

## Inspiration & Frustration

*Lady Justice: Women, the Law, and the Battle to Save America*  
Dahlia Lithwick (Penguin Press 2022), 368 pages

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Since I was in law school, I have considered anything Dahlia Lithwick writes to be a must read. For more than 20 years, her pieces in Slate have analyzed and explained the work of the Supreme Court with far more concision and wit than any Con Law professor I ever had. The opening to her Supreme Court Dispatch describing the 2014 pregnancy discrimination case *Young v. UPS*<sup>1</sup> is a great example: “Sometimes being a Supreme Court justice looks like the most glamorous job in the world. Robes! World travel! Life tenure! Adoring clerks! But other times, it all comes down to parsing the semicolons.”<sup>2</sup> In her pieces, the cases come alive as dramatic and funny and real. And her writing always foregrounds the human impact of any legal issue.

So I am glad to have read Lithwick’s new book, *Lady Justice: Women, the Law, and the Battle to Save America*,<sup>3</sup> even if I feel frustrated by its limitations. Lithwick’s project in writing *Lady Justice* is certainly an important one. The book serves to highlight the work women lawyers have done and are doing to protect our democracy, particularly since the election of Donald Trump in 2016. It is thus a catalog and chronology of many of the major legal battles of the Trump years, including the Muslim ban, the Unite the Right March, the family separation policy, the Kavanaugh confirmation, the census citizenship question, the undermining of the Voting Rights Act, and the reversal of *Roe v. Wade*. Lithwick is deeply concerned about the state of our democratic institutions, but she

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<sup>1</sup> *Young v. UPS*, 575 U.S. 206 (2015).

<sup>2</sup> Dahlia Lithwick, *Supreme Court Dispatches: Heavy Lifting*, SLATE (Dec. 3, 2014, 6:45 PM), <https://slate.com/news-and-politics/2014/12/young-v-ups-pregnancy-discrimination-arguments-supreme-court-justices-argue-over-a-semicolon.html>.

<sup>3</sup> DAHLIA LITHWICK, *LADY JUSTICE: WOMEN, THE LAW, AND THE BATTLE TO SAVE AMERICA* (2022).

aims to do more than catastrophize. The book is meant to offer glimpses of hope and promise through the stories it tells of women lawyers who fought back and who show a way forward. In this way, the book is a corrective to the way we often talk and think about changes in the law. Actual lawyers are often left out of the story of the law's evolutions. A law student could easily go through three years of legal education without ever learning about—or even learning the names of—the lawyers who strategized, organized, and litigated the cases in her coursebooks.

Most of the chapters in *Lady Justice* are built around profiles of women lawyers who did vital work as litigators, community organizers, and politicians during the years of the Trump administration, including Sally Yates, Becca Heller, Robbi Kaplan, Brigitte Amiri, Vanita Gupta, and Stacey Abrams. These chapters are inspiring. The women Lithwick profiles are all smart, pragmatic, and indefatigable. They are funny and self-aware. They are clear-eyed and frank. And all of them believe that the law—despite its many flaws—can be used for good in the hands of committed and clever lawyers. They believe in law and legal institutions. Even if the book at times makes you question why. For example, in the chapter called “The Airport Revolution,” Lithwick profiles Becca Heller, the co-founder of the International Refugee Assistance Project, who was at the center of the spontaneous airport resistance to the Muslim ban. Heller explains her view of the law to Lithwick:

I didn't go to law school because I had a deep respect for the courts and the rule of law. I think a lot of the law is completely ridiculous. The law says a lot of really horrible things, and historically has said a lot of really horrible things, and it has been used in a lot of really horrible ways. But, I think, sometimes you can use it to achieve good things. I mean, to me, getting a law degree is just about using the master's tools to destroy the master's house.<sup>4</sup>

Aside from these profiles, there are two chapters focused on #MeToo that are both the most painful and compelling in the book. The first describes the accusations of sexual harassment and misconduct against Alex Kozinski, former Chief Judge of the Ninth Circuit.<sup>5</sup> Lithwick was personally harassed by Kozinski when she clerked at the Ninth Circuit and after two other women, Heidi Bond and Emily Murphy, came forward, Lithwick published an account in *Slate* of what Kozinski had said and done

4 *Id.* at 63.

5 *Id.* at 159–87.

to her.<sup>6</sup> For Lithwick, #MeToo is literal—she is one of the many women who have faced unwanted sexual advances at work from a powerful man. And her description of the emotional toll of these experiences as well as the costs of choosing if and when to discuss them publicly is heart-rending, especially for readers who know Lithwick best for her playful and irreverent voice.

But Lithwick is a lawyer. The description of her personal experience soon becomes a critique of the systemic and procedural failures that allow judges like Kozinski to escape consequences for their actions while their accusers are put through the ringer. To do this, Lithwick weaves into these chapters the stories of Anita Hill and Christine Blasey Ford in coming forward during the confirmation hearings of Clarence Thomas and Brett Kavanaugh. The similarities in their experiences (including the lack of careful process, the absence of meaningful investigation, the forced isolation of giving scrutinized public testimony, the sense that the conclusion is predetermined by politics) are dispiriting, given the decades that separate them. But Lithwick finds hope here too. She sees the work of women lawyers as a way for them to express the frustration and rage that so many women feel and as a way to make things better. She writes,

For Anita Hill, and for so many of the women lawyers who have grave doubts about the justice system and the current Supreme Court, the real work to achieve enduring justice for women requires a recalibration of both the machinery of justice itself and a culture that can accept the outrageousness of women's voices. And maybe, above all, what drew so many women to the law was the possibility of being outrageous together. For all the flaws of the legal system, of the court system, and even of the #MeToo movement, it helped us find our way to one another, and on the very worst days that was enough.<sup>7</sup>

But as much as *Lady Justice* offers hope and sisterhood, the book's blind spots are as obvious as its bright pink cover.

First among them is that the book is focused so intently on women that it is stuck in a gender binary that feels deeply behind the times. The book begins with the story of Pauli Murray, who Lithwick describes as “the most important woman lawyer few people know about”<sup>8</sup> and also a “queer, gender-nonconforming attorney so far ahead of the curve of

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<sup>6</sup> Dahlia Lithwick, *He Made Us All Victims and Accomplices*, SLATE (Dec. 13, 2017, 3:11 PM), [https://slate.com/news-and-politics/2017/12/judge-alex-kozinski-made-us-all-victims-and-accomplices.html?pay=1712413115083&support\\_journalism=please](https://slate.com/news-and-politics/2017/12/judge-alex-kozinski-made-us-all-victims-and-accomplices.html?pay=1712413115083&support_journalism=please).

<sup>7</sup> LITHWICK, *supra* note 3, at 215.

<sup>8</sup> *Id.* at 3.

modern constitutional history that it all but forgot she had been one of its principal designers.”<sup>9</sup> But aside from Murray, who died in 1985, nonbinary and transgender people are otherwise barely mentioned in the book, even though the ban on transgender military service was another of the Trump era’s defining legal horrors. A story about women lawyers that excludes the work of lawyers who exist outside a cisgender binary is woefully incomplete. This failure to acknowledge the book’s cabined view of gender allows the book to rely on descriptions of women and womanhood that veer into a kind of sloppy “girl power” vibe, including “women plus law equals magic; we prove that every day.”<sup>10</sup>

In a similar way, the book fails to meaningfully contend with the deep racism that surfaced during the Trump era, especially when the murders of George Floyd and Breonna Taylor (who isn’t even mentioned) raised urgent questions about systemic racism, racially motivated police violence, and the complicity of white lawyers, judges, and institutions, including most damningly for Lithwick’s project, white feminists. Acknowledging the work of women lawyers, even when those lawyers are as racially diverse as Lithwick’s subjects are, misses the law’s ongoing failures when it comes to racial justice and equality. Black people are still starkly underrepresented as lawyers,<sup>11</sup> law firm partners,<sup>12</sup> law professors,<sup>13</sup> and law students.<sup>14</sup> Celebrating women, without accounting for this ongoing failure, makes the book’s hopefulness seem willfully blinkered.

Indeed, if anything, the legal battles of the Trump era demonstrate that everything is intersectional. The work done by the women lawyers in the book demonstrates that the attacks on bodily autonomy, migrant families, Muslims, the voting rights of Black and Latino communities, democratic norms, and the rule of law, all require intersectional solutions and awareness. So the narrow focus in *Lady Justice* on gender alone is entirely the wrong way to think about and write about the important work of the women it profiles. And yet, it is wonderful to spend time with the women Lithwick profiles and with Lithwick’s intimate and charming voice. And it is a relief to find hope in this book, despite its frustrating flaws.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.* at 284.

<sup>11</sup> *ABA Profile of the Legal Profession 2023: Demographics*, ABA, [https://www.abalegalprofile.com/demographics.html#:~:text=Meanwhile%2C%20the%20number%20of%20Black,the%20U.S.%20population%20\(13.6%25\)](https://www.abalegalprofile.com/demographics.html#:~:text=Meanwhile%2C%20the%20number%20of%20Black,the%20U.S.%20population%20(13.6%25)) (last visited May 12, 2024).

<sup>12</sup> *2023 Report on Diversity in U.S. Law Firms 5* (Jan. 2024), NALP, <https://www.nalp.org/uploads/Research/2023NALPReportonDiversityFinal.pdf>.

<sup>13</sup> See, e.g., *Law Professor Demographics and Statistics in the US*, ZIPP1A, <https://www.zippia.com/law-professor-jobs/demographics/#race-statistics> (last visited May 12, 2024).

<sup>14</sup> Susan L. Krinsky, *The Incoming Class of 2021 — The Most Diverse Law School Class in History*, LSAC LAW: FULLY (Dec. 15, 2021), <https://www.lsac.org/blog/incoming-class-2021-most-diverse-law-school-class-history>.