

ON FIRSTS, FEMINISM, AND THE FUTURE OF THE LEGAL PROFESSION

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This is my inaugural attempt to write about women in the legal profession and my own experiences as a woman in that profession. I must confess that I find the endeavor somewhat uncomfortable. I have spent most of my scholarly career researching and writing about a thirty-year period in American constitutional and civil rights history. I like to know a lot before I write a little. Moreover, I have spent my career writing histories not my own. My goal has always been to amplify the voices of those whose stories and claims have been hard to hear. Now, lately, and I imagine into the future, I find myself asked to share my own story and that of others like me—women with status, resources, and education that give them ample opportunity to speak for themselves.

As I thought about how to write on this new and uncomfortable topic, I realized that two guiding principles that have defined my scholarship in constitutional history apply here too. Both flow from the foundational premise that the most visible markers of constitutional change—Supreme Court cases, constitutional amendments—are better understood as moments of punctuation in longer stories than as changes themselves. The first lesson that flows from that premise is that change is a process, not a point in time. The shift from past to present is rarely instant or binary. The second and related lesson is that change is not made by a single person, institution, or set of elite actors. It is the product of the actions of many different people—those who join a protest or write a letter to a lawyer or file a case or write a newspaper or law review article. Change happens when people—constrained and opportunistic, selfish and selfless, connected and alone—make it happen.

Milestones like the Nineteenth Amendment can easily invite the celebration of a moment: August 18, 1920, when American women became voters.¹ But our commemoration need be limited to neither celebration nor

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1. *The 19th Amendment*, NAT'L ARCHIVES (May 16, 2019), <https://www.archives.gov/exhibits/featured-documents/amendment-19> [<https://perma.cc/6Q43-VYJD>].

that single moment. It should also be a time for us to recognize what preceded that moment and followed it, what it left to be accomplished, and who played critical but unrecognized roles. It can and should provide an opportunity to reflect on how the process of change unfolds and what part each of us, as individuals, in our institutions, and in the profession writ large, have played and can play in the future.

I. THE PERSONAL STORY

It is fair to say that I did not always have a particularly robust sense of myself as part of a story of gender equality, in the legal profession or otherwise. I certainly did not, until recently, have a sense of the role I would or could play in attaining further gender equality in the legal profession by virtue of serving as the first woman dean of the University of Virginia School of Law.

Growing up, it seemed to me—to the extent that I thought about it—that Second Wave Feminism had already generally succeeded. My mother completed her education (through a doctorate) and went to work full time during my childhood. I found the world as open to me as it was to my two older brothers. They were my models, and what they modeled seemed entirely possible for me too. My mother’s question was always, “If not you, who?” Perhaps in answer, I joined the boys’ wrestling team in middle school. I had grown up boxing and wrestling with my brothers. It seemed like the natural next step for me and a largely uncontroversial one in my world. Women were equal. I could wrestle.

For the rest of my educational career, the fact that I was a woman seemed mostly not to matter. My schools and my classes during college, law school, and graduate school in history were filled with fairly even numbers of men and women. I supported my friends who majored in women’s studies. But I studied race and class because I wanted to use my education and power on behalf of those systemically marginalized in our society. To me, that was not women—or at least not the privileged, white women who still seemed to dominate the feminist imagination.

Looking back, I can see more clearly my own inklings of the unfinished business of Second Wave Feminism. To join that wrestling team, I was required to take a fitness test many of my male teammates could not have passed. In college, I helped found Women’s Street Theater, an organization that brought dramatic education about rape and sexual harassment to our peers on campus. I encountered belittling behavior and harassment on occasion and witnessed far more sex, gender, and intersectional discrimination, harassment, and assault around me. For the most part, however, gender inequality as I experienced it from my relative position of

privilege felt unsystematic and already a vestige of the past. I called myself a feminist as a political stance I chose rather than a personal burden I carried.

Then I entered the work world, and I could see signs of continuing gender inequality all around me. I not infrequently found myself the only woman in the room, or the only woman to speak, or the only woman in a high-status position. When I entered the academic teaching market in 2000, only 6.4% of tenured faculty were women.² Neither my law school nor my university—like so many others—had ever been led by a woman.³ My colleagues and my superiors were overwhelmingly male.

When I became a parent, I realized that my expectations that men and women would share equally the benefits and burdens of work in the home and careers in the world were far less widely shared than I had anticipated. My husband was also a UVA law professor, and he and I were committed to co-parenting. It was hard to do. Schools, teachers, other parents, and children's organizations from soccer to ballet and beyond often treated me as the only relevant parent for appointments, potlucks, and playdates. My children's expectations for my presence in their school lives also exceeded their expectations for my husband. Given all of this, I should not have been surprised that I felt more guilt than he did when work interfered with family—despite the fact that co-parenting and identical jobs meant that we spent basically the same amount of time with our children.

Then I became a first. I never expected to be a first. I thought the firsts were all behind us. Even when I joined the boys' wrestling team, it had not felt like I was a first. There was no fanfare, no announcement, no sense of radical transformation. This new first was nothing like that one. When I became dean of UVA Law School in the summer of 2016, I was both the first female dean and the first Jewish dean in our two-hundred-year history.⁴ That is a bit of an overstatement, as the school did not name its first dean until 1904, eighty-four years after the Law School's founding.⁵ But I was the twelfth, and it was 2016.⁶

What was particularly striking about this “first” was that aside from some older Jewish alumni who had attended the Law School when anti-Semitism was clearly more pronounced, the Jewish milestone was not nearly

2. Laura M. Padilla, *A Gendered Update on Women Law Deans: Who, Where, Why, and Why Not?*, 15 AM. U. J. GENDER SOC. POL'Y & L. 443, 477 (2007).

3. Mike Fox et al., *Women Who Led the Way*, UVA LAWYER, Fall 2019, at 57.

4. *UVA Law School History*, UNIV. VA. SCH. LAW: ABOUT THE SCHOOL, <https://www.law.virginia.edu/about/uva-law-school-history> [<https://perma.cc/4G2J-PLY9>]; *UVA Stories: Risa Goluboff—The Law School's First Woman Dean* (WTJU 91.1 FM broadcast 2018), <https://player.fm/series/wtju/uva-stories-risa-goluboff-the-law-schools-first-woman-dean> [<https://perma.cc/4774-2CHA>].

5. *UVA Law School History*, *supra* note 4.

6. *Id.*

as salient to most people as the gender milestone. I took that then and I still take it now as an indication—despite the current spike in anti-Semitic violence in the U.S. and around the world— that perhaps in some regards we have come further with religious pluralism than gender equality.

I know some “firsts” who resist the label as either unimportant or affirmatively retrogressive. I have embraced it, not because it is everything—it is not—but precisely because it is a moment of punctuation in my own process of recognizing the ways gender has shaped my career and what it allows me to shape in turn. Shortly after I was named dean, my father asked whether I was still picking pieces of glass out of my hair. I laughed, but the answer was yes. The remnants left from shattering that particular glass ceiling remind me that change is a process, not a point in time.

II. THE UVA STORY

Had Elizabeth Tompkins known the phrase “glass ceiling” when she became one of the first female law students at the University of Virginia School of Law in 1920,⁷ I have no doubt that she would have agreed that the glass shards were mighty hard to shake from her hair. Tompkins and her classmates Rose May Davis and Catherine Rebecca Lipop began their legal studies just a few weeks after the ratification of the Nineteenth Amendment.⁸ This year, then, marks a milestone in my institution as well as in the nation: one hundred years of suffrage and one hundred years of educating women to be lawyers at UVA.

Tompkins’ story epitomizes for me both how change is a process rather than a point in time and how individual people make change happen. As women pushed for the vote in 1919, so too, in the words of then-law school dean William Minor Lile, they “clamored” for admission to the University of Virginia for graduate study.⁹ Even that was not the beginning, however. By that time, UVA had already been educating, though not granting degrees to, teachers and nurses for decades.¹⁰ In order to get out in front of potentially

7. *History of Women at UVA*, (RE)IMAGING WOMEN IN STEM (2017), <http://voicesand-visibilityuva.org/about-these-portraits/women-at-uva-history> [<https://perma.cc/7H6H-GXG8>].

8. Peter Wallenstein, “*These New and Strange Beings*”: *Women in the Legal Profession in Virginia, 1890–1990*, 101 VA. MAG. HIST. & BIOGRAPHY 193, 207 & n.30 (1993).

9. Dean William Minor Lile, Address to Law Alumni at the University of Virginia Centennial Celebration (June 3, 1921), in *THE CENTENNIAL OF THE UNIVERSITY OF VIRGINIA, 1819–1921: THE PROCEEDINGS OF THE CENTENARY CELEBRATION, MAY 31 TO JUNE 3, 1921*, at 149, 156 (John C. Metcalf et al. eds., 1922), <https://hdl.handle.net/2027/uva.x000471619?urlappend=%3Bseq=210> [<https://perma.cc/FZ5M-SKKT>].

10. See Anne E. Bromley, *Six Memorable Milestones for Women at UVA*, UVA TODAY (Nov. 15, 2017), <https://news.virginia.edu/content/six-memorable-milestones-women-uva> [<https://perma.cc/C6US-K5A3>]; Sierra Bellows et al., *Women at the University of Virginia*, VA. MAG. (Spring 2011),

more radical change from the legislature in 1919, the University decided to admit a small number of women to its graduate schools—with higher standards of admission—for the fall of 1920.¹¹

Tompkins and Davis entered the Law School as regular, degree-seeking students, while Lipop, the law librarian, enrolled as a “special student.”¹² It was clear to Tompkins that admission was the beginning, not the end of her journey. She later recalled that it took the men in her class “one semester to find out that I was not after a husband and another semester to find out that I could do the work. After that, everything was fine.”¹³ “Fine” hid a good many remaining challenges. “Fine” did not mean all of the faculty were thrilled with the new female students. Even though some of her professors, including the dean, found her “powers of acquisition and of appreciation of legal principles . . . fully equal to those of the men in the front rank of the graduating class,”¹⁴ she found one professor so resistant that the “invisible wall” he had erected to her academic success was “as inevitable as the Rock of Gibraltar [sic].”¹⁵ It was “destroying any confidence [she] ever had in [her]self.”¹⁶ She also lacked the intellectual community that the men in her class enjoyed in their fraternities, where they had “a round table and discuss[ed] Law every night for an hour.”¹⁷ Excluded from the fraternities, and with no alternatives available, she lamented, “There has been, and there is, no one to argue with when I leave class at noon.”¹⁸

Upon graduation, Tompkins became the first woman to join the Virginia bar, and she clerked for a local law firm for two years. Though one of her fellow lawyers went out of his way to help her learn the ropes, the principal partner had “yet to offer to show [her] a single thing at the Clerk’s

https://uvamagazine.org/articles/women_at_the_university_of_virginia [<https://perma.cc/XN58-HM9V>]; (RE)IMAGING WOMEN, *supra* note 7.

11. UVA Board of Visitors, Meeting Minutes (Feb. 19, 1920), http://xtf.lib.virginia.edu/xtf/view?docId=2006_09/uvaGenText/tei/bov_19200219.xml&chunk.id=d3&toc.id=&brand=default [<https://perma.cc/7ZPP-FR69>]; UVA Board of Visitors, Meeting Minutes (Jan. 12, 1920), http://xtf.lib.virginia.edu/xtf/view?docId=2006_09/uvaGenText/tei/bov_19200112.xml&chunk.id=d3&toc.id=&brand=default [<https://perma.cc/XZ32-Y2L6>]; *see* Dean William Minor Lile, *supra* note 9, at 156.

12. Wallenstein, *supra* note 8, at 207.

13. Jane Roush, *Early Women Law Graduates Recall Study in Male World*, VA. L. WEEKLY, Apr. 11, 1980, at 1, 3.

14. William Minor Lile, *Annual Report of the Law Department to the President of the University*, Jan. 1, 1924, ANNUAL REPORTS TO THE PRESIDENT, 1904–1958, Accession #RG-2/1/1.381, Special Collections, University of Virginia Library, Charlottesville, VA (on file in Deans’ Papers, University of Virginia Law Library).

15. Letter from Elizabeth N. Tompkins to her father (Apr. 22, 1921), <https://archives.law.virginia.edu/records/mss/97-4/digital/1098> [<https://perma.cc/LDP2-P7CZ>].

16. *Id.*

17. *Id.*

18. *Id.*

office.”¹⁹ Once the clerkship ended, Tompkins, like other women lawyers of her time and for some time to come, had limited career options and trouble finding a permanent position. Dean Lile suggested that she hang her own shingle and offered his support and advice on how to do so.²⁰

Elizabeth Tompkins’ story is not unique to UVA or the Commonwealth of Virginia. When, in 1870, Ada Harriet Miser Kepley received her Bachelor of Laws from what is now Northwestern University—becoming the first woman in the United States to graduate from law school—it was illegal for women to practice law in Illinois.²¹ Though many law schools admitted women by 1920, others continued to exclude them as late as 1951.²² Those women who did manage to attend and graduate from law schools across the country faced many of the problems Tompkins did—discrimination, social and intellectual isolation, lack of mentoring, and most fundamentally, limited career prospects.²³ This trend continued through the middle part of the twentieth century, with most firms refusing to hire women lawyers. Women who found jobs in private practice tended to cluster in fields like family law, tax, and estate planning. Others worked as legal secretaries, law clerks for judges,²⁴ or as editors for legal publishing houses.²⁵

19. Letter from Elizabeth N. Tompkins to her mother (June 20, 1924), <http://archives.law.virginia.edu/records/mss/97-4/digital/1106> [<https://perma.cc/QX4C-9NCN>].

20. Letter from Dean William Minor Lile to Elizabeth N. Tompkins (Dec. 4, 1924), <http://archives.law.virginia.edu/records/mss/97-4/digital/1107> [<https://perma.cc/DW57-BVBX>].

21. D. Kelly Weisberg, *Barred from the Bar: Women and Legal Education in the United States 1870–1890*, 28 J. LEGAL EDUC. 485, 485 n.2 (1977).

22. VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* 118 (1998) (“The phenomenon of sexual integration of American law schools was so widespread that by 1920, women had been admitted to 102 of 142 law schools.”). Some elite law schools continued to exclude women until later. *See, e.g., Law School History Timeline*, DUKE LAW, <https://web.law.duke.edu/history/timeline/vertical> [<https://perma.cc/H9MP-STS2>] (Duke Law, 1927); *The History of Columbia Law School*, COLUMBIA LAW SCH., <https://www.law.columbia.edu/-admissions/jd/learn/history-m> [<https://perma.cc/5CLW-4UYG>] (Columbia Law, 1927); *Harvard Celebrates 60 Years of Women at the Law School*, HARVARD LAW TODAY (Sept. 26, 2013), <https://today.law.harvard.edu/harvard-celebrates-60-years-of-women-at-the-law-school/?redirect=1> [<https://perma.cc/J988-EVEH>] (Harvard Law, 1950); *Georgetown Law Timeline 1870–2010*, GEORGETOWN LAW, <https://www.law.georgetown.edu/library/special-collections/archives/georgetown-law-timeline> [<https://perma.cc/A6ZS-3SXD>] (Georgetown Law, 1951).

23. Cynthia Grant Bowman, *Women in the Legal Profession from the 1920s to the 1970s: What Can We Learn from Their Experience About Law and Social Change?*, 61 ME. L. REV. 1, 14 (2009).

24. *See id.* at 7–10, 18 (describing hiring challenges women lawyers faced in the 1940s, 1950s, and 1960s); *see also* JILL ABRAMSON & BARBARA FRANKLIN, *WHERE THEY ARE NOW: THE STORY OF THE WOMEN OF HARVARD LAW 1974*, at 23 (1986) (reporting an HLS professor in 1956 telling women law students: “Why, none of you is going to have any trouble getting jobs whatsoever. Any of you will get jobs as legal secretaries at any firm.”); *id.* at 215 (describing an HLS grad in the ’70s who had difficulty getting a litigation job at old-line Wall Street firms, which all wanted to put her in estate work or tax).

25. The history of American women lawyers working as legal publishers is as long as the history of American women in the legal profession. After years of studying the law with her husband, a prominent Chicago lawyer, Myra Bradwell launched the weekly newspaper *Chicago Legal News* in 1868. A year

In fits and starts across the twentieth century, women came to play a larger role in the life of UVA and other law schools. Marion Boyd Crockett '32 joined the editorial board of the *Virginia Law Review* in 1931, the first woman to do so.²⁶ Dean Lile congratulated the *Law Review's* board “for their fairness and courage in selecting her, in spite of sex prejudice.”²⁷ World War II prompted further change, as when Frances Ames '43 and Flora Kirley '43 were the only editors listed on the masthead for the January 1943 volume of the *Virginia Law Review*. Their male co-editors were serving in the armed forces.²⁸

Still a clear minority in the late 1960s and early 1970s, women continued to add new “firsts” as both students and faculty. In 1970, Elaine Jones became the first African American woman to graduate from UVA Law, twenty years after Gregory Swanson broke the color line at UVA Law, the University of Virginia, and every institution of higher education in the former Confederacy.²⁹ In 1972, Linda Howard '73 became the first woman and the first person of color elected as president of the student body.³⁰ Carol Stebbins '80 served as the *Virginia Law Review's* first female editor-in-chief in 1978.³¹ Gail Marshall '68 became, in 1969, the first female assistant professor on the full-time teaching faculty.³² Lillian R. BeVier joined the faculty in 1973 and later became the first tenured female law professor at the school.³³ In 1985, Mildred Robinson became the school's first tenured African American female faculty member, thirteen years after Larry Gibson

later, she passed the Illinois bar examination but was denied admission to the bar on the basis that she was a woman. *Chicago Legal News* nevertheless became “the most important legal publication west of the Alleghenies.” George W. Gale, *Myra Bradwell: The First Woman Lawyer*, 39 A.B.A. J. 1080, 1080–81 (1953). Bradwell's daughter, attorney Bessie Bradwell Helmer, followed her mother into legal publishing, working as editor-in-chief of *Chicago Legal News* and as the editor of at least two volumes of the Revised Statutes of the State of Illinois. ENCYCLOPEDIA OF WOMEN IN AMERICAN HISTORY 300 (Joyce Appleby et al. eds., 2015); Ill. Rev. Stat. (B. Bradwell Helmer ed., 1917); Ill. Rev. Stat. (B. Bradwell Helmer ed., 1921).

26. Recipients of Degrees, Department of Law (June 14, 1932), 19 U. VA. REC. 20 (1933).

27. Diary Entry of William M. Lile (Mar. 5, 1931), in *THE DIARY OF A DEAN: EXCERPTS FROM THE PRIVATE JOURNAL OF WILLIAM MINOR LILE* 112 (Kristin H. Jensen ed., 2011).

28. Fox et al., *supra* note 3, at 55.

29. *Id.* at 56; Eric Williamson, ‘Justice Starts Right Here’: Remembering Gregory Swanson, UVA and UVA Law's First Black Student, UVA LAWYER, Fall 2016, at 16, <https://www.law.virginia.edu/uvalawyer/article/justice-starts-right-here-remembering-gregory-swanson-uva-and-uva-laws-first> [<https://perma.cc/FJ8A-2HZF>].

30. Fox et al., *supra* note 3, at 56.

31. *Id.* at 57.

32. *Id.* at 56.

33. Mary Wood, *Lillian BeVier—Law School's First Tenured Female Professor—Ends Career at Head of the Class*, UNIV. VA. SCH. LAW (May 10, 2010), <https://www.law.virginia.edu/news/201005/lillian-bevier---law-school's-first-tenured-female-professor---ends-career-head-class> [<https://perma.cc/TJ7E-GUMB>].

became the first African American junior faculty member and eight years after Samuel Thompson became the first African American tenured professor.³⁴

By the late 1970s—at UVA Law and elsewhere—women began attending law schools and entering the legal profession in more significant numbers. As the number of female undergraduates exploded at UVA after the university settled a gender discrimination lawsuit in 1970, women’s enrollment at the Law School grew dramatically as well.³⁵ That same decade, and again in response to gender discrimination litigation, New York law firms agreed to abide by hiring practices that would ensure the hiring of women associates.³⁶ As a result, women entered the legal profession and law firms in unprecedented numbers.³⁷

In the middle of all these moments—behind, underneath, and through them—were women who studied and excelled and graduated and joined a profession not particularly hospitable to them. Those women made it possible to imagine women trial lawyers, partners, leaders, and deans. They paved the way for my own role in UVA’s history.

When I became dean in 2016, the response was overwhelmingly positive. I had expected alumnae and female students to be excited about this most recent milestone. They were, but they were not alone. Everyone I encountered seemed receptive. My presence revealed a pent-up desire on the part of alumni of all demographics, career paths, and political persuasions to discuss how to make progress for women, people of color, and others who have historically been marginalized in the profession. “Here is what I am doing to diversify my workplace,” they told me. “How can I do more?” they wanted to know.

Over the past three years, I have wondered what Elizabeth Tompkins would make of all this. Would she be surprised to see, one hundred years on, that women make up nearly half our class of law students, that a woman heads the *Virginia Law Review*, that women lead 67% of our student

34. Fox et al., *supra* note 3, at 57; Eric Williamson, *Black Law Students Mattered*, UVA LAWYER, Spring 2018, at 50, <https://www.law.virginia.edu/uvalawyer/article/black-law-students-mattered> [<https://perma.cc/Y3XK-GHQ9>].

35. See Jane Kelly, *Going Co-Ed*, UVA TODAY (Sept. 28, 2017), <https://news.virginia.edu/content/case-full-coeducation-uva-turned-late-night-phone-call-0> [<https://perma.cc/8552-ZU33>]; Ann Graham, *College Women Encouraged to Consider Legal Training*, VA. L. WEEKLY, Oct. 12, 1973, at 2–3 (showing women’s enrollment growing from 8.5% of the class to 17.8% of the class over three years); see also General Profile of the Entering Class, School of Law, 1967, 1968, 1971, 1974, 1975, 1976, 1977 (Records of the Law School Foundation, RG 107-2013, University of Virginia Law Library) (showing that women’s enrollment grew from single digit percentages for the classes entering in 1967–1969 to 26–27% of the classes entering in 1976 and 1977).

36. Bowman, *supra* note 23, at 14.

37. *Id.* at 15.

organizations, and that a woman has taken Dean Lile's place? Or would she be more surprised to learn that a hundred years on women are not yet half the class, still far from half the faculty, and that we only just hired our first woman as dean? What would she make of the fact that my husband "works for me" as a faculty member and that together we teach a seminar on work-life balance to men and women contemplating both families and careers?³⁸ Would she think all of this radical and amazing, or a long time coming and still not quite arrived? Most of all, what would she make of the fact that we are still discussing how to achieve true gender equality among lawyers and beyond?

III. THE PROFESSION'S STORY

The stories I have shared about my own evolution and that of my law school can be multiplied and varied a thousand times over. They are just a few strands of the many that make up the history of pursuing gender equality in the legal academy and the legal profession over the past century.

There is no doubt that immense progress has been made, that we are emphatically not the same profession we were when Elizabeth Tompkins became a lawyer. Recent data show that women make up 57% of undergraduates in the United States, roughly 50% of law students,³⁹ and 45% of law firm associates.⁴⁰

Real inequalities nonetheless remain, especially in more senior positions in the profession. Though the percentage of female law school deans almost doubled from 18% to 32.5% between 2007 and 2019, it remains just under one third.⁴¹ Indeed, women hover around one third in many key indices: between 33% and 37% of federal judges (depending on the level); 34% of state court judges; and 36% of tenure-line law professors.⁴² Other numbers are yet more dispiriting: 19% of equity partners at law firms are women and, across the legal sector, women generally make 78% of men's

38. He actually reports to the Provost, to avoid conflicts of interest.

39. Kyle McEntee, *More Transparency Please*, 13 FIU L. REV. 465, 478 (2019).

40. Commission on Women in the Profession, *A Current Glance at Women in the Law*, AM. BAR ASS'N, Jan. 2018, at 2, <https://www.americanbar.org/content/dam/aba/administrative/women/a-current-glance-at-women-in-the-law-jan-2018.authcheckdam.pdf> [<https://perma.cc/XS33-FP76>].

41. Laura M. Padilla, *Women Law Deans, Gender Sidelining, and Presumptions of Incompetence*, 35 BERKELEY J. GENDER, L. & JUST. (forthcoming 2020) (manuscript at 11) (on file with author).

42. Kristen Konrad Tiscione, "Best Practices": A Giant Step Toward Ensuring Compliance with ABA Standard 405(c), A Small Yet Important Step Toward Addressing Gender Discrimination in the Legal Academy, 66 J. LEGAL EDUC. 566, 570 (2017); Commission on Women in the Profession, *supra* note 40, at 5; 2019 US State Court Women Judges, NAT'L ASS'N OF WOMEN JUDGES, <https://www.nawj.org/statistics/2019-us-state-court-women-judges> [<https://perma.cc/N49X-XYYY>].

salaries.⁴³ Between 2010 and 2018, the gender pay gap in partner compensation actually grew from 32% to a whopping 53%.⁴⁴

When there were literally no women in law schools, it was fairly easy to identify how to increase gender equality: let them in. One hundred years later, it is harder to pinpoint why exactly we have not achieved equality. That is not because people haven't tried to explain the remaining gaps. A bevy of scholars, commentators, politicians, and policymakers tell us the problem is the marriage penalty in our income tax system or a lack of paid family leave.⁴⁵ It is men not doing enough housework, or women leaning out when they should be leaning in, or men leaning in when they should be leaning out.⁴⁶

All of these explanations and more have something to offer. But the very existence of so many—and the plausibility of many of these explanations on their face—suggests that there is no single cause for the gender inequality that remains in the legal profession. As in society more generally, the causes are complex, interrelated, and overlapping. Women face explicit bias and sexism, including sexual harassment and discrimination.⁴⁷ Implicit bias also plays a role. Leaders (who are predominantly white and male) are less likely to socialize with women than men outside of work, or to hire, promote, mentor, sponsor, and otherwise support those who don't look like them.⁴⁸ Men interrupt and ignore women, get away with behavior for which women are penalized,⁴⁹ and find it easier

43. Commission on Women in the Profession, *supra* note 40, at 2, 5–6.

44. Elizabeth Olson, *Female Law Partners Face 53 Percent Pay Gap, Survey Finds*, BIG L. BUS. (Dec. 6, 2018) <https://biglawbusiness.com/female-law-partners-face-53-percent-pay-gap-survey-finds> [<https://perma.cc/5FCH-A4KQ>].

45. See, e.g., Alieza Durana, *The Hidden Ways the Tax Code Hurts Women*, SLATE (Oct. 30, 2017), <https://slate.com/human-interest/2017/10/the-tax-codes-joint-filing-system-is-a-sexist-relic-from-the-40s.html> [<https://perma.cc/8ESH-GJMA>]; Claire Cain Miller, *The Gender Pay Gap is Largely Because of Motherhood*, N.Y. TIMES (May 13, 2017), <https://www.nytimes.com/2017/05/13/upshot/the-gender-pay-gap-is-largely-because-of-motherhood.html> [<https://perma.cc/LYX2-GBUL>].

46. See, e.g., Claudia Goldin, *Tackle Gender Inequality at Home and at Work: Flexible But Lower-Paying Jobs Lead to an Earnings Gap*, CHI. BOOTH REV. (May 15, 2019), <https://review.chicagobooth.edu/economics/2019/article/tackle-gender-inequality-home-and-work> [<https://perma.cc/QRH2-BDS3>].

47. Roberta D. Liebenberg & Stephanie A. Scharf, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice*, AM. BAR ASS'N 8 (2019) (“Women [lawyers working at law firms] report being four to eight times more likely to be overlooked for advancement, denied a salary increase or bonus, treated as a token representative for diversity, lacking access to business development opportunities, perceived as less committed to her career, and lacking access to sponsors. . . . 50% of women versus 6% of men had received unwanted sexual conduct at work. In essence, one of every two women said they had experienced sexual harassment.” (emphasis omitted)).

48. See RACHEL THOMAS ET AL., *WOMEN IN THE WORKPLACE—2018*, MCKINSEY & CO., AT 12–15.

49. Lynn Smith-Lovin & Charles Brody, *Interruptions in Group Discussions: The Effects of Gender and Group Composition*, 54 AM. SOC. REV. 424, 425 (1989); Joan C. Williams et al., *You Can't Change*

and more rewarding to negotiate aggressively.⁵⁰ The structure and expectations of business development and the compensation mechanisms of many workplaces are more attuned to men's conventional preferences than women's.⁵¹

Legal and regulatory structures and workplace policies unevenly shape workforce participation. Weak family leave laws and policies discourage two-career households, as does a national shortage of adequate, accessible childcare.⁵² Parsimonious paternity leave policies contribute to a regime that encourages women to take on the role of primary caregiver and discourages men from doing so. Additionally, there is a mismatch between child-bearing years and many of the most intense moments in legal careers—like tenure in the legal academy, making partner in private practice, or ascending to leadership positions in government and non-profits. Women who take time off to have children, or who work fewer or more flexible hours to care for children or aging parents, are often “mommy-tracked”⁵³ or have trouble

What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession, AM. BAR ASS'N 8 (2018), <https://www.americanbar.org/content/dam/aba/administrative/women/you-cant-change-what-you-cant-see-print.pdf> [<https://perma.cc/QP52-237H>].

50. Orly Lobel, *Knowledge Pays: Reversing Information Flows & the Future of Pay Equity*, 120 COLUM. L. REV. (forthcoming 2020) (manuscript at 12–13), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3373160.

51. See, e.g., PAMELA STONE, OPTING OUT?: WHY WOMEN REALLY QUIT CAREERS AND HEAD HOME 86 (2007) (“Women . . . repeatedly brought up the ‘male majority’ in describing the tenor and demeanor of their workplaces. . . . Almost as frequently, women noted that the pace and expectations of their workplaces were set by men with stay-at-home wives.”). See generally ARIN REEVES, ONE SIZE NEVER FITS ALL: BUSINESS DEVELOPMENT STRATEGIES TAILORED FOR WOMEN (AND MOST MEN) (2014).

52. See Youngjoo Cha, *Reinforcing Separate Spheres: The Effect of Spousal Overwork on Men's and Women's Employment in Dual-Earner Households*, 75 AM. SOC. REV. 303, 313 (2010) (finding that “having a spouse who works long hours increases women's likelihood of quitting but not men's”); Grover J. (Russ) Whitehurst, *Why the Federal Government Should Subsidize Childcare and How to Pay for It*, EVIDENCE SPEAKS REPS., Mar. 9, 2017, at 2, https://www.brookings.edu/wp-content/uploads/2017/03/es_20170309_whitehurst_evidence_speaks3.pdf [<https://perma.cc/RNH3-JDA9>] (“Accredited, center-based childcare for a dual-earner family with two young children and with earnings at 150 percent of the average full-time worker's wage would cost that family, on average, 29 percent of their take-home pay.”); Leila Schochet, *The Child Care Crisis is Keeping Women Out of the Workforce*, CTR. FOR AM. PROGRESS (2019), <https://www.americanprogress.org/issues/early-childhood/reports/2019/03/28/467-488/child-care-crisis-keeping-women-workforce> [<https://perma.cc/56ZH-EMPM>]; Williams et al., *supra* note 49, at 8 (reporting that lawyers “agreed that taking family leave would have a negative impact on their career”).

53. Goldin, *supra* note 46 (“Among the majority of highly educated couples with careers and children, the woman is the professional who is on call at home, while the man is the professional who's on call in the office. And in consequence, he earns more than she does.”); STONE, *supra* note 51, at 91 (“Prior to becoming mothers, the women were moving upward, often rapidly; after the first child, half described either plateauing or a decidedly downward trajectory. To the extent that this occurred, women has less incentive to continue with their careers and started to disengage from them.” (footnote omitted)).

finding on-ramps back into the profession.⁵⁴

The gendered cultural norms into which men and women are socialized from birth also contribute to gender inequality by shaping identities and expectations about family life and its relation to work. One recent Harvard Business School study of 25,000 graduates showed that less than 10% of Gen X and Baby Boomer women said they expected their own careers to take precedence over their partners' careers while approximately 60% of their male classmates expected their own careers to take precedence.⁵⁵ Many men and women today want both families and careers. As economist Claudia Goldin has noted, both families and careers seem to require someone on call full time. Given the many pressures and incentives mentioned above, the usual result is that men tend to be on call at work and women in the home.⁵⁶

I could go on with this depressing and potentially paralyzing litany of the legal, institutional, economic, cultural, and interpersonal causes of the gender inequality that continues to afflict our profession and society. And that is not even all. As we commemorate the Nineteenth Amendment and coeducation and locate those milestones in the longer story of gender equality, we must locate them as well within the similarly messy stories of the incomplete quest for equality of many different types of people. Writing about the position of "women" in the legal profession is in many ways writing with a limited view. Women are not a single, homogeneous group. The women UVA admitted in 1920 were all white, and it took another half century for African American women to join them. One must understand gender inequality as one aspect of the longstanding, continuing, and often intersectional inequalities faced by people of color, LGBTQIA+ people, people with disabilities, and first-generation professionals, to name a few. Here at UVA Law, we must write of Gregory Swanson and so many others who have repeatedly transformed the very definition of a UVA lawyer.

IV. COMING FULL CIRCLE

Needless to say, I have come a long way from thinking of feminism as an abstract thing of the past unrelated to my current challenges and obligations. It is also clear that the divide between my commitment to feminism and my commitments to redressing racial and economic inequality

54. STONE, *supra* note 51, at 199–200 (explaining that many women seeking to return to work after child-rearing "felt compelled to explore other career options that they hoped would provide greater flexibility" than traditionally male-dominated professions such as law).

55. Robin J. Ely et al., *Rethink What You "Know" About High-Achieving Women*, HARV. BUS. REV., Dec. 2014, at 101, 102, 106, 107.

56. Goldin, *supra* note 46. Though this couple inequity is most pronounced in heterosexual couples, a similar dynamic of division of labor can be seen in same-sex couples as well. *Id.*

is not as large as I had once thought. These variations on equality are key elements of a broader goal for the legal profession: the equal flourishing of all people at work and at home.

As we continue to strive toward that goal, I propose that we start with my initial two premises: that change is a process, not a point in time, and that we are all changemakers. The knowledge that we are empowered to make change transforms the myriad reasons for persistent inequality from a paralyzing obstacle to an open invitation. With so much to do, there is no shortage of opportunities—and therefore obligations—to act at the institutional level and the personal, the professional and the political.

To fight inequality wherever we see it, we will find ourselves called to act in our various roles—as an employer or employee, a husband or wife or partner, a parent or child, a citizen, a community board member, or a voter. We must check our explicit and implicit biases and call others out on theirs. We must reshape our laws to address harassment, discrimination, and the persistent pay gaps that reward some people more than others. We must change the policies in our workplaces and the who-does-what norms within our volunteer organizations, our religious congregations, our children's sports teams, and our own homes.

For me, that means acting as a wife, mother, citizen, lawyer, professor, historian, and most of all as a dean with some ability to shape the future of the institution I lead. I am committed to working toward a future in which all lawyers and aspiring lawyers can thrive at school, at work, and in life. I am committed to making Elizabeth Tompkins, and all who have preceded us, proud of the profession we will yet become.