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# 100 Years of Women at Fordham: A Foreword and Reflection

Elizabeth B. Cooper

*Fordham University School of Law*, [eoelaw@fordham.edu](mailto:eoelaw@fordham.edu)

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## 100 YEARS OF WOMEN AT FORDHAM: A FOREWORD AND REFLECTION

*Elizabeth B. Cooper\**

As we reflect back on 100 Years of Women at Fordham Law School, we have much to celebrate. In contrast to the eight women who joined 312 men at the Law School in 1918—or 2.6 percent of the class—women have constituted approximately 50 percent of our matriculants for decades.<sup>1</sup> Life for women at the Law School has come a long way in more than just numbers. For example, in 1932, the Law School recorded the first known practice of “Ladies’ Day,” a day on which some professors would call on women, who otherwise were expected to be silent in their classes.<sup>2</sup> In this context, one can only imagine the experience of Mildred Fischer, the first woman to serve as Editor-in-Chief of the *Fordham Law Review*, in 1936.<sup>3</sup>

We have come a long way and, thankfully, it is no longer unusual to see a woman voted Editor-in-Chief of the *Law Review* and our other scholarly journals. Women also have rightly claimed their place at the head of the Student Bar Association and countless student organizations. From the very start, however, women have succeeded as scholars and advocates at the Law School and in their careers.

Fordham Law alumnae have a strong tradition of public service. Early on, Ruth Whitehead Whaley, the first African American woman to graduate from the Law School (1924), finished her studies with *cum laude* honors at the age

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\* Associate Professor of Law, Fordham University School of Law; Faculty Director, Feerick Center for Social Justice and Faculty Co-Director of the Stein Scholars program. Professor Cooper joined the Fordham Law faculty in 1995 and teaches the Legislative and Policy Advocacy Clinic, which she founded.

1. In 1921, Patricia A. O’Connell, Mildred L. O’Connor, and Ella L. Ralston were the first three women to graduate from the Law School. Ms. Ralston received the prize for the highest standing in the third-year evening class and was the first Fordham Law woman to pass the New York State Bar Exam. *See 100 Years of Women at Fordham Law School: Timeline* (2018) (on file with the *Fordham Law Review*). As late as 1960, however, there were only three women in the Law School’s entering class. *See id.* In 1960, women made up less than 4 percent of all law school admissions. *Id.* By 1961, forty years after women first graduated from the Law School, 500 women had earned degrees from Fordham Law—or, an average of 12.5 women graduates each year. *Id.* In a long-overdue cause for celebration, from 2016 through 2018, for the first time, the Fordham Law Alumni Association was headed by a woman, Sharon McCarthy (1989).

2. *See id.*

3. Mildred Fischer served as the *Fordham Law Review*’s first woman Editor-in-Chief in 1936. *See id.*

of twenty-three.<sup>4</sup> Ms. Whaley was the third African American woman to be admitted to the New York Bar and had an extraordinary career, first in private practice and then in high-level appointed positions in New York City government.<sup>5</sup> Eunice Carter (1932) became the first African-American woman assistant district attorney in New York State, playing a pivotal role in one of the most significant mob prosecutions of the time.<sup>6</sup> Many decades later, in 1979, Cira Martinez became the first Latina to graduate from Fordham Law—and went on to sit on the Bronx Family Court.<sup>7</sup>

Among the most famous of our alumnae is the late, great Geraldine Ferraro (1960), who served in the U.S. House of Representatives and was the first woman vice presidential candidate of a major political party, as well as the first Italian American major party nominee in 1984.<sup>8</sup> In 1972, just two years after graduating from Fordham Law, Karen Burstein became the first woman elected to the New York State Senate from Long Island.<sup>9</sup> For decades, Law School alumnae have served as judges, including Irene K. Duffy (1957), Marilyn H. Patel (1963), Renee R. Roth (1969), Jacqueline Silbermann (1972), Loretta A. Preska (1973), Sherry Klein Heitler (1976), and Cira

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4. Obituary, *Ruth W. Whaley*, 76, *Lawyer and City Aide*, N.Y. TIMES (Dec. 25, 1977), <https://www.nytimes.com/1977/12/25/archives/ruth-w-whaley-76-lawyer-and-city-aide.html> [<https://perma.cc/S5BD-EY3G>].

5. In a 1949 essay Ms. Whaley wrote, *Women Lawyers Must Balk Both Color and Sex Bias*, describing the ways in which women, and especially women of color, were compelled to perform better than their male colleagues. She observed that, if they did not, “the overlooked errors of a male colleague become the colossal blunders of the woman.” Ruth Whitehead Whaley, *Women Lawyers’ Lot Not Easy: She Must Balk Both Color and Sex Bias*, N.Y. AGE, Oct. 29, 1949, at 58. For a richer discussion of Ms. Whaley’s career, and some of the hurdles she faced at the Law School, see R.A. Lenhardt & Kimani Paul-Emile, “*All the Women are White, All the Blacks are Men, But Some of Us Are Brave*”, 87 FORDHAM L. REV. ONLINE 68, 70 (2019).

6. Ms. Carter played a significant role in developing the case against Lucky Luciano; she also is the grandmother of Yale Law Professor and author, Stephen L. Carter. See STEPHEN L. CARTER, *INVISIBLE: THE FORGOTTEN STORY OF THE BLACK WOMAN LAWYER WHO TOOK DOWN AMERICA’S MOST POWERFUL MOBSTER* (2018). The first Black woman to serve as a United States Attorney was Fordham Law alumna Janice McKenzie Cole, in 1994. See 100 Years of Women at Fordham Law School, *supra* note 1; see also Lenhardt & Paul-Emile, *supra* note 5 (discussing Ms. Carter’s life and legal career).

7. The Honorable Cira Martinez, class of 1979, was the first Latina woman Fordham Law graduate; she also was a lesbian. She served as the Supervising Judge of the Bronx Family Court. See 100 Years of Women at Fordham Law School, *supra* note 1; *Paid Notice: Death of Martinez, the Hon. Cira*, N.Y. TIMES (Dec. 7, 2001), <https://www.nytimes.com/2001/12/07/classified/paid-notice-deaths-martinez-the-hon-cira.html> [<https://perma.cc/T4ZS-FXU6>].

8. See Frances A. McMorris, *75 Years of Women at Fordham*, ALUMNI EVENTS, Apr. 1, 1994, at 8. Ms. Ferraro served in Congress from 1979–85. *Id.*

9. Burstein also served as a New York City Family Court Judge, as well as the Chair and Executive Director of the State Consumer Protection Board and Chair of the New York State Civil Service Commission. N.Y. STATE LEGISLATIVE WOMEN’S CAUCUS, *WOMEN OF THE NEW YORK STATE LEGISLATURE* 37 (2017), [https://nyassembly.gov/write/upload/pdfs/20170626\\_78563.pdf](https://nyassembly.gov/write/upload/pdfs/20170626_78563.pdf) [<https://perma.cc/S6DA-PHWG>]. During her judicial swearing in, Burstein came out as a lesbian.

Martinez.<sup>10</sup> Indeed, forty-two women graduates of Fordham Law are currently sitting as judges on various courts in twelve states.<sup>11</sup>

An important part of the history of women at the Law School is the chronicle of women who have served on our faculty. It was not until 1972—fifty-four years after women students matriculated—that the Law School hired the first women to join the faculty: Sheila Birnbaum and Lucille Polk Buell.<sup>12</sup> Next to arrive, in 1978, was Maria Marcus, who until her retirement from teaching in 2011, was widely regarded as the “dean” of the women faculty. For anyone fortunate to study with, be mentored by, or be coached for a moot court competition by Professor Marcus, the experience is extraordinary: her sharp mind, keen observations, and high standards have kept us striving to do our best for over forty years.<sup>13</sup>

When I joined the faculty in 1995, I was the twenty-second woman to be hired, but one of only fourteen women professors at the time.<sup>14</sup> Some of my

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10. See Constantine N. Katsoris, *A Tribute to the Fordham Judiciary: A Century of Service*, 75 FORDHAM L. REV. 2303, 2339–371 (2007). Judge Duffy was one of New York State’s first woman Family Court judges. *Id.* at 2326. Judge Patel was appointed to the U.S. District Court for the Northern District of California and, ultimately, the first woman Chief Judge in the district. *Id.* at 2330. Judge Roth served as New York County Surrogate. *Id.* Judge Silbermann was the first woman Chief Administrative Judge of the Civil Court of New York for Matrimonial Matters. Judge Preska was Chief Judge of the U.S. District Court for the Southern District of New York. Heitler was a Judge of the New York State Supreme Court, Appellate Division. *Id.* at 2331. Judge Martinez was the first woman to serve on the Bronx Family Court. *Id.*

11. See Newsroom, *100 Years of Women at Fordham*, FORDHAM L. NEWS (Jan. 19, 2019), <https://news.law.fordham.edu/blog/2019/01/19/100-years-of-women-at-fordham-law/> [<https://perma.cc/2GNS-QXM7>].

12. Sheila Birnbaum, the first tenured woman at the Law School, left to teach at New York University School of Law in 1980 and has spent significant time as a litigator in some of New York’s largest law firms. She is currently a partner at Dechert LLP. See *Sheila L. Birnbaum*, DECHERT LLP, <https://www.dechert.com/people/b/sheila-l--birnbaum.html> [<https://perma.cc/GN79-D3LX>] (last visited Mar. 2, 2019). Lucille Polk Buell, who taught legal writing (a full-time faculty position), went on to become the first woman judge on both the Westchester Family Court and then the New York Supreme Court (9th District). See Email from with Robert Reilly, former Assistant Dean, Fordham Law School, to author (Feb. 21, 2019) (on file with author); *Record Group 4: Judiciary*, WESTCHESTER COUNTY ARCHIVES DESK REFERENCE, <https://archives.westchestergov.com/images/stories/deskreference/RecordGroup04.pdf> [<https://perma.cc/B686-SE7G>] (last visited Mar. 2, 2019); Obituary, *Lucille Buell*, N.Y. TIMES (Dec. 14, 2008), <https://www.legacy.com/obituaries/nytimes/obituary.aspx?pid=121331929> [<https://perma.cc/5QLV-VS78>]. Buell was a 1947 graduate of the Law School, finishing first in her class and joining Hughes, Hubbard & Reed as the first Fordham Law woman to be hired by a Wall Street firm. See *100 Years of Women at Fordham Law School*, *supra* note 1.

13. Professor Marcus continues to serve as the Faculty Moderator of the Law School’s Inter-School Moot Court Teams, devoting countless hours to coaching and advising the Law School’s numerous competitors. *Maria L. Marcus*, FORDHAM UNIV., [https://www.fordham.edu/info/23194/emeriti/6643/maria\\_l\\_marcus/1](https://www.fordham.edu/info/23194/emeriti/6643/maria_l_marcus/1) [<https://perma.cc/JGX9-2E5G>] (last visited Mar. 2, 2019).

14. The remaining women faculty, in order of hire, include: Gail Hollister (1977; retired), Helen Bender (1979), Marilyn Friedman (1979; left for private practice), Georgene Vairo (1982; joined the faculty at Loyola Law School, LA), Mary Daly (1983; left to become Dean of St. John’s Law School—the first woman graduate of the Law School to become a law

predecessors left to return to practice, follow a spouse to a different city, join the faculty of a different law school, or become a judge.<sup>15</sup> I know little about what it was like to be on our faculty in the two decades before my arrival, but I understand that Fordham Law was not always an easy place for its women faculty.

Even in the 1990s, it often felt a little lonely to be a woman on the faculty. We comprised barely 30 percent of the full-time professors; it felt dicey to identify as a feminist and, although our alumni were extraordinarily loyal and generous, few among their leaders were women. Fordham Law was, though, undergoing great change: John D. Feerick,<sup>16</sup> our Dean, and Georgene Vairo, our Associate Dean, were transforming the institution from a regional law school to a national one; from a white, male, and often Irish-led institution, to a place of greater diversity; from a well-respected law school to a stellar institution of higher learning.

It was in 1984, that the first woman of color, the Honorable Deborah A. Batts, joined the Law School's faculty. Chantal Thomas, Leah Hill, and Gemma Solimene, the second, third, and fourth women of color, were not hired until 1996 and 1999, respectively. Indeed, it was not until last decade that Fordham Law hired Sheila Foster, Catherine Powell, Sonia Katyal, Robin Lenhardt, Kimani Paul-Emile, Chi Mgbako, and Tanya Hernandez, who have transformed the Law School and legal academia with their cutting-edge scholarship and dynamic leadership.

The history of the LGBTQ faculty is more obscure and some of it will never be known. When I arrived at Fordham, I was discreetly told of the

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school dean (2004); deceased), Deborah Batts (1984; now a U.S. District Court Judge, SDNY), Claudette Krizek (1984; became a social worker), Carolyn Gentile (1986; left to return to practice), Jacqueline Nolan-Haley (1987), Beth Schwartz (1987), Marc Arkin (1987), Janet Tracy (1989; retired), Jill Fisch (1989; now at University of Pennsylvania Law School), Rachel Vorspan (1989), Deborah Denno (1991), Ann Moynihan (1994; deceased), Tracy Higgins (1992), Linda Sugin (1994), Elizabeth Cooper (1995), Chantal Thomas (1996; now at Cornell Law School), Marcella Silverman (1996), Leah Hill (1996), Lynn Kelly (1996; left to direct a legal services organization), Katherine Franke (1997; now at Columbia Law School), Cheryl Bader (1997), Martha Rayner (1998), Gemma Solimene (1999), Susan Block-Leib (1999), Elizabeth Maresca (2000), Sheila Foster (2001; now at Georgetown University Law Center; Foster was the first African American woman to serve as Vice Dean at the Law School), Catherine Powell (2002), Sonia Katyal (2002; now at University of California, Berkeley Law), Carolyn Gentile (2002) (a different Carolyn Gentile from the person hired in the 1980s), Jennifer Gordon (2003), Robin Lenhardt (2004), Gráinne de Búrca (2006; now at NYU Law School), Kimani Paul-Emile (2007), Chi Mgbako (2007), Jeanne Fromer (2007; now at NYU Law School), Tanya Hernandez (2009), Zephyr Teachout (2009), Clare Huntington (2011), Aditi Bagchi (2012), Janet Freilich (2016), and Rebecca Kysar (2018).

15. Buell (became a judge; *see supra* note 2); Friedman (returned to practice); Krizek (moved); Vairo (after serving as Associate Dean for Academic Affairs for many years under Dean John D. Feerick, joined the faculty of Loyola Law School, Los Angeles, in 1995); Batts (appointed to the Southern District of New York, 1994).

16. John Feerick was named the eighth Dean of the Law School in 1982, serving twenty years in the position. *See John D. Feerick*, FORDHAM UNIV., [https://www.fordham.edu/info/23130/john\\_d\\_feerick](https://www.fordham.edu/info/23130/john_d_feerick) [<https://perma.cc/Q6XQ-K6LP>] (last visited Mar. 2, 2019).

(closeted) gay men on the faculty. Judge Batts, who came out during her tenure on the faculty, joined the judiciary a year before I arrived. Georgene Vairo left for Loyola Law just as I started. Although many other LGBTQ colleagues have since been hired, and Fordham Law is now very welcoming to our communities, I felt enormously self-conscious about this part of my identity in my early years here.<sup>17</sup>

Thankfully, much has changed in the forty-seven years since women first joined the Law School faculty. Although we have not yet attained parity, women now constitute 39 percent of the full-time faculty. Further, the three current Associate Deans are all women: Linda Sugin (Academic Affairs), Clare Huntington (Research), and Leah Hill (Experiential Learning).

It is in this context that I express my gratitude to the *Fordham Law Review Online* for creating this space for women—faculty, alumnae, and students—to share their scholarship. Delightfully, there is no umbrella theme or limitation on the scope of their contributions; rather, they have followed their own intellectual curiosity and passions to create this terrific collection of Essays. The short precis that follow are designed to lure the reader to discover more about their keen ideas and brilliant minds.

Starting with the historical precedent for parental involvement in the development and governance of public schools, third-year student Jennifer Butwin makes a compelling case for giving non-citizen parents the right to vote in school board elections.<sup>18</sup> Building from the observation that non-citizen parents have the same stake in their children’s education as other parents, she coherently argues that allowing (and encouraging) this enfranchisement would increase educational achievement in schools and would allow school boards to represent the communities they serve.<sup>19</sup>

Dean Leah Hill draws our attention to the heart-breaking structural dysfunctions that have created and continue to perpetuate the “school-to-prison pipeline” for Black girls.<sup>20</sup> As she points out, one of the key failures lies in a suspension rate of Black girls that is seven times higher than that of their white peers, and which pushes them “out of school and into the juvenile justice system and ultimately plac[es] them at risk for a range of adverse life experiences.” This disproportionate treatment, that begins in preschool and persists throughout public education, is rooted in facially neutral laws (e.g., giving school districts great discretion in developing disciplinary schemes), as well as implicit and explicit bias. Dean Hill observes that although attention “has been paid to Black girls’ traumatic experiences . . . in the home

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17. Professor Mary Daly, a heterosexual woman and a devout Catholic, was extraordinary in volunteering to serve as the faculty moderator for the first LGBTQ student organization at the Law School in 1987.

18. Jennifer Butwin, *Putting Students First: Why Noncitizen Parents Should Be Allowed to Vote in School Board Elections*, 87 FORDHAM L. REV. ONLINE 49 (2019).

19. *Id.*

20. Leah Hill, *Disturbing Disparities: Black Girls and the School-To-Prison Pipeline*, 87 FORDHAM L. REV. ONLINE 58 (2019).

and community environment, not enough attention is focused on acknowledging the adverse impact of racism inside and outside of school.”<sup>21</sup> This Essay is an important step in changing this fact.

Clare Huntington, the Associate Dean for Research and a highly-respected family law scholar, identifies the inability of this discipline to “contend with, respond to, and recognize the emotions that are at the core of human experience” as her most compelling concern.<sup>22</sup> She focuses most keenly on the disjuncture that exists between deep societal knowledge “about the emotional arc of family relationships,” whether between partners or parent and child, and the failure of family law to recognize this cycle as inherent in family life. Huntington, ever-striving to expand family law theory to meet the real needs of the people it seeks to govern, renews her calls for “a reparative model” of family law that takes into account the “family-like relationships [that] often persist even after legal relationships are altered;” a “new theory of state regulation” to address the needs of non-marital families, built on the insight that it is possible to separate marriage from parenthood but not relationships from parenthood;” and a new discipline to be focused on early childhood development and the law.<sup>23</sup> Each of Huntington’s well-developed theoretical approaches has the potential to significantly transform family law, ensuring that it truly meets the needs of families in all of their manifestations.

Professors Robin Lenhardt and Kimani Paul-Emile, two of the directors of the Fordham Law Center on Race, Law & Justice,<sup>24</sup> have crafted a compelling Essay exploring the still-persistent racism and sexism that interfere with the career trajectories of African Americans, women, and particularly, African American women.<sup>25</sup> They begin with a reflection on a pivotal 1982 book edited by feminist writers and educators, Gloria T. Hull, Patricia Bell Scott, and Barbara Smith, entitled, *All the Women are White, All the Blacks are Men, But Some of Us Are Brave: Black Women’s Studies*.<sup>26</sup> They observe that this early demonstration of “the need for intersectional analyses when addressing questions of race and gender” remains as true and important more than thirty-five years later. Tracing the line from early Black women graduates of the Law School—Ruth Whitehead Whaley and Eunice Carter—to Tanyell Cooke, the current President of the Student Bar Association and member of the Black Law Students Association, the authors observe that although the particular challenges that they have—and will—encounter may differ, there are a specific set of explicit and implicit biases that Black women, as Black women, continue to face in the profession.

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21. *Id.*

22. Clare Huntington, *Family Law’s Exclusions*, 87 FORDHAM L. REV. ONLINE 64 (2019).

23. *Id.*

24. Professor Tanya K. Hernández is the third director of the Center.

25. Lenhardt & Paul-Emile, *supra* note 5.

26. ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE: BLACK WOMEN’S STUDIES (Gloria T. Hull et al. eds., 1982).

While cognizant of how very far we, as a law school and a society, have come, Lenhardt and Paul-Emile close with a call to action to coincide with the 100-year anniversary of women at Fordham, stating that the costs are too high “to allow another generation of [women of color] attorneys . . . from achieving full equality and inclusion in all levels of legal education, training, and practice.”<sup>27</sup>

For decades, women who have brought claims regarding sexual harassment in the workplace have faced a most difficult dilemma: whether to sign a non-disclosure agreement (NDA) as part of a settlement, or proceed to trial. Third-year student Bina Nayee reviews the 2018 New York State statute prohibiting employers from including NDAs in settlements of sexual harassment claims unless the employee seeks the protection of confidentiality.<sup>28</sup> While noting the importance of this measure to permit claimants to speak of their experiences, and perhaps to stem “the pattern of sexual harassment in their workplace,” Nayee identifies additional steps the state must take to ensure that employers do not find ways to obviate the letter and spirit of this innovative statute.<sup>29</sup>

Professor Jacqueline Nolan-Haley, an international expert in alternative dispute resolution, explains how the promise of mediation as “a vehicle for providing access to justice,” while enhancing autonomy and self-empowerment, has fallen far short of its promise.<sup>30</sup> She frankly identifies the ways in which “individuals with disadvantaged economic status,” particularly those without representation, experience a “withering away of consent,” especially when mediation has been institutionalized in court-connected programs. Confronting the question of whether “the benefits of court mediation [are] more desirable for unrepresented parties than the . . . civil litigation system,” Nolan-Haley proposes a set of best practices, and the use of an “Index” that would “rate the performance of court mediation programs serving unrepresented parties,” hoping that the shining of a bright light on current practices will not only increase transparency, but also create a “measure of accountability” that, too often, does not exist.<sup>31</sup>

Third-year law student Praatika Prasad creates a nuanced and provocative exploration of the structural barriers to interracial LGBTQ relationships.<sup>32</sup> Recognizing the importance of the Supreme Court’s *Obergefell* decision holding that same-sex couples have a constitutional right to marry, she also sharply critiques Justice Kennedy’s “white-washing” of the *Loving* decision, on which the Court relies, wholly ignoring the importance of the anti-

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27. Lenhardt & Paul-Emile, *supra* note 5.

28. Bina Nayee, *The Efficacy of New York’s Qualified Prohibition on NDAs and Reforms That Can Protect Sexual Harassment Survivors*, 87 FORDHAM L. REV. ONLINE 73 (2019).

29. *Id.*

30. Jacqueline Nolan-Haley, *Mediation, Self-Represented Parties, and Access to Justice: Getting There from Here*, 87 FORDHAM L. REV. ONLINE 78 (2019).

31. *Id.*

32. Praatika Prasad, *More Color More Pride: Addressing Structural Barriers to Interracial LGBTQ Loving*, 87 FORDHAM L. REV. ONLINE 89 (2019).

subordination principle to the Court's earlier decision. As such, Prasad observes, the Court's focus on "marriage and dignity does not carry the same potential for less privileged subgroups within the community." This failure, she says, "has prevented the acknowledgment of how State structures create barriers to interracial intimacy." Thus, Prasad observes, even though *de jure* regulation of marriage based on race and on sexual orientation is unconstitutional, other structural barriers—such as those concerning housing, education, and employment—have a profound impact on whether there is the likelihood, opportunity, or desire to form interracial LGBTQ relationships. Specifically, she suggests focusing on reducing residential segregation as a critical first step to dismantling these structural barriers, as doing so "would increase cross-racial contact, lead to better educational and employment outcomes, . . . give LGBTQ people of color a chance to improve their social capital," and, ultimately, would "improve the prospects of interracial LGBTQ loving."<sup>33</sup>

Fordham Law alumna Bronwyn Roantree (2018) conducts a fascinating inquiry into how the European Court of Human Rights could reach such different results when evaluating bans on particular religious dress for men and women.<sup>34</sup> These cases are not unusual in that European countries increasingly have banned, or have tried to ban, religious dress, notwithstanding the protections of "freedom of thought, conscience, and religion" found in the European Convention of Human Rights. Roantree contrasts the Human Rights Court's upholding a ban on women wearing Islamic headscarves at a public university with its striking down a ban on male members of a political Islamic group wearing religious uniforms. In both cases, the Turkish government based its objections to the clothing on "the need to protect public order and safety." Roantree insightfully observes, however, that the Court adopted a gendered approach to the cases: it extended a political significance to the women's religious dress that it did not give to the men's religious uniform. The Court also gave less credibility to the women's reasoning for wearing their dress than it gave to the men— notwithstanding that both parties claimed they wore the dress out of their personal religious beliefs, not to make a political statement. The result, says Roantree, was an unnecessary and inappropriate "curtailing [of] women's agency in the name of promoting gender equality."<sup>35</sup>

Third-year student Tracey Tomlinson navigates the complex world of negligence when it occurs in the context of Assisted Reproductive Technology (ART).<sup>36</sup> Such negligence typically occurs when a sperm bank

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33. *Id.*

34. Bronwyn Roantree, *Gender and Religious Dress at the European Court of Human Rights: A Comparison of Şahin v. Turkey and Arslan v. Turkey*, 87 FORDHAM L. REV. ONLINE 101 (2019).

35. *Id.*

36. Tracey Tomlinson, *Negligent Disruption of Genetic Planning: Carving Out A New Tort Theory to Address Novel Questions of Liability in an Era of Reproductive Innovation*, 87 FORDHAM L. REV. ONLINE 113 (2019).

sends the wrong vial of sperm or the fertility clinic uses an incorrect vial of sperm. Plaintiffs have alleged various claims in these contexts, but as Tomlinson points out, they “often do not fit squarely within one tort.” She similarly rejects new theories of responsibility proposed by courts (“loss of genetic affinity”) and scholars (“reproductive negligence”), as too narrow, too broad, or too blunt. Tomlinson deftly seeks to recognize the disappointment parents may face in this context, to avoid the “moral quagmire” of assigning a value to a child or stigmatizing the child, yet also to incentivize ART clinics to take measures to avoid such errors. She recommends the creation of a new tort, negligent disruption of genetic planning (NDGP), which would permit plaintiffs to recover damages when “negligent actions thwart reproductive planning,” resulting in the birth of a child without the genes selected by the ART patient. The elements of NDGP are designed to be sufficiently broad and specific to allow courts to incrementally develop common law doctrine while “balancing the serious moral and ethical questions that arise in these situations.”<sup>37</sup>

Alumna Catherine Tremble (2018) also explores the ways in which technology is challenging traditional legal theory, but in a far more alarming context: the right of an individual to publish Computer-Aided Design (CAD) files on the internet that would allow others to 3D print guns and gun parts.<sup>38</sup> She carefully unpacks recent litigation in which the government sought to enjoin this act under the International Traffic in Arms Regulations (ITAR), but which the defendant argued was a prior restraint of speech. The files were, in fact, published, and the case was settled, but the underlying issues remain. Tremble thoroughly explores the prior restraint claim, concluding that courts will likely find CAD files to be both expressive and functional, and therefore deserving of intermediate scrutiny; but, she warns that the ITAR statute is itself on constitutionally weak grounds. Instead of continuing to do battle in the courts, Tremble urges the government to work with the manufacturers of at-home 3D printers to develop a mechanism “that would recognize when the file being printed has the capability of becoming an undetectable weapon” and to create safeguards to prevent its printing, or to stop printing unless a piece of metal is inserted into the item, thereby making it detectable. This solution, which she asserts is “aimed at manufacturers and not at speech,” would circumvent First Amendment concerns.<sup>39</sup>

It is difficult to imagine a more diverse and fascinating collection of legal scholarship than that produced by these ten authors in this Issue of the *Fordham Law Review Online*. I expect the women students entering Fordham Law School in 1918 would have anticipated nothing less than the excellence reflected in this collection; they may, however, have been

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37. *Id.*

38. Catherine Tremble, *Don't Bring a CAD File to a Gun Fight: A Technological Solution to the Legal and Practical Challenges of Enforcing ITAR on the Internet*, 87 *FORDHAM L. REV. ONLINE* 129 (2019).

39. *Id.*

surprised by some of the subject matter. May the women of Fordham Law School—students, alumnae, and faculty—continue their extraordinary work and accomplishments, and continue to surprise us, for the next 100 years . . . and the centuries thereafter.