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THE LEGAL EDUCATION OF WOMEN: FROM "TREASON AGAINST NATURE" TO SOUNDING A "DIFFERENT VOICE"

CHRISTINE M. WISEMAN*

The law of nature destines and qualifies the female sex for the bearing and nurture of the children of our race and for the custody of the homes of the world and their maintenance in love and honor. And all life-long callings of women, inconsistent with these radical and sacred duties of their sex, as is the profession of the law, are departures from the order of nature; and when voluntary, treason against it.¹

A graduate of Marquette University and its law school, I am the third woman to be promoted and awarded academic tenure at the Marquette University Law School.² And I suppose it is with some trepidation that I

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1. In re Goodell, 39 Wis. 232, 245 (1875). Petitioner Lavinia Goodell later refiled for admission to the Wisconsin bar and was admitted. See In re Goodell, 48 Wis. 693, 81 N.W. 551 (1879). Chief Justice Edward G. Ryan, the author of the first opinion, dissented without opinion from the later decision.

2. I was promoted to the level of Associate Professor of Law and awarded academic tenure in 1988. The first woman to be accorded that status was Mary Alice Hohmann, promoted to the level of Associate Professor and tenured in 1969. She was one of two women graduates of Marquette University Law School in 1959, and in 1962 became the first woman appointed to its faculty. Her appointment, however, was to the position of Associate Law Librarian. She later went on to become Law Librarian and to teach a law course, becoming the first woman to do so. See Robert F. Boden, In Memoriam: Mary Alice Hohmann, 65 MARQ. L. REV. 501 (1982). The
acknowledge my "pedigree," because in academic circles (unless one is a graduate of Harvard or Yale) utilization of such a non-diverse hiring practice is often criticized as "out of the mainstream" or worse. Yet it is that very "pedigree" and my twenty-year association with the Marquette legal experience which perhaps best qualifies me for what I have been asked to do — commemorate\(^3\) and celebrate the contribution of Marquette Law School to the legal education of women.

The difficulty of such a task is underscored by the fact that I cannot speak for all women who have matriculated at or graduated from this institution. To do so might be described as sexist, just as it might be considered racist to suggest that all people of one color necessarily speak with one accord.\(^4\) Yet in terms of our "collective" experience, there is some degree of commonality. That commonality exists in Marquette's relatively long history of institutionalized male homogeneity.

**A. In Memoriam: A Gendered History**

Tracing the development of the Marquette Law School from 1892 through 1924, then editor-in-chief V. W. Dittmann of the *Marquette Law Review* noted in a comment\(^5\) that though modest at inception, the law school had "at all times had a natural, normal growth."\(^6\) In that respect, it had "always consisted of men who were earnest in the pursuit of legal knowledge, and limited by means and circumstances in the following of their profession."\(^7\) The comment went on to note that at this early juncture, the faculty was "composed of some of the ablest and most successful members of the bench and bar of Milwaukee,"\(^8\) who joined other "full-time

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first woman hired in a full-time, tenure-track position was Carolyn McBeth Edwards, hired in August 1974. She was promoted to the level of Associate Professor and tenured in 1979. While it may appear that the promotion and tenure of women operates on a decennial basis, I would point out that Patricia C. Bradford was promoted and tenured in 1989, and a fifth woman has applied for promotion and tenure this year. While no woman to date has been promoted to the level of full professor, and there are no women full professors currently teaching at the law school, no woman has as yet applied. Moreover, to date no woman has been denied promotion and tenure at this law school.

3. The American Heritage Dictionary defines commemorate as "[to] honor the memory of with a ceremony." The AMERICAN HERITAGE DICTIONARY 297 (2d ed. 1982). The author would distinguish commemoration from celebration for purposes of this article.


6. Id. at 300.

7. Id. (emphasis added).

8. Id. at 301.
faculty men" seeking to provide "an atmosphere more practical and less academic than is found in most law schools." 

Referring to the fact that the Marquette Law School was about to complete its thirty-second year, having graduated nearly 400 lawyers, Mr. Dittmann remarked with obvious pride:

These graduates together with the large body of other former students who have received instruction in law at Marquette constitute a body of men who have had in the aggregate no small influence upon legal, political and general civil life, particularly in the state of Wisconsin where the great majority of them are carrying on their daily work. 

Such single-sex observations are particularly interesting in view of the fact that one woman had earlier received a Marquette law degree by affiliation of the Milwaukee Law School with Marquette University, and at least one woman had graduated in each of the classes of 1914, 1920, 1922, 1923. There were likewise two women in the class of 1924 and one woman in Mr. Dittmann's own graduating class of 1925.

9. Id.
10. Id.
11. Id. at 303.
12. She was Katherine R. Williams. See BULLETIN OF MARQUETTE UNIVERSITY LAW SCHOOL, New Series VIII, Vol. 13, No. 5, at 33 (1935) (available in Marquette Law School Archives). She was granted an Hon. LL.B. degree from the Milwaukee Law School in 1909, and was the only woman of 144 graduates to receive a law degree from Marquette by virtue of this arrangement. See Mary Ann Boehnlein, Jurisprudence in Petticoats 8 (Apr. 20, 1983)(unpublished manuscript available in Marquette University Archives).
13. Marie Desrosiers graduated in 1914 from a class of nineteen people. See BULLETIN OF MARQUETTE UNIVERSITY LAW SCHOOL, supra note 12, at 19. Documents indicate that she began her study of law at Marquette on February 7, 1910, and attended all classes of the Marquette evening law program until the end of June 1910. Thereafter, she attended all classes during the scholastic year 1912-13 (five hours per week) and during the scholastic year 1913-14 (ten hours per week). She therefore attended night school four and a half years, one-half year more than required by the Association of American Law Schools, and earned more credit hours than were required by the AALS at the time her degree was conferred. See Report of the Committee of the Faculty of Marquette University College of Law In re Charges of Executive Committee of Association of American Law Schools, submitted by Max Schoetz, Dean of Marquette Law School, to the Rev. H.C. Noonan, S.J., President of Marquette University 4 (Dec. 21, 1916)(available in Marquette University Archives).
14. She was Geraldine McMullen, who graduated out of a class of fourteen. See BULLETIN OF MARQUETTE UNIVERSITY LAW SCHOOL, supra note 12, at 19-20.
15. These were Nellie Donaldson and Margery M. Heck, who graduated out of a class of forty-one. Id. at 27.
16. Gladys Cavanaugh, Clara Conrad, and Anna Millmann were graduates of the thirty-seven-person class of 1923. Id.
17. These were Florence Y. Kyle and Charlotte Nachtwey. Id.
18. She was Dora Goodsitt. Id. at 28.
Mr. Dittmann also recorded the observation that among the school's more immediate concerns for the future operation of the school, "[a]dditional faculty men are needed." This was no doubt to fulfill the law school's endeavor to:

secure for its instructors men who not only take high rank at the bar, but who have been trained in the best universities and law schools of the country. Such men possess not only the wide empirical knowledge of the practical lawyer in a large city, but also the broad, comprehensive basis of theory and method which is indispensable to the successful teacher. The School is singularly fortunate in being able to obtain such men from the large and able bar of Milwaukee.

Even more remarkable than Mr. Dittmann's early observations was the Dean's Report dated December 1969 which contained an entire section devoted to "The Students." In a paragraph entitled "Women in Law," the author extolled the efforts of Marquette Law School, with its implementation of programs for undergraduate female students, to attract more women to the study of law. He concluded that "[a]s a result of these programs and of general increased interest in law on the part of women students, our enrollment of women continues to grow. Fourteen women were enrolled in the 1968-69 year, and we expect a larger number in 1969-70." In the very next paragraph entitled "Student Morale," however, the author noted that although "hippie types today appear in larger numbers at many law schools . . . [t]here are no such at Marquette, where the students continue to behave and look like lawyers." The paragraph concluded: "We propose to continue the tradition that a Marquette law student is a professional man who should like [sic] and act like one, and our students seem to agree with the

19. Dittmann, supra note 5, at 303.
20. This description of the Marquette law faculty first appeared in the BULLETIN OF MARQUETTE UNIVERSITY COLLEGE OF LAW 6-7 (1911-12) (available in Marquette University Law School Archives). It continued largely unchanged until 1941, when it was amended to delete the reference to the Milwaukee bar as the source of faculty appointments. Extant materials indicate that the gender-specific reference continued until 1962-64, when Mary Alice Hohmann was added to the faculty, at which time the bulletin was revised to refer to the faculty in non-gendered terms. Earlier descriptive accounts highlighted a staff "composed of men whose legal education has been received in the leading law schools of the United States, and who have been invited to occupy the chairs which they fill for their high standing and character in the community as men and as lawyers." BULLETIN OF MARQUETTE UNIVERSITY COLLEGE OF LAW 7 (1910); see also id. at 8 (1909).
22. Id.
preservation of that tradition.” Under the circumstances, I assume it is safe to say that at least fourteen such students did not.

1. A Mirror of American Legal Education

In all fairness, Marquette Law School fares no worse historically than other institutions of legal education and, in some instances, fares much better. In point of fact, the entire first century of American legal education has been distinguished by scholars for its “glaring absence” of women, a devise not only of English common law, but Roman law as well.

Eventually, however, women made their way into legal education. Some, like Wisconsinite Lavinia Goodell and Iowan Arabella Mansfield,

23. Id. (emphasis added).

24. Dean John C. Hervey, then Dean of the Oklahoma City University School of Law and retired advisor to the Section on Legal Education of the American Bar Association, served as Distinguished Visiting Professor of Law at Marquette Law School during the spring semester of 1968-69. While at Marquette, he conducted an evaluation of the school and reported to the Woollam Society Board of Directors at its visitors' committee held on May 2, 1969. A summary of that report evaluating the Marquette law faculty contained the following remarks:

The faculty is strong. Nearly all faculty members are practical lawyers with proven know-how in the practice of law. Dean Hervey, for the faculty in his Law School, hires only men with five years or more experience in private practice. The faculty represents a good cross-section of age and experience. . . . Men of this type furnish the nucleus around which a balanced faculty can be built . . . .


26. In his book, Hortensius the Advocate, author and historian William Forsyth writes of the practice of law under the Roman Empire. He recounts that there existed an express law preventing women from “pleading the causes of others,” in order “that they might not intermeddle in such matters, contrary to the modesty befitting their sex, nor engage in employments proper to men.” William Forsyth, Hortensius the Advocate 179-80 (1882). Forsyth went on to explain the occasion for such an edict, noting that it was attributable to “the conduct of a virago named Carfania, a most troublesome and ill-conditioned lady (improbissima faemina), who caused the magistrates a great deal of annoyance by her importunity in court.” Id. at 180.

27. Rhoda Lavinia Goodell, Wisconsin’s first woman lawyer and the applicant in the cases cited in supra note 1, was born in New York in May 1839. After graduating from the Ladies Seminary at Brooklyn Heights, New York, she assisted her father in editing the publication Principia, an anti-slavery and reform newspaper. Five years later, she embarked upon a teaching career and, after three years teaching, spent four years working for Harper’s Bazaar. She later moved to Janesville, Wisconsin, following her parents in 1871. Prompted by her father, she then spent three years studying law in the office of Jackson & Norcross in Janesville. See R.D. Kohler, The Story of Wisconsin Women 48 (1948). On June 17, 1874, Lavinia Goodell was examined in the Rock County Circuit Court and determined by that court to be a resident of Wisconsin, of good moral character, and “possessed of sufficient legal knowledge and ability.” In re Goodell, supra note 1, at 232. She was therefore admitted to practice law by that court. For an
who became the first woman to be admitted to the bar of any state with her admission to the Iowa bar in 1869,28 gained entrance by virtue of their self-directed study and apprenticeship.29 Others, like Ada Kepley, the first woman graduate of the Union College of Law (now Northwestern),30 and the first woman to receive an accredited law degree,31 obtained formal legal education. By 1880, there were some 200 women lawyers in the United States.32 Yet whatever the nature of their legal study, many women of the time were barred from practicing law.

Two months after Arabella Mansfield gained admission to the Iowa bar, Myra Colby Bradwell passed an examination for the Chicago bar.33 Nevertheless, the Illinois Supreme Court was constrained to deny her application for a license to practice law in Illinois because the applicable Illinois statute was based upon English common law, to which “female attorneys at law were unknown.”34 The court remarked: “That God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply and execute the laws, was regarded as an almost axiomatic truth.”35 Thus, the Illinois high court determined that it was not within its province to give “a new interpretation to an ancient statute” or “to introduce so important a change in the legal position of one-half the people.”36

Ms. Bradwell later appealed the denial of her application for admission to the United States Supreme Court on grounds that admission to practice law is a privilege of United States citizenship which might not be denied to any person possessed of the requisite learning and character.37 The Supreme Court disagreed, relegating the issue to one of State’s rights, and upheld the determination of the Illinois Supreme Court. Justice Bradley, in a concurring opinion joined by Justices Swayne and Field, reasoned further that it was never a fundamental privilege of women “to engage in any and

interesting and thorough account of her history and legal practice, see Catherine B. Cleary, Lavinia Goodell, First Woman Lawyer in Wisconsin, 74 Wis. Mag. of Hist. 243 (1991).

29. KOHLER, supra note 27, at 48.
30. Weisberg, supra note 25.
31. EPSTEIN, supra note 25, at 50.
32. RONALD CHESTER, UNEQUAL ACCESS: WOMEN LAWYERS IN A CHANGING AMERICA 8 (1985).
33. MORELLO, supra note 28, at 14; Weisberg, supra note 25. She had studied law in her husband’s law office in order to assist him with the research and preparation of briefs, and passed the Chicago bar exam in 1869. See MORELLO, supra note 28, at 14-15.
34. In re Bradwell, 55 Ill. 535, 539 (1869), aff’d, 83 U.S. 130 (1873).
35. Id.
36. Id. at 540.
37. See Bradwell v. Illinois, 83 U.S. 130 (1873).
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every profession, occupation, or employment in civil life.” A natural law proponent, Justice Bradley advocated:

[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman’s protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfit it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband.

Moreover, although it might be true that many women were unmarried and therefore unaffected by the legal encumbrances and incapacities then associated with marriage, he concluded that “the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.”

With such views emanating from the nation’s High Court, admission to practice law was likewise denied on the basis of sex to Lavinia Goodell in Wisconsin (1875), Lelia Josephine Robinson in Massachusetts (1881), and Belva Lockwood in Virginia (c. 1890). That situation changed shortly,

38. Id. at 140 (Bradley, J., concurring).
39. Id. at 141.
40. Id. at 141-42. It is interesting to note that in 1872, one year before the Supreme Court decision in Bradwell, the state of Illinois enacted legislation providing that “no person could be precluded or debarred from any occupation, profession or employment, except the military, on account of sex.” MORELLO, supra note 28, at 21. Such legislation resulted from the efforts of eighteen-year-old Alta M. Hulett, who studied law with a Rockford attorney and drafted the Illinois bill when, notwithstanding her single status, she too was denied a license to practice law. When the legislation passed in March 1872, Alta M. Hulett became the first woman lawyer in the state of Illinois. Id. The Illinois Supreme Court, on its own motion, later admitted Bradwell to practice law in 1890. Two years later she was admitted to practice before the United States Supreme Court, but she never did. Id.
41. Ex parte Robinson, 131 Mass. 376 (1881).
42. See In re Lockwood, 154 U.S. 116, 118 (1893). Though admitted to practice in the District of Columbia and before the United States Supreme Court, the Supreme Court determined that it was within the purview of the Virginia Supreme Court of Appeals to construe Virginia statutes and to determine whether use of the word “person” within such statutes was confined to males. On March 3, 1879, Ms. Lockwood had become the first woman to be admitted to the bar of the United States Supreme Court after she petitioned Congress for the admission of women to the federal courts. Though her bill and a second bill drafted by her never reached the floor of the House of Representatives, the House passed a similar bill in April 1878. The “Lockwood” Bill eventually passed the Senate on February 7, 1879, and was later signed into law by President Rutherford B. Hayes. See MORELLO, supra note 28, at 34-35.
however. By 1900, thirty-four states had admitted women to the practice of law\textsuperscript{43} and by 1917, the number of states increased to forty-six, including the District of Columbia.\textsuperscript{44}

Notwithstanding their admission to the practicing bar, the admission of women to the law schools was not accomplished with nearly the same dispatch. In 1869, the same year Arabella Mansfield was admitted to practice law, Washington University in St. Louis admitted two women, and became the first institution to offer legal education regardless of an applicant’s sex.\textsuperscript{45} Of these two women, one had been denied admission at Columbia University Law School,\textsuperscript{46} which did not finally admit women until 1929.\textsuperscript{47} Michigan, however, had admitted women in 1870, Yale in 1886,\textsuperscript{48} Cornell in 1887, New York University in 1891, and Stanford in 1895.\textsuperscript{49} Other elite institutions, such as Harvard, did not admit women until 1950.\textsuperscript{50}

\begin{itemize}
\item \textsuperscript{43} Isabella M. Pettus, \textit{The Legal Education of Women}, 61 ALB. L.J. 325, 330 (1900).
\item \textsuperscript{44} MORELLO, supra note 28, at 36-38. Later firsts include the state of Arkansas (1918), South Carolina (1918), Rhode Island (1920), Delaware (1923), and Alaska (1950). \textit{Id.} at 38.
\item \textsuperscript{45} EPSTEIN, supra note 25, at 49. These women were Lemma Barkaloo and Phoebe Couzins. See MORELLO, supra note 28, at 44, 46.
\item \textsuperscript{46} She was Lemma Barkaloo. See EPSTEIN, supra note 25, at 49; MORELLO, supra note 28, at 44.
\item \textsuperscript{47} Weisberg, supra note 25, at 486. In a 1925 issue of \textit{The Nation}, a candid Columbia law faculty reportedly disclosed its true reason for withholding admission to women, despite the pleas of its president:
\begin{quote}
The faculty . . . has never maintained that women could not master legal learning or that they should not be made to endure the frank and shocking language of the law. No, its argument has been lower and more practical. If women were admitted to the Columbia Law School, the faculty said, then the choicer, more manly and red-blooded graduates of our great universities would turn away from Columbia and rush off to the Harvard Law School!
\end{quote}
\item \textsuperscript{48} Apparently, Yale later reconsidered its decision in 1890, whereupon its catalogue specified: “It is to be understood that the courses of instruction above described are open to persons of the male sex only, except where both sexes are specifically included.” See Weisberg, supra note 25, at 487 n.8.
\item \textsuperscript{49} EPSTEIN, supra note 25, at 50.
\item \textsuperscript{50} Commenting upon her experience as a law student, Harvard law graduate Barbara Moses writes:
\begin{quote}
Harvard Law School is officially sex-blind. Sex is supposed to play no part in admissions decisions, financial aid, academic life, or the job placement process. Women are treated exactly like men — and that is precisely the problem. All of the rules and guidelines governing admissions, financial aid, academics, and placement were instituted years ago with Harvard’s typical law student in mind. Unfortunately, Harvard’s typical law student was a white man, either single, or married to a nonprofessional wife. The backgrounds, achievements, concerns, and needs of Harvard’s women students are different
\end{quote}
\end{itemize}
stitution was later joined by Notre Dame in 1969 and finally, by Washington and Lee University in 1972.51 It is interesting to note that although Harvard Law School did not admit women until 1950, women had actually applied for admission in the 1870s.52 In denying admission to initial applicants M. Fredrika Perry and Ellen Martin, the reason given was that "it was not considered practicable to admit young men and young women to the Law Library at the same time, and it was not considered fair to admit to the Law School without giving the privileges of the Library."53

The struggles of women for admission to Marquette Law School appear to have been coextensive with their struggles for admission to the university itself, and admit of a similar theme. Recounting the law school's origins, author Raphael N. Hamilton, S.J., in his book entitled The Story of Marquette University, notes that Henry S. Spalding, who was then Director of Affiliated Colleges for Marquette University,54 purchased the Milwaukee University Law School in September 1908.55 This left Marquette University with the only functioning law school in the city of Milwaukee.56 In describing its potential for success, author Hamilton noted:

People knew that Marquette would receive their children of any race or creed without prejudice, and through subsequent years the Jesuit administrators have been ever willing to meet sensible demands for educational expansion, so Milwaukee has remained satisfied with her one University.57

As authority for its community acceptance, Fr. Hamilton cites to an editorial appearing August 2, 1908, in the Milwaukee Sentinel, which complimented the school: "Known as a Catholic institution, Marquette's educational opportunities are open to all on equal terms. In the bestowal of such advantages as will be available through its law department it makes no discrimination between Catholic and Protestant."58 Equality thus appeared

from those of their male counterparts. As a result, the system doesn't work as well for women as it does for men.


51. EPSTEIN, supra note 25, at 50.
52. Weisberg, supra note 25, at 486.
53. Id. at n.8 (citing Martin, Admission of Women to the Bar, 1 CHIC. L.T. 83 (1886)).
55. Id. at 84. For a discussion of the historical evolution of the Marquette Law School, see William Miller, The Marquette Law School — the First Twenty Years, 74 MARQ. L. REV. __ (1991).
56. HAMILTON, supra note 54, at 84.
57. Id. at 84-85.
58. Id. at 85 n.76.
to be the accepted and anticipated norm for many classes of people, with one notable exception — women.

In the sixteenth century, the Jesuits had compiled a *Ratio Studiorum*, or “Plan for Studies,” which provided a comprehensive institution of learning by which Jesuit colleges were conducted for over three hundred years. The *Ratio Studiorum*, however, assumed that all students would be male, as was the European tradition. Nevertheless, after the turn of the century, with the increasing presence of women at American secular universities and Marquette’s elevation to university status in 1907, the issue of admitting women surfaced at Marquette. Hamilton explains that one woman actually took college courses and was awarded a bachelor of science diploma in 1909. However, in order to obviate the necessity of opening the university to more women, “a policy which was so foreign to the Jesuit tradition,” the Marquette faculty urged the creation of a Catholic women’s college — a prospect already advanced by several orders of Catholic nuns. The resulting problem, quite simply, was this: “The Jesuits wanted women’s colleges to avoid co-education in their University, but to get women’s colleges they would have to open the doors to co-education by admitting religious women to their classes.” The solution was to permit the nuns to rush through abbreviated college courses during the summer recess, when they were free of grade-school teaching obligations, and when the university’s male students were on vacation.

The plan for summer registration took effect on June 28, 1909, with an unforeseen complication: laywomen as well as religious appeared and won admission to the university’s various departments. That development spawned a sharp debate over the cancellation of summer classes, lest women in secular garb invade the campus. Eventually, it was determined to continue classes, pending approval from the Jesuit Father General in Rome. In the interim, summer classes continued through two more ses-

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60. Id. at 124.
61. Id.
62. Id. at 72.
63. Id. at 124.
64. Id.
65. Id.
66. Id. at 125.
67. Id.
68. Id.
69. Id.
70. Id.
71. Id. at 125-26.
sions: 1910 and 1911, with the latter bringing as many as twenty-three secular women. Finally, Rome replied favorably to the request for admission of women in the spring of 1912, but by that time the admission of women had filtered through the entire university curriculum (including law). By 1916, 375 women were enrolled at the university and there was no turning back.

2. Community Response: A Curiosity

Early statistics demonstrate that the number of women practicing law in Wisconsin in 1900 was only twenty-three, compared with 2226 men. By 1940 that number had risen to only forty-eight. Their presence in the profession and in the courts was marked at first with a fascination for dress and demeanor typically afforded a "curiosity." Reflecting, for example, upon the municipal law practice of Milwaukee lawyer Kate Kane in the 1880s, reporter Bill Hooker noted that “[s]he was a good looking woman, high strung, and had a temper like a hyena when aroused, though generally she was as mild and good natured as a kitten.” He then recalled an incident where Kane grew angry with a judge, throwing a glass of water at his head. The glass did no damage, and the judge “called a bailiff to help Miss Kane to an armchair, where she nearly fainted from fright.” (Certainly, it is questionable whether anyone with the temerity to throw a glass of water at a judge would faint from fright).

Likewise, commenting upon administration of the oath of practice to Kate Pier McIntosh, an 1887 graduate of the University of Wisconsin Law School, Mr. Hooker wrote:

I can see that handsome young brunette as she stepped up before Judge Gilson and took the oath. She was plainly attired and wore her extraordinarily long black hair hanging loosely down her back, away below the waistline. I thought she was the handsomest woman

72. Id. at 127.
73. See id. at 127 & n.65.
74. Kohler, supra note 27, at 50 & n.38 (citing 12th United States Census, 1900, Special Reports, Occupations, 2:541). By comparison, New York had forty women lawyers and Illinois led the country with eighty-seven. Women’s admission to the bar was still prohibited in Alabama, Arkansas, Delaware, South Carolina, Vermont, and Virginia. Louisiana, Maryland, North Carolina, and Rhode Island reported no law barring the admission of women, but could identify no women applicants. Georgia, on the other hand, officially reported that no women wanted to study law. See Ginsburg, supra note 47, at 14 (citing Pettus, supra note 43, at 325).
75. Kohler, supra note 27, at 124 & n.31 (citing the 13th, 14th, 15th, and 16th U.S. Census).
77. Id.
78. Kohler, supra note 27, at 50.
I had seen up to that time; and she was handsome . . . . She was a magnificent picture . . . .

[During the World war I met Mrs. McIntosh there many times. While years of time had accumulated, she bore the same sweet smile that wreathed her face that day long ago when she was admitted to practice.]

Gradually the focus changed, and many more women became known for their legal prowess and professional contributions. Women such as Dorothy Walker of Portage and Cecilia Doyle of Fond du Lac, Wisconsin, were noted for their service as members of the Wisconsin State Bar Board of Governors. The latter was also the first woman to serve as judge of a court of record in Wisconsin.

Nettie Karcher of Burlington was a "pioneer in the profession and held in high regard," while Marjorie Loomis Marshall won acclaim for her service as attorney for the War Manpower Commission from 1943 to 1945. Similarly, Mary Downey Waal had served as a member of the executive committee of the Milwaukee Bar Association, Julia B. Dolan as director of the Milwaukee Legal Aid Association, and Belle Bartin Ruppa as organizer of the National Association of Women Lawyers. Credit was also awarded Catherine Cleary for an "unusually brilliant record in the University of Wisconsin Law School, where she was a member of the Order of the Coif and a contributor to the Wisconsin Law Review." Finally, there was Rhoda C. House, "[t]he epitome of Indian womanhood," who was the only native American at the time to hold a position as "Indian Court" judge on the Menominee Reservation at Keshena.

B. In Celebration: A Herstory

From 1926 through 1936, graduating classes of the Marquette Law School either included no women or included fewer than six percent women (there were generally less than three). That trend continued largely

79. Hooker, supra note 76, at 38.
80. Kohler, supra note 27, at 124.
81. Id. at 125.
82. Id.
83. Id.
84. Id.
85. Id.
86. Id.
87. Extant documents indicate the following numbers and percentages of law degrees conferred upon women: 1926: 2 of 62 (3.2%); 1927: 3 of 77 (3.9%); 1928: 1 of 25 (4%); 1929: 1 of 69 (1.4%); 1930: 2 of 64 (3.1%); 1931: 0 of 70; 1932: 1 of 66 (1.5%); 1933: 3 of 72 (4.2%); 1934: 1 of
through 1971. My class — the class of 1973 — was perhaps the turning point, with a measurable presence of eight women out of a class of ninety-two, or 8.6%. This growing presence of women was marked not only by increasing numbers but also by a demand that the law school hire a woman in a full-time faculty position. As noted in a Board of Visitors report, it was marked further by some discontent with the prevalent pedagogy:

The complaint was voiced by two young lady freshmen that female students are not called on in most classes to recite and be subjected to questioning by the teacher. The complaint should not be difficult to eliminate.

Of course, there were other not so subtle complaints which never made their way into any Board of Visitors report. For example, as a second-year law student, I recall being called upon one Monday morning to rise and recite in a particular class. As I stood before my ninety-one peers, prepared to recite on a case, I was asked whether or not it was true that I was about to change my name. When I stood there stunned, the professor interposed an additional question, asking whether that had not been the purpose of my trip out of town the preceding weekend. When I still would not answer, he apologized for being misinformed as to the facts (and many years later for invading my privacy). No doubt we all have our horror stories. The point is not to relive past indiscretions, but to demonstrate by comparison how far we have come from the open and obvious.

73 (1.4%); 1935: 3 of 56 (5.4%), and 1936: 0 of 27. BULLETIN OF MARQUETTE UNIVERSITY LAW SCHOOL, supra note 12, at 28-34.


National statistics demonstrated a similar, though not identical, trend:

In 1967 women were only 4.5% of the nation's first-year law students; in 1970, they were 8.5%, in 1973, nearly 16%. By 1975, 23% of all law students were women. Three AALS-approved law schools that year reported women were a majority of the entering class, six others reported women exceeded 40% of the first-year students, forty-nine others, 30% or more.

Ginsburg, supra note 47, at 4-5.


In retrospect, the single most common feature of my "class of women," (and one that I have noted in successive years of teaching), was our difference from one another in age, attitude, and life experience. In short, many of us shared but one characteristic in common — our gender. And so, once again, the nagging feminist question arises: what uniquely gendered female characteristic merits celebration by virtue of its emergent presence in the legal profession?

Searching for the answer as far back as 1900 the focus was pragmatic, i.e., "[a]re there any circumstances where the law has need of a woman?" The answer sought to identify gender-based contributions by noting the ways women lawyers might uniquely contribute to the profession. Thus, one early feminist strategist noted that "many sensitive women will not confide their business affairs to men," and "women can understand each other better than men can women"; "[w]omen see quicker the confusion which is misleading the client and the utter ignorance of law which a man cannot even imagine."92

Furthermore, women were necessary because of their influence. Those who successfully pursued the active practice of law could only be persons of "high, unselfish motives and large intellectual power." As such, the law would benefit from the participation of men and women of high intellect and principle.

In yet another forum, the United States Supreme Court sought to identify the same phenomenon. Ruling that the purposeful and systematic exclusion of women from federal jury panels violated congressional statutes, the Supreme Court in Ballard v. United States94 could arrive at nothing more articulate than a "flavor" or "distinct quality" to characterize the impact of either sex upon a community: Yet it is not enough to say that women when sitting as jurors neither act or tend to act as a class. Men likewise do not act as a class. But, if the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel? The truth is that the

92. Id. Deborah Rhode identifies this feminist strategy by its "claim that women's distinctive attributes promote a distinctive form of understanding." See Deborah L. Rhode, Feminist Critical Theories, 42 Stan. L. Rev. 617, 624 (1990). She cites Robin West's argument that women are closer to a more moral life, whether by reason of sociology, psychology, or biology, since they are more nurturant, more caring, more natural, and more loving, as a later example of such feminist strategy. See id. at 624 n.25 (citing Robin West, Feminism, Critical Social Theory and Law, U. Chi. Legal F. 59 (1989)).
two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle interplay of influence one on the other is among the imponderables. To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded.95

In a later feminist work of some moment,96 developmental psychologist Carol Gilligan focused on and valued the relational significance of women's moral development. Arguing that women necessarily reasoned in "a different voice," Gilligan posited that women were "less likely than men to privilege abstract rights over concrete relationships."97 Based upon responses to questions about conceptions of self and morality recorded during three separate studies,98 she found that:

just as the conventions that shape women's moral judgment differ from those that apply to men, so also women's definition of the moral domain diverges from that derived from studies of men. Women's construction of the moral problem as a problem of care and responsibility in relationships rather than as one of rights and rules ties the development of their moral thinking to changes in their understanding of responsibility and relationships, just as the conception of morality as justice ties development to the logic of equality and reciprocity. Thus the logic underlying an ethic of care is a psychological logic of relationships, which contrasts with the formal logic of fairness that informs the justice approach.99

Her studies further suggested that women's moral judgment proceeded sequentially from "an initial concern with survival to a focus on goodness and finally to a reflective understanding of care as the most adequate guide to the resolution of conflicts in human relationships."100 Thus, where Sigmund Freud and Lawrence Kohlberg had viewed a woman's sense of relational self as indicative of a lesser state of moral development, Carol Gilligan found instead a heightened state of moral responsiveness to others' needs.101

95. Id. at 193-94; see also Taylor v. Louisiana, 419 U.S. 522, 535-36 (1975)("[T]he exclusion of women from jury venires deprives a criminal defendant of his Sixth Amendment right to trial by an impartial jury drawn from a fair cross section of the community.").


97. Rhode, supra note 92, at 624; this author finds the characterization offered by this secondary source more illustrative of Gilligan's point than the work itself.


99. Id. at 73.

100. Id. at 105.

The subject of considerable scholarly debate, Gilligan's work has been acclaimed for its recognition of the existence of a women's culture and its concomitant demand that the values of such culture themselves be valued by using them to alter and reshape existing societal structures, rather than just assimilating or incorporating them into existing structures. Likewise, her treatise has been criticized for dividing the world along gender lines which reinforce dichotomous stereotypes — men as rational, linear thinkers; women as nurturing, contextual thinkers.

If, as contemporary feminist scholar Deborah Rhode suggests in another context, the quest of "a different voice" should rather be "multiple accounts that avoid privileging any single universalist or essentialist standpoint," which yet "resonate with women's shared experience without losing touch with our diversity," the education offered by the Marquette Law School now successfully sounds that voice. Of a student body numbering 499, there are, as of this writing, 213 women (42.6%), and six of them are editors on the fourteen-member editorial board of the Marquette Law Review.

Of a full-time, tenure-track faculty of twenty-one, seven of us are women — different women, of different backgrounds, "pedigrees," legal interests, and experiences. Furthermore, three of twelve tenured positions (25%) are now filled by women. In addition, two of our administrators are wo-

104. See Rhode, supra note 92, at 625; McConnell, supra note 102, at 113; Scales, supra note 103, at 1381.
105. Professor Rhode in her article, *Feminist Critical Theories*, supra note 92, argued for a unifying objective which embraces the disparate critical feminist theories. She writes:

Although critical feminists by no means speak with one voice on any of these issues, part of our strength lies in building on our differences as well as our commonalities. Precisely because we do not share a single view on this, or other more substantive concerns, we need theories but not Theory. Our objective should be multiple accounts that avoid privileging any single universalist or essentialist standpoint. We need understandings that can resonate with women's shared experience without losing touch with our diversity. The factors that divide us can also be a basis for enriching our theoretical perspectives and expanding our political alliances . . . .

Id. at 626. In truth, the same can be said not only for critical feminist theories but the voice of women in legal education.
106. Rhode, supra note 92, at 626.
107. Id.
108. Cf. Debra C. Moss, *Would This Happen to a Man?*, 74 *A.B.A.J.* 50, 53 (1988). In an insert to the article entitled, "Low grades for top schools," the author includes tenure statistics compiled by Professor Richard Chused of Georgetown University Law Center for the Society of American Law Teachers. His data on the twenty-two "prestige schools" for the academic year
men, as is the director of our admissions program and the director of our legal writing program.

The transition has not always been easy. Salaries were sometimes gender-based under prior administrations, and inappropriate comments found their way into faculty discussions. Nevertheless, where other institutions have sought to quiet the voices of women, this institution has in some significant measure encouraged them. And one of those voices is mine.

If the value of a different voice lies in its experience and the difference that experience makes, then I sound the voice of a generation of women who knew little of educational choice or academic advantage. As I remarked on May 2, 1991, when I received Marquette University’s Robert and Mary Gettel Award for Teaching Excellence, it was in many respects ironic that I would be receiving such an award when the reason I went to law school in 1971 was because I did not want to teach. Teaching (albeit not in a law school) was one of the few professions which welcomed the women of my generation. Of course, if you grew up a woman in a predominantly blue-collar Italian family on Milwaukee’s far south side in the 1960s, you probably did not have to worry about such choices. The likelihood is that you never made it to college in the first place. What little money existed was relegated to the education of sons. There was no discussion of “which university” or “which curriculum” offered “which career opportunity.” And so, when Marquette University, and later Marquette University Law School, offered me admission (and scholarship money as well) it was

1986-87 revealed that women law professors held the following tenured positions on the various law faculties: University of California at Berkeley: 3 of 44 tenured positions; University of California at Los Angeles: 5 of 36 tenured positions; University of Chicago: 0 of 22 tenured positions; Columbia University: 5 of 42 tenured positions; Cornell: 1 of 27 tenured positions; Duke University: 4 of 31 tenured positions; Georgetown University: 6 of 46; George Washington University: 3 of 35; Harvard: 5 of 56; University of Illinois: 1 of 19; University of Michigan: 1 of 39; University of Minnesota: 3 of 30; New York University: 7 of 53; Northwestern University: 4 of 38; University of Pennsylvania: 1 of 22; University of Southern California: 2 of 26; Stanford: 2 of 36; University of Texas: 5 of 49; Vanderbilt University: 2 of 23; University of Virginia: 2 of 42; University of Wisconsin: 3 of 42; and Yale: 2 of 34. Id. at 53. See generally Richard H. Chused, The Hiring and Retention of Minorities and Women on American Law School Faculties, 137 U. PA. L. REV. 537 (1988).

Records at Marquette Law School disclose that in 1986-87, 1 of 11 tenured positions was filled by a woman. See supra note 2. With one woman in 1987 (9% of its tenured faculty) Marquette still did better than half of the schools represented in the Chused study.

109. Even as a faculty member in 1980, I recall being asked by a former male faculty member (much to the chagrin of other male faculty members who were present at the time and chastened him) whether I was still lactating after the birth of my third child.

110. See Moss, supra note 108, detailing the sex-based tenure denial claims of Professor Drucilla Cornell at the University of Pennsylvania Law School in 1988, and Professor Clare Dalton at Harvard Law School in 1987.
not one of several options to be considered — it was the only game in
town.\textsuperscript{111} Attendance at the local university and its law school enabled me
to live at home (a paramount consideration for "good" young women), and
seek outside employment to pay for those expenses not covered by
scholarship.\textsuperscript{112}

Thus, in 1977, when former Marquette Law School Dean Robert F.
Boden telephoned me and asked me to teach a course in Appellate Advo-
cacy because I had since served as a federal district law clerk and Assistant
Wisconsin Attorney General in the Criminal Appeals Division, he called on
a woman with no pedigree to speak of and no significant list of publications
or research topics. Quite literally, he took a chance on "raw talent" — a
commodity which could only be appreciated by the same institution which
had nurtured it. With the active support of two or three other faculty mem-
bers, all of whom were male, he mentored that talent into a successful
teacher who later filled a full-time tenure-track position. In addition, his
administration offered time and flexibility to raise and nurture three
children.\textsuperscript{113}

\begin{enumerate}
\item \textsuperscript{111} Although not included in any study, I find that my experiences were not unlike those of
the New York City women lawyers studied in 1965 by author Cynthia Fuchs Epstein. \textit{See EP-
STEIN, supra note 25.} In her chapter entitled, "Where They Came From and Why They Chose
the Law," Epstein notes:

Of the women interviewed in 1965, fewer than 10 percent of those who attended New
York area schools chose their law school on the basis of academic criteria. Most of them
selected a school because of "practical" concerns of the moment — restrictions on admis-
sion at the institution of first choice, pressure to be at or near home, or the desire to
combine work with their education. Financial reasons aside, the women's selection of
schools was geared to short-term, non-career considerations rather than long-range occu-
pational gain, planning, and goals.
\textit{Id.} at 35.

\item \textsuperscript{112} Since I was the oldest of three college-age children, Epstein's study likewise reflects my
experience that:

In spite of the fact that 90 percent of the women interviewed in the 1960s described
their families' incomes as comfortable or better, only 30 percent did not work at all during
law school. Almost 40 percent worked full-time and about an additional 20 percent
worked part-time, nearly all for economic reasons. Although many of their families were
"comfortable," more than half had three or more children and two-thirds of the women
had younger siblings. Some of the families had to save for the education of the younger
children and could not invest very heavily in further education for older children, espe-
cially if they were girls. Most "knew" they would have to work and never considered
alternatives such as loans from other family members or outside sources.
\textit{Id.} at 36.

\item \textsuperscript{113} In his book, \textit{UNEQUAL ACCESS: WOMEN LAWYERS IN A CHANGING AMERICA}, Ronald
Chester comments that "[e]xceptional professional women must realize that they did not achieve
what they have sheerly by dint of their own efforts; the way was paved by women, like those we
interviewed, who struggled before them." \textit{CHESTER, supra note 32, at 120.} He states further that,
inasmuch as women still bear children and largely nurture them through infancy, the "flexibility
Call it "inbreeding" or whatever you will, Marquette Law School gave voice to the perspective of women who grew to womanhood in a generation of silence and would largely be silenced now in academic circles. If, as one of my colleagues states, "education is an art and a science, and the art of it comes from one's experiential base," then the art borne of our struggles would be lost. Although written in the experiential context of people of color, Mari Matsuda's comments are perhaps relevant as well to early generations of women lawyers. What we offer legal education by the inclusion of our voice is not "abstract consideration of the position of the least advantaged. The imagination of the academic philosopher cannot recreate the experience of life on the bottom." What we offer instead is the witness of our very existence.

As the Committee on Faculty Appointments, of which I am chair, examines the thousand or more resumés submitted by prospective law teachers, I am saddened to realize that no person of my entry credentials would survive the rigors of a contemporary selection process. Pedigree and the promise of national scholarship have become the norm for law teachers.

of time and workload that most women will require can only be achieved by ridding the profession of its competitive, workaholic, and hierarchical characteristics." Id.

114. Tracing the trajectory of moral development with respect to two sixth-grade participants in a rights and responsibilities study, one boy and one girl, each of whom described a situation where they confronted a decision of whether or not to "tell on" someone, psychologist Carol Gilligan describes the development in the girl of a "world kept secret because it is branded by others as selfish and wrong." GILLIGAN, supra note 96, at 51. She notes that "the secrets of the female adolescent pertain to the silencing of her own voice, a silencing enforced by the wish not to hurt others but also by the fear that, in speaking, her voice will not be heard." Id. When extended to adult concepts of self and morality, she found that women were reluctant to judge the conduct of others — a reluctance attributable to their uncertainty about their right to make moral statements or the price of such a judgment. As stated by one woman interviewed in the study: As a woman, I feel I never understood that I was a person, that I could make decisions and had a right to make decisions. I always felt that that belonged to my father or my husband in some way, or church, which was always represented by a male clergyman. They were the three men in my life . . . and they had much more to say about what I should or shouldn't do. They were really authority figures which I accepted. It only lately has occurred to me that I never even rebelled against it . . . .

Id. at 67.

115. The statement is that of my friend and colleague, Dr. Anthea Bojar, Chair of Faculty, Teacher Education Division, Cardinal Stritch College, Milwaukee, Wisconsin.


117. As used in this article, pedigree would have excluded many women since, as noted earlier in the text, several of the top law schools from which law teachers are typically selected did not open their doors to women until the late 20th century.
Whether or not it should be the norm is the subject of another discourse. Nevertheless, for my generation of women, the celebration of Marquette Law School is that it was not.