

Contents

<i>Preface</i>	v
<i>Summary of Contents</i>	ix
<i>List of Contributors</i>	xxvii
Introduction: Gender and Judging: Overview and Synthesis	3
<i>Ulrike Schultz and Gisela Shaw</i>	
1. What the Book is About.....	3
1.1 General Overview.....	3
1.2 Approaches to the Subject	4
1.3 Differences between Civil and Common Law Judiciaries	5
1.4 Judges and Prosecutors.....	6
2. The Advancement of Women in the Judiciary	7
2.1 Access and Early Development	7
2.2 The Situation Today	14
2.3 Gender Factors in Recruitment and Entry to the Profession.....	15
2.4 Careers in the Judiciary—Chances and Impediments.....	18
2.5 Biographical Factors: Age, Origin, Sexual Orientation	21
2.6 Promoting Women in the Judiciary: Quotas and Demands for Diversity.....	22
3. The Judiciary: Still a Gendered Organisation?.....	24
4. Do Women in the Judiciary Make a Difference?	26
4.1 Views of Pioneering and Eminent Female Judges.....	27
4.2 The Issue of Gendered Judging	29
4.3 Differences in Habitus and Social and Legal Qualities	30
4.4 Gender and the Quality of Judgments	33
4.5 Impact of Gender in Gender-coded Cases.....	34
Workplace Sexual Harassment	34
Immigration Law.....	35
Family Law.....	35
Social Law	36
Criminal Law	36
Supreme Court Judgments.....	37
5. Feminist Judges and Judging	38
6. Gender Trainings for the Judiciary	40
7. Conclusion	42
8. References	44

PART 1: PIONEERS AND EMINENT WOMEN JUDGES

1.1. Becoming the First Women Judges in Ontario: Women Lawyers, Gender and the Politics of Judicial Appointment	51
<i>Mary Jane Mossman</i>	
1. Introduction	51
2. Stories of Three Women in Law: Helen Kinnear, Margaret Hyndman and Mabel Van Camp	53
3. The Puzzle of Judicial Appointment: Gender, Feminism and the Legal Profession	60
4. References	66
1.2. Profiles in Leadership: Eminent Women Judges in the United States	69
<i>Elaine Martin</i>	
1. Introduction	69
2. Patricia M Wald: Her Gendered Path to the Bench	71
3. Dorothy M Nelson, Her Unique Perspective as a Woman Leader	73
4. Rosemary Barkett: Her Feminist Jurisprudence	77
5. Conclusion	81
6. References	81
1.3. The Entry and Integration of Women into Judicial Positions in Israel	83
<i>Eyal Katvan</i>	
1. Introduction	84
2. Framework and Sources	84
3. Women Judges Prior to the Establishment of the State	87
3.1. Hebrew Courts of Peace	87
3.2. Women on the HCP—Formal Recognition	90
3.3. The Participation of Women on Other Quasi-judicial Bodies	91
4. Women Judges Immediately Following the Establishment of the State	93
4.1. Climbing up from the Bottom of the Ladder: The Magistrates' Court	94
4.2. Why only in Haifa?	94
4.3. Why didn't Women Handle Matters of Personal Status? ..	95
4.4. Why only Two Women Judges?	95
5. Developments Since the Establishment of the State	96
6. Private and Collective Initiatives	98

7. Conclusions	99
8. References	100
1.4. First Female Judges in the Weimar Republic in Germany: Reflections on Difference	103
<i>Marion Röwekamp</i>	
1. Introduction	103
2. Biographical Data on the First German Female Judges	105
3. First Impressions and Experiences of Female Judges	108
4. Have Female Judges Changed Jurisprudence?	113
5. Conclusion	116
6. References	118

PART 2: WOMEN JUDGES' WORK AND CAREERS

2.1. Feminisation of the French 'Magistrature': Gender and Judging in a Feminised Context	125
<i>Anne Boigeol</i>	
1. Introduction	125
2. Feminisation of the <i>Magistrature</i>	126
2.1. The Selection Process: A Chance for Women.....	128
2.2. Feminisation—A Phenomenon at all Levels of the Judicial Hierarchy, but... ..	129
2.3. The Persistence of a Glass Ceiling	129
2.4. Is Affirmative Action Required to Change the Gender Profile of Presidents of Courts?	133
3. Gender Consciousness—A 'Private' Issue	134
3.1. No Women Judges' Voices of Support.....	134
3.2. No Women Judges' Associations, but... ..	135
3.3. Negative Gender Consciousness?.....	137
4. Gendering Judging	138
4.1. Gendering the Judges.....	138
4.2. Gender and Judging.....	140
5. Conclusions	141
6. References	142
2.2. 'I was noticed and I was asked ...' Women's Careers in the Judiciary. Results of an empirical study for the Ministry of Justice in Northrhine-Westfalia, Germany	145
<i>Ulrike Schultz</i>	
1. The Project	145
2. The German Judiciary	146

2.1. Justice in Germany	146
2.2. Women in the Judiciary: Statistical Evidence	148
3. Careers in the Judiciary	150
3.1. Career Structure	150
3.2. The Hidden Structure	152
3.3. Women in Career Positions	152
4. Career Factors	153
4.1. Soft Career Factors	153
4.2. Promotion Hurdle Number One: Administrative Experience	154
4.3. Promotion Hurdle Number Two: <i>Erprobung</i>	155
4.4. Promotion Criterion: Assessment	156
5. The Promotion Process	157
6. Career Obstacles for Women	158
6.1. Work–life Balance	158
6.2. Motherhood	158
6.3. Part-time Work	159
6.4. Discrimination	160
6.5. Partners' Careers	160
6.6. Competition among Women	161
6.7. Gender Stereotypes	161
6.8. Do Women Judges Judge Differently?	162
6.9. Inner Career Obstacles and Career Renunciation	162
7. Results	163
8. References	164
2.3. Women Judges and Magistrates in Kenya: Challenges, Opportunities and Contributions	167
<i>Winifred Kamau</i>	
1. Introduction	167
2. Historical Legal Background	168
3. The Constitution of Kenya, 2010	170
4. The Kenyan Judiciary: Structure and Organisation	171
4.1. Superior Courts	172
4.2. Subordinate Courts	173
5. Appointment of Judicial Officers	175
5.1. The Judicial Service Commission	175
5.2. Appointment Process of Judges and Magistrates	177
6. Women's Experience in the Kenyan Judiciary	180
6.1. Women Judges	180
6.2. Women Magistrates	182

6.3. General Challenges faced by Women Judicial Officers	184
7. Contributions of Women Judges and Magistrates	184
7.1. The Kenya Women Judges Association	185
7.1.1. Establishment of the Family Division of the High Court	185
7.1.2. Bench-book on Family Law	186
7.1.3. Compendium of Sexual Offences Cases	186
7.1.4. Jurisprudence of Equality Programme (JEP)	186
8. Conclusion	189
9. References	189
2.4. The Impact of Women on the Administration of Justice in Syria and the Judicial Selection Process	191
<i>Monique C Cardinal</i>	
1. Introduction	191
2. Methodology	192
3. An Appointments Process Based on Merit	193
3.1. Higher Qualifications for Women	194
4. The Syrian Government's Fight Against Judicial Corruption	199
5. Judicial Autonomy of Judges and Public Prosecutors	201
5.1. Institutional Structures	202
5.2. Personal Connections and Powerful People	203
5.3. Personal Integrity: Sense of Duty, Reputation and Financial Security	205
6. Conclusion	208
7. Acknowledgements	209
8. References	209
2.5. Skills for Judicial Work: Comparing Women Judges and Women Magistrates	211
<i>Kathy Mack and Sharyn Roach Anleu</i>	
1. Introduction	211
2. Skills and Qualities Needed for Judicial Work	215
2.1. Legal Values	217
2.2. Legal Skills	220
2.3. Interactive Qualities	224
2.4. Empathy, Communication and being a Good Listener	226
3. Conclusion: Skills, Gender and Court Hierarchy	227
4. References	229

2.6. Professional Stress, Discrimination and Coping Strategies: Similarities and Differences between Female and Male Judges in Switzerland	233
<i>Revital Ludewig and Juan LaLlave</i>	
1. Introduction	233
1.1. Perceptions of Emotional Experiences in Judging	235
1.2. Discrimination	236
2. Questions and Methods	237
3. Results	238
3.1. Professional Difficulties	238
3.1.1. Time Pressure	238
3.1.2. Problems with Colleagues	239
3.1.3. Decision-making	239
3.1.4. Professional Stress.....	239
3.1.5. Subjective Perception of Professional Problems	239
3.2. Coping Strategies.....	240
3.2.1. Cognitive-emotional Coping Strategies	241
3.2.2. Emotional-avoidance Coping Strategies	241
3.2.3. Tactical Coping Strategies	242
3.2.4. Social Support Coping Strategies	242
3.3. Work-life Balance.....	243
3.3.1. Impact of Profession on Personal Life.....	244
3.3.2. Impact of Personal Life on Professional Goals	244
3.4. Satisfaction	245
3.4.1. Job Satisfaction	245
3.4.2. Family Life Satisfaction	245
3.4.3. Standard of Living	245
3.5. Discrimination.....	246
3.5.1. Canton Affiliation	246
3.5.2. Gender.....	246
4. Discussion: Gender Similarities and Differences Hypothesis	248
5. References	251

PART 3: GENDER PERSPECTIVES IN JUDGING

3.1. Gendered Experiences of a Judge in Germany	255
<i>Ruth Herz</i>	

3.2. Women Judges in the Netherlands	267
<i>Bregje Dijksterhuis</i>	
1. Introduction	267
2. Female Participation in the Dutch Legal Profession	268
2.1. The Distribution of Women in the Judiciary	268
2.2. Career Opportunities.....	269
2.3. The Debate in the Media on Quantitative Feminisation of the Judiciary	271
2.4. Diversity Policy in Favour of Male Judges?	275
3. Gendered Judging	276
3.1. A Successful Methodological Approach	276
3.2. Gendered Judging in the Field of Alimony: The Results	278
4. References	282
3.3. Gender and Judging in Traditional and Modern Societies: A Comparison of Two Case Studies (Ivory Coast and Italy)	283
<i>Maria Rita Bartolomei</i>	
1. Introduction	283
2. Women Judges Among the Abron Ethnic Group	285
3. Women Judges in the Marche Region of Italy	289
3.1. Women Judges' Views	290
3.2. Female Lawyers' Views	293
3.3. Male Judges' Views	295
3.4. Male Lawyers' Views	296
3.5. Overview	297
4. Concluding Remarks	299
5. References	300
3.4. Gender Arguments and Gender Perspective in Legal Judgments in Argentina	303
<i>Andrea L Gaston, M Angela Amante and Rubén Rodriguez</i>	
1. Introduction	303
2. Research Design and Methodology	306
3. Case Study	308
4. Results Obtained.....	310
5. Summary and Conclusions	313
6. References	314
3.5. Do Women on South Africa's Courts Make a Difference?	317
<i>Ruth B Cowan</i>	
1. South Africa's Gender Diversity Priority	317
2. The Reality of Judicial Gender Diversity	318

3. Should Women Make a Difference? Do Women Make a Difference?	320
4. The Study Reported Here	321
5. Where 'Women's Issues' are Involved	322
5.1. <i>S v Jordan and Others</i>	322
5.2. <i>Volks v Robinson</i>	324
5.3. <i>Masiya v Director of Public Prosecution Pretoria</i>	326
6. Did the Women Make a Difference in Cases Involving Women's Issues?	328
7. When Women's Issues Were Not Before Them	329
8. Voices of Disagreement	330
9. What Can be Said?	332
10. References	333

PART 4: GENDERED CONSTRUCTION OF JUDGES

4.1. 'May it Please the Court'. Forming Sexualities as Judicial Virtues in Judicial Swearing-in Ceremonies	337
<i>Leslie J Moran</i>	
1. Forming Sexualities as Judicial Virtues—A Case Study.....	337
2. Conclusions	350
3. Acknowledgements	351
4. References.....	351
4.2. Let History Judge? Gender, Race, Class and Performative Identity: A Study of Women Judges in England and Wales	355
<i>Hilary Sommerlad</i>	
1. Introduction	356
2. Research Methods	359
3. Motivations for, and Sites of, Entry	360
4. Role Negotiation	362
5. Women's Judicial Performativities	365
6. Contestation, Resistance and Closure	369
7. Concluding Remarks	371
8. References	373

PART 5: FEMINIST JUDGES AND FEMINIST ADJUDICATION

5.1. Must Feminist Judges Self-identify as Feminists?	379
<i>Beverley Baines</i>	
1. Introduction	379
2. Feminist Adjudication	381

2.1. Three Feminist Legal Methods	381
2.1.1. Asking the Woman Question	382
2.1.2. Feminist Practical Reasoning	383
2.1.3. Consciousness-raising	384
2.2. Feminist Adjudication	385
3. The Limits of Feminist Self-Identification	386
3.1. Two Limitations	386
3.1.1. Distinguishing Professional Cultures	386
3.1.2. Distinguishing Feminist Legal Theories	391
3.2. Two Theories	393
4. The Limits of Feminist Adjudication	393
4.1. Three Limitations	393
4.1.1. Silence	393
4.1.2. Inconsistencies	394
4.1.3. Expectations	394
4.2. Power	395
5. Conclusions	395
6. References	396
5.2. Justice Marcia Neave: Case Study of a Feminist Judge	399
<i>Rosemary Hunter</i>	
1. Introduction	399
2. Predictions	400
3. Method	402
4. Statistical Findings	403
5. Decisions	405
5.1. Inclusivity: Creating New Legal Knowledge	405
5.2. Contextualisation	408
5.3. No or Non-generalisable Difference	409
5.4. Classic Feminist Issues	411
6. <i>Giller v Procopets</i>	413
7. Conclusions	417
8. References	418
5.3. What's in a Label? Argentine Judges' Reluctance to Call Themselves Feminists	419
<i>Beatriz Kohen</i>	
1. Introduction	419
2. The Study	422
3. The Consequences of Working with a Gender Perspective and a Commitment to Equality Between Men and Women	423
3.1. Does a Judge with that Orientation Need to be a Woman?	424

3.2. The Public Declaration of the Judges' Sympathies with Feminist Goals	425
4. Understanding the Judges' Refusal to Identify with the Feminist Label	426
4.1. The Difficult Position for Women in Argentina	426
4.2. The General Reluctance to Self-identify as Feminist	428
4.3. The Attitudes of the Judges Interviewed	429
5. Summary	432
6. References	433
5.4. A Feminist Adjudication Process: Is There Such a Thing?	435
<i>Reg Graycar</i>	
1. Introduction	435
2. Gendered Harms	438
2.1. Limitation of Actions Rules.....	439
2.2. Evidentiary Issues	439
2.3. Problems in Attributing Responsibility.....	440
2.4. Jurisdictional Issues	440
3. Systemic Injuries and Feminist Adjudication: Some Background Concerns From Feminist Legal Theory	441
4. The 'Grandview Agreement'	443
4.1. The Benefits	445
4.2. The Adjudication Process	445
4.3. The Hearings	446
5. The Women's International War Crimes Tribunal (WIWCT) ..	450
5.1. 'Not a Mock Trial but a Real Trial without Legal Force'	453
6. Some Concluding Reflections	454
7. References	455

PART 6: QUOTAS AND DIVERSITY

6.1. Which Judicial Selection Systems Generate the Most Women Judges? Lessons from the United States	461
<i>Sally J Kenney</i>	
1. Introduction	462
2. Why so Few? Explanations	462
3. Does Method of Selection Explain The Variation?	469
4. What Does Increase the Number of Women?	473
5. Conclusions	475
6. References	476

6.2. Gender Quotas for the Judiciary in England and Wales	481
<i>Kate Malleison</i>	
1. Introduction	481
2. Diversity Policies in the Judicial Appointments Process in England and Wales	483
2.1. The Use of Quotas in England and Wales	484
3. The Legal Framework Governing the Use of Quotas in England and Wales	485
4. Quotas and Merit: Rethinking the Ranking Model of Merit Selection in the Judiciary	488
5. Different Quota Models	493
6. Conclusion	497
7. References	498
6.3. Rethinking Judicial Diversity	501
<i>Erika Rackley</i>	
1. Introduction	501
2. A Working Definition of Diversity	504
3. Inclusive Diversity	506
4. Transformative Diversity	511
5. From Inclusive to Transformative Diversity and Back Again ..	514
6. Conclusion	517
7. References	517
PART 7: GENDER AND JUDICIAL EDUCATION	
7.1. Gender and Judicial Education in India	523
<i>Ann Stewart</i>	
1. Introduction	523
2. The Original Gender and Law Education Project	524
2.1. The Institutional Context	525
2.2. Project Design	526
2.3. Evaluation	530
3. Locating the Programme	532
3.1. The 'Development' Framework: Judicial Reform Projects	532
3.2. Judicial Reform in India	533
3.3. Women in the Judiciary	535
3.4. Where are They Now?	536
3.5. Individual Agency and Institutional Development	538

4. Conclusions	540
5. References	541
7.2. Gender and Judicial Education in Japan	543
<i>Kayo Minamino</i>	
1. Introduction: Japan's Ranking in International Gender Indices	543
1.1. Why is CLE a Subject for International Comparison in Japan?	544
1.2. Limited Accessibility to Information on Judicial Education	545
2. Gender Bias in the Judiciary Holding Back Women's Empowerment	546
2.1. Employment Discrimination Lawsuits in Japan	546
2.2. NGO's Action to Protest the Gender Biased Decision	548
2.3. Settlement following CEDAW Concluding Observations 2003	549
3. Japan's Judicial Education and Gender Issues	550
3.1. One-hour Lecture on Women's Human Rights	550
3.2. Administration of Justice and Bureaucratic Judiciary	551
3.3. Gendered Working Conditions of Judges	552
4. Conclusion: Judicial Independence From a Gender Perspective	553
5. References	554
7.3. Engendering the Judiciary—Lessons from the Philippines	557
<i>Atsuko Miwa</i>	
1. Introduction	557
2. Early Efforts Towards a Gender-Responsive Philippine Judiciary	558
3. Programme of Action to Mainstream Gender in the Judiciary and Committee on Gender Responsiveness in the Judiciary (CGRJ)	560
4. Gender Training for the Judiciary	563
4.1. Gender Curricula of Mandatory Continuing Legal Education (MCLE)	563
4.2. 'Seminar-Workshop on CEDAW, Gender Sensitivity and the Courts' conducted by the Philippine Judicial Academy (PHILJA) of the Supreme Court	564
5. Gender Justice Award	566
6. Conclusion: Further Challenges	568
7. References	569

7.4. Gender Training for the Judiciary in Cambodia	571
<i>Keiko Sawa</i>	
1. Introduction	571
1.1. The Aim of the Collaborative Research	571
1.2. Why Cambodia?	572
2. Gender Training in Cambodia	574
2.1. Japan's Support for Lawmaking in Cambodia	574
2.2. Overview of Judicial Education Support	575
2.3. Gender Training for the Judiciary in RSJP and LTC	577
2.4. Training for Practising Judges and Prosecutors by the Ministry of Women's Affairs	578
3. The Significance and Range of Gender Training in Cambodia	579
3.1. Issues in Gender Training for the Judiciary	579
3.2. Gender Training for the Judiciary in the Cambodian Context	579
3.3. The Acceptance of Gender Law in Cambodia	581
4. Conclusion	583
5. References	583
7.5. Do German Judges Need Gender Education?	585
<i>Ulrike Schultz</i>	
1. Introduction	585
2. Legal System in Germany	586
3. Gender Bias in Judging	587
4. Do Women Judge Better or Differently?	588
5. Changes in Law	589
6. Gender in Legal Publications	591
7. Gender in Legal Education	592
8. Gender Training for the Judiciary	594
9. Concluding Observations	595
10. References	597
<i>Index</i>	599