Having concluded this comprehensive and complex volume, both editors of *Women in the World’s Legal Professions* felt at the time that tackling another one of its kind would be inconceivable. And yet, driven by sheer fascination with the topic and having put together an editorially less demanding (much shorter) study on ‘Gender and Judging’ in the form of a special issue of the *International Journal of the Legal Profession* (2008),² we decided to bite the bullet and proposed to the increasing number of scholars working in this area the production of a large-scale collection of contributions on the subject.

Work on this volume was finally brought together at a special workshop on ‘Gender and Judging’ at the International Institute for the Sociology of Law in Oñati, Spain, in June 2009, jointly organised by Ulrike Schultz, Sally Kenney³ and Gisela Shaw. The bulk of the contributions included here originated as papers presented at this meeting.

In all, the book comprises 30 contributions by 32 scholars, of these 28 female and four male. Nineteen countries from the world’s five continents, as well as from its two major legal systems—common law and civil law—are represented here. Common law countries included are Australia, Canada, India, Israel, Kenya, South Africa, the United Kingdom and the United States. Respective civil law countries are Argentina, France, Germany, Italy, Japan, the Netherlands, Syria and Switzerland. Additionally, there are contributions on the Philippines and Cambodia. The collection is truly interdisciplinary, its authors including lawyers, sociologists, political scientists, historians, psychologists and philosophers, among them specialists in feminist subjects and researchers with a keen interest in feminist and/or gender studies.

¹ U Schultz and G Shaw (eds) (Oxford, HartPublishing, 2003). Also a special issue of the *International Journal of the Legal Profession* has been edited: *Women in the Legal Profession* (2003) 10(2) *IJLP* and many articles in books and journals have been inspired by the work of the group.

² In 2012, this issue was reproduced by Routledge under the title *Women in the Judiciary*. Five papers on ‘Gender and Judging’ were compiled and edited by Dermot Feenan in a special issue of *Feminist Legal Studies* (1/XVII, April 2009). Further articles have since been written and will eventually appear in published form.

³ Sally Kenney runs a blog on ‘Gender and Judging’ which gives details on 120 colleagues who have subscribed to it and where a lively exchange of ideas and information is taking place: genderandjudging.com.

All academic ranks and age groups are represented. There is evidence of some considerable continuity of work given that seven of the authors were also contributors to the volume on *Women in the World's Legal Professions*.

Producing an international collection, especially when, as is the case here, fewer than half of the authors are not native English speakers, requires some hard work on all sides regarding language. In this context it is worth mentioning that occasional idiosyncratic phrasing may actually help to emphasise differences in national writing and citing cultures.

We—editors and authors—would like to acknowledge invaluable help received from various sources: the ILSL offered (for the second time) a venue and structural framework for our crucial final meeting; Malen Gordoa Mendizabal provided generous structural assistance and endless patience, managing to retain her equanimity even at the fifth change in our programme; the ILSL and the LSA both lent support to this project; Gunther Gerl helped with expert editorial work. We are grateful to the Center on Women and Public Policy, Hubert H Humphrey Institute of Public Affairs, University of Minnesota, and to the Society of Friends at Fern Universität in Hagen, Germany, for their generous sponsorship of breakfasts and evening meals in Oñati—a not to be underestimated ingredient ensuring fruitful collaboration and communication among the project team. Finally, our thanks go to Richard Hart for accepting this volume for publication in the Oñati series.

List of Contributors

M Angela Amante is a lawyer, attorney at law (UBA, Argentina) and UBA assistant professor focusing on law research methodology.
aamante@cvi.com.ar

Beverley Baines is a Professor in the Faculty of Law and cross-appointed to the School of Policy Studies and the Department of Gender Studies in the Faculty of Arts & Science, Queen's University, Canada: law.queensu.ca/facultyAndStaff/facultyDirectory/baines.html
bainesb@queensu.ca

Maria Rita Bartolomei is a lawyer and a legal mediator with a PhD in Sociology of Legal and Political Institutions, working as adjunct professor of Cultural Anthropology (University of Macerata) and Sociology of Law (University of Messina), Italy. She has conducted many anthropological fieldworks in Italy as well as in India (Kerala) and Africa (Ivory Coast, Tanzania and Zambia). Her fields of interest are: the survival of traditional institutions in black Africa; migration processes and legal adaptation; and, especially, the role of women jurists in changing legal cultures and empowering women's and children's (human) rights.
m.bartolomei@unimc.it

Anne Boigeol is a French sociologist, senior researcher at the Centre national de la recherche scientifique (Institut des sciences sociales du politique, Ecole normale supérieure de Cachan) working on questions of gender in the legal professions and the judiciary and, more recently, on women at the Bar. She was President of the RCSL from 2006 to 2010 and a member of the Oñati International Institute for the Sociology of Law governing board from 2001 to 2010.
aboigeol@gmail.com

Monique C Cardinal is an Associate Professor of Islamic Studies at the Faculté de théologie et de sciences religieuses of the Université Laval in Quebec, Canada. Her main areas of interest are the history of Islamic law, its teaching and institutions. She has done extensive fieldwork in the Arab world, particularly in Syria since 1992. Her present research focuses on the history of the judicial system in modern Syria.
monique.cardinal@fts.ulaval.ca

Ruth B Cowan is Senior Research Fellow (The Ralph Bunche Institute for International Studies, City University of New York) concentrating on South Africa's transformation to democracy with focus on gender equality. She

created *Courting Justice*, a documentary featuring South African women judges; and is the Founding President and board of directors' member of Pro Mujer—a women's empowerment organisation serving poor women in Latin America. She has extensive economic and social development experience in Latin America and Afghanistan. Her current project focuses on two Native American women tribal court judges in California.

ruthcowan@aol.com

Bregje Dijksterhuis is a Research Fellow in the School of Social Work and Law, University of Applied Sciences in Amsterdam, the Netherlands. Her PhD thesis in Law (Leiden University) dealt with national judicial cooperation in the field of alimony law (Leiden University Press 2008). She researches and teaches family law and sociology of law. She has a particular interest in women judges and in questions of gender and divorce law.

bregjedijksterhuis@planet.nl

Andrea L Gastron holds a postdoctoral degree in gender studies (UCES, Argentina), a PhD in sociology (UBA, Argentina) and a degree in law (UBA). She is a Professor and Researcher at UBA/UCES focusing on law research methodology and gender studies.

andreagastron@hotmail.com

Reg Graycar is a barrister practising in NSW, and is Emeritus Professor of Law at the University of Sydney, Australia. She was Professor of Law at the University of Sydney from 1997 to 2012, prior to which she was Professor of Law at UNSW. She is a former full-time commissioner of the NSW Law Reform Commission, a former part-time commissioner of the Australian Law Reform Commission and was also a part-time hearing commissioner with the national Human Rights and Equal Opportunity Commission. She has published extensively on a range of legal issues including, with Jenny Morgan, *The Hidden Gender of Law*, Federation Press, 1990; 2nd edn, 2002. Since 1986, her work has been supported by a number of grants from the Australian Research Council for research on, among other things, the gendered nature of personal injury damages assessment, law reform in changing societies and the subject of this article, legal responses to systemic and historical injuries.

rgraycar@stjames.net.au

Ruth Herz is a former judge at the local court of Cologne, Germany. From 2007 to 2010 she was an associate researcher at the Centre of Criminology, University of Oxford, and is now a visiting professor at Birkbeck College, University of London. She is a member and co-founder of the international interdisciplinary network 'Images of Justice'. Her latest book *The Art of Justice* was published by Hart Publishing, Oxford, 2012.

rherz@gmx.net

Rosemary Hunter is Professor of Law at the University of Kent, UK. She was one of the organisers of the UK Feminist Judgments Project, and is currently chair of the UK Socio-Legal Studies Association, a founding editor of the online journal *feminists@law* and a member of the executive committee of the Equal Justices Initiative, a lobby group whose aim is to promote the equal participation of women and men in the judiciary in England and Wales.
r.c.hunter@kent.ac.uk

Winifred Kamau (LLB, LLM, PhD) is a Senior Lecturer at the School of Law, University of Nairobi, Kenya. Her research interests are in gender, law and dispute resolution with a focus on how the interaction between formal and informal dispute resolution structures impacts on women.
winkamau@hotmail.com

Eyal Katvan holds PhDs in law and in history of medicine. He is a lecturer at the Academic Center of Law and Business in Israel. His major interests are bioethics, law and medicine (gender perspectives); the legal and medical professions; legal history and the history of medicine. He specialises in medical, physical and mental examinations, women's legal history and the history of law and medicine.
katvan@biu.013.net.il

Sally J Kenney is the executive director of the Newcomb College Institute of Tulane University where she holds the Newcomb College Endowed Chair and is a Professor of Political Science. Her first book, *For Whose Protection? Reproductive Hazards and Exclusionary Policies in the United States and Britain*, examined how courts and judges construct rather than discover gender differences through law by examining cases on women's exclusion from hazardous work. Her latest is *Gender and Justice: Why Women in the Judiciary Really Matter* (New York, Routledge Press, 2013). She co-chairs the Collaborative Research Network on Gender and Judging for the Law and Society Association (genderandjudging.com/), co-founded the Infinity Project whose mission is to increase the gender diversity of the federal bench to ensure the quality of justice in the Eighth Circuit (www.theinfinityproject.org), and works closely with the academic network of the National Association of Women Judges.
skenney@tulane.edu

Beatriz Kohen is a sociologist and a researcher on gender and judging with a PhD from the University of Durham on gender differences in the family law courts of the city of Buenos Aires. She teaches at postgraduate level at the University of Palermo Law School where she is in charge of the Law and Gender Program. She coordinates a programme on human trafficking of the Argentine Association Judges in association with the International

Association of Women Judges and collaborates with the recently created Gender Observatory of the Judicial Council of the city of Buenos Aires.
bkohen@fibertel.com.ar

Juan LaLlave is a clinical psychologist practising analytical psychotherapy and Jungian analysis with an added focus on forensic and political psychology as well as criminology. His research interests include competence versus bias in moral, legal, ethical judgments, moral dilemma, and boundaries in the work of expert witnesses. He is a research member affiliated with the programme in Psychiatry and the Law at Harvard Medical School and works with the Competence Center for Forensic Psychology at the IRP, University of St Gallen in Switzerland.
lallave.hms@gmail.com

Revital Ludewig is a psychologist and therapist. She teaches legal psychology at the University of St Gallen, Switzerland. Her current research includes a project on 'Difficulties, moral dilemmas and coping strategies in the work of judges and lawyers'. She also teaches continuing education for judges and lawyers in Switzerland and Germany with the German Academy for Judges, Institute University Kurt Bösch and others. She serves as forensic consultant, evaluator and supervisor for various courts and is founder of the Competence Center for Forensic Psychology at the IRP, University St Gallen. Among other subjects, her publications look into victim psychology, knowledge base in psychology, moral dilemmas and decision-making.
revital.ludewig@unisg.ch

Kathy Mack, BA Rice, JD Stanford, LLM Adel is Professor of Law, Flinders Law School. She is the author of a monograph, book chapters and articles on Alternative Dispute Resolution and articles on legal education and evidence. With Sharyn Roach Anleu she has conducted empirical research involving plea negotiations. Since 2000, they have been engaged in a major socio-legal study of the Australian judiciary.
www.flinders.edu.au/law/judicialresearch
judicial.research@flinders.edu.au

Kate Malleon is Professor of Law at Queen Mary, University of London. Her main research interests are the judiciary, the constitution and the legal system. She has a particular interest in judicial selection processes and the challenge of increasing diversity in the composition of the judiciary. She has recently completed a three-year Research Council funded project on the selection processes of the international judiciary and is currently working on a project on the politics of judicial independence.
k.malleon@qmul.ac.uk

Elaine Martin is Professor of Political Science at Eastern Michigan University. Her teaching interests comprise women and politics, gender and the judiciary, politics in fiction and film, sex and justice, global issues, state and local politics and local government management.

elainemartin@yahoo.com

Kayo Minamino is Professor of Law at Kyoto Women's University Faculty of Law in Kyoto, Japan. Her major research interests are gender and law and judicial education on gender issues.

minamino@kyoto-wu.ac.jp

Atsuko Miwa is currently a researcher at the Kyoto Human Rights Research Institute, Kyoto, Japan. She was formerly Programme Officer at the United Nations Development Fund for Women (UNIFEM) Bangkok Office and has been researching and writing in the field of gender, development and human rights.

kokusai@kyoto.email.ne.jp

Leslie J Moran is Professor in the Law School, Birkbeck College, University of London. His research on the judiciary has two main strands: first, the politics and practice of judicial (especially sexual) diversity; secondly, judicial image making and image management.

l.moran@bbk.ac.uk

Mary Jane Mossman is Professor of Law at Osgoode Hall Law School of York University in Toronto, Canada, and was Director of the Institute for Feminist Legal Studies at Osgoode from 2002 to 2010. Her current research focuses on the history of women lawyers in Ontario from the 1890s to the 1970s.

mjmossman@osgoode.yorku.ca

Erika Rackley is a Professor in the Law School at Durham University, UK. She has written widely in the area of judicial diversity and is author of *Women, Judging and the Judiciary: From Difference to Diversity* (Routledge, 2013). She is co-organiser (with Rosemary Hunter and Clare McGlynn) of the Feminist Judgments Project in England and Wales and co-editor of *Feminist Judgments: From Theory to Practice* (Hart, 2010). She is also on the executive committee of the Equal Justices Initiative (www.law.qmul.ac.uk/eji/index.html), a group which works to promote the equal participation of women and men in the judiciary in England and Wales.

erika.rackley@durham.ac.uk

Sharyn L Roach Anleu, MA Tas, LLB Adel, Ph D Conn is Matthew Flinders Distinguished Professor of Sociology at Flinders University, Adelaide and a Fellow of the Australian Academy of the Social Sciences in Australia. With Kathy Mack, she is currently engaged in socio-legal research in the

Australian Judiciary and their courts. She has contributed to the Masters programme at the International Institute for the Sociology of Law, Oñati, Spain.

www.flinders.edu.au/law/judicialresearch

judicial.research@flinders.edu.au

Rubén Rodríguez is a psychologist (UBA, Argentina) and specialist in quali-quantitative market, opinion and publicity research. He is currently Professor and Researcher at UCES/UBA/CAECE University.

rodriguez.rubenjose@gmail.com

Marion Röwekamp is a historian/lawyer at the Freie Universität in Berlin. After various stays in the US (Columbia University/Mount Holyoke College/Harvard University), she is now working at CIESAS, the Colegio de México as well as at the Instituto de Investigaciones Históricas of the UNAM in Mexico City. Her main interest is in gender and law in a historical perspective.

roewekamp@zedat.fu-berlin.de

Keiko Sawa is Associate Professor of Sociology of Law in the Faculty of Contemporary Society, Kyoto Women's University, Japan. She specialises in gender and minorities issues.

sawa@kyoto-wu.ac.jp

Ulrike Schultz is a lawyer and Senior Academic at the FernUniversität in Hagen, Germany. She specialises in questions of gender and law, the sociology of the legal profession, and didactics and professional communication. She has taken part in many international socio-legal projects, and conducted big empirical studies on, for example, women's careers in the judiciary and women in the legal academy. She heads the International Working Group on the Comparative Study of Legal Professions and has been a member of the Oñati International Institute for the Sociology of Law governing board since 2006. She co-chairs the Collaborative Research Network on Gender and Judging for the Law and Society Association.

www.ulrikeschultz.de

ulrike.schultz@fernuni-hagen.de

Gisela Shaw is Emeritus Professor in German Studies at the University of the West of England, Bristol (UK), where she held the post of Director of Research for Modern Languages and European Studies (1996–2002). She chaired the British Women in German Studies Association (1995–2001) and has worked in philosophy, literature and legal sociology (with a special interest in women jurists).

gisela@giselashaw.com

Hilary Sommerlad is Professor of Law, Centre for Professional Legal Education and Research (CEPLER), University of Birmingham. Her extensive work on

woman lawyers includes a study (with colleagues) of diversity in the legal profession undertaken for the Legal Services Board: www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/lbs_diversity_in_the_legal_profession_final_rev.pdf.
h.a.k.sommerlad@bham.ac.uk

Ann Stewart is Reader in Law and Associate Professor at the School of Law, University of Warwick, UK. She is director of the International Development and Human Rights programme and specialises in gender, law and development issues. She has researched and been involved with judicial training in India on gender issues since 1996.
ann.stewart@warwick.ac.uk

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