BARRIERS TO WOMEN'S ENTRY INTO THE LEGAL PROFESSION SEEM TO HAVE all but disappeared. Over the past two decades the number of women graduating from law school and practising law has grown enormously in most industrialised, Western societies. Legal barriers were repealed during the first two decades of the Australian Commonwealth (the first state being Victoria in 1903 and the last, Western Australia in 1923), nevertheless fewer than one in five of all law graduates were women until the 1970s (Mathews 1982, p. 636). In the decade 1978-1987 the proportion of women graduates grew to almost one half at some law schools (see Table 1). Similarly, but not as dramatically, the number of women lawyers has expanded. In 1947 only 2 per cent of all practising lawyers in Australia were women compared with 17 per cent in 1986, and an estimated 25 per cent in 1991 (see Table 2).

The same pattern has been documented in several other societies (Abel 1985). In the United States, for example, women received 2.5 per cent of all law degrees conferred in 1960 and 40 per cent in 1987. Women currently constitute one-fifth of the profession compared with less than 5 per cent in the 1960s and earlier (Epstein 1983, p.4; US Bureau of the Census 1990, pp.163, 389).

This demographic change has spawned considerable theorisation (particularly among women law school faculties) about the difference women's entry will make to the practice and organisation of legal work. In contrast, research on stratification within the legal profession indicates that barriers persist resulting in gender segmentation. Women are concentrated in lower paying, less prestigious employment settings with few opportunities for promotion relative to men (Abel 1985; Epstein 1983; Hagan 1990; Mossman 1990; Murray 1987; Podmore & Spencer 1982; Sokoloff 1988). Arguments suggesting that women will make a difference appear to be...
<table>
<thead>
<tr>
<th>Law School</th>
<th>1978 % of Women</th>
<th>Total N</th>
<th>1979 % of Women</th>
<th>Total N</th>
<th>1980 % of Women</th>
<th>Total N</th>
<th>1981 % of Women</th>
<th>Total N</th>
<th>1982 % of Women</th>
<th>Total N</th>
<th>1983 % of Women</th>
<th>Total N</th>
<th>1984 % of Women</th>
<th>Total N</th>
<th>1985 % of Women</th>
<th>Total N</th>
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<th>Total N</th>
<th>1987 % of Women</th>
<th>Total N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adelaide Univ</td>
<td>38.1 (97)</td>
<td>116</td>
<td>38.1 (97)</td>
<td>116</td>
<td>43.3 (120)</td>
<td>116</td>
<td>36.4 (129)</td>
<td>116</td>
<td>40.5 (116)</td>
<td>116</td>
<td>48.1 (129)</td>
<td>116</td>
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<td></td>
</tr>
<tr>
<td>ANU (1)</td>
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<td>126</td>
<td>32.2 (90)</td>
<td>126</td>
<td>34.7 (95)</td>
<td>126</td>
<td>27.9 (86)</td>
<td>126</td>
<td>28.9 (67)</td>
<td>126</td>
<td>32.0 (78)</td>
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<td>31.6 (98)</td>
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<td>126</td>
<td>49.4 (79)</td>
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</tr>
<tr>
<td>Macquarie Univ</td>
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<td>23.0 (129)</td>
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<td>15.6 (135)</td>
<td>116</td>
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<td>29.1 (165)</td>
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<tr>
<td>Monash Univ</td>
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<td>116</td>
<td>25.7 (226)</td>
<td>116</td>
<td>23.2 (241)</td>
<td>116</td>
<td>27.6 (239)</td>
<td>116</td>
<td>29.8 (198)</td>
<td>116</td>
<td>31.5 (235)</td>
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<td>37.6 (234)</td>
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<td>116</td>
<td>43.9 (244)</td>
<td>116</td>
<td>47.6 (208)</td>
<td>116</td>
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<td>Tasmania (2) Univ</td>
<td>24.0 (33)</td>
<td>126</td>
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<td>26.3 (38)</td>
<td>126</td>
<td>22.9 (35)</td>
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<td>15.9 (44)</td>
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<td>32.6 (46)</td>
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<td>37.5 (40)</td>
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<td>21.8 (55)</td>
<td>126</td>
<td>26.9 (52)</td>
<td>126</td>
</tr>
<tr>
<td>Univ of NSW</td>
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<td>126</td>
<td>22.9 (218)</td>
<td>126</td>
<td>29.8 (168)</td>
<td>126</td>
<td>33.3 (201)</td>
<td>126</td>
<td>36.3 (237)</td>
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<td>31.0 (210)</td>
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<td>40.0 (220)</td>
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<td>38.1 (194)</td>
<td>126</td>
<td>43.9 (228)</td>
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<tr>
<td>Univ of Tech Sydney (3)</td>
<td>16.7 (6)</td>
<td>126</td>
<td>24.0 (25)</td>
<td>126</td>
<td>19.0 (63)</td>
<td>126</td>
<td>22.1 (68)</td>
<td>126</td>
<td>26.7 (86)</td>
<td>126</td>
<td>23.3 (86)</td>
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<td>35.2 (71)</td>
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<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Univ of WA</td>
<td>20.2 (79)</td>
<td>126</td>
<td>18.6 (86)</td>
<td>126</td>
<td>28.2 (85)</td>
<td>126</td>
<td>31.9 (94)</td>
<td>126</td>
<td>38.0 (71)</td>
<td>126</td>
<td>41.7 (84)</td>
<td>126</td>
<td>41.7 (84)</td>
<td>126</td>
<td>40.2 (82)</td>
<td>126</td>
<td>57.0 (86)</td>
<td>126</td>
<td>47.8 (90)</td>
<td>126</td>
</tr>
</tbody>
</table>

Data Source: Supplied by respective law schools.

(1) includes honours graduates
(2) includes honours and combined degree students
(3) 1981 - first year of graduates
### Table 2

**Law Professionals in Australia**

<table>
<thead>
<tr>
<th>Year</th>
<th>Men</th>
<th>Women</th>
<th>Total</th>
<th>Women as % of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1947</td>
<td>4,467</td>
<td>109</td>
<td>4,576</td>
<td>2.4</td>
</tr>
<tr>
<td>1961</td>
<td>6,478</td>
<td>258</td>
<td>6,736</td>
<td>3.9</td>
</tr>
<tr>
<td>1976</td>
<td>11,939</td>
<td>970</td>
<td>12,909</td>
<td>7.5</td>
</tr>
<tr>
<td>1981</td>
<td>15,523</td>
<td>1,993</td>
<td>17,516</td>
<td>11.4</td>
</tr>
<tr>
<td>1986</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>full-time</td>
<td>17,995</td>
<td>3,628</td>
<td>21,623</td>
<td>16.8</td>
</tr>
<tr>
<td>part-time</td>
<td>1,433</td>
<td>768</td>
<td>2,201</td>
<td>34.9</td>
</tr>
<tr>
<td>1991</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>full-time</td>
<td>24,453</td>
<td>8,182</td>
<td>32,635</td>
<td>25.1</td>
</tr>
<tr>
<td>part-time</td>
<td>661</td>
<td>789</td>
<td>14,501</td>
<td>54.4</td>
</tr>
</tbody>
</table>

Rate of increase (based on 1986 full-time employed lawyers) 4.0 33.3 4.7

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1. Law Professionals: judges, magistrates, barristers, solicitors and legal officers.


Compatible with research indicating that women tend to be concentrated in areas and positions where they would have very little scope for transforming the organisation of legal work and knowledge.

Discussions of the differences women lawyers might make to the practice and organisation of law must take into account the locations of women in the legal profession, relative to those of men. Recruitment processes, work contexts and the division of labour all affect the possibilities of adopting different approaches. Moreover, the meaning and relevance of gender will depend on specific social contexts. A central question then becomes: In which kinds of work settings are men and women lawyers situated and what are the consequences for legal practice? This paper first examines recent feminist jurisprudence and empirical research on women in the law. It then discusses women lawyers in one segment of the profession, namely in-house legal counsel, in order to demonstrate the importance of recruitment processes and work contexts for an understanding of women's position in the law relative to that of men. Finally, the paper suggests further research on women's position within the legal profession and the implications for legal practice.
A Woman's Voice in Law?

There have been two divergent responses to the question: 'Whether women will be changed by the legal profession or whether the legal profession will be changed by the increased presence of women?' (Menkel-Meadow 1986, p. 899). First, many argue that the entrance of women will make a difference as they will adopt a caring approach and value empathy and mediation over a competitive, adversarial and individualistic orientation. The law can incorporate women's experiences and approaches to practice. On the contrary, others argue, the law is so imbued with such masculine values as objectivity, reasonableness, individual rights and adversarial tactics, and has been so instrumental in perpetrating gender inequality that there is little scope for women to make any difference.

Proponents of the 'difference' approach maintain that women have particular transformative contributions to make to the practice of law, perhaps resulting in 'an alternative professional culture' (Menkel-Meadow 1989a, p. 313). This transformative potential derives from women's experiences of exclusion which creates an outsider's critical perception; oppression which engenders greater empathy for subordinated groups; and the learned attention to caring and relationships (1989a, pp. 312-13). Women's life experiences are unlike those of the framers of the law and their focus on recognising and accepting different points of view negates the impetus to create universalistic truths which are insensitive to a broad range of experiences. Theorists suggest that women will be more concerned with substantive justice for all than with procedural fairness. Women will be more likely than men to take into account contextual factors in understanding and communicating with clients rather than focussing narrowly on the specific legal issues (Menkel-Meadow 1989b, p. 233).

Menkel-Meadow starts with Carol Gilligan's (1982) notion of a different voice in moral development to infer a women's different voice in legal processes (1987, p. 44). In present legal structures, she argues, such male-dominated or male-created values as victory, predictability, objectivity, deductive reasoning, universalism, abstract rights and principles override so-called 'female values' of mediation, caring, empathy for both parties to a dispute, and preservation of relationships. The underlying theme is that such an approach would be more just, more sensitive and more appropriate, indeed superior to the adversarial court process.

Continuing in this vein, some theorists propose a set of feminist legal methods, including a distinctive approach to litigation, which emphasises the centrality of the clients' experiences and women's perspectives, often excluded or silenced by current legal practice and doctrine (Bartlett 1990, p. 831-2).

Consciousness-raising is seen as a central element in empowering the client and moving toward the substantive goal of ending the subjugation of women by demonstrating to the courts, among other things, how the law affects women's lives (Bartlett 1990, pp. 863-7; Burns 1990, p. 196; Cahn 1991, pp. 4-5). A recent article in the Harvard Women's Law Journal suggests: 'Feminist litigation... is governed by its contribution to the larger feminist enterprise of transforming established social, economic, political and legal power relations that work to the detriment of women' (Burns 1990, p. 193). In addition, feminist lawyers seek to empower their clients through litigation (Cahn 1991, p. 20).

This 'difference' viewpoint assigns women considerable agency and ability to change legal practice without examining how the organisation of work constrains the possibilities or even the desirability of different approaches. Such values as mediation
and negotiation may have more to do with the nature of the work context (in turn affected by market forces and government laws and regulations) than with the gender of the legal practitioners. Indeed, much of lawyers' work does not involve adversarial practice or dispute resolution but involves managing uncertainty both for their clients and themselves (Flood 1991; Macaulay 1979). Ironically, the entry of women into the profession has been accompanied by greater litigiousness which reflects, in part, the complexity and anonymity of contractual relations and increased government regulation rather than the changed gender composition of the profession. Little scope for the transformation of legal practice or the adoption of feminist legal methods would exist in large law firms with corporate clients.

Alternative dispute resolution procedures emerge in precisely those areas where human relations skills are needed and where women or children are likely to be victims or complainants, for example in family law and issues of child welfare or protection. It is in those areas of the law that women have made the most inroads and which look like an extension of women's traditional familial roles thereby reproducing gender segmentation within the profession. Moreover, women and women's groups have been particularly adamant about the use of criminal penalties in such areas as domestic violence and rape, and see little scope for mediation or negotiation because of inequalities in bargaining power between men and women. In the more informal, welfare approach emphasising participants' control, compromise and choice any agreement reached is generally not enforceable (Lerman 1984, p. 67). The procedural protection of a court system and the attempt to equalise power relationships through legal representation and formality may be essential to achieve justice for women (Bottomley 1985, p. 164).

For other legal theorists neither increasing women's entry nor placing more value on so-called female qualities will transform legal practice and knowledge. They describe law as 'maintaining male domination' (Polan 1982, p. 294), 'a powerful conduit for the reproduction and transmission of the dominant ideology' (Thornton 1986, p. 5), 'a paradigm of maleness' (Rifkin 1980, p. 84), and 'a particularly potent source and badge of legitimacy, and site and cloak of force' (MacKinnon 1989, p. 238).

Rejecting the notion of 'different voices' Catherine MacKinnon (1982; 1983; 1987; 1989) suggests that inequality comes first, the most central inequality being gender; differences follow. She argues that focussing on differences serves as ideology which neutralises and rationalises power inequalities. Gender is a question of power, of male supremacy and female subordination (1987, p. 40). To valorise empathy, care, mediation, concern for relationships and orientation to others inevitably reproduces gender inequality and reinforces male dominance. Such allegedly 'female' attributes are in no way 'natural' nor constitute a 'woman's voice' but are by-products of male dominance; their emphasis reproduces that inequality. MacKinnon writes:

I do not think that the way women reason morally is morality 'in a different voice'. I think it is morality in a higher register, in the feminine voice. Women value care because men have valued us according to the care we give them . . . Women think in relational terms because our existence is defined in relation to men. Further, when you are powerless, you don't just speak differently. A lot you don't speak (1987, p. 39).

The qualities attributed to women result from the oppression of male dominance, which is hegemonic and impervious to change (MacKinnon 1987, p. 7). Male
dominance is perhaps the most pervasive and tenacious system of power in history, and is metaphysically nearly perfect (MacKinnon 1983, p. 638).

MacKinnon's concern is not just to identify male dominance and propose a feminist theory, but also to engage in practical action and the transformation of power relations through a feminist method, namely consciousness raising. She suggests that consciousness raising enables women to view the shared reality of their condition from within the perspective of their own experience. This grounding in experience permits a critique of the purported generality, disinterestedness, and universality of prior accounts (1982, pp. 536-7).

She seems to suggest that despite women's various experiences a coherent women's perspective transcending ideological distortion will emerge through consciousness raising. MacKinnon assumes that women's experiences and accounts will be complementary not conflicting; that the feminist critique of knowledge and male power is an amalgam of all women's partial views. However, taking experience as the level of analysis raises several interpretive questions: How can accounts or experiences be evaluated? On what basis does a theorist or observer (for example, MacKinnon) choose one view rather than another? (cf. Huber 1973, pp. 280-82). Some women have access to male power, is their experience less valid than those who do not have access to power? MacKinnon argues that to show that an observation or experience is not the same for all women proves only that it is not biological, not that it is not gendered (1987, p. 56). To say that all experiences are gendered is as true for men as for women. If all accounts are equally as valid, then the same can be said of men's accounts. Moreover, how does consciousness raising cast off the male point of view which has been imposed? Given these problems, claims that women will produce an accurate depiction of reality, either because they are women or because they are oppressed appear highly implausible (Hawkesworth 1989, p. 544).

While MacKinnon views consciousness raising as an important feminist methodology her critique of law is overly deterministic, making it difficult to imagine from where a distinctive women's experience could emerge. The notion of the maleness of law, that law reflects and perpetuates male dominance which is 'metaphysically nearly perfect' begs a further question of how MacKinnon (and other proponents of the law is patriarchal viewpoint) can explain her own knowledge base. On one level MacKinnon claims there is a distinctive women's perspective that is privileged yet when she confronts women's accounts which differ from her own she denies them thereby undermining her notion of a women's standpoint (Hunter & Law 1988; MacKinnon 1987, p. 205).

A major feminist project has been to dismantle views of the world which present women as one dimensional member of an homogeneous category; however, in many respects MacKinnon does the opposite. While seeking to capture the variety of women's experiences MacKinnon's view of women collapses into the very stereotype of women she seeks to critique; she portrays women as passive, submissive, dominated and victims of rape (1983) sexual harassment (1979) pornography (1986), or more generally sexuality as defined by male domination. While it is essential not to conceptualise gender inequality as arising solely from women's actions and choices it is also important to recognise women's resistance and historical achievements.

The 'difference' and 'domination' perspectives suffer from opposite limitations: the former assigns women practitioners too much agency; while the latter assigns too little. Both approaches offer a somewhat one-dimensional view of women as either demonstrating greater sensitivity to clients and adopting a nurturant approach to legal
dealings or as passive victims of male dominance. Additionally, the two approaches tend to treat the law, both as an occupation and a body of knowledge, as a given; as non-problematic and as unified. This leads to an historical, static and reified conception of law as an objective fact which women confront. Their conceptions of law are too broad and abstract. Neither considers the ways in which types of legal practice or employment settings construct gender relations. Certainly women may exhibit specific qualities held to be evidence of a feminist approach, but only under certain circumstances, for example where:

- the client is relatively powerless and has little knowledge of their rights or of the operation of the legal process;
- there is little time pressure, thus enabling extended conversations to discover the client's point of view and experiences;
- the work context has a political rather than a purely economic or administrative ideology;
- billable hours are not the principle criterion of employer satisfaction and promotion;
the clients are women or children with personal (as distinct from corporate) legal problems.

The availability and applicability of different approaches to legal work will depend on the structure of the workplace and women's position within it. This requires analysis of both the structure and organisation of law, that is the processes of domination, and of the ways in which women and men negotiate or bargain for privileges and resources which might make a difference to the practice of law (Gerson & Peiss 1985, p. 322). Not all women are in the same position or have the same experience of law. While women lawyers have little control over the structure of the legal profession and their position within it, that position involves constraints as well as opportunities for action. There is scope for agency and change, albeit constrained (Alcoff 1988, pp. 433-4).

Often behaviour deemed to be evidence of gender difference in fact derives from men and women's differential locations within work settings (Kanter 1977). Thus, in order to investigate difference and domination within the legal profession it is essential to examine women's positions within it, then to explain how those positions might affect legal practice and knowledge.

Stratification and the Legal Profession

Far from being a 'community within a community' (Goode 1957) the legal profession has always been segmented and stratified (Heinz & Laumann 1982; Smigel 1964). Different kinds of work are differentially evaluated; the division of labour is also a division of status, clientele and visibility (Heinz & Laumann 1982, p. 36). The profession has undergone numerous changes, including growth, increased specialisation, bureaucratisation of employment settings, the growth of large firms, the decline of the solo practitioner, and a relaxation on advertising restrictions (Roach Anleu 1992). This re-structuring coincides with the movement of women into the profession. The profession has become more complex and new dimensions of inequality are emerging; gender cross-cuts other cleavages that stratify legal practice (Hagan 1990, pp. 848-9). Recent discussion suggests the existence of dual career structures and 'glass ceilings' which restrict women's opportunities for promotion. In the United States, for example, women who take advantage of flexible working hours, maternity and child care provisions offered by some law firms may be disadvantaged in promotion decisions and relegated to the 'mommy track'. Many others decide to leave because of incompatibility between motherhood and law (Hochschild & Machung 1989, pp. 110-25; Kingson 1988). Changes in the structure of the profession are benefiting men more than women. Aggregate statistics showing women's greater participation in the legal profession obscure gender segmentation within the occupation (Sokoloff 1988, p. 37). A simple comparison of men and women according to broad areas of practice and employment obscures differences in the types of work they perform in different organisations or within the same organisation, for that matter.

While large-scale empirical research has been sparse in Australia, two studies show that women lawyers have occupational profiles different from those of men (Dixon & Davies 1985; Hetherton 1981). Research on Victoria's lawyers in practice in the mid-1970s found that women received just over half the income of men. Nearly 15
per cent of the men were barristers compared to 1.4 per cent of the women and 40 per cent of the former and 18 per cent of the latter were law firm partners. Women were more likely to be employees in private practice whereas men and women were evenly distributed in corporate or public service employment. Sixteen per cent of the women worked part-time compared to 4 per cent of the men. Family law and probate/estate administration accounted for almost twice the proportion of work hours among women than among men. Property law also constituted proportionately more of women's work. In contrast, women spent less time than men in commercial and company law and criminal law. These gender differences in income, status and areas of work, the study concludes, seem to be independent of the relative youth of the women and the high proportion of part-time women (Hetherton 1981, pp. 125-44).

The tendency for women not to follow the traditional male career path of articles then partnership in a private law firm was observed also in a Western Australian study (Dixon & Davies 1985). Family responsibilities were far more likely to interrupt women's career and various options to conventional legal practice were more attractive to women. Government employers (public service and law schools) were more accommodating to motherhood, in part due to sex discrimination legislation. Women who did work in private practice were concentrated in smaller firms that paid less than large firms (Dixon & Davies 1985, pp. 19-25, 73-90).

Gender segmentation within law is not restricted to Australian society. A recent Canadian study of men and women lawyers found women to be under-represented in corporate and commercial work and civil litigation, and over-represented in family law, especially in small to medium firms and in solo practice. The greatest gains for women are in corporate settings, in part due to the expansion of these sectors and specialisations (Hagan 1990, p. 842). Men and women lawyers move along gender specific mobility ladders that produce a gender stratified income hierarchy; on average men earn about twice as much as women. The gender gap in income within the legal profession actually may be widening (Hagan 1990, pp. 838, 849).

In the United States of the 586 respondents to a questionnaire mailed to women who graduated in 1975 or 1976 from one of fourteen eastern-state law schools 21 per cent were law firm partners; 12 per cent were solo practitioners; 22 per cent worked for public agencies; 14 per cent were corporate counsel; and 14 per cent were associates in law firms (Caplow & Scheindlin 1990, p. 404). These lawyers practised across the range of specialties: 17 per cent specialised in corporate business; 12 per cent in litigation; 10 per cent worked in administrative law. Less than 5 per cent worked in family law, tax, or trusts and estates. However, about half of the respondents believed that their salary was somewhat or substantially lower than those of comparable male colleagues (Caplow & Scheindlin 1990, pp. 404-9).

The clear pattern is that women are not competing with men for the same positions or jobs within the legal profession; women earn less, are more likely to experience interrupted careers, specialise in so-called 'female' areas of the law, and are much less likely to make partner. However, little research deals with the processes whereby those outcomes emerge. Do they result from gendered assumptions on the part of law schools or employers? Do they result from women's career choices, albeit made within constraints specific to many women? What kinds of work is allocated in accordance with a set of gender norms? Under what conditions are feminist methods employed?
Women Lawyers in In-House Legal Departments

In a study of men and women lawyers in in-house legal departments that varied by size and industry in corporations located in the northeastern United States, the author found differences among the firms with respect to the number, position, and salary of men and women lawyers. The aim was to identify their relative positions within the labour market, how the recruitment practices of firms affected the hiring of men and women, and the work of men and women lawyers within the departments. The research involved in-depth, semi-structured interviews with thirty-four men and thirty-four women in-house counsel and the General Counsel (head of the legal department) and/or the legal recruitment officer of each corporation to gather information on recruitment practices.

Nearly one-third of the lawyers (total number of lawyers: 184) in the six financial services companies were women, compared with less than one-fifth in the six manufacturing firms (total number of lawyers: 497). Proportionally more women lawyers worked in the medium-sized legal departments (11-25 lawyers), whereas the large departments (26 or more lawyers) employed the least women. Women lawyers were far more likely than men to work in medium-sized departments in financial services companies. Men lawyers were more likely to work for manufacturing companies, especially those in electronics, information processing and defence industries—in particular those with small (10 lawyers or fewer) or large in-house legal departments (Roach 1990, p. 210).

In order to explain these differences it is essential to examine the recruitment practices of the different legal departments.

[It's] just the way the law schools are composed now . . . half of the students are women, and if you're going to be upset about hiring women, you are going to be in big trouble.

This comment exemplifies the response of all the recruiters (both general counsel and recruitment officers) to questions regarding the number of women lawyers on their staffs. Invariably, they explained these gender differences by indicating that recent hires of men and women were about equal, reflecting the increased number of women entering and graduating from law school. They indicated that the older members of the department are predominantly male, reflecting the composition of law schools at the time of their graduation, whereas the ratio of recent men and women hires is more balanced because of the similar numbers of men and women law school graduates. Even so, this does not account for why some in-house legal departments hired relatively more women than others.

Every general counsel and recruitment officer claimed they look for and hire the best lawyers, however they do not all define 'best' in the same terms. Rather, they hire, or try to hire, the 'best lawyers' from those segments of the labour pool in which they seek recruits. Women and men are not evenly distributed across the legal labour market. Corporations with large legal departments, opportunities for promotion and career development, and salaries comparable to large law firms can compete with those firms for the same graduates of prestigious law schools; consequently, they tend to hire fewer women because of the lower proportion of women at these schools.

Manufacturing companies requiring experienced lawyers in specific fields of law recruited from the pool of law firm associates experienced in business and corporate
Women are also underrepresented in this segment of the labour pool. Financial services companies seeking experienced lawyers recruited lawyers with skills in banking, insurance and finance laws, which to some extent are 'female areas' of legal practice. More significantly, though, tertiary sector industries are large employers of women in a variety of jobs and positions. Unlike the manufacturing companies studied the legal departments in the financial services companies are centralised in one location and tend to focus on lawyers with fewer alternative employment opportunities due to immobility, and these lawyers are more likely to be women than men.

The large departments in this study perform most of their companies’ legal needs and thereby occupy important positions within those companies. They expect recruits to develop their careers within the host company. The large law departments recruit new law school graduates and compete for the top graduates of the best schools, at which women are underrepresented. On the other side, small legal departments tend to recruit associates from the outside law firms, frequently firms with whom they have worked previously. This reduces the perception of risk in hiring a completely 'unknown' lawyer and increases the probability of hiring men.

Even if men and women possessed the same law school training and firm experience the recruiters suggested that men were more likely to have contact with corporate clients and responsibility for business cases. This visibility enhanced men's chances of recruitment to an in-house legal department, especially to those in manufacturing companies, because many preferred to hire lawyers with whom they had dealt with previously. The general counsel of a small legal department in a manufacturing company observed that uncertainty in recruitment is minimised by:

Hiring people that we have worked with when they were on the outside . . . The younger man in the corporate law department worked with us when he was in a large firm downtown, and . . . the litigation counsel was a man we had worked with quite a bit when he was outside. So we got to know them pretty well.

The segment of the labour pool from which this department sought recruits contained disproportionately few women, or in other words, the recruitment strategy was inadequate for locating suitably qualified women lawyers.

These employment patterns do not necessarily reflect different ideas on meritocratic hiring, nor do they reflect discriminatory intent, but are a consequence of an organisation's location, its perceived needs, and its ability to attract lawyers, all of which may have discriminatory effect. Unequal employment of men and women lawyers does not merely reflect conditions in the labour market, but corporate recruitment efforts are insufficient to locate certain applicants, in particular women.

Within the legal departments significant gender differences existed regarding current position and salary. Women were concentrated in the lower echelons of the legal departments and earned less because they were disproportionately located in financial services companies which pay lower salaries compared with the manufacturing companies. However, few differences between the men and women interviewed were found with respect to quality of law school attended, academic performance, previous legal employment, and legal speciality. Men were slightly more likely to be engaged in litigation work but most men and women concentrated on general corporate work. Women spent more time on contracts and men more on disputes, trial work and administration (Roach 1986, p. 215-16). One in-house lawyer
specialising in property law explained that in her previous law firm job she was given home mortgages and personal real estate cases, whereas at her current in-house legal department she works on joint ventures, business property acquisitions and commercial real estate involving millions of dollars. She stated:

I would not have been given that kind of work in the private firm, but in a corporation there is none of the personal real estate work to be done.

Another woman lawyer previously employed in a private law firm observed a tendency for some firms to allocate women ‘paralegal’ tasks, for example, looking up records and examining business correspondence. She indicated that when she was given this kind of work:

The partner said that even though it was not legal work the client wanted it done, and by assigning the job to a lawyer the firm could bill at a higher rate.

These comments suggest that profit considerations and gender assumptions are more important criteria of work allocation in private legal practice than in corporate legal departments.

The biggest difference between men and women in-house counsel is numerical which is probably the result of variations in the gender composition of legal labour markets combined with the specific recruitment practices of the legal departments. Men and women differ very little regarding career antecedents and the division of labour which suggests that gender segregation within the legal profession is incomplete. Women lawyers are not excluded from in-house legal departments, but men and women lawyers do not appear to compete for the same jobs, obtain the same positions, or earn identical salaries despite similarities in ‘human capital’ attributes.

**Conclusion**

In conclusion, women increasingly are entering the legal profession, yet they are not located in the same positions as men. Arguments that the mere entry of women must make a difference to the practice of law need to examine the work contexts where different methods might be adopted rather than focusing on the gender of the practitioner. The idea of feminist methods seems to be applicable only in certain areas of law thereby undermining the assertion that they are potentially transformative. On the other hand, women are not passive victims of the male-dominated legal system but are active participants in it as lawyers, although gender segmentation restricts the areas in which women participate.

Rather than viewing women’s entry into the legal profession as signalling change for the better, or no change at all it is imperative to examine the women’s locations within the occupation and the ways in which these locations make gender relevant and constrain the nature and content of legal work. There is much scope in Australia to examine those areas of law and legal practice most hospitable to women lawyers; the processes whereby legal work is allocated and by whom; the relationship between the work of lawyers and para-legals (a predominantly female occupation); and the impact of feminist arguments on the process of lawyering.
References


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