

# *Women and publishing in family and property law journals*

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# WOMEN AND PUBLISHING IN FAMILY AND PROPERTY LAW JOURNALS

Victoria Barnes\* and Nora Honkala\*\*

## 1. Introduction

It is difficult to articulate exactly how one person matters to you and has contributed to your development in a way that is both clear and succinct. It is common in British middle-class culture (of which the academic world is embedded in) to stay muted in the belief that there is some general dignity in silence. Indeed, this route would be far easier. But this is not what is demanded here on this occasion. This is a *festschrift*. The tradition here is by contrast rather different and as such, it differs from any ordinary edited collection.<sup>1</sup> The tradition is to begin by commenting briefly on the author's relationship to the honouree and to summarise their life with overt flattery. We propose to offer some expression on our relationships with Rosemary Auchmuty,<sup>2</sup> but to dispense with the abject hyperbole and disingenuous laudation. We instead display what is a modicum of heart-felt and rather honest admiration. This perhaps reflects our cultural interpretation (or adaptation) of what *festschrift* ought to look like.

Such a task of balancing laudation with honesty is an act that is fraught with complexity generally speaking, but, even more so in this chapter. This is because it is far more challenging to write about your relationship with a person, when the authors are, in fact, two people. This is, after all is said and done, a joint paper. This chapter is a shared one and it is collectively written - and deliberately so. To put it simply, the authors are different two people with a separate rather than a joint set of relationships. People thus mean different things to one another. Individuals quite frequently and quite understandably have different relationships. Each individual's relationship with one another is fairly unique and no two (or three!) relationships are the exact same. The paragraphs, which follow, will nevertheless try to achieve our aim of writing about our relationships with Rosemary Auchmuty without the gratuitous detail, fictionalised accounts and the hagiographic bent. We will briefly summarise our connection to Rosemary Auchmuty and relationship with her, before moving onto the substantive aspects of the chapter and the details about its core claims in relation to scholarship.

Throughout her career, Rosemary Auchmuty has contributed to the lives of a wide range of scholars, not only in law and not only to our lives. She has mentored both of the authors of this chapter. Nora Honkala has known Rosemary Auchmuty for 15 years (to date) during which Rosemary Auchmuty has supervised her Masters dissertation, as well as her PhD on gender and refugees in international law. Both the LLM and the PhD were undertaken at the University of Reading. Nora also had the pleasure of contributing to two projects of Rosemary

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<sup>1</sup> Michael Taggart, 'Gardens or Graveyards of Scholarship? Festschriften in the Literature of the Common Law' (2002) 22 *Oxford Journal of Legal Studies* 227.

<sup>2</sup> We propose here to full name Rosemary thorough out, as odd as it sounds. This navigates the thorny issue of referring to her by her first name, as is common in informal circles (and we do normally), or her last name, as is more common in scholarship and the normal attribution of scholar. The full name fits both of those positions. We recognise that the authors of the other chapters in this volume do not necessarily follow suit. That is, of course, their prerogative.

Auchmuty's; the *Women's Legal Landmarks Project*, which Rosemary Auchmuty lead and edited with Erika Rackley, and the *Great Debates in Gender and Law*. Both of these were valuable opportunities to work with groups of feminist scholars as well as showing how feminist projects could be different to other collective academic projects, and provided a learning opportunity to reflect on the importance of mentoring in academia in general.

Victoria Barnes's connection to Rosemary Auchmuty is equally longstanding, but perhaps not as intense. Rosemary Auchmuty was not Victoria's PhD supervisor.. She was, in Reading's lexicon of the time, her monitor.<sup>3</sup> In essence, each year, Rosemary Auchmuty would verify that Victoria's PhD was on track and, if we use the lexicon of today, check on her wellbeing. In other words, Rosemary Auchmuty would verify that the relationship between Victoria and her supervisors was satisfactory. Victoria gave her first paper to the Society of Legal Scholars in the Legal History section, which Rosemary Auchmuty then led. Although it is impossible to prove a counterfactual point, Victoria probably would not have presented in this section, without Rosemary's encouragement. This point is perhaps easy to overlook or forget many years on, where a conference presentation matters little. Small gestures do matter, though. To a PhD student with very little experience, that gesture mattered even more. It is demonstrative of the kindness and support that was commonplace. Rosemary Auchmuty participated in the special issue of the *Journal of Legal History* organised by Victoria. There Rosemary Auchmuty represented an important and understated viewpoint by defending the importance of a socio-legal approach to legal history, fairly unabashedly.<sup>4</sup>

Aside from shaping our research and beliefs about the direction of scholarship, Rosemary Auchmuty played a tremendous role in our academic career and its pathways. For most of our careers, Rosemary Auchmuty was not associated with her obvious research strengths. Indeed, this realisation has come for some other people, only rather recently.<sup>5</sup> It may be difficult to believe now that her academic leadership was for the most part concentrated around teaching rather than research. These routes have been for too long bifurcated with one being seen, by some, as lesser than the other. Contempt is often plain to see.<sup>6</sup> Having been the Director of Teaching and Learning at Reading for many years, Rosemary Auchmuty was always involved closely in the discussion of teaching. She was, without a doubt, the leading voice on these matters and in supporting those in teaching.<sup>7</sup> It was there in this position that Rosemary Auchmuty encouraged greater discussion of teaching, more reflection and, essentially, she pushed for change in culture.<sup>8</sup> In the beginning of both Nora and Victoria's academic careers, Rosemary Auchmuty was instrumental in the development of our teaching in law schools. Given her prominent position in the law school at Reading, she was influential in our first academic appointments there as Teaching Fellows. This was an important first stepping stone

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<sup>3</sup> In other institutions, this is the Research Development Officer.

<sup>4</sup> Rosemary Auchmuty and Erika Rackley, 'Feminist Legal Biography: A Model for All Legal Life Stories' (2020) 41 *The Journal of Legal History* 186.

<sup>5</sup> For the under recognition of women's research as measured through citations, see Christopher A Cotropia and Lee Petherbridge, 'Gender Disparity in Law Review Citation Rates' (2017) 59 *William & Mary Law Review* 771.

<sup>6</sup> For a wider discussion, see Ann C McGinley, 'Reproducing Gender on Law School Faculties' (2009) *Brigham Young University Law Review* 99 and in relation to those in adjacent academic support roles, Susan P Liemer and Hollee S Temple, 'Did Your Legal Writing Professor Go to Harvard: The Credentials of Legal Writing Faculty at Hiring Time' (2007) 46 *University of Louisville Law Review* 383.

<sup>7</sup> For a discussion of why this matters and is important, see Kathryn M Stanchi, 'Who Next, the Janitors - A Socio-Feminist Critique of the Status Hierarchy of Law Professors' (2004) 73 *UMKC Law Review* 467.

<sup>8</sup> R Auchmuty, 'Using Feminist Judgments in the Property Law Classroom' (2012) 46 *The Law Teacher* 227.

for us. Rosemary Auchmuty's role here demonstrated a point that should be plain for all to see. This was an admission that teaching and mentoring others, whether formally or informally, was an academic's first priority.

In sum, we owe a debt to Rosemary Auchmuty that can never quite be repaid. Our labour in the writing of this chapter, the organisation and the editing of this *festschrift* is but a small gesture in the grand scheme of things. It is a token of our gratitude and a celebration of someone with an academic career marked by an unusual commitment to both teaching and research. Her commitment was genuine and, even after her research successes, unwavering. In this sense, Rosemary Auchmuty's scholarly ethos is unique, remarkable and, above all, exceptional. Over the course of those years, we have spent many hours over coffees talking about gender and women and the law, feminism(s), issues of discrimination, equality and equity. These conversations have enriched our research careers. Many a times we have agreed, although not always. Those conversations have always been productive with Rosemary Auchmuty taking perhaps what might be best described as unusually clear and less than opaque positions. There was always room to toy with ideas, debate and even disagree somewhat vehemently so on scholarly issues. Just as two persons do not share the same relationship with the third, three people do not always share the exact same world view, although, as you can see, there are enough similarities in our various positions, aims and drives.

Rosemary Auchmuty's scholarship and interests spans across the three broad specialist fields of law examined here; namely property, trusts and family law.<sup>9</sup> In many respects, Rosemary Auchmuty is a first mover; she was a leading feminist; a pioneer among legal academics. The academy was mostly dominated by male legal scholars and scholarship. She started her career in law in 1989, when she took up a lectureship at Westminster. Our inspiration and motivation for this chapter was to consider to what extent has this situation changed? What was it like now? One of the ways to measure and understand the research landscape in these areas of law is to look at the gender of the authors of the literature in these fields. This chapter examines the key journals, several of which Rosemary Auchmuty has contributed to,<sup>10</sup> and the participation of women in these publications. It considers the authors in five leading law

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<sup>9</sup> Rosemary's scholarship in these fields include; R Auchmuty, 'What's so Special about Marriage? The Impact of *Wilkinson v Kitzinger*' (2008) 20 *Child & Family Law Quarterly* 479; R Auchmuty, 'The Married Women's Property Acts: Equality Was Not the Issue' in Rosemary Hunter (ed) (Oxford, Hart 2008); R Auchmuty, 'Land Law and Equity and Trust' in Caroline Hunter (ed) (London, Palgrave Macmillan 2012); R Auchmuty, 'Law and the Power of Feminism: How Marriage Lost Its Power to Oppress Women' (2012) 20 *Feminist Legal Studies* 71; R Auchmuty, 'Marriage and Civil Partnership: Law's Role, Feminism's Response' in Margaret Davies and Vanessa Munro (eds) (Aldershot, Ashgate 2013); R Auchmuty, 'Dissolution or Disillusion: The Unravelling of Civil Partnerships' in Nicola Barker and Daniel Monk (eds) (Abingdon, Routledge 2015); R Auchmuty, 'The Experience of Civil Partnership Dissolution: Not "Just like Divorce"' (2016) 38 *Journal of Social Welfare and Family Law* 152; R Auchmuty, 'The Limits of Marriage Protection: In Defence of Property Law' (2016) 6 *Onati Socio-legal Series* 1196; R Auchmuty, 'The Limits of Marriage Protection in Property Allocation When a Relationship Ends' (2016) 28 *Child and Family Law Quarterly* 303; R Auchmuty, 'Feminist Responses to Same Sex Relationship Recognition' in Chris Ashford and Alexander Maine (eds), *Research Handbook on Gender, Sexuality and the Law* (Abingdon, Routledge 2020).

<sup>10</sup> She has published in *Child & Family Law Quarterly* and the *Journal of Social Welfare and Family Law*. See R Auchmuty, 'What's so Special about Marriage?' (n 9); R Auchmuty, 'The Limits of Marriage Protection in Property Allocation When a Relationship Ends' (n 9); R Auchmuty, 'The Experience of Civil Partnership Dissolution: Not "Just like Divorce"' (n9).

journals in property, trusts and family law. For its data points, it takes each author of an article in the *Child & Family Law Quarterly*, *Journal of Social Welfare and Family Law*, *Conveyancer and Property Lawyer*, *Trusts and Trustees*, and the *International Journal of Law, Policy, and the Family*. Our dataset runs from 2016 to 2021 and considers the gender of authors of articles in these five journals. Altogether, there are around 1500 authors in this dataset.

The analysis of these results reveals that although there has been some change, wide discrepancies still exist in women's participation in legal publishing. This suggests that factors such as networking as well as disciplinary openness act as barriers for women. The exclusion and underrepresentation of women in the scholarly literature not only has an impact on individual careers, but also on the shape and scope of the legal field as a whole. Our aim here is to shed light, identifying and illuminating issues of representation in the publishing field. We view this essential. Such an empirical approach allows for a systematic exploration of what is often chalked up to be – and otherwise, dismissed and, in short, rubbish – as an individual experience. The results here show that this is not the case. With greater understanding of general trends and a rather clear statement that these experiences are not anecdotal, solutions can be found. It is to this pragmatic goal that our work in this chapter speaks to most.

## 2. Theories about women publishing

To date, there have been various studies in fields, other than law, exploring men and women's publication rates in academic journals. Some large studies have been undertaken, especially in STEM subjects on this issue. For example, a study across 15 different journals that publish work of the American Society for Microbiology researchers found that senior women were underrepresented as authors compared to global and society estimates of microbiology researchers.<sup>11</sup> Furthermore, they found that manuscripts submitted by corresponding authors that were women received more negative outcomes than those submitted by men.<sup>12</sup> Other studies have also demonstrated a lower percentage of women authored publications compared to their share in the professional fields, such as a 20-year study of five high impact journals in gastroenterology by Long et al,<sup>13</sup> as well as a 15-year study of 10 high profile Political Science journals by Teele and Thelen.<sup>14</sup> Teele and Thelen also observed that women had not benefitted from co-authorship and that the methodological leanings of top journals were more likely to reflect the type of work men disproportionately engaged with.<sup>15</sup> And Prothero and McDonagh's study of marketing journals noted a lack of women on editorial and advisory boards as well as recipients of awards given and works celebrated.<sup>16</sup>

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<sup>11</sup> Ada K Hagan and others, 'Women Are Underrepresented and Receive Differential Outcomes at ASM Journals: A Six-Year Retrospective Analysis' (2020) 11 *mBio* e01680 1.

<sup>12</sup> Hagan and others (n 11) 1.

<sup>13</sup> Michelle T Long and others, 'Female Authorship in Major Academic Gastroenterology Journals: A Look over 20 Years' (2015) 81 *Gastrointestinal Endoscopy* 1440.

<sup>14</sup> Dawn Langan Teele and Kathleen Thelen, 'Gender in the Journals: Publication Patterns in Political Science' (2017) 50 *PS: Political Science & Politics* 433.

<sup>15</sup> D Teele and K Thelen (n 14) 434.

<sup>16</sup> Andrea Prothero and Pierre McDonagh, "'It's Hard to Be What You Can't See" - Gender Representation in Marketing's Academic Journals' (2021) 37 *Journal of Marketing Management* 28.

In addition, there have also been engagement with gender representation of authorship in individual journals, such as *Lancet*,<sup>17</sup> as well as smaller reviews undertaken by editors or editorial boards, such as *Journal of Mental Health*,<sup>18</sup> *Journal of Roman Studies*,<sup>19</sup> and *American Journal of Political Science*<sup>20</sup> to name a few. Some of the STEM subject-specific studies have additionally focused on analysis of last named and corresponding authors,<sup>21</sup> as different fields have different conventions as to authorships. For example, some conventions include analysis of last authors as they could be serving as a proxy for seniority, or to represent a project lead, whereas corresponding authors are often considered to have contributed the most to a publication. Some STEM- fields also have a convention of including supervisors listed as authors in student's publications, a tradition that does not exist in legal publishing.

Currently, on the average, women represent 49 per cent of the academic staff and 66 percent of part-time staff in UK Higher Education institutions.<sup>22</sup> The level of women professors overall is merely 28 percent.<sup>23</sup> Law, however, is rather different and has more women professors than many other fields.<sup>24</sup> Nevertheless, the percentage is still markedly lower than men, currently at the level of 37 percent.<sup>25</sup> The figures represent a decrease in women as seniority increases, as well as a significant over-representation of part-time workers.<sup>26</sup> Furthermore, academia, just as most other sectors of employment suffers from a persistent gender pay gap. Currently the professorial gender pay gap in the UK is at 6.2 percent, well above the 5 percent which the Equality and Human Rights Commission defines as a significant gender pay gap.<sup>27</sup> If we were to make a general hypothesis, based on the representation of women in academic institutions,

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<sup>17</sup> Julio González-Alvarez, 'Author Gender in The Lancet Journals' (2018) 391 *The Lancet* 2601; Jocalyn Clark and Richard Horton, 'What Is The Lancet Doing about Gender and Diversity?' (2019) 393 *The Lancet* 508; Rosemary Morgan and others, 'Gendered Geography: An Analysis of Authors in The Lancet Global Health' (2019) 7 *The Lancet Global Health* e1619.

<sup>18</sup> Til Wykes and Jo Evans, 'Gender Diversity in the Journal of Mental Health – How Are We Doing and What Do We Need to Do?' (2020) 29 *Journal of Mental Health* 493.

<sup>19</sup> Christopher Kelly and others, 'Gender Bias and the Journal of Roman Studies' (2019) 109 *Journal of Roman Studies* 441.

<sup>20</sup> Kathleen Dolan and Jennifer L Lawless, 'It Takes a Submission: Gendered Patterns in the Pages of AJPS' (*American Journal of Political Science*, 20 April 2020) <<https://ajps.org/2020/04/20/it-takes-a-submission-gendered-patterns-in-the-pages-of-ajps/>> accessed 11 March 2023.

<sup>21</sup> See for example, Julie Overbaugh, 'Defining the Barriers to Women Publishing in High-Impact Journals' (2018) 92 *Journal of Virology* e02127, 1–4.

<sup>22</sup> Higher Education Statistics Authority Bulletin 2020-2021, available at <https://www.hesa.ac.uk/news/01-02-2022/sb261-higher-education-staff-statistics..>

<sup>23</sup> *ibid.*

<sup>24</sup> The first woman, Claire Palley, was appointed to a Chair at Queen's Belfast in 1970, see Fiona Cownie, 'The United Kingdom's First Woman Law Professor: An Archerian Analysis' (2015) 42 *Journal of Law and Society* 127. For more on the legal academy, see Clare McGlynn, 'Women, Representation and the Legal Academy' (1999) 19 *Legal Studies* 68; Celia Wells, 'Working out Women in Law Schools' (2001) 21 *Legal Studies* 116; L Duff and L Webley, 'Gender and the Legal Academy in the UK: A Product of Proxies and Hiring and Promotion Practices' in R Auchmuty and others (eds) *Gender and Careers in the Legal Academy* (Oxford, Hart Publishing 2021). There are a number of studies outside of the UK, see Robin West, 'Women in the Legal Academy: A Brief History of Feminist Legal Theory' (2018) 87 *Fordham Law Review* 977; U Schultz, 'Gender in Socio-Legal Teaching and Research in Germany' (2020) 21 *German Law Journal* 1345; Angela Melville and Amy Barrow, 'Persistence Despite Change: The Academic Gender Gap in Australian Law Schools' (2022) 47 *Law & Social Inquiry* 607.

<sup>25</sup> Higher Education Statistics Authority Dataset for 2021.

<sup>26</sup> Higher Education Statistics Authority Bulletin 2020-2021 (n 22).

<sup>27</sup> The Universities and Colleges Association for Employers, 'Examining the Gender Pay Gap in Higher Education', June 2022, available at <https://www.ucea.ac.uk/library/infographics/gender-pay/>.

a corresponding level of representation in legal publishing would constitute a reasonable expectation.

That said, these figures do not only represent the state of affairs and document existing trends in legal academia. The practices and habits that lead to these figures perpetuate them. Where you publish matters. It matters to individual careers, and to the collective. If hiring committees and promotion committees use journal names as a proxy or shorthand for research excellence – such practice seems logical given that we cannot all be specialists in everything – and if the ‘top’ journal does not publish pieces written by women at the same rate as men, then it will be harder for women to occupy middling or senior positions – or, at the very least, to be seen as solid researchers.

Many journals are prestigious because they are exclusive and difficult to get into. But, perhaps they are merely exclusionary. In the British academic world, scholarship and editorial decisions are couched in terms of ‘quality’, ‘originality’ and ‘rigour’, but that is not necessarily the case. It cannot be the case that men only write research that is of a sufficiently high quality, originality and rigour. Arguably we need a better way of assessing, monitoring and changing what journal editors do because their decisions have such a tremendous impact on individual careers. It is hoped that the data in this chapter helps to begin conversations around this. This is a worthwhile aim because questions about gendered inequalities matter.

There are of course limitations to viewing a significantly large and varied sector as a whole, including using aggregate results as we often do here. Looking at results from a bird’s eye view reveals very little of the best and worst performer. It gives them a cloak and enables them to remain hidden and obscured by the average. Uncovering the gaps – working out who publishes the work of most women and the fewest women – is what this chapter aims to achieve.

### 3. Method

For the purposes of our analysis here we have taken every published journal article in the five leading property, equity and family law journals; *Child & Family Law Quarterly*, *Journal of Social Welfare and Family Law*, *Conveyancer and Property Lawyer*, *Trusts and Trustees*, and the *International Journal of Law, Policy, and the Family* over the last five years from 2016 to 2020. The journals that have been chosen for this chapter are due to them representing the broad specialist fields that Rosemary Auchmuty’s work has engaged with. The data has then been broken down further to examine all of the authors on co-authored journal articles and each of those have been weighted equally. This chapter only focuses on journal articles, rather than all types of publications, including for example case commentaries or book reviews. This is primarily for the reason that journal articles in the main, go through similar process of review, in short, an editor screening followed by a peer review.<sup>28</sup>

The articles were then gender coded by a combination of first-name coding and, if needed, a follow up internet search was conducted to assign authors to men and women categories. This

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<sup>28</sup> It is worthwhile to note that there are some journals which have their own process of peer review, for example by the whole editorial board reviewing each piece that is published in the journal. An example of this is the journal *Feminist Legal Studies*.

is a common method in the literature concerning gender statistics in publishing.<sup>29</sup> Authors were coded by men's first names to 'M', women's names to 'F' and others to 'O'. For any first name that was not obvious, for example Alex could be Alexander or Alexandra, same with Nic and so on, a manual check on the person's website was performed. This was either evident from the photograph or the biography. The category 'O' for others is intended for others, including corporations and those who use the pronouns 'they'. There are, of course, some limitations to this way of coding. It is possible that there remains some misgendering in the dataset. For example, if the author is trans and has a gender ambiguous name – but does not use 'they' as a pronoun on their webpage, they may be categorised based on the gender implied conventionally and traditionally by the appearance in their photograph. Indeed, it is commonplace to simply use a first name in biography so this is potentially likely. Another example is if an author has published an article under a man's name in 2016, and has subsequently changed their gender and, now, identify as a woman today, this would not be reflected in the dataset. *Modern Law Review* is one of the few journals that have a policy, where authors who at a later stage change their name after publication can retrospectively change the name listed as the author of the article.<sup>30</sup> The remaining journals do not have such a policy (at the time of writing) or, at least, if they do, it is not publicly shared information. In other words, each name in the dataset appears as it is written on the journal article at the time of publication. And this also means that if one author publishes in each of the five journals reviewed, their name appears five times in the dataset.

There are several different stages at which gender equality in terms of representation could be evaluated, for example at submission stage, in editorial decisions, or in the review processes. The data for this present study does not include submission numbers. These are held by individual journals and publishers and, as such, are not currently accessible to the public. Submission rates have recently been under much scrutiny in the general academic field.<sup>31</sup> This is because the impact of COVID-19 pandemic has exacerbated age-old gendered inequities in the academic and non-academic world and so brought increased attention to academic publishing. It has been shown that women have been disproportionately affected by the pandemic, for example.<sup>32</sup> Once again, we see especially in STEM-subject fields, academic figures addressing, or at least making visible, the disproportionate effect the pandemic has had on women's research productivity.<sup>33</sup> King and Frederikson have, for example, found that across STEM disciplines, women's publishing rate has fallen relative to men's amid the pandemic. Here, they note that the 'publish or perish'-culture of academia and the pandemic could be setting back hard-won progress of women in STEM.<sup>34</sup>

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<sup>29</sup> See for example, David Card et al, 'Are Referees and Editors in Economics Gender Neutral?' (2020) 135 *Quarterly Journal of Economics* 269.

<sup>30</sup> This has traditionally been an issue for women, who change their names upon marriage.

<sup>31</sup> Molly M King and Megan E Frederickson, 'The Pandemic Penalty: The Gendered Effects of COVID-19 on Scientific Productivity' (2021) 7 *Socius* 23780231211006976; Ruomeng Cui, Hao Ding and Feng Zhu, 'Gender Inequality in Research Productivity during the COVID-19 Pandemic' (2022) 24 *Manufacturing & Service Operations Management* 707.

<sup>32</sup> Indeed, this has a wider impact on the shape of the system, see Merin Oleschuk, 'Gender Equity Considerations for Tenure and Promotion during COVID-19' (2020) 57 *Canadian Review of Sociology* 502.

<sup>33</sup> See for example, Giuliana Viglione, 'Are Women Publishing Less during the Pandemic? Here's What the Data Say' (2020) 581 *Nature* 365.

<sup>34</sup> King and Frederickson (n 31) 1, 14.

The decrease in the rate of publication for women is consistent with women performing disproportionately more of the care work at home (and in the workplace). Evidence from scientific fields also shows that women academics are more likely to have a partner who is also an academic, and therefore less likely to have full-time support at home, whereas men, who are scientists, are more likely to have partners who are not working for pay outside the home.<sup>35</sup> Undoubtedly, further studies comparing submission and publication rates would be required to further understand this field. Even though our current data also does not tell us specifically about women's lived experiences of publishing or of the distribution of labour in the home, there is much to be gained by counting women, and men, in this way. Let us consider how persistent inequalities are in the academy and the aims and objectives of law in creating just and fair results. It is somehow paradoxical how little engagement there has been in systematically analysing representation of men and women in legal publishing.

This study conducts the first stage in a process of understanding the system of academic publishing in law journals. This is, first, to merely know the numbers of women publishing, when and where. This is in and of itself important. It makes visible a matter that has hitherto been invisible. It allows the public to see the participation rates of women authors in journals. These raw numbers have previously only been visible to editors and publishers. Individual journals will be collecting this type of data, and clearly conversations happen internally. It is also clear that these conversations even mean that action is taken by some editorial boards to address these issues. For example, the *Modern Law Review* offered a public seminar to encourage further submissions from women in particular. Women on the journal's editorial board noted that the journal receives less submissions from women but indeed has a higher rate of acceptance of women-authored publications.<sup>36</sup> Given, however, the various studies in other fields and the considerably higher visibility of engaging with questions of gendered research productivity or editorial practices in other fields, legal studies lags significantly behind on these questions. We now turn to discuss the journals that relate closely to the research of Rosemary Auchmuty and the extent to which women publish in them.

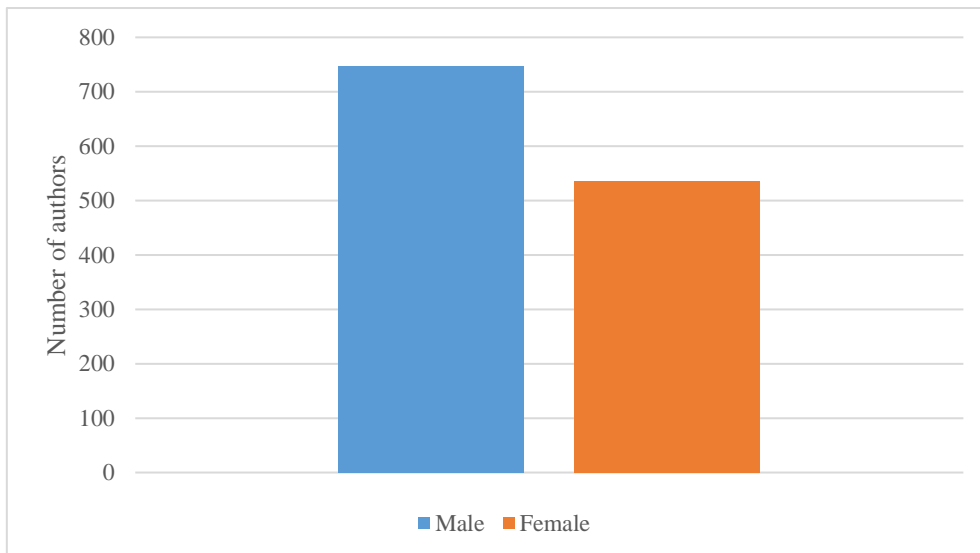
#### 4. Results

Figure 1: Numbers of men and women authors

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<sup>35</sup> King and Frederickson (n 31) 4.

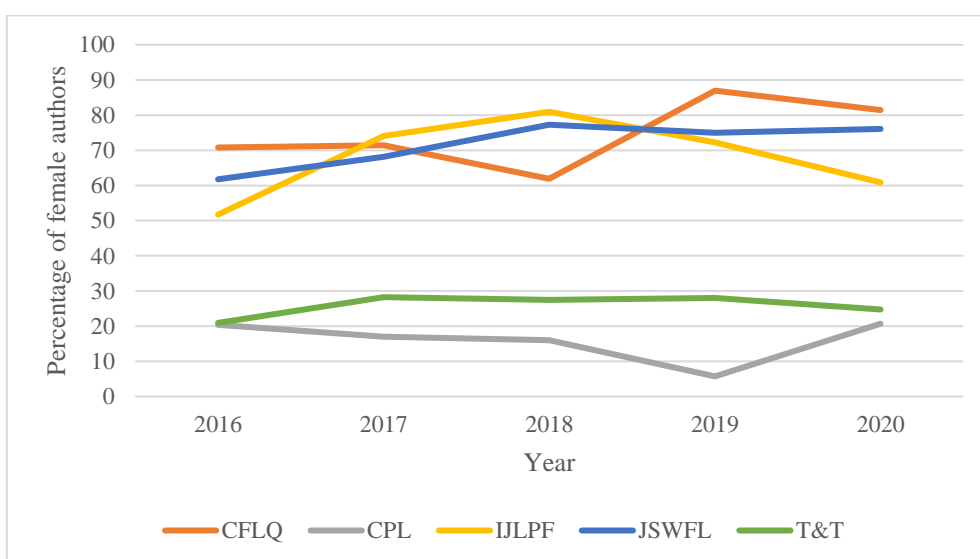
<sup>36</sup> V Mantalou, V Munro, J Braithwaite, K Greasley, O Lynskey and C Gearty, 'Modern Law Information Session for Female Academics', available at [https://onlinelibrary.wiley.com/page/journal/14682230/homepage/zoom\\_info\\_session..](https://onlinelibrary.wiley.com/page/journal/14682230/homepage/zoom_info_session..)



Source: Dataset

The overall numbers across the five journals are represented here with about 58 percent of the publications having been authored by men represented here by the pillar on the left and about 42 percent women represented here by the pillar on the right. However, this pattern is not universal across the journals examined. As Figure 2 shows, there is a wide discrepancy across these five journals. They each have markedly different gender profiles with none of them representing this average. Furthermore, the peaks and troughs between the journals are extreme. The journal with the highest number of women authors is 87 per cent in *Child & Family Law Quarterly* in 2019. By a marked contrast in 2019, only six per cent of authors in *Conveyancer and Property Lawyer* were women. The gap between these two journals is marked and in percentile, this is a difference of 81 per cent.

Figure 2: Percentage of women author by journal, by year



Source: Dataset

More generally, there is a notable bifurcation in these journals. In more detail, we see the percentages of women authors in *Child & Family Law Quarterly* varying between around 60

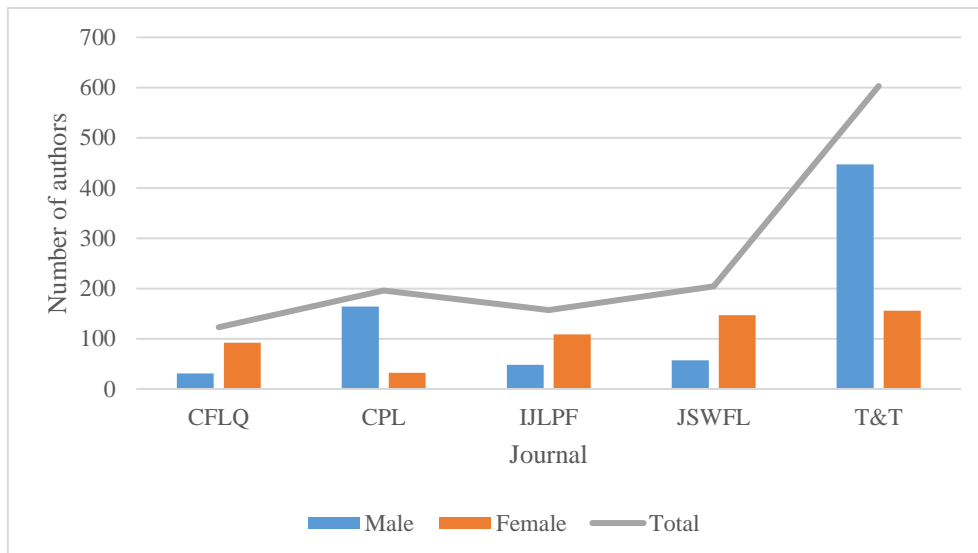
and 90 percent, the *International Journal of Law, Policy, and the Family* varying between just above 50 to 80 percent, and *Journal of Social Welfare and Family Law* between just above 60 to almost 80 percent. On the other hand, for *Trusts and Trustees*, the percentage of women authors over the five year period varies from merely just above 10 percent to a high of less than 30 percent. Lastly, in *Conveyancer & Property Law*, the percentage of women authors varies from the lowest in the dataset of six percent to a high of around 20 percent. To put it crudely, it is evident that *Child & Family Law Quarterly*, *Journal of Social Welfare and Family Law*, and the *International Journal of Law, Policy, and the Family* are 'women's journals'. They publish – predominantly – the work of women. *Conveyancer and Property Lawyer* and *Trust and Trustees* are 'men's journals'. They publish – predominantly – the work of men. This leaves a segregation where women are in one place but not in another. Much of the work in family and property law focuses on the family home, as has much of Rosemary Auchmuty's work.<sup>37</sup> If we think of these journals like Georgian and Victorian homes, there is a drawing room (that is for women) and a dining room (this is for men).

If we return here to the question of the pandemic and the potential that the disparity could be in part explained by a decrease in the ability of women to participate in publishing, there are three journals that are noteworthy in the dataset. The onset of the pandemic was in 2019 and by March 2020, it was in full swing. We see that the *International Journal of Law, Policy and the Family* sees a dip in the percentage of women authors in 2020, although this decrease continues from the previous year. The journal *Trust and Trustees* sees a dip from a relatively low percentage of women authors to even lower in 2020. *Child & Family Law Quarterly* also sees a drop in the number of women authors from 2019 to 2020, although this is only by a few percentage points. It is possible that some of these decreases could be explained by a decrease in women's submissions due to the effects of the pandemic or that they were unable to complete revisions at an ordinary pace. With the data that we have, we cannot conclude this definitely. Our data shows trends that require explanation. The data does not itself explain them. Nevertheless, it ought to be noted that it seems unlikely that the disparities in the publications overall could be explained merely by the number of submissions. The discrepancies between the rates in the journals remain quite significant. This is an issue that we return to for further discussion in section 5.

Figure 3: Gender balance in authors by journal

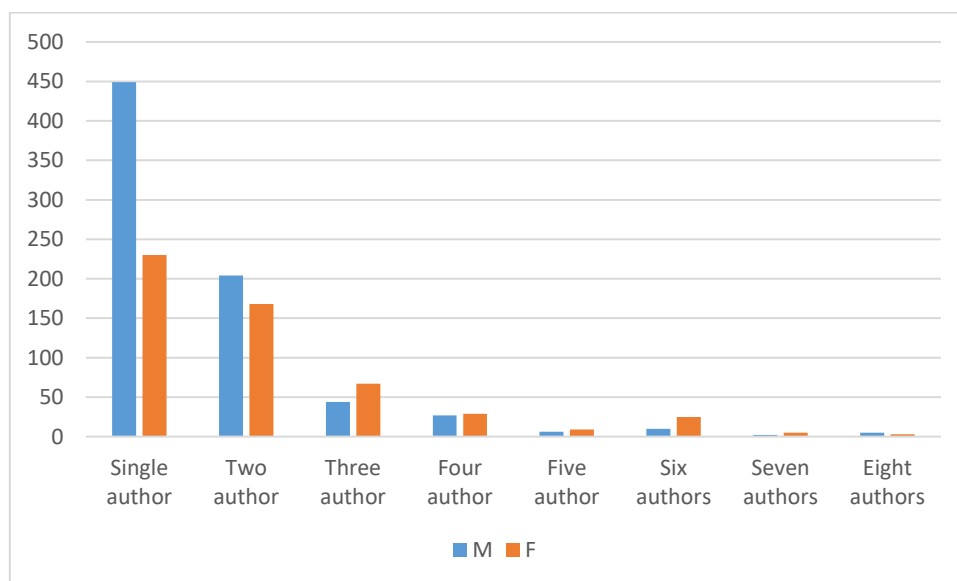
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<sup>37</sup> See, for instance, the forthcoming monograph: Rosemary Auchmuty, *Women and the Family Home Legal and Social Change in Post-War England* (Abingdon, Routledge 2024).



Source: Dataset

Figure 4: Gender balance of single and multi-authored manuscripts



Source: Dataset

Figure 3 represents the numbers of authors rather than percentages. It allows for a more nuanced view, which shows the scale and size of these journals more prominently. Scale and size are particularly important and we discuss this in detail in the analysis in the following section. There is also another factor to consider, which is the gender balance of single and multi-authored manuscripts.

What is clearly evident from this Figure 4 is that men are significantly more likely to write single authored pieces and women are more likely to collaborate. In fact, men are almost twice as likely than women overall to publish single-authored pieces. The cross-over between more men or more women seem to happen at the three author-stage. There are, of course, multiple possible explanations for this. For example, some may view women as more collaborative than

competitive in their outlook considering them as being socialised to be more relational than men.<sup>38</sup> Others may prefer a more structural explanation derived from feminist critiques of gendered labour practices in the workplace and at home. These might explain why women as a group, as compared to men, lack time to do research, as they perform disproportionately more of the care and administrative tasks at work, as well as more unpaid labour in the home, in the form of housework, and care work, whether childcare/elderly care or care of the disabled.<sup>39</sup> Furthermore, in academia, women are also disproportionately represented as part-time workers as noted above, as well as working on teaching intensive contracts as opposed to teaching and research contracts. This may have an effect on women's choices to undertake collaborative work. Collaborative projects alleviate pressure but are not necessarily efficient nor a way of producing more research, quicker. The nature of collaboration (in an ideal world) entails far greater levels of communication because all parties involved in authoring should be involved and agree on the direction of the research.

## 5. Discussion

The most notable finding from our dataset is the clear bifurcation between 'men's journals' and 'women's journals'. When we examine the patterns further the following observations can be made.

### 5.1. Patterns in 'women's journals'

Comparing the journals, we can find that the high numbers of women authors for *Child & Family Law Quarterly*, for example, can partly be explained by their higher numbers of co-authored manuscripts. Whether the collaboration would be explained through women being more collaborative than men or gendered labour practices, we suggest that this trend is not something editors need necessarily to be concerned about. Or in other words, it is not suggestive of bias on their part. It is also notable that these journals encourage socio-legal research in their mission statements. *Child & Family Law Quarterly*, for example notes that the journal 'embraces a wide variety of approaches to child and family law: empirical, doctrinal, historical, socio-legal, and comparative'.<sup>40</sup> *International Journal of Law, Policy and the Family* notes that it includes theoretical analysis of law, sociological literature concerning the family, which is of special interest to law and legal policy, social policy literature of special interest to law and the family, as well as literature in related fields.<sup>41</sup> And *Journal of Social Welfare and Family Law* publishes 'interdisciplinary research and analysis of social welfare, family law and policy issues from a UK and international perspective'.<sup>42</sup> Whereas the mission statements of *Trusts and Trustees* and *Conveyancer & Property Lawyer* describe them as 'the leading', and 'most authoritative' journals in their fields respectively, they also show that as journals they are more practice-oriented and make no mention of socio-legal approaches.

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<sup>38</sup> See for example, C Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Reprint edition) (Cambridge, Harvard University Press, 2016).

<sup>39</sup> Christopher Westoby and others, 'What Are the Barriers and Facilitators to Success for Female Academics in UK HEIs? A Narrative Review' (2021) 33 *Gender and Education* 1033.

<sup>40</sup> About *Child & Family Law Quarterly*, available at, <https://www.familylaw.co.uk/child-and-family-law-quarterly>.

<sup>41</sup> About *Journal of Law, Policy and the Family*, available at <https://academic.oup.com/lawfam/pages/About>.

<sup>42</sup> *Journal of Social Welfare and Family Law*, available at <https://www.tandfonline.com/journals/rjsf20>.

It may be the case that the scientific data driven analyses often published in these three journals may lend themselves to co-authorship, while writing narratives, interpretations or critiques potentially lends itself more easily to working independently at a desk without a team. To write a narrative - to research and carry out those tasks together with someone else – would require finding someone who agrees with your world view to an astonishingly high degree, which is not impossible – but it can be difficult. It is, therefore, possible that the high numbers of women authorship in these journals reflect the higher proportion of women in the legal field engaging in socio-legal work. It is also possible that the data reflects the higher representation of women in the sub-field of family law. To be clear, it may be that the broader and persistent gender stereotypes, gender biases and gender segregation in the academic system and questions of different socialisation of men and women explain the gender-segregation in certain legal fields, such as a high proportion of women in family law. Previous studies have shown, for instance how legal academia privileges courses, such as constitutional law which as a field remains dominated by men, while viewing women-dominated ‘softer’ subjects, such as family law or gender and law, as less prestigious.<sup>43</sup> In this literature, skills-based courses, such as Legal Method, Legal Practice, Advocacy and Lawyering Skills are known as ‘the pink ghetto’.<sup>44</sup>

## 5.2. Patterns in ‘men’s journals’

Our data shows here that where the journal is smaller in size (as measured by the number of authors), fewer women are publishing original articles in it. Where the journal is larger in size (as measured by the number of authors), there are more women. This is shown by the line of best fit on Figure 5 with brings together each of the journals here as a reference point. The relationship between the number of authors and women is disproportionate. Bear in mind that the scale on Figure 5 is not 1 author: 1 women author nor is it 1 author: 2 women author. This suggests the part of the issue here is in the openness or closedness of the network. In other words, if the network of authors in a given area is small, there are likely to be fewer ‘outsiders’ and more ‘insiders’. There are fewer women because they are outsiders in a profession that historically been dominated by men.

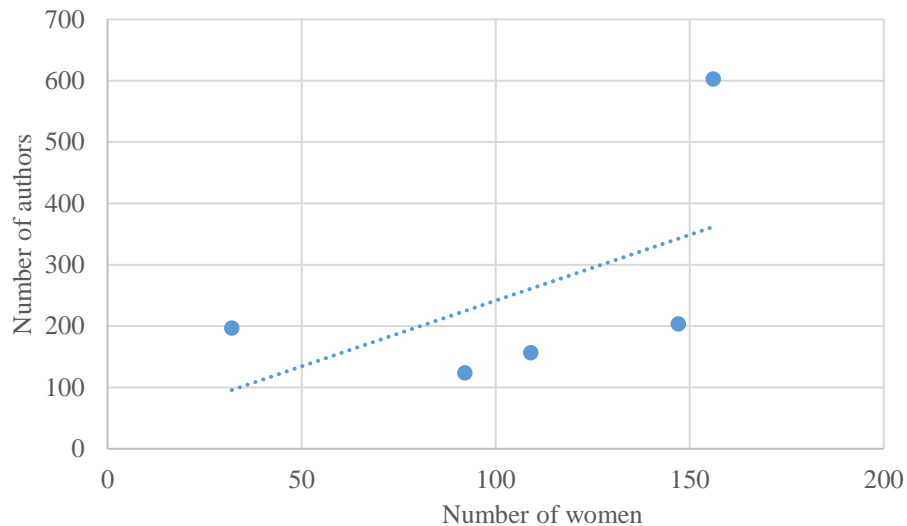
If we apply this logic and bear the theory in the paragraph above in mind, *Conveyancer and Property Lawyer* is arguably less of a concern. Why? This is because *Conveyancer and Property Lawyer* is the first point from the left in Figure 5. It is a small journal and it behaves in a way that is typical of the smaller journals. It is a closed network made up of ‘insiders’ and with few women. If it were to expand and become a bigger journal and follow the pattern set out by Figure 5, then more ‘outsiders’ and more women would publish in it. Where the journal is larger in size and publishes more articles, it is generally open, and there are disproportionately more women. Yet, this is not what appears with *Trust and Trustees*. The pattern here cannot be explained with a small insider or male-dominated network. In around 5 years, the journal published the work of around 650 authors, only a quarter of which were women. Something else, then is at play.

Figure 5: Journal length and women authors for family, property and trust law journals

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<sup>43</sup> Marjorie E Kornhauser, ‘Rooms of Their Own: An Empirical Study of Occupational Segregation by Gender among Law Professors’ (2004) 73 *UMKC Law Review* 293.

<sup>44</sup> *ibid*, and see eg. Christine Haight Farley, ‘Confronting Expectations: Women in the Legal Academy’ (1996) 8 *Yale Journal of Law and Feminism* 333, 352–3.



Source: dataset

Journal editors badge their decisions around ‘quality’, ‘originality’ and ‘rigour’, but this Figure suggests it is a difficult position to hold when faced with these details. It is not tenable to argue that in one year, a journal only accepted the work of a handful of women, because all of the other women submitted manuscripts that were unoriginal and lacking in quality and/or rigour. It could, of course, be argued that women do not submit enough to a particular journal. However, one of the tasks of an editor is to go out there and talk to interesting people, doing what its perceived to potentially be good work, and encourage them to submit. One possibility is that some editorial teams are not doing this enough or that may be having restricted conversations within a small network. Indeed, these patterns suggest an exclusiveness, as if editors are either not doing this or only talking to one gender. This of course, ties into a wider conversation about the composition of editorial teams and the necessity of widening the composition of editorial boards, keeping in mind representation as to sex, ethnicity, seniority and class.

## 6. Conclusion

The academic world has, no doubt, changed in several different ways since Rosemary Auchmuty began her career. How much have the journals which have been allied to Rosemary Auchmuty’s work changed? Family law, unlike some other fields of legal inquiry, has always been a place for women scholars. Andrew Bainham, Stephen Cretney and Stephen Parker were important male figures but there were also female figures, such as Ruth Deech, Christina Lyon and Judith Masson. Has there been a proliferation of women since then? Are they publishing now? If so, where? Our answer to this question is not built upon stories of individual women or men as is the traditional method in Rosemary Auchmuty’s research. This is the method in legal biography, more generally, which Rosemary Auchmuty has contributed to significantly.<sup>45</sup> Here, we have taken an approach that aims to be more systematic. It is an approach that deliberately speaks of unnamed individuals in order to document and then improve the participation of a collective and of the group. This aim is, of course, one that Rosemary Auchmuty has equally promoted, most notably for us in her leadership and

<sup>45</sup> Cross reference to Bourne, Derry, Cownie in this volume

teaching.<sup>46</sup> This study is quantitative and empirically driven view of the authors leading journals in family and property law.

We have not only documented the extent to which women are part of the scholarship here but also suggest ways to increase this rate of participation. In doing so, the findings are not merely descriptive, but also push for change. Our data shows that in family law, this is a field of scholarship that is dominated by women writing. This is not necessarily a worry for the editors of these journals. The data shows that in the journal studied here women collaborate more often and so as teams publish, we see more voices and those voices happen to be women. This can only be a positive for editors, who are not in control of how their authors write. There is, however, some cause for concern for those in the academy, more generally. It may well be that women collaborate as socio-legal work is often about data and as such, it is far more divisible than traditional black letter legal research. This method is desk-based and often revolves around perceptions and a claim to superior interpretation.

These points about method divisions aside and that socio-legal journals have more women authors, there are some key takeaways for editors. Journals that do not have a socio-legal emphasis have relatively few women authors. Why is that women do not publish single-authored manuscripts and engage in black letter desk-based research at the same rate as men? Possible explanations are that women are socialised to help and collaborate so they do. Another is simply that they collaborate to make ends meet in a busy world with competing demands for time. Both are equally possible. Collaborative projects are not necessarily quicker as the nature of collaboration demands both greater levels of communication and consent. As such, they can in themselves be slow. This means in an academic setting, which prioritise efficiency and results, those writing with a feminist ethos can be at a disadvantage. The same applies to those in leadership positions.<sup>47</sup> While journal editors are not in control of how their authors write nor the academic system in which they inhabit, they are able to influence a journal's profile and the manuscripts that they accept. This gives much pause for thought.

This study also hopefully offers some thought to those in the wider academic system. Publications remain at the heart of opportunities for promotion in the academy. Failures to address systematic differences in men and women's publication rates directly contributes to the persistent inequalities in the academy. Though the data presented here offers merely a snapshot of publications in the legal field, it ought to make us pause as we go ahead. Any assumptions that the academy is a place where women now enjoy equality in research cannot be sustained. Journals, which exclude women by accident or by design, should not be considered to be solid places for legal research. The findings here ought to be a concern for doctrinal law journals. Equality is more than an aim and a goal that is aspirational.<sup>48</sup> It is evident that these journals lack the equality and diversity in authors, which is now needed to be perceived as a suitable outlet of importance research. We suggest this ought to be considered by hiring managers, promotion committees or authors, who seek for greater equality and opportunity for all.

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<sup>46</sup> Cross reference to Hunter in this volume

<sup>47</sup> Cross reference to Hunter in this volume

<sup>48</sup> Lauren Carasik, 'Renaissance or Retrenchment: Legal Education at a Crossroads' (2010) 44 *Indiana Law Review* 735.

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