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The "Feminization" of the Legal Profession

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THE COMPARATIVE SOCIOLOGY
OF WOMEN LAWYERS:
THE "FEMINIZATION" OF
THE LEGAL PROFESSION

BY CARRIE MENKEL-MEADOW*

I. INTRODUCTION

The story of women in the legal profession is an easy one to tell, even across widely disparate national and legal cultures. Until quite recently women were not to be found in significant numbers among law graduates, legal professionals, or in any occupation involving legal work, however loosely defined. For most nations this changed radically in the 1970s with the expansion of university education to include women and the simultaneous development of an increased role for the university in training legal professionals in many countries.

In some countries women were prohibited by law from entering legal occupations even if they had read law or apprenticed with a lawyer. In such countries it took a change of law, whether by legislation or common law development, to effect a change in the rules of admission to legal practice. In other countries (New Zealand, for example) women were never legally prohibited from entering the profession, but they did not enter the field. The participation of women in the profession strongly tracks the development in other countries with more formal barriers. Social barriers to entry and participation in the profession seem more powerful than legally prescribed limits. Similarly, the international women's movement, the democratization of university education, new methods of birth control, and different attitudes toward the family have effected enormous changes in the participation of women in the legal profession.


This essay explores the 'feminization' of the legal profession from several perspectives. First, data on women's participation in the legal profession are reported, principally from secondary sources, including the national reports prepared for the Working Group for Comparative Study of Legal Professions. Some primary data from the United States and Canada will be reanalyzed. It should be noted that the data presented disproportionately represent western industrial nations; there is a gross underrepresentation of Third World and underdeveloped nations. In part, this is due to the level of development of the legal profession in such nations. The scarcity of data from these countries limits our ability to understand the impact of some colonial legal systems on the indigenous legal culture.

Second, the implications of a very rapid expansion of women lawyers into different segments of the legal profession will be explored, principally as speculations and suggestions for future research. These speculations are based on currently existing data and suggestions drawn from feminist theory and research in the sociology of occupations. It may be too early to draw accurately the picture of what participation in the legal profession will be like for women. Perhaps by advancing a few interesting questions at this stage we can direct our attention to the most important subjects for study.

In short, this paper explores several dimensions of the term 'feminization' of the legal profession. On the one hand, we can consider the profession feminized simply by the increased participation of women. On the other hand, the question of whether the profession will be 'feminized' — that is, changed or influenced by women in the profession, is an issue of a different order. There is some level of complexity even in the definition of 'feminized'. For those who attribute 'feminine' qualities to women (or to men), the legal profession becomes 'feminized' when those feminine qualities (empathy, relatedness, nurturance, collectiveness) are recognized, appreciated, and absorbed into the performance of legal tasks and functions. For others the profession becomes 'feminized', not

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2 The Working group for Comparative Study of Legal Professions is a component of the Research Committee of Law of the International Sociological Association. The national reports considered in this article cover Canada, the United States, the United Kingdom, Scotland, New Zealand, Belgium, Germany, Norway, France, Italy, Spain, Yugoslavia, Brazil, Venezuela, Japan, and India. The reports will be published in R. Abel and P. Lewis eds., Lawyers and Society: A Comparative Perspective (Berkeley, Los Angeles, CA: University of California Press, 3 volumes, 1988-89.


by stereotypic attributions of gender qualities, but by a 'feminist' influence on the profession that includes changes in the practice of law (adaptations of work to family) and in the substantive law itself (ranging from employment discrimination issues to family law and criminal law). The issues here, which derive in part from important work being done in the field of feminist jurisprudence, are concerned with whether women who enter the profession will conform to a male model of what it means to be a lawyer or whether the profession will innovate and adapt to accept previously excluded entrants who may have new perspectives to offer on how the practice of law can be conducted.

Sociologists of the legal profession perform a worthwhile task in reporting the number and distribution of particular social groups in the professions. Statistical patterns reveal much of the story of macro social change. Identifying the patterns of aggregate change is, however, only part of the story. First, explanations of the patterns must be developed. Second, changes and trends on micro and qualitative levels should also be identified, not only for prediction about future macro changes, but for the richer explanations that are possible and for the observations of variations and deviance from norms that may provide the clues to social innovation. It is not simply the counting of numbers that is interesting, but what those numbers mean.

One of the significant themes in any study of women in the legal profession is whether women will be changed by the legal profession, or whether the legal profession will be changed by the increased presence of women. In short, what will the dependent and independent variables be in a study of the impact of a previously excluded group on the profession? What difference will the entrance of women make in the profession? Will differences be observed because women are different (culturally, socially, or biologically) from men and will therefore perform legal functions in a different way? Will women make contributions to the profession from their position as previously excluded outsiders, as

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5 F. Olsen, "The Sex of Law," [unpublished manuscript].
10 Epstein, supra, note 8 and Menkel-Meadow, supra, note 7.
dominated and oppressed beings who will reject the hierarchy and unnecessary stratification of the profession, or as people with family responsibilities and interests who will require adaptations in the workplace? Next, what will be the nature of women's contributions to the legal profession? Will they be changes in the way law is practised, in the structure of work, in the substantive law, or in the very basic forms of the legal system? These are some of the questions and themes to be explored in a study of women in the legal profession.

Other themes include macro questions. As women begin to approach constituting half of the profession, will the status of the profession decline? As women and the things they do have been devalued in various cultural forms, will the increased performance of legal tasks by women affect the social and political regard of these legal functions? We already see evidence of this in the clustering of women in the legal jobs typically lowest in the social hierarchy in virtually all countries. In a less likely turn of events, might the status of the legal profession rise with changes in the profession wrought by women; a profession that truly helps through warmer, less aggressive, more honest practices?

Once participation in the profession exceeds token levels new questions emerge. Will only exceptional women succeed or rise in the professional hierarchy? Will average women do as well as average men? In short, what is the nature of gender discrimination? Are those women, who act like men, allowed to penetrate the restricted boundaries, while those who act more like women are kept out? With the demand for equality as the theoretical construct on which much feminist theory is based, what will happen when some women are not 'equal' to men but in positions of authority over them? Again, the nature of gender discrimination is implicated in far more complex forms. Women may be 'equal' to men, but when they are in superior positions in functional


13 In most western countries women comprise about 40 percent of the present law student body. See text accompanying notes 22 and 27. See also M. Carter & S. Carter, "Women's Recent Progress in the Professions or Women Get A Ticket to Ride After the Gravy Train Has Left the Station" (1981) 7 13.6 Feminist studies 476.


15 C.A. MacKinnon, "Women Lawyers — On Exceptions" in Feminism Unmodified, supra, note 6 c. 5.
or occupational stratification systems, does the resistance become another form of the 'women are inferior' argument — they cannot be better than, above, or superior to men? What effect has the large influx of women into the profession had on others now excluded? As expansion of the profession declines in the 1980s and the places available in the profession become more limited, who are women displacing and what effect does that have on social structures? Many of the national reports demonstrate that as gender barriers are eliminated or reduced, the class barriers may get stronger. A large proportion of the increasing number of women entering the profession are from the middle class. Does this suggest that class discrimination is more resistant to change than gender discrimination?

Finally, a comparative study of women in the legal profession must look at women's participation in other professions. Are the questions suggested here particular to the legal profession, or are there more universal clusters or patterns that characterize women's participation in the professions or in the workforce generally? It will be useful to compare women's participation in the professions previously denominated 'men's professions' and those denominated 'women's professions', and men's participation in previously female dominated professions (nursing, teaching, et cetera). This is a particularly difficult enterprise when conducted across cultures and nations. These themes will be explored with the hope of illuminating some of the questions that future research will have to address.

II. WOMEN'S PARTICIPATION IN THE LEGAL PROFESSION: THE DATA

The participation of women in the legal profession is remarkably uniform (with a few notable exceptions) in the western industrialized nations. Since the 1970s, women have entered the legal profession in dramatic numbers. In many nations this accounts fully for the growth in the legal profession, and for the growth in the number of law students studying for admission to the bar. The entrance of women into the profession has come at a time when the profession in general has been growing; women have for the most part entered the profession without displacing men and therefore without disturbing the male-dominated power structure. Women are also entering the profession at a time of increased unemployment of lawyers generally. They are disproportionately represented among the unemployed, part-time employed, and underem-

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ployed, and tend to earn less money than men in equivalent jobs. Most
significant for purposes of this study, women are disproportionately
represented in different spheres of legal activity. While the sphere or
location of women lawyers may differ from country to country, the spheres
of women's activities are almost always found at the bottom of the
professional hierarchy.17

A. Women in Legal Education

In the 1970s, women began entering universities for legal training
in large numbers.18 The reasons may differ slightly from country to country
such as the Viet Nam war and its accompanying social reform and protest
movements in the United States, the opening up of universities to women
in large numbers in Europe, and the decrease in available teaching jobs
in Germany.19 Also, most nations felt the effects of the international
women's movement of the time. However, while women's participation
in legal education climbed rapidly in most countries, it has levelled off
to a relatively constant rate somewhere between 30 and 40 percent.
Exceptions are France, Norway, and Yugoslavia, where women studying
law now exceed 50 percent of the relevant student body.20

In the United States, women were barred from many law schools
until well into the twentieth century. Harvard did not accept women
until 1950; and the last law school to admit women did so as late as
1972 (Washington and Lee in Virginia). Until the 1960s, enrolment of
women remained at about 3 percent. By 1970 the percentage took its
first leap forward to a little over 8 percent, climbing steadily through
the decade until peaking and stabilizing at about 38 percent in the mid-
1980s.21 This rapid growth can be explained in part by the expansion
of available seats. Throughout the 1960s and 1970s, new law schools
opened with constantly expanding enrolments. Within the last three years
national enrolment has decreased. Some schools have closed and legal
educators have begun to talk about the effects on legal education of
shrinking enrolment and dilution of student quality.22 For some years,

17 See text accompanying notes 50-71.
18 G. Neave, "From the Other End of the Telescope: Deprofessionalization, Re-
supra, note 2.
19 E. Blankenberg & U. Schultz, "The Legal Profession in Germany" in Abel & Lewis, eds.,
supra, note 2.
20 Abel, supra, note 16 at 22-23.
21 Epstein, supra, note 8; Curran, supra, note 8; R. Abel, "American Lawyers" in Abel &
Lewis, eds., supra, note 2.
The increase in female students had little or no effect on the numbers of male students. Since 1973, however, virtually all expansion in the number of lawyers admitted to the bar has been due to the increase in female students. As expansion stopped and the places became more limited, the number of male applicants to American law schools has actually decreased (.1 percent a year since 1979) while female enrolment increased at an average annual rate of 41.4 percent.23

Similar patterns are found in other countries. In England and Wales, the number of male university law graduates increased at an average annual rate of 5.4 percent between 1967 and 1978, but the number of female graduates increased at a rate of 31.2 percent (very similar rates exist for enrolment in law programmes at the polytechnics).24 In Canada, the number of male students doubled between 1962 and 1981, while the number of female students increased twenty-four times. Women now represent approximately 35 to 40 percent of all new entrants to the profession in virtually all provinces.25 There are some suggestions that there may be proportionally more women lawyers in French Canada than English Canada. This would parallel development in Europe where new entrants to the legal profession exceed 50 percent in France but have not yet reached 30 percent in England.26

In continental Europe, as of 1983, women represented 37 percent of German law students in the universities, 54 percent of French law students, 35 percent of Belgian law students (a figure which has remained constant since 1975), and 54 percent of Norwegian students.27

In Brazil, where legal education serves as a general education for the elite, women represented about 25 percent of all law graduates in 1980.28 In New Zealand, where women were never barred from legal practice by law, they comprised only 9 percent of the student body in 1981. As of 1983, however, they began to constitute a substantial portion of the student body studying law at Auckland University.29 In other

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23 Abel, supra, note 16 at 22.
26 Abel, supra, note 16 at 22-23.
countries, women have yet to make a significant impact on the enrolment in formal legal training. In India and Japan women continue to represent a small fraction of those calling themselves law students.\footnote{Abel, supra, note 16. The reports of India and Japan do not even report on the numbers of women in the profession: J.S. Gandhi, "Historicity, Profession and Modernity: A Sociological Portrait of Indian Legal Profession" and K. Rokumoto, "The Present State of the Japanese Practising Attorneys" in Abel & Lewis, eds., supra, note 2. See also M. Kamiya, "Japanese Women — The Legal Status and the Reality" (1986).}

Several points must be noted about these data. First, collecting and reporting data on women studying to be lawyers is a relatively modern phenomenon resulting from the increased formalization of legal education in common law as well as civil law countries.\footnote{Although the first women to be admitted to the bar in the United States in the late 1800s read law with their husbands and used the apprenticeship system, by 1986 virtually all states had eliminated this form of legal education. R. Chester, Unequal Access: Women Lawyers in a Changing America (South Hadley, Mass.: Bergen & Garvey Publishers, 1985).} Second, the figures reported above tell us only about women's entrance into university law courses.\footnote{It should be observed that in many countries the increase of women in legal education has come at the expense of the working class. Though universities have opened their doors to working class students, law students remain solidly middle or upper class. Recent female admittees are disproportionately middle or upper class, reflecting old patterns in the recruitment to the legal profession, Abel, supra, note 16 at 35, 40.} The type of education varies radically from country to country and the effect of a university based education on the likelihood one will actually practise law varies greatly. In Italy and Brazil, for example, the attrition rates during legal study are quite high due to the easy entrance requirements and large opportunity costs involved in delaying earning capacity for as long as seven years. In other countries the transition from legal education to licence to practise is lengthened and narrowed by examinations, clerkships, and apprenticeships. Thus, the entry of women into legal education is only the beginning of the story. If legal education is more universally available to women, entrance to the profession is controlled at later stages. In addition, the fact that enrolment of women has stabilized at an almost uniform level of 35 to 40 percent is curious, but difficult to explain. Is there some world-wide conspiracy of admissions officers to maintain the profession as predominantly male or have we collectively reached the peak of women's interest in the legal profession? In those countries with high attrition rates, we have little data about the causes and timing of that attrition. In Brazil, for example, where women comprise 24.6 percent of law graduates, only 20.9 percent of legal professionals are women.\footnote{Falcao, supra, note 28.} At what stage and in what ways are women eliminated from legal study and practice?
B. **Women in the Legal Profession**

It must be noted that even with a law student participation rate of about 35 percent it will take at least another generation to have a large impact on the total number of women in the legal profession of most countries. Even though women represent over one-third of new admittees to the bar each year, they still enter a formerly totally male population. In the United States, although 34 percent of new entrants to the profession in 1983 were women, women still comprised only 12 percent of the total lawyer population. Demographers predict that women will not approach 40 percent of the lawyer population until shortly before the year 2000. In analyzing the data about entrance into the profession, it is most important to try to uncover the places and rates of female attrition, failure, or discouragement. One crucial step in understanding women's participation in the legal profession is to locate points where women either choose to leave the training track or are forced out by external discriminatory pressures.

There is much anecdotal, but little hard empirical evidence that women are leaving large law firms before the partnership decision because they fear rejection. By any measure, women still do not represent more than about 3 percent of the partners in major law firms. They do not like the demands of 'greedy institutions' that require up to 2300 billable hours a year, or they find the work demands for partnership inconsistent with child-bearing plans. It takes about seven years to become a partner, which requires a primary commitment to one's career during the best years of fertility. Thus, while rates of entry to legal education are quite high, rates of actual admission to the bar and rates of actual participation in the profession are lower, once again with a remarkable consistency across nations.

In the United States, admission to the bar for women climbed radically in the 1970s, along with the general growth and expansion of entrants into the legal profession. By 1973, the number of males admitted each year levelled off, but the number of females admitted to the bar continued.

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to increase yearly through 1983. Likewise, in Canada, women represent between 35 and 40 percent of new entrants to the bar. In England and Wales 20 percent of those called to the bar are women (while participation rate in legal education was about 34 percent), and in Scotland, 1982 saw 36 percent of new entrants as female (participation in legal education had risen to about 40 percent). Many countries report that women may perform better in school, but still have greater difficulty in locating positions. In Norway, where 54 percent of law students are now women, a much smaller number actually enter the profession.

The British case illustrates the discrimination that appears to exist at the apprenticeship level. Although England and Wales report comparable numbers of men and women receiving honors, women have particular difficulty in finding pupillages, tenancies (only 40 to 45 percent of women get them compared to 60 to 70 percent of men), and clients (over half of a group of surveyed women said they had trouble getting clients).

Women in Great Britain report discrimination not only from male barristers, but from clerks and clients as well. As recently as 1967, two-thirds of London chambers had no women; in 1976, one-third still had no women. In 1975, when 17 percent of those called to the bar were women, only 12 percent of those who actually started to practise were women. A similar story can be told with respect to solicitors where apprenticeships may not serve as quite the same discriminatory barriers, but attrition is quite high. In 1974, 2,296 women were 'on the rolls', but only 1,299 women took out practising certificates, and many women were found working as clericals in solicitors' offices. A higher percentage of women express interest in becoming solicitors rather than barristers in recognition of the more obvious discrimination in the barrister apprenticeship structure.

38 Abel, supra, note 21.
40 Abel, supra, note 24; A. Patterson, "The Legal Profession in Scotland" in Abel & Lewis, eds., supra, note 2.
41 Johnsen, supra, note 27.
43 This discrimination is not remedied by statute; although women have been entitled to be admitted to the bar since 1919, the Sex Discrimination Act of 1975 does not apply to the bar because barristers are not "employees." In contrast, the United States Supreme Court recently held that partnership, although not an "employment" decision, was a "condition or term of employment" under the statutory language of Title VII of the 1964 Civil Rights Act (42 U.S.C.A. 2000(e)), for the purposes of finding a major law firm may have discriminated unlawfully in denying partnership to a woman. Hishon v. King & Spaulding, 104 S. Ct. 2229 (1984).
44 Royal Commission on Legal Services (1979).
45 Abel, supra, note 24.
Thus, while women appear to have greatly increased their participation in meritocratic university education, their actual participation in legal practice is moving at a generally slower, but widely varying pace, as the controls imposed by the university end and the controls of the presently male constituted profession take over. Barriers to entrance or success in the legal profession operate in complicated ways that reinforce the current male-created structure of the legal profession. While some of the barriers can be attributed to blatant or subtle discrimination by particular male actors, others are socially constructed structural impediments that begin as external forces but appear to many to be internal in operation (that is, choices by women not to pursue full-time practice or some particular form of practice). Thus, as long as partnership decisions are timed to coincide with childbearing plans, women may be unable as a class to “succeed” in large numbers in the large law firm context. Even where, as in the United States, some firms attempt to adapt their structures, such as by permitting maternity leave or allowing part-time work, women who avail themselves of such ‘innovations’ find they are considered less committed as lawyers; they have failed to live up to the male constructed image of a dedicated lawyer. Therefore, women are perceived as “opting out” without any examination of whether the work structure has within it impediments or obstacles that pre-ordain the outcome. As is said in employment discrimination doctrine, such “neutral rules or constructs have disproportionate impacts” on particular segments of the workforce. A significant question arising from this picture of disproportionate entrance into the profession is whether it is the profession that will innovate and adapt to women’s life cycles or whether women will have to adapt to current male structures of work organization that assume an unbroken lifetime commitment to full-time work. At present, the latter appears to be the case.

C. Occupations of Women in the Legal Profession

The most startling finding of this comparative study of women in the legal profession is that women are disproportionately located in different spheres of the profession in virtually every country. What is most interesting, however, is that although women cluster in what are considered the lowest echelons of the profession, the particular form of

46 See Abramson & Franklin, supra, note 35; L. Fenning, “Parenting and the Big Firm Career” (Address to the National Association for Law Placement, Inc., 1985) [unpublished].


legal practice differs somewhat from country to country. Thus, in aggregating the national data that we have, women are performing virtually all lawyering tasks, but in any particular culture or country they may be excluded from a particular branch of the profession either because they are generally restricted from high status occupations or because particular stereotypes of what women are good or bad at relegate them to certain tasks or locations. There is, therefore, a sort of push-pull effect where women are 'pulled' into what they are perceived to be good at (domestic relations work) and 'pushed' (or more likely kept) out of what is considered high status work — usually private commercial work in western capitalist regimes. Another factor operating to increase gender segmentation of the workforce is the compatibility of particular occupations with life cycle choices. Thus, in most western European nations where government programmes for child-rearing leaves exist, women will be found disproportionately in government legal posts.

In Germany, for example, women prefer public sector jobs because of a regulatory scheme, particularly in the judiciary, which permits part-time work and guarantees child-rearing leave for some years with re-entry into the same job. Women currently represent 28 percent of jurists in judicial practice training and 30 percent of all judges on probation (the first three years of occupation in the judicial role). Unfortunately, although women seem to prefer jobs with the state, such jobs are becoming less available due to economic conditions. Since women experience difficulty in obtaining private company jobs they appear to be turning to public advocate positions (prosecutors and other government litigation positions). In 1983 they represented 36 percent of advocates (a position in the German legal profession that is typically entered as a second choice, when one cannot pursue one's first choice).

In Belgium, by contrast, there are comparatively fewer judges, and being a judge is considered a very high prestige occupation. Women are disproportionately underrepresented in this occupation. Within Belgium's international commercial occupations, women are also underrepresented in private commercial employment. Women are highly represented in the non-profit sector, in teaching, and as government advocates. Most important, however, is that although women represent 35 percent of the student population, they represent 50 percent of those seeking work (highly represented among the unemployed). Fifty percent of all

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women attorneys can be found in Brussels where there is said to be easier acceptance. In contrast, in France, women are found disproportionately in suburban practices serving working class and middle-class individuals, rather than in prestigious Paris commercial practices.

In further contrast, while women seem to be employed in advocate positions in many European nations (by default), in Norway women are underrepresented in litigation practices, in part because these professions are viewed as requiring "aggressive defiance" and a connection to trade, both of which women are thought not to have. In Norway, women are disproportionately represented in the lower posts in the central government. Of those in private practice, women have two-thirds of all personal relations clients, and men have three-fourths of all property-capital relations clients.

In Brazil, women represent 46 percent of all legal aid attorneys, the least remunerative of legal occupations, and 20 percent of the public prosecutors. Interestingly, where the poverty of the nation greatly decreases the use of courts, police chiefs (who are law graduates) are considered the most common source of dispute resolution, particularly among the poorer classes (the majority of the population). Women represent only 6 percent of all police chiefs.

In the common law countries the patterns are strikingly uniform. In general, women are not found at the highest levels of private practice, and, although they are overrepresented in public jobs, occupations of women tend to cluster at the lower levels. Of course, an important explanation for the hierarchical findings has to do with length of time in the profession. In most of these countries women have not been lawyers long enough and in high enough numbers to have climbed the respective ladders to senior partnership or high justice. Nevertheless, some interesting patterns exist. In the United States, women are found disproportionately in government positions (approximately 21 percent of women lawyers are found in government positions, both federal and state, compared to about 12 percent for men). When women are found in the private sector interesting clusters occur; they are found disproportionately in large firms

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53 Huyse, supra, note 27.
54 Abel, supra, note 16 at 39.
55 Johnsen, supra, note 27.
56 This is a country that reports that men are clients more often than women; 13 percent of women surveyed indicated that they had consulted a lawyer compared to 25 percent of the men; Johnsen, supra, note 27.
57 Falcao, supra, note 28.
(as junior associates) and in very small practices, not in middle-size firms.\textsuperscript{59} Perhaps this is because large firms apply more bureaucratic, rationalistic standards, and small firms operate on closer personal relations. Middle-size firms may represent the major source of discretionary discrimination in delegated committees or firm culture. In recent years, women have been overrepresented in the large law firm associate pool. In 1980, they comprised 15 percent of all associates but only 2 percent of all partners.\textsuperscript{60} This latter figure is changing yearly. A recent study of firms of over 100 lawyers in Los Angeles reveals that between 1983 and 1984 the fraction of partners who were women increased from 3 to 4 percent,\textsuperscript{61} partially confirming the relatively recent admission phenomenon discussed above.

Given the rapid increase in entrance to the profession in the 1970s, partnership rates seem quite low. A recent study of the women in the class of 1974 at Harvard Law School revealed that although women graduates were more likely to work initially at large \textit{élite} law firms, ten years later 23 percent of the women were partners, while 51 percent of the men were partners. Over half of the forty-nine women who initially went to large private firms had opted out one way or another to a different form of practice or no practice at all.\textsuperscript{62} Similarly, women are grossly underrepresented at the highest levels in England where there were few women as heads of sets, Q.C.'s, or judges. Women barristers are concentrated in the least favoured specialties — criminal law, domestic relations, and general civil litigation — and hardly found in the more remunerative fields of tax, commercial law, and chancery. In Scotland, women comprise only two out of 148 principals in the leading law firms.\textsuperscript{63}

Women are also overrepresented at the lower ends of the occupational hierarchy. In the United States, women account for almost all paralegals and paraprofessionals who perform routine legal tasks and assist lawyers. In Japan, women make up 67 to 78 percent of law clerks.\textsuperscript{64}

Most common law countries also report underrepresentation of women in the élite circles of the bar associations, whether compulsory or voluntary. Thus, women are hardly found in the élite Councils of Law Societies in Scotland, England, or New Zealand. Similarly, women are sparingly represented in the House of Delegates to the American

\begin{footnotesize}
\begin{enumerate}
\item Curran, Rosich & Carson, \textit{supra}, note 8 at 42-49.
\item "Los Angeles Perspective," \textit{supra}, note 36.
\item Abramson & Franklin, \textit{supra}, note 35.
\item Abel, \textit{supra}, note 24.
\item Rokumoto, \textit{supra}, note 30; Kamiya, \textit{supra}, note 30.
\end{enumerate}
\end{footnotesize}
Bar Association, and are just beginning to find themselves in leadership positions in state and local bar associations. This, of course, can be attributed to the fact that positions in the elite circles of the bar associations tend to be recruited from the elite commercial sections of the bar. In some countries, women have actively supported and formed their own bar associations which can contribute to some segmentation of the female bar. In Canada, for example, the Women’s Law Association is a general membership organization for women, but the Women and Law Group has a more explicitly feminist political agenda, focusing on the role of women in the profession and the impact of particular laws on women.

As women continue to enter the profession, more complicated issues will likely become more pronounced in terms of political feminist philosophy, choices of subject specialty, task specialization, and assimilation to or rejection of traditional, and conventional male modes of work organization. Some women will identify themselves with the professional class ("I am a lawyer first and a woman second"), others will identify themselves as women first, with class interests coextensive with other women.

D. Women Lawyers’ Income

As stratification within the profession’s specialties and types of work are clearly demarcated for women, the available data on women’s incomes present an even stronger illustration of disparities between men and women.


66 Similarly, in a recent case before the California Supreme Court, two women’s lawyers’ groups divided as to appropriate political strategy. In a dispute over the legal treatment of a professional degree at the time of marital dissolution, one lawyers’ group (Women Lawyers of Los Angeles) argued on behalf of the wife’s (and women’s) interest in having the degree considered community (thus, shared) property, while another women’s lawyers’ association (the California Women’s Lawyer Association) chose to identify with the professional class argument by seeking the treatment of the professional degree as separate property (thus protecting the women’s newly found professional status and income investment). Similar conflicts faced women lawyers’ groups as they chose positions in the litigation surrounding the legal treatment of pregnancy disability leave.

California Federal Savings and Loan Association v. Guerra 107 S.Ct. 683 (1987), 33 Emp. Prac. Dec. (C.C.H.) 34, 227 (C.D. Cal. 1984) involved the debate between "equal versus special" treatment of pregnancy; that is, should pregnancy be treated the same as male disability (the federal approach) or under its own special rules (the California state approach)? See W. Williams, "Equality’s Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate" (1984) 13 N.Y.U. Rev. of L. & Soc. Change 325; and C. Littleton & S. McCloud, Brief of Coalition for Reproductive Equality in the Workplace California Federal Savings & Loan v. Guerra (1986). The U.S. Supreme Court decided that it was permissible for states to grant pregnancy leave and to go "further" than federal law in providing such benefits to promote equal employment opportunity.

67 See the wonderful contrasts in the personal stories of women lawyers in such recent books as E. Couric, Women Lawyers: Perspectives on Success (New York: Harcourt, Brace & Jovanivich, 1983), B.C. Smith’s, Breakthrough: Women in the Law (New York: Walker & Co., 1984), and Abramson and Franklin’s, supra, note 35 for class and gender identifications.
lawyers. In Ontario, a recent study reveals that while women seem to suffer little discrimination in getting jobs in the élite law firms, after five years of practice women suffered an income gap of $2,946 on an annual basis. In New Zealand, women have only a 2 percent chance of making over $50,000 (men have a 25 percent chance of achieving this income level), and 7 percent of women earn under $7,000 while no men earn this little. In a poorer nation, Brazil, only 5 percent of men earned less than three times the minimum wage, while 15 percent of women were below that income level; 21 percent of men earned twenty times the minimum wage, while only 5 percent of women were in this category. In England, female barristers earned about half of what comparable male barristers earned (when controlled for age and type of practice). Several studies in the United States of national, state, and local samples demonstrate that women continue to earn considerably less than men in comparable jobs. For example, a 1982 study of lawyers in the state of Minnesota reveals that the median income for women lawyers was $27,960, compared with $43,690 for men. Even controlling for age, disparities continue to exist. In the cohort of graduates between 1975 and 1981, women earned $26,810 compared with $33,410 for men.

The composite picture which emerges is that women legal professionals, while growing in numbers in many countries, continue to face occupational allocation barriers, segregation in particular areas of practice and tasks, low status, and lower income levels. Given the continuing barriers and disadvantageous working conditions, the more interesting question to ask is why women continue to seek entrance to the legal profession — what do they find appealing in the profession and how will they, if at all, change the profession once they achieve a ‘critical mass’, either in the profession as a whole or in particular segments of the profession that now seem more diverse than unitary?


69 Murray, supra, note 29.

70 Falcao, supra, note 28.

71 Abel, supra, note 16 at 40.

III. THE IMPACT OF THE FEMINIZATION OF THE LEGAL PROFESSION: WHAT WILL IT MEAN FOR THE PROFESSION AND FOR THE LAW?

The feminization of the legal profession is clearly a process which is well on its way, if what is meant by feminization is increasing numbers of women in the profession. There are more women lawyers now and there will be even more women lawyers in the coming years. What makes this social process interesting is the question of whether women will have a unique or different perspective to offer the practice of law or the development of substantive doctrine. Such questions involve important issues in feminist theory. If women demand equality to men on the basis that they are the same as men, more women in the profession should be no more significant than more blue-eyed lawyers. Because some feminists believe that equal participation does not necessarily require 'sameness', particularly when what women are supposed to be the same as is a male model, notions of difference can be introduced into what contributions women may offer to the profession. This is a dangerous and problematic argument, though one I am willing to make, because of the possibility that arguments or claims about differences can be distorted into claims about inabilities or stereotypic devaluing of what is labelled female.

The 'difference' argument can be explained as follows. First, we see and experience differences everyday. Problems arise when the differences are used to devalue one-half of the set of differences, usually the female versions, without recognizing their possible strengths and functional possibilities (particularly in the context of the legal profession). Second, to observe the differences is not to endorse them or necessarily to have a view about their origin (social, biological, cultural, or political). My view is that the origins are mostly, though not exclusively, social (that is, transformable through socialization) and political (women are what they are in part because they have been defined by those who have the power to speak the definitions, men). Thus, what follows is more in the nature of a speculative suggestion on the basis of current data and theory of what contribution women may make to the law and

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73 See Menkel-Meadow, supra, note 8; C. Menkel-Meadow, "Portia in a Different Voice: Speculations on a Women's Lawyering Process" (1983) 1 Berkeley Women's L.J. 39; "Feminist Discourse," supra, note 11.

74 "Feminist Discourse," supra, note 11.


to the legal profession with projection into the future of what might happen to the profession with the greater participation of women.77

In a recent survey conducted by the American Bar Association, three-quarters of the women questioned said that there would be major consequences for the profession as a result of women’s entrance (40 percent of the men said it would not have major consequences but 45 percent of those said that it would have “mostly favourable” consequences).78 What might those consequences be?

The most commonly suggested difference is a perceived aversion to combativeness and the extremes of the adversarial process. Women express dissatisfaction with the win or lose nature of litigation and the inability to effect solutions that take account of all the parties’ needs.79 This is consistent with some recent research in developmental psychology which suggests that women may seek solutions to moral problems without choosing abstract right and wrong answers, and will try to keep the relationships of the parties in moral dilemmas constant. For example, using Kohlberg’s Heinz’ dilemma (should Heinz steal a drug he can’t afford in order to save the life of his wife?), Carol Gilligan has demonstrated that girls seek to hold constant the relationships and desires of the parties rather than deciding, as in an algebraic equation, that life is worth more than property so the drug should be stolen.80 Instead, the pharmacist and Heinz should meet together and discuss their problem directly (as in mediation, rather than litigation) and arrive at another substantive solution — instalment payments for the drug. Thus, applying this ‘female form’ of moral reasoning to the legal process, different processes might be used (more mediation and less litigation) and different substantive solutions might be reached (fewer binary winner-take-all-results).81

Similarly, there is some evidence that women are more concerned with the peculiar form of situational ethics that the adversary system requires by placing one’s client at all times above the welfare of the other side. One of Carol Gilligan’s subjects, a lawyer, suggested that she would have preferred to turn over to the court a document from

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79 P. Fox, “Good-bye to Game-playing” (1978) Juris. Dr. 37.


the other side that an incompetent lawyer had failed to use. This would have defeated her client's case but achieved the 'just' result. The subject of this study was concerned not only with achieving the correct result, but with expressing concern for the other side; the adversary is cared for, thought about, and dealt with, rather than being treated as an 'end' to be defeated in the way the adversarial system contemplates. Will the imagery and vocabulary of litigation associated with wars and sports change as women enter these fields and seek to modify them?

From these suggestive data, one could ask a series of questions that might explain some of the occupational segregation demonstrated above. Do women seek judgeships or other non-adversarial jobs in disproportionate numbers? Are job choices in less adversarial systems (that is, the Continental European inquisitorial systems) different from common law adversarial systems? Are women choosing occupations they prefer for these reasons (self-selection), or are they channelled into certain jobs because of perceptions by others that these are the jobs they would best be suited to (discrimination based on stereotype)?

Of course, while the positive sides of these differences can be observed, we should also look at the negative aspects. Do women resist litigation because they fear or prefer to avoid conflict? Is that a good quality for a legal professional to possess? Does over-solicitude or caring for the other side diminish the loyalty or zeal given one's own client? Are the stereotypic feminine qualities of empathy and altruism possible in the practice of law, as currently constituted or even as it can be imagined in a different society? Can women transform the stereotypes that devalue them ('women are good with people') to functions they have been barred from in the professions (that is, client relations in large law firms)? It appears that, as in law, women in the corporate sector are assigned to particular jobs and industries based on the negative attributions of stereotypes, while the mainstream and power lie elsewhere.82

Women trial advocates have argued for a different style of trial advocacy — conversations with fact-finders — rather than persuasive intimidation.83 Women have expressed interest in broadening the nature of relevance, wanting to know more of the facts involved in a problem than what is legally relevant; a search for what feminist theorists call "contextualism and particularity" rather than the application of a few facts to general, abstract principles of law.84

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83 "Women in the Legal Workforce" (University of Southern California Conference, March 1983).
84 Gilligan, supra, note 83 at 100; Menkel-Meadow, "Portia," supra, note 73 at 58-59.
Perhaps most significant for the practice of law is the possibility of different work structures. Early studies of feminist law firms, at least in the United States, demonstrate that women have organized more egalitarian, less hierarchical work structures, involving more participatory decision making, thought to derive in part from the particular feminist methodology of the leaderless consciousness raising group. Such groups value equality of hearing time, where expertise grants a hearing rather than an authoritative decision. The emphasis on experiential sources of knowledge may lead to broader avenues of inquiry.

In those rare circumstances where women have risen to levels of leadership in the profession (judgeships, senior, but not yet managing partners, cabinet secretaries, or deans) there is the controversial question of whether women will lead and manage differently — more nurturing, communicative, and consensus building styles. The women in leadership debate flourishes not only in law, but in other professions as well, such as corporate leadership, medicine, and education.

Some evidence suggests that, as a formerly excluded group, women have attempted to demystify and deprofessionalize the law in greater numbers than men, in an effort to empower less powerful sisters. Such developments in law parallel those in medicine where nineteenth-century American women pioneers in the medical profession attempted to emphasize public health, preventive care, and education over surgery, medicine, and more interventionist forms of medical care.

Perhaps most related to women's role in the profession is the obvious connection of personal lives to professional lives. While women continue to bear the children, there is a biological necessity for reconciling the complicated relationship between personal lives and professional work. While some countries have provided solutions by passing social legislation that attempts to permit women (and in some cases men) to take temporary leaves, many have not. Issues like maternity leave, re-entry, seniority, and assessments for partnerships become the women's province. Some

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85 Epstein, supra, note 8.
86 "Corporate Woman", supra, note 82.
89 Pro Se divorce project.
92 "Los Angeles Perspective," supra, note 36.
women have hoped and urged that their connection to the family and to work may alter the work styles and commitments of all legal professionals, offering a healthier balance between the 'greedy institutions' of work and the rest of life. In a recent study of lawyers employed by government, private and non-profit organizations in the United States, sociologist Eve Spangler concluded that male and female attorneys did not talk about their work differently; but that only women, seemed concerned about the accommodations between career and family. Although some view this as a simple issue of working conditions or 'fringe benefits', others view it as an opportunity for women's concern with domestic life to create an "oppositional culture" in the workplace to place emphases on different issues and values in the means and ends of work. As Virginia Woolf urged, women should become professionals "without becoming professionalized" to the male constructed conceptions of that the professions require.

Finally, there is the influence of women on the substantive law. In many nations the influx of women into the profession coincided with law reform on issues affecting women (civil rights, discrimination laws, equality rights, abortion, divorce reform, pregnancy benefits, and, in some countries, marital property rights). It is not universally true, however, that the entrance of women into the legal profession will lead to liberal social reforms. The data from Germany suggest that recent women entrants into the legal profession are more politically conservative than their male counterparts. Similar data in the United States are beginning to reveal that male and female college students who are attracted to law are oriented to individual success and financial security and are thus more conservative and have more in common with each other than with others of their sex who are attracted to other fields of study. Yet the increase of women in the profession seems to have changed some of our understandings of juridical concepts — equality has been transformed in some contexts into equity (comparable worth and equal value in Europe and the U.S.), and individual rights, in some contexts, have been transformed

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93 Spangler, supra, note 12.
94 Ibid.
96 V. Woolf, Three Guineas (New York: Harcourt, Brace & World, 1938) at 83.
97 Blankenburg & Schultz, supra, note 19.
into more collective or group-based rights (health care and reproductive freedom).

IV. CONCLUSION

To the extent that the difference women make is based on their position as outsiders, the discriminated against and dominated, one can imagine a time when parity is achieved that the particular contribution of women to the profession may simply “wither away” as discrimination diminishes and women enter the profession in ever-larger numbers. Those who imagine this time can contemplate an androgynous legal profession, whatever shape that might take. Or, if the differences are of a more complicated origin, some particular contributions of women will continue in forms we probably cannot yet imagine. The hope would be that differences in approach, practice, and substance might serve to broaden the practice of law in such a way that the source of the different contributions would no longer matter — women would make contributions as well as men and the previously disempowered would be empowered so that the source of their disempowerment (gender), might no longer matter. In this view, the feminization of the legal profession is not for feminists only. If feminism’s purpose is to help redeem humanism, then the feminization of the legal profession should help redeem the profession from the flaws of client domination (both by and for clients), unnecessary and harmful contentiousness, dehumanizing segmentation, stratification, and alienation in the workplace.

Much of what has been suggested above is as yet untested, culture and legal system dependent, and will require cross-cultural study and verification. What I hope to suggest is that we must examine the meaning of the entrance of women into the legal profession from more than the perspective of quantitative sociology. As we collect data and observe gender differences in location and type of practice, favoured tasks, and specialties, we should be prepared to examine the transformative potential of these social facts.
