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Thirty-five years of feminism and family law in the legal academy

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ABSTRACT

This chapter is in two parts, each of which reflects upon the developments and current state of family law scholarship and feminist teaching in universities in England and Wales. Piper focuses on the enormous body of research and writing that Felicity Kaganas achieved in over 35 years of research in family law. It outlines the publications that she and Kaganas wrote together and highlights Kaganas' other significant work. It reflects upon the impact of this work for students, academic colleagues and policy-makers and concludes that many of the same issues Kaganas addressed over the years remain current. Auchmuty, on the other hand, reflects upon 35 years of feminism in the classroom. Both Auchmuty and Kaganas started teaching in English law schools in the 1980s when the job was very different. Since that time, law teaching has become an increasingly feminised profession, with feminist teachers occupying some of the highest positions, and feminist legal research has flourished. In spite of these two profound shifts, the law degree has remained virtually unchanged, especially in respect of the 'core curriculum'. These reflections consider why this is so, focusing on mechanisms of patriarchal containment and backlash, and considers what can be done about it.

KEYWORDS

Professor Kaganas; scholarship; differential impacts; joint parenting; abuse

Family law scholarship – Christine Piper

Introduction

I first met Felicity Kaganas sometime in the summer of 1986 when she arrived at Brunel University. I have to say I was wary of her at the time – but this was because she had recently come from South Africa to teach family law and I was concerned that I might not then get a family law post. I was just finishing a PhD and thought she would queer my pitch. But we soon became friends and there both started a family law career which has lasted now over 35 years.

Felicity has contributed much to the community of family law scholarship over those years, both in her work with others and as a single author. While her work to date covers most areas of family law, it has concentrated upon three areas: grandparents, joint

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parenting and domestic abuse, all with close attention to gender issues. Indeed, while Felicity's work in these areas has been so influentiaI, I realise that she and I have written a great amount together in these areas.

Grannies

One thing we focused on from the beginning was grandparents. I don't know quite why, except that it raised all sorts of issues about the limits of law and we believed that law was not usually helpful in this situation. However, Felicity reminded me that in the UK, lobbying in the 1980s led to the inclusion of provisions to widen access to the courts by 'non-parents' and so grandparents lost any preferential legal status and had to apply to the court, under section 10(9) of the Children Act 1989 like anyone else for leave to apply for section 8 orders (for contact and residence, *inter alia*).[1] Previously, whilst these very general provisions did not refer specifically to grandparents, those provisions had, in effect, singled them out as a distinct group – of non-parents – and they had a special status which the Children Act 1989 had removed.[2]

We started writing about grannies with a short piece in *Family Law* (Kaganas and Piper 1989) in 1989 and then wrote a longer piece in 1990 on 'Grandparents and the Limits of Law' (Kaganas and Piper 1990). Our intention was to examine the law in several jurisdictions but within the remit of conciliation – as it was then termed. We had to conclude, however, that conciliation/mediation was not generally geared to non-parents, including grandparents. In 1991 we also wrote a piece on 'Grandparents and the Children Act 1989' (Kaganas and Piper 1991) and made the point that the outcome of grandparents' applications would inevitably depend on the way the Act was implemented by solicitors, judges and court welfare officers. As we said then, this could lead 'to an improvement in the position of excluded grandparents without undermining parental control more than is already the practice' (Kaganas and Piper 1991, p. 131).

It wasn't until a decade later – in 2001 – that we wrote another article, called 'Contact with Grandparents: "justice v welfare" revisited' (Kaganas and Piper 2001). In that article we looked at the importance of Article 8 of the ECHR (by then incorporated in the Human Rights Act 1998) but concluded that 'new rights are likely to do litte to change the domestic legal landscape in relation to private law contact disputes' and that 'rights will not necessarily "trump" prevailing constructions of welfare which place the child's interest firmly within the nuclear family under parental control' (Kaganas and Piper 2001, p. 150)

We then had a long rest from grannies but were persuaded in 2018 to contribute a chapter to a collection edited by Jonathan Herring and Beverley Clough. The sub-title gave a clue as to what we eventually expected to find: 'Looking after grandchildren: unfair and differential impacts?' (Piper and Kaganas 2018). In that chapter we looked at other material such as the history of the changes in the family and, importantly, we looked at the research evidence for any significant trends in caregiving by grandparents. The Grandparent Plus charity – in 2013 - thought there were such trends and other surveys agreed. Indeed, for informal or part-time care there was some evidence that grandparents were the main carers where the parents were in the workforce or studying.

There was also evidence that grand*mothers* were the main carers and that other countries, notably the USA, Australia and the Netherlands, exhibited at that time the same trends. So, it was full-time care which had changed most in the last decade (Piper

and Kaganas 2018, p. 201). As we said then in relation to grandparents, and particularly grandmothers, this perception of inevitability and lack of choice can be contrasted with the contemporary emphasis on choice and control in the decision to become a parent; with the availability of contraception and abortion, parenthood is a status that is now, more than ever, one that is assumed voluntarily (Piper and Kaganas 2018, p. 220). And – as we wrote at the end – 'We are not returning to an age of close extended families. This is new and the burden borne by contemporary grandparents is heavier' (Piper and Kaganas 2018, p. 223).

Whether that is still the case is not clear. The circumstances in which grandparents, or grandmothers, step in today are different and could be more complicated. In the past grandparents usually looked after grandchildren when their parents died or when illegitimacy of grandchildren was being concealed whereas the current research on special guardianship and grandchildren who could be taken into care now shows that grandparents are 'persuaded' to step in by social services, or do so by their own wish to be 'good grandparents'. In some cases, they may have to deal with contact between their own children with addiction or mental health problems and their grandchildren and they often get no state help, either in the form of finance or advice.

After that, in 2020 we wrote 'Grandparent contact: another presumption' (Kaganas and Piper 2020). Proponents of grandparent rights had argued that there should be a statutory presumption in favour of grandparent involvement and we argued against that, feeling that the requirement to apply for leave gave some protection to mothers. We said that there was 'no more evidence in favour of a legal entitlement to contact for grandparents as a class than there was in 2011'(Kaganas and Piper 2020, p. 151) when the Final Report of the Family Justice Review[3] was published.[4] This body of work may have been focussed on grannies, but like our other work together and like Felicity's solo work, it was also about children's living arrangements, women's roles, changing families and law's role in directing, facilitating or hampering those changes.

Joint parenting

Whilst we started off with grannies, our overlapping concern was with what was called 'joint parenting' or 'shared parenting' at that time. We did chapters on joint parenting in 1994 (Piper and Kaganas 1994) and 1995 in (Kaganas, King and Piper 1995) and later, in 2002, Felicity and I wrote an article entitled 'Shared Parenting: A 70% Solution?' (Kaganas and Piper 2002). The question mark at the end of the title was because, at a conference organised by the Lord Chancellor's Department and the Family Courts Consortium, Hamish Cameron, a consultant child psychiatrist, advocated 'a transparent, easily understood framework' for shared parenting. This was to be a 'court-specified presumptive tariff of "balanced parenting time"' which might be a 70/30 split and would be enforced via section 8 applications.[5] As we wrote then, 'the package that the Children Act 1989 offers to parents would appear not to have worked to increase parental cooperation and decrease litigation' (Kaganas and Piper 2002, p. 365) and so pressure from non-resident parents was again being voiced.[6] Also after the 2002 Report, *Making Contact Work*, and other subsequent events, the press became interested, yet, we said, '[W]here this faith in the advisability of contact in the general run of cases stems from is obscure' (Kaganas and Piper 2002, p. 371). However, professionals who, we said, 'sing from the same song sheet' about the benefits of contact, assume there are benefits. We

argued that 'the introduction of a presumption in favour of shared parenting would not achieve this aim and might be detrimental' (Kaganas and Piper 2002, p. 378). It did of course happen 12 years later in the *Children and Families Act* 2014 and Felicity has written much about this reform and about welfare and legal presumptions or 'assumptions' about the 'good' of contact. It seems that the beneficial effects of these presumptions are still as debateable as they were over 20 years ago.

Domestic abuse

We were also very interested in domestic abuse and its effects – or domestic violence as it was often referred to in the 1990s. We started off with a piece in *Family Mediation* in 1993 (Kaganas and Piper 1993) which had been dedicated, in that issue, to mediation in the context of violence. We made clear that, with pressure for more couples to attend mediation, 'mediators and academics alike were concerned that mediation should not exacerbate the problems of those engaging in it' (Kaganas and Piper 1993, p. 7).We, therefore, looked at research which focused on the problems arising when a couple were faced with mediation where domestic abuse had occurred, but where the abuse was not already suspected or known. We felt that what we wrote would – we hoped – have some impact on what mediators were doing. Unfortunately, that may not have been so as the Family Mediation Council said in 2022 that it was a myth that you could not attend family mediation if you have been a victim of domestic violence.[7] The mediator makes the assessment about suitability. It is clear, therefore, that much depends on the skill and assessment of the mediator.

In 1994 we produced two more articles (Kaganas and Piper 1994a, 1994b). Here we tackled head-on the issue as to whether disputes should be mediated when the partners had been in an abusive relationship. We pointed out that the Law Commission's proposals for divorce reform include a waiting period in order for couples to be made aware of the benefits of mediation but that 'there is little acknowledgement of the complexity of the issue' (Kaganas and Piper 1994a at 265). So, we reviewed research on domestic violence and mediation and pointed out the difficulties which needed to be addressed if those proposals were properly evaluated. The shorter paper also focused on the LCD consultation paper – *Looking to the Future: Mediation and the Ground for Divorce*. That consultation paper had recommended, in effect, that parties who refuse mediation could be compelled to fund the legal process themselves. We saw this as a penalty against victims of domestic abuse and a further refusal to understand the complexity of mediation and domestic abuse (Kaganas and Piper 1994b, pp. 143–145). While a form of compulsory mediation seems no longer to be on the cards, funding for the legal process is today focused mainly upon mediation.

In 1997 we moved on to asking 'How will "they" know there is a risk of violence' (Piper and Kaganas 1997) in relation to the *Family Law Act* (FLA) section 1(d) with mediators and court welfare officers (now CAFCASS officers) devising ways to screen out 'unsuitable' clients. The FLA 1(d) lays down some principles, one of which is 'any risk to one of the parties to a marriage, and any children, of violence from the other party should, so far as reasonably practicable, be removed or diminished'. So, it was again up to professionals to assess risk and to screen out cases where risk was present. Our concern was, however, how will 'the law' know? We wondered not only about welfare professionals, but also about legal

representatives. We went through the screening process in detail but also used a small study conducted in the previous year by the Centre for the Study of Law, the Child and the Family – which we then had at Brunel University. In the two areas we interviewed a total of 36 solicitors: 14 said they 'always' asked about domestic violence, 20 said they did 'sometimes' and 2 'never'. The reasons they gave for their answers were interesting. For example, 10 solicitors referred explicitly to the protection of their client but, in contrast, 15 solicitors gave reasons that made no reference to their clients' welfare. (For further details see Piper and Kaganas 1997, pp. 276–278.) And, of course, screening for risk of abuse is still on the family law agenda.

We were also involved in a book that Shelley Day Sclater and I edited in 1999 called *Undercurrents of Divorce* (Day Sclater and Piper 1999) which is now a Routledge Revival. Felicity and I wrote 2 chapters separately (Kaganas 1999, Piper 1999) and one together on 'Divorce and Domestic Violence' (Kaganas and Piper 1999). And, with others, we began to use the concept of 'coercive control', which is so important a part of the law today.

Skipping to 2010 when we took up this issue again in *Feminist Judgments: From Theory to Practice* (Hunter *et al.* 2010) we contributed a Commentary (Piper 2010) and a Judgment (Kaganas 2010a) on the then and still leading case on contact in the context of domestic violence *Re L (A child) (Contact: Domestic Violence)* [2000] EWCA Civ 194. Felicity, from a feminist viewpoint, re-wrote the judgment saying in her opinion 'I agree with the experts that there should be an assumption that direct contact is not in the child's best interests in cases of domestic violence', stating that it would not lead 'to an excessive focus on physical abuse or past behaviour' (p. 126) as Thorpe LJ had believed.

In 2015 we contributed a chapter to *Law in Society: Essays in Honour of Michael Freeman* (Diduck *et al.* 2015). Our chapter developed our ideas of mediation and cooperative parenting in the context of domestic abuse and was entitled 'Michael Freeman and the Rights and Wrongs of resolving private law disputes' (Kaganas and Piper 2015, pp. 369–393). This was because Michael had published a book in 1983 called *The Rights and Wrongs of Children* (Freeman 1983) and we wanted particularly to use Chapter 6 of that book which was called 'Children as the victims of the divorce process'. We concluded that, whilst Michael Freeman had predicted many of the ways in which family law would change, some of his hopes had not been realised in the way he intended. He wished the law and professionals to 'send a message to parents about the need for cooperative parenting' (Diduck *et al.* 2015, p. 387) and that has of course happened – at least at one level. For us a great concern was that parents – or one of them – might be pressured into agreeing outcomes which do not include the protection they need (Diduck *et al.* 2015, p. 388). And that of course has been a recurrent theme of our work. It is a pity that we still have to repeat it.

Almost 19 years later, as family lawyers will know, the Government announced in January 2024 that the Private Family Law Early Resolution Consultation had been shelved because of concerns raised about the adequacy of the proposed safeguards to protect those who had suffered abuse. They will instead pilot early legal advice.

The concerns Felicity and I have raised over the last 35 years about children's welfare, mediation and domestic abuse are still alive and we hope we have contributed to ways of thinking about them which attend to the welfare also of women, be they grannies or mothers.

I have taken many words to outline all we did together but, of course, writing with me is not all that Felicity did. She also wrote many articles and book chapters, both with other people and individually.

With Alison Diduck she wrote *Family Law, Gender and the State* which is now in its third edition (Diduck and Kaganas 2012). This was the first, and I think only Family Law textbook written from a feminist perspective, and which deviated from the traditional chapter headings of marriage, divorce, etc to include also social, and state regulation of families. In *Undercurrents of Divorce* she wrote about 'Contact, conflict and risk' (Day Sclater and Piper 1999 at 99–120) and in *Body Lore and Laws: Essays on Law and the Human Body* (Bainham *et al.* 2002) she wrote about 'Domestic homicide, gender and the expert' (at 105–126). She helped edit *Surrogate Motherhood* (Day-Sclater *et al.* 2003 at Chapter 9) and in *Children and their Families* (Bainham *et al.* 2003) she and Day Sclater wrote on 'Contact: Mothers, welfare and rights'. In *Feminist Perspectives in Family Law* (Diduck and O'Donovan 2006) she wrote on 'Domestic violence, men's groups and the equivalence argument' whilst in *Rights, Gender and Family Law* (Wallbank *et al.* 2010) she wrote on 'Child protection, gender and rights'. She also wrote about 'Child Protection and the Modernised Family Justice System' in *Vulnerabilities, Care and Family Law* (Wallbank and Herring 2013).

That would be enough but that is not all by a long way. With Shelley Day Sclater she wrote 'Contact Disputes: Narrative Constructions of `Good' Parents' published in *Feminist Legal Studies* (2004) and in *Legal Studies* she wrote in 2018 'Parental Involvement – A Discretionary Presumption'. Over the years, she wrote many more articles and I will simply list the places where they were published: *Child and Family Law Quarterly*, *Journal of Law and Society, Modern Law Review, Journal of Social Welfare and Family Law* and *Current Legal Problems.*

Felicity's vast body of work is read by and has influenced scholars and legal and family professionals around the world. She has been consistent in her devotion to the highest standards of rigour and to her concern for fairness and justice in an often unfair system. But, what is perhaps most interesting, is that while in many other areas of law the debates change or move on, over 35 years of family law scholarship, we are still having the same debates about carers and children, about mothers and fathers and the gendered nature of caring/family living and about what 'welfare' means. Felicity's voice has been crucial to these debates.

The last frontier: feminist legal education

Rosemary Auchmuty

Felicity Kaganas has been one of the leading feminist law teachers of her generation. Her retirement, shortly to be followed by my own, prompts me to reflect on the trajectory of feminist influence on English legal education over the decades since we started out as law teachers in the 1980s. Our paths first crossed in the early 1990s, when Felicity and her Brunel colleagues Christine Piper and Alison Diduck welcomed me into the conference circuit. I went on to become external examiner for their subjects. Though my field is property law, my research on property disputes between cohabitants and later on marriage overlapped with their family law concerns.

Many things have changed in the legal academy in the decades since Felicity and I started out. Law schools have become more numerous, and vastly bigger. While not a positive development in many ways, this expansion does mean that law teachers don't live in fear of losing our jobs, as colleagues in other departments do, and may indeed receive preferential treatment. It has allowed for a greater range and variety of optional modules to be taught, and that, in turn, has created space for feminist teachers. Indeed, in the years since Felicity and I started teaching in English law schools we have seen what looks at first glance like a golden age of feminist legal education. Two factors would seem to have created a climate receptive to feminist critique in what had hitherto been bastions of male privilege and power: the increasing 'feminisation' of the student body and, later, of the staff, and the welcome given to feminist legal research by the Research Assessment Exercise (RAE) and the Research Excellence Framework (REF).

In spite of these two developments, however, I do wonder how much has changed in the legal academy. In particular, the question I ask myself is how far these two factors have affected actual law *teaching*. Have gender perspectives entered the core curriculum to any significant degree? What do our students learn in their ordinary LLB syllabuses about women's different experiences of law or law's role in creating and perpetuating our subordination and, at times, oppression? How well do we prepare our students to recognise and tackle the inequalities and legal injustices suffered by women in the past, and still today, that we have faced ourselves, and that our research has revealed and publicised? *Why is the law degree our students study today so little different from the one we studied 40 years ago?*

A positive environment . . .

The 'feminisation' of the law school

The generation before ours was the last in which women were a tiny minority of students in a relatively small discipline. The expansion of higher education in the 1960s, and the shift to law as a graduate career, brought an influx of students into law schools, of whom a steadily increasing majority were women. By the late 1980s female law students outnumbered male (McGlynn 1998, p. 7) and by 2023 the ratio was 2 to 1 (McHugh 2023).

If women law students were scarce in the generation before ours, women law teachers were almost non-existent. Neither Katherine O'Donovan (McGlynn 1998, p. 61) nor Celia Wells (Wells 2003), p.230) was taught by a single woman even though, in fact, women had been teaching law in British universities since 1920, when Ivy Williams took up a tutoring post at Oxford. Our professional association, then called the Society for Public Teachers of Law (SPTL, now the Society for Legal Scholars, SLS), refused to admit women until 1949 (Cownie and Cocks 2009, p. 68), and the first woman law professor in the UK was not appointed until 1971 (Claire Palley at Queen's University, Belfast), more than 60 years after the first woman professor in another discipline (Edith Morley in English at Reading, 1908). Even when Felicity and I started out, the profession of law teacher had an air of the masculine club: I well remember how the SPTL invited members to bring their wives to the dinner at the annual conference, also alarmingly specifying evening dress.

Women started to enter the faculty in greater numbers around the time that Felicity and I joined. For a long time we congregated at lecturer level, perhaps because pastoral roles were usually allocated to women, considered better suited to this kind of work than men, whereas promotion was determined on the basis of research which (owing to the onerous nature of their duties) women had less opportunity to do (Wells 2003, p. 232). Impostor syndrome, family responsibilities and lack of mentoring also played a part in our slow progress. By 2000, however, there were 55 women law professors in the UK – a higher proportion than in any other discipline, though still fewer than one per law school (Wells 2003, p. 227).

The situation today could not be more different. Our students today will be taught by women – probably more women than men – at every level up to professor, and their management will include women heads of school, deans, pro-vice chancellors and even vice-chancellors. Should any of our students aspire to an academic career, they will see plenty of female role models.

The rise of feminist legal scholarship

The second big change in the UK legal academy is that feminist legal scholarship has flourished. It would be hard to overestimate the importance of this shift. When Felicity and I started at British law schools, there was no pressure to write: if academics published anything, it was generally doctrinal and mostly confined to textbooks and case notes. The Research Assessment Exercise and Research Excellence Framework provided huge incentives for law schools to encourage good feminist scholarship, first by refusing to create a 'women's studies' subject area, so that feminist work had be submitted within the traditional disciplines, and, second, because of the involvement of so many feminists on successive law sub-panels. After some resistance at the start – many of us can claim the distinction of having been rejected by the *Modern Law Review* – all journals and publishers now accept it. Both Felicity and I have benefited enormously from this development.

. . . yet standing still

It is clear that law schools have become more hospitable places for women, both students and staff. Adrienne Barnett, Felicity's colleague at Brunel, has been quoted as saying:

> Comparing my experience of studying law in the late 1970s/early 1980s when there were more male students with the situation now, I think that having more female students enhances the collegiality of the students and peer support. (McHugh 2023)

This in turn would suggest that law schools would be more hospitable to teaching and course content that addresses the female situation in law.

But is this the case? Consider the curriculum that I studied in the 1980s. The core curriculum was essentially the same as today's, less EU law. There was a range of options, none concerned with gender. I was taught the law as it was and, of course, to 'think like a lawyer': selecting the salient legal points out of a mass of facts, identifying the applicable law, and applying it. I quickly found that my feminist notions had no place in my legal studies. I learned to state and apply the law of rape, not to criticise it. That's not a bad education for a feminist – it brings home very clearly what we are up against – but what Sheila McIntyre famously called 'learning to speak male' (Auchmuty 2003, p. 379) hardly

helps us to make sense of our lives and, crucially, closes off opportunities to challenge law's injustice where it exists.

Today there will probably be elements of feminist content available to students on most law degrees. There may be an optional module or two concerned with 'Gender and Law', and sometimes an individual teacher will insert feminist perspectives into a substantive law module, including the core curriculum. Teaching materials are available for most subjects should a keen teacher seek inspiration – for example, the edited textbook *Great Debates in Gender and Law* (Auchmuty 2018) and the articles showing ways the *Feminist Judgments* could be used in the classroom (Hunter 2012). But this does not mean that students *are* necessarily exposed to feminism. Specialist materials sit alongside the ranks of textbooks that make no reference to feminist ideas or scholarship. 'It is thought possible to know a subject while maintaining illiteracy on questions of gender', observes MacKinnon (2003), p. 200). No one has to teach feminist content and, in most law schools, no student is forced to study it.

My conclusion is that, in spite of decades of effort on the part of feminist teachers like Felicity and myself, British law teaching remains remarkably untouched by feminist influence. In many – possibly most – institutions it is still possible to pass through an entire law degree without ever encountering feminism. Even in those places where a committed feminist has introduced the approach into her own teaching, it is still acceptable for students to attack it in their increasingly influential feedback. One mention of a wrong done to a woman and a module may be denounced as 'too feminist'. This happens to me so often that my colleagues treat it as a joke.

The anatomy of resistance

When men were fully in charge, they alone determined the rules for entry and operation. They decided, for example, to admit into their institutions only those in their own image. For centuries the law, aided by custom and social pressure, permitted this, until first-wave feminism began to dismantle sex discrimination in the Sex Disqualification (Removal) Act 1919 which, among other things, allowed women to be admitted to the legal profession. But even this clearly-worded statute was interpreted by disbelieving judges as a *power* rather than a *right*, thus necessitating (following campaigns by second-wave of feminists) the enactment of the Sex Discrimination Act 1975.

Once outlawed, however, overt discrimination is quickly replaced by informal (and therefore less easily spotted and resisted) methods of limitation. The men in charge could still insist on qualifications, framed in sex-neutral ways, that men would always find easier to meet. The classic example is women's admission to the higher judiciary, where the neutral criterion of 'merit' still manages to exclude many women because they have not been able to pursue the same single-minded careers as men. Women's experience as lawyers and judges is different from men's because as women they have faced informal discrimination throughout their lives, or have had broken careers because of caring responsibilities, or have been excluded from men's networking advantages, or are too feminine (so not natural judges) or not feminine enough (so not natural women), or just because their presence challenges men's comfortable homosocial society.

But in universities, the influx of women has not been so contained. Felicity and I have seen an astonishing shift in our academic careers. The great expansion of law schools, the

imposition of stricter recruitment processes and the scramble for research excellence have meant that not only are more and more women being appointed but, proving their merit on fairer criteria, they are being promoted. They now run law schools, even whole universities. They head up REF sub-panels and the SLS itself. Feminist legal research has become respectable, even valued. Feminists have been permitted to teach their research specialism in the odd optional module.

But that is as far as we have gone. Feminism remains marginal to the wider curriculum and any greater infiltration has been successfully resisted.

There is a theory – indeed, it is more than a theory: an observable fact – that every advance in women's rights is followed by a patriarchal backlash. Erika Rackley and I noticed this very clearly when putting together the volumes of *Women's Legal Landmarks*, in which the 'What happened next' section of each landmark, though researched by a hundred different scholars, told a similar tale of reaction and retrenchment that put paid to any narrative of steady progress. The status quo has many ways of perpetuating itself. Every time women make inroads into men's power a way is found to restrict or defuse the threat. The mismatch between the proliferation of feminist legal research and feminists themselves in law schools stands in stark contrast to their lack on influence on law teaching.

The central feature of backlashes, as Susan Faludi explains, is that 'they have always been triggered by the perception – accurate or not – that women are making great strides'. These advances are in turn interpreted by men – 'especially men grappling with real threats to their economic and social well-being on other fronts – as spelling their own masculine doom' (Faludi 1992, p. 13). Faludi is clear that it is not women's *actual* equality that prompts backlash – since women have never achieved this – rather, 'the increased possibility that they might win it' (p.14). The speedy feminisation of the law school and the seriousness with which feminist legal scholarship is now taken are feeding men's perception that women are about to take over completely and *men will lose out*.

Backlash is not a conspiracy – if it were, it would be easier to counter. Rather, it emanates from a range of different directions representing different interests and invoking different strategies. Here are the strategies I think have been employed to ensure that feminism has never been integrated into legal education.

Men still control knowledge

Legal knowledge, like law itself and all institutions, rolls on through its own momentum. Lynne Spender's classic study (Spender 1983) of how men control the knowledge that is passed down from generation to generation is beautifully exemplified in the law textbook. Introduced at the end of the nineteenth century, the textbook sets down a compendium of principles designed with men's interests in mind. Textbooks today all follow the same syllabus because that was what was thought important for law students to know in the days when law was openly patriarchal and lawyers were all men.

The problem for women is that this knowledge is presented as objective, complete, and neutral. Any other focus or approach is seen as subjective, partial, and political. Even where feminist scholarship might be relevant to a particular topic, it is remarkable how the traditional texts manage to avoid mentioning it, even in a footnote. Any additional or substitute material offered by teachers about, say, the differential treatment of women in some areas of law tends to be dismissed as a lecturer's personal hobbyhorse.

Of course, feminists can write their own textbooks, and some (including Felicity) have done so (Diduck and Kaganas 1999 and later editions). But these, unlike the texts that go into successive editions under new authorships as the old ones depart, tend to be withdrawn once the authors retire. There are no feminist texts in my subject, property law, but, even in modules where one is available, there is little guarantee that it will be the one chosen by the module convenor. My own edited *Great Debates in Gender and Law*, designed to demonstrate the possibility of integrating feminist perspectives into every core module and many popular options, is not even used by most of my colleagues teaching those modules.

The marginalisation of feminist influence on the study of law is also demonstrated in the recent vogue for Handbooks and Encyclopaedias in this or that legal area. Some include a chapter (one only) on 'feminist' perspectives. I was asked to write this chapter in no fewer than four of them. One chapter. One author. This does not suggest mainstream incorporation. It suggests, rather, a niche specialism, not core material, only included because there is an author available.

'No need for feminism'

Among the timeless mechanisms of anti-feminist backlash are the discursive techniques, familiar to anyone who has studied the progress of women's legal rights in history. The 'problem' of women can be denied, rendered invisible, declared solved or even over-compensated for, placed low on the hierarchy of needs or declared too great a luxury. We have all heard assertions that, for example,

- women are equal now
- women's life decisions are due to personal 'choice'
- women have gone too far
- men suffer too, and sometimes at the hands of women
- other issues are more pressing (unemployment, poverty, war, any problem faced by men)
- other *people* are more important (special provisions for women are replaced by 'Equality, Diversity and Inclusion' agendas in which every other disadvantaged group appears to need more urgent attention).

Arguments like these are most often used to deny the need for continued feminist analysis, let alone action. But if women are equal now, if the problem is solved or the time not right, why the persistence of the gender pay gap? Why the difficulties women face in trying to combine a career with family responsibilities, in a society that offers little affordable childcare provision and in institutions where vastly increased student numbers mean less and less flexibility over timetabling? Why are most victims of sexual crime women? Why does a woman die every three days at the hands of a man? Why are our reproductive freedoms under constant attack? Why is the rape conviction rate so low? If women 'choose' domestic duties and financial dependence on men, what other options do they actually have? *Why don't we study these things on our law degrees?*

The job has changed

There are many ways of containing women's progress in the workplace. A recurrent strategy is to pressure women to conform to an approved domestic model in the service of husband and family – that is, to get out of the workplace and back into the home. We saw this most clearly after both world wars, when women had enjoyed unprecedented independence. Yet, in defiance of the legal and social pressures, women's participation in the workforce and public life has steadily increased, forcing the development of new strategies to keep women out of competition with men.

The first of these consists of making the conditions under which women work as difficult as possible. Since men's workplaces rarely make provision for caregiving or domestic responsibilities, these should continue to be expected of women. Pregnancy leave (a feminist victory) should be kept to a minimum. Affordable childcare (a feminist demand) should be withheld. It should be made so difficult, or so expensive, to combine paid work with family life that women will be forced to 'choose' to give up work, go part-time, or forgo opportunities to take on more demanding and prestigious roles.

These conditions affect female academics just as much as they affect women in other jobs, but still they want to work – out of necessity as well as ambition – leading, in the legal academy, to the 'feminisation' of the profession noted above. But this very feminisation has taken the shine off the prestige of university law teaching. Since women's work never has the status of men's work, the increasing feminisation of the profession has been accompanied by a corresponding loss of status. As Celia Wells put it 20 years ago, 'Feminisation leads to the conclusion that if a woman can do a job, it can hardly be such a big deal' (2003, p. 231).

This has several consequences for the role. With the huge increase in the number and size of law schools, to be a law teacher in the UK is no longer to be part of an elite. And with so many law professors now, a chair is not the rare pinnacle of academic achievement it used to be. Academics are no longer highly-paid. Salaries overall have lost about 20% of value over the past dozen years (UCU 2021). It cannot be a coincidence that the masculine domination of academe began to decline immediately following the mandatory publication of the gender pay gap in universities. The more women you employ, the lower the gender pay gap. At my own university, Reading, the gender pay gap in 2023 was a shocking 18.7%, an improvement nevertheless from 2022's 25.4%. Felicity's university, Brunel, is only slightly better, with a median hourly pay gap of 14, down from 2022's 20.1% (Jack 2023). But the institutions with the lowest pay gap are mostly newer universities that lack the male-dominated legacy of the older ones, and now have very few male employees; places where the female rate has always represented the norm.

The main reason for the drop in status of law-teaching is that the job itself has changed. Though few of us ever resembled the idealised image of the great scholar dispensing wisdom from his booklined ivory tower, whose research responsibilities, quite apart from his teaching, were negligible, we were once seen as scholarly experts in our fields, delivering research-led teaching to students expected to develop the skills of independent learning and critical thinking. Today, however, our role is to teach an increasingly nervous, dependent and ill-prepared student body at more basic levels than we could have imagined even a decade ago. What once used to be 'men's work', with all the prestige, power and money that that attracted, has become 'women's work': pastoral care, customer service, and instruction of the young.

Male academics are now expected to perform those feminine roles too and, with the student numbers we have today, can no longer confine their teaching to their niche research areas. In consequence, it is not just that more women are being let in; *fewer men want to join*. Forced to adapt to the new feminised role, men are deserting the once overwhelmingly masculine domain for more thrusting, better remunerated careers elsewhere. The law school has become feminised by default.

What all this means is that the purpose of the law school has changed. Legal education is now mass education, its primary goal to satisfy students and give them what they want, which is *the law*, not critiques of it. To ensure their comfort – for, to do them justice, they live in difficult times and face a hostile future – we spend an inordinate amount of our time in counselling and reassuring them, leaving little time for innovation and intellectual challenge. Departing from the traditional syllabus risks alienating students, leading to negative feedback, followed by institutional rebuke. Our time is taken up with preparing more and more aids to learning and responding to questions, complaints, institutional demands, and that negative feedback. Students who take specialist feminist-focused modules usually respond to them positively, but in the core curriculum there is hardly space to include any feminist material, let alone to justify it to students or (in the face of student objections) to management.

Conclusion

I am aware that I have painted a depressing picture of the current state of English legal education. Many people will find my description of the barriers to feminist mainstreaming over-pessimistic (eg Hunter 2023, p. 227). But few will dispute that the law degree our students study remains startlingly impervious to feminist scholarship, in comparison with, say, that of history or English. I have tried in this article to give some reasons why this should be so.

On the positive side, every change of circumstances opens up new possibilities. As the professions relax their grip on the LLB, for instance, we could reform the core curriculum – get rid of property law, perhaps, and replace it with compulsory family law and employment law, which practically demand feminist engagement. Or we could take advantage of the fact that today's students rarely read a textbook (let alone any scholarly critique) and that increasing numbers rely solely on the lecturer's materials. We can seize this opportunity to write feminism into our modules and if the students never read anything else they will know no other story.

In conclusion, in spite of the many challenges we have faced, I trust that Felicity will agree that law teaching has been, for her as it has been for me, a rewarding career. We have been lucky to work in a profession that allowed us to do work that we love, to write about what matters to us, to forge friendships with like-minded colleagues, and even to change some people's lives. I just wish we could have done more.

Notes

1. A status which they had briefly held in the UK as a result of the implementation of the Domestic Proceedings and Magistrates Court Act 1978 and the Children and Young Persons (Amendment) Act 1986. We footnoted Kaganas and Piper (1990), pp. 29–30.

2. They had standing to apply for access during the subsistence of an order for legal custody under s8 (2) of the D P M C A or under s9 (1) of the Guardianship of Minors Act 1971 (G M A). They also have standing when a custodianship order is made and while it is in force. And, where a parent of a child is dead, the parents of the deceased may seek an access order.
3. David Norgrove, *Family Justice Review* Final Report 2011.
4. At that time we also learnt about the *Troxel v. Granville* 530 U.S. 57 (2000) case but this was too late for us to alter our article. In that case the US Supreme Court struck down a Washington law that allowed any third party to petition state courts for contact over-riding parental objections.
5. The conference was organised by the The Advisory Board on Family Law:
   Children Act Sub-Committee and was titled 'Making Contact Work'. The Board later produced *Making Contact Work: A Report to the Lord Chancellor on the Facilitation of Arrangements For Contact Between Children and their Non-Residential Parents and the Enforcement of Court Orders For Contact* 2002.
   The paper Cameron referred to was 'Sanctions of the Last Resort' given at the Conference in November 2001. Also, now, see *Conference Report by the Family Courts Consortium*, 2002.
6. Indeed S. 1(2A)(2B) was inserted (22.10.2014) 12 years later by the Children and Families Act 2014 (c. 6), ss. 11(2), 139(6); S.I. 2014/2749, art. 3 (with art. 4).) i.e. the presumption. Section (2A)A states that 'a court, in the circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare'. (2B) In subsection (2A) 'involvement' means involvement of some kind, either direct or indirect, but not any particular division of a child's time.
7. Family Mediation Council January 17, 2022, in their *News*.

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