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## Special Issue on Women and the Law

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## Special Issue on Women and the Law

### Cover Page Footnote

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## FOREWORD

TRACY E. HIGGINS\*

THIS issue of the *Fordham Law Review* commemorates in part the seventy-fifth anniversary of the admission of women to Fordham Law School. As evidenced by the ceremonies, speeches, and tributes over the past year, the women of Fordham Law School have made important contributions to the school and to the legal profession. This issue of the Law Review, however, reflects more than the contributions of Fordham's women graduates. It reflects the contributions of all women to the law—as a profession, as a field of study, as an aspect of our daily lives. These contributions are all the more remarkable given that it was just over a century ago that the Illinois Supreme Court explained to Myra Bradwell that “God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply and execute the laws.”<sup>1</sup> Many determined and courageous women disagreed, and the practice and substance of the law as a result has been irrevocably transformed.

In September of 1918, when Fordham admitted its first women students,<sup>2</sup> one might not have been able to predict the many ways in which the increasing numbers of women in the profession would affect legal practice and legal thought. Yet as Dr. Carol Gilligan explains in her essay, *Getting Civilized*,<sup>3</sup> the omission of women from studies of human behavior led her to suspect that including women would make a difference. She found that it has. So too has the inclusion of women made a difference in the law. Gilligan acknowledges that the claim that women as a group differ in particular ways from men as a group—ways that would influence the kind of lawyers they become—is controversial. She explains, “To know that research on knowing did not include women is one thing. To say that women’s ways of knowing change our understanding of knowing and knowledge is more difficult to accept.”<sup>4</sup> Yet, as she points out, “[I]f the second sentence is not true, the first is inconsequential.”<sup>5</sup>

In the realm of legal practice, the expansion of the profession to include women’s voices has been far from inconsequential, even if we decline to characterize the substantive impact of their participation. Women have reached the highest levels of the profession, serving as Supreme Court Justices, federal and state judges, United States attor-

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1. *In re Bradwell*, 55 Ill. 535, 539 (1869), *aff'd*, 83 U.S. 130 (1872).

2. Eight women and 312 men began classes that fall. Two of the women, Patricia O’Connell and Mildred O’Connor, became Fordham’s first women graduates.

3. 63 *Fordham L. Rev.* 17 (1994).

4. *Id.* at 20.

5. *Id.*

neys, presidents of bar associations, state and now federal attorneys general. Women comprise almost half of all law students,<sup>6</sup> and by the year 2000, will comprise one-third of all practicing attorneys.<sup>7</sup> Yet, has opening the legal profession to women meant more than simply an increase in opportunities for women and growth in the talent pool from which lawyers are drawn? Have women had a particular impact on the way law is practiced and on the substance of the law itself? Although it is difficult, and perhaps problematic, to answer these questions in a definitive way, to dismiss them is to ignore much of the complexity and significance of women's contributions to the law.

Professor Deborah Rhode addresses these questions regarding the nature of women's contribution to legal practice in her article, *Gender and Professional Roles*.<sup>8</sup> Disagreeing with Harvard Dean Erwin Griswold that the admission of women to law schools was not "very important or very significant,"<sup>9</sup> Rhode argues that the growing number of women lawyers has brought to the legal profession an emphasis on "values traditionally associated with women."<sup>10</sup> Rhode acknowledges, as does Gilligan, the problems with identifying a set of values that are uniquely and definitively women's, and yet she notes that differences in women's practices are observable generally, if not predictable with particularity.<sup>11</sup> Rather than making specific empirical claims about the significance of women's voice, she suggests a feminist alternative for understanding women's contribution to legal professionalism that neither exaggerates nor denies difference.<sup>12</sup> Rhode's thoughtful discussion of a feminist understanding of women as lawyers has implications both for lawyers' professional roles and relationships and women's status within the legal profession. Indeed, many of Professor Rhode's suggestions about the nature of lawyering and the role of women in legal practice are reflected in Attorney General Janet Reno's remarks acknowledging women's progress in the law,<sup>13</sup> in which she reminds us of the ways in which our commitments to human relationships inform and enrich our practice as lawyers.

In addition to questioning the way law is practiced, women's participation in the creation and critique of legal norms has transformed the substance of the law itself. In contrast to Abigail Adams entreaty to

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6. See Sandra Day O'Connor, *Madison Lecture: Portia's Progress*, 66 N.Y.U. L. Rev. 1546, 1548 (1991) (citing Feminist Majority, *The Feminization of Power: Women in the Law* 1, 7 (1990)).

7. See *id.* at 1549 n.24.

8. 63 Fordham L. Rev. 39 (1994).

9. *Id.* at 39 (quoting Erwin Griswold, *Developments at the Law School*, in Harvard Law School Yearbook 10 (1950)).

10. *Id.* at 40.

11. *Id.* at 44.

12. *Id.*

13. The Honorable Janet Reno, *Address Delivered at the Celebration of the Seventy-Fifth Anniversary of Women at Fordham Law School* (May 19, 1994), in 63 Fordham L. Rev. 5 (1994).

her husband to "Remember the Ladies,"<sup>14</sup> women need no longer lobby cautiously from the margins for legal change. Rather, they are active participants in the debate within legislatures, courts, and the legal academy. Professor Martha Chamallas' insightful article, *Questioning the Use of Race-Specific and Gender-Specific Economic Data in Tort Litigation: A Constitutional Argument*,<sup>15</sup> is an example of this large and growing body of scholarship. Work by women lawyers and legal scholars has enriched the substance of the law by challenging the assumptions that underlie traditional doctrinal categories, including in tort law the concepts of duty, injury, and the calculation of damages.

Finally, and perhaps most significantly, women's increased participation in the legal profession has led to the inclusion of women's experiences as a basis for legal change. Nowhere is the significance of this inclusion more evident than in the area of rape law. It is probably no coincidence that rape, as Professor Deborah Denno points out in her *Introduction to Men, Women and Rape*,<sup>16</sup> both "overwhelmingly involves male perpetrators and female victims"<sup>17</sup> and, perhaps more than any other crime, is "plagued by myths and misinformation."<sup>18</sup> It has been only in the past two decades that rape and other forms of sexual assault have been brought to the forefront of debate, a debate that for the first time has reflected the accounts of women as victims, as counsellors, and as lawyers. The direct participation of women in this debate at all levels has created the foundation for discussions such as the thoughtful and sophisticated exchange among Professors Denno, Dripps, and West, and prosecutor Linda Fairstein, printed in this issue.

In short, this issue of the *Fordham Law Review* supports the claim implicit in Professor Gilligan's essay: the inclusion of women's voices in the chorus of the law has made a difference. That difference is evident not simply in the numbers of women, such as Attorney General Reno, who hold positions of prominence in the profession, although they are an important testament to women's success in a few short decades. The difference is evident too in the way the law is practiced,

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14. Letter from Abigail Adams to John Adams, in *The Feminist Papers: From Adams to de Beavoir*, at 10 (Alice S. Rossi, ed., 1988). Abigail Adams writes:

[I]n the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favourable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If particular care and attention is not paid to the Ladies we are determined to foment a Rebellion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation.

*Id.* at 10-11.

15. 63 *Fordham L. Rev.* 73 (1994).

16. Deborah W. Denno, *Introduction to Men, Women and Rape*, 63 *Fordham L. Rev.* 125 (1994).

17. *Id.* at 127.

18. *Id.* at 135.

the way it is defined, and the critical lens through which it is viewed. Although the many ways in which women's voices have made a difference might not have been anticipated by Myra Bradwell or Dean Griswold, few would disagree that these voices have enriched the law as it shapes our practice as lawyers and governs our lives as individual citizens.