

Discrimination Cases

Academics in Court. The Consequences of Faculty Discrimination Litigation. GEORGE R. LANOUE and BARBARA A. LEE. University of Michigan Press, Ann Arbor, 1987. x, 285 pp. Paper, \$16.95.

More than 20 years ago, the eminent legal historian Lawrence Friedman wrote that "it is easy to forget that each [law case] embodies the skeletal remains of a unique human situation: even at its most matter-of-fact and businesslike, the legal system rests on human raw material." Friedman was drawing on the 20th-century tradition of legal realism, and he presaged the recent scholarly fascination with the place of the "human voice" in the law, the impact of litigation and legal decisions on real people. Similarly, students of the implementation process, scholars of distinction such as Milbrey McLaughlin, Richard Elmore, and Eugene Bardach, have called our attention to the sometimes serendipitous process of implementing court decisions and statutes. In *Academics in Court*, LaNoue and Lee write in this same modern tradition.

Academics in Court is concerned with employment discrimination litigation in higher education, focusing on Title VII of the Civil Rights Act and the Equal Pay Act. These acts were amended in 1972 to extend to university employers, and they basically forbid discrimination in employment and compensation by sex or race. LaNoue and Lee are not primarily concerned with legal doctrine; rather they seek to examine the impact of the litigation process and judicial decisions on "the lives of the participants and their environment" (p. 7). They assert that their "study examines the consequences of the academic discrimination process and [that they do] not attempt to determine which party 'deserved' to prevail" (p. 22). In this effort they have produced a fascinating and readable book, but one that only partially succeeds in achieving its articulated aims.

The core of the book consists of a series of case studies, really stories, about sex and race discrimination suits at the University of Connecticut, Muhlenberg College, the University of Delaware, Montana State University, and the University of Minnesota. The authors claim to draw on the judicial-systems model developed by others, and they set up a method of analysis that separates litigation into stages: triggering incident, perception of alleged discrimination, settlement or litigation decision, pretrial impacts,

trial impacts, decision impact, post-trial impacts, and so forth (p. 15). But with all due deference, their model is not so much one of social science methods as it is one of providing useful subheadings for sophisticated case descriptions, based on court papers, interviews, and other data. As the authors themselves admit more than 200 pages later, social scientists have not succeeded in developing coherent theories to order information about the impact of litigation (p. 240). Indeed, the authors make no effort to ensure the representativeness of their sample or to compare employment discrimination experiences at universities not subjected to the litigation process.

The stories they relate are good stories and highly informative, though frequently the authors do not analyze in detail the common themes that emerge. One common theme is that many discrimination suits arise in the context of departments or universities that are endeavoring to raise standards for hiring, promotion, and tenure. From the university's perspective it is applying the new standards, for example a substantial publication requirement, in an evenhanded manner. Litigants, however, see many other colleagues in the same department who were tenured, in the past, with records very similar to their own. They see discrimination, not changing institutional conditions. Another theme is that the litigants tend to associate the discriminatory acts and hurtful words of individuals in the academic community with an overall atmosphere of racism or sexism, including employment decisions, whereas the universities tend to see them as isolated events having no bearing on institutional policies. Finally, many universities are able to amass evidence of special recruitment efforts for minorities and women, but the litigants in class action suits are more interested in results than processes. Hence it is not surprising that the parties draw markedly different inferences from the underrepresentation of minorities and women on faculties.

The authors ably relate the impact of discrimination litigation on the participants: the luck of the draw in determining whether one finds oneself before a sympathetic or a hostile judge, the feelings of powerlessness and the absolute preoccupation of litigants with their cases, the alienation from lawyers and judges who do not treat the case with the same intensity as the litigants, the feeling that the "real" story never came out, the

hostility of academics who view themselves as liberals when they are charged with racism and sexism, and the horrendous human problems in using the sanctions of law to compel an academic community to accept someone whom it has previously rejected.

If there is a major flaw in the book, apart from the unwarranted assumption of scientific methods, it lies in the authors' assertion of objectively examining consequences without caring who wins or loses. Perhaps it is inevitable that the storyteller will take sides in relating emotionally and ideologically charged stories, but, in any event, the authors do hold strong pro-plaintiff views. A ruling against the plaintiff is characterized as a "great disappointment" to women and a "setback" (p. 85); a university's "extraordinary efforts" to recruit blacks are placed in quotation marks (p. 130), whereas frequently the plaintiff's claims are not so treated (p. 119); an adverse decision "has not created the legal precedent faculty women needed to challenge the fundamental arrangements in American higher education" (pp. 173–174); the documentation of the plaintiff's alleged shortcomings is viewed as a use of the university's "formidable political clout" (p. 186); and a "conservative" view of affirmative action is viewed as unpromising (p. 146). It is not so much that one agrees or disagrees with the authors' views, but rather that *Academics in Court* is infused with judgments on the merits that are not defended with analysis and that stand outside of the authors' stated objectives for their study.

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Roots of a Discipline

From Mineralogy to Geology. The Foundations of a Science, 1650–1830. RACHEL LAUDAN. University of Chicago Press, Chicago, 1987. xii, 278 pp., illus. \$27.50. Science and Its Conceptual Foundations.

The transformation of geology over the past two decades demonstrates just how dramatically a science can change its shape and scope. Geologists have allied themselves with physicists, chemists, and mathematicians; field and museum workers are on the defensive; even the name "geology" has been challenged as a label for the discipline, so that many departments are now engaged in "earth science." Geology, once a self-evidently natural way of perceiving the earth, can no longer be taken for granted.

These developments should sharpen awareness that human beings, not nature,