

# Address

## Ladies in Waiting: The Women Law Professors' Story

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### 1. Introduction

Naturally I do not want to start without expressing my gratitude to all of you here for making my visit to Sydney so enjoyable; in particular, to PricewaterhouseCoopers Legal for their continued support for the chair in women and law, to Professor Jeremy Webber, Dean of the Law Faculty, and all the colleagues and students who achieve, against the odds of the architecture, a friendly and welcoming working environment.

George Orwell, as Theodore Dalrymple recently reminded us, observed that '[t]he first duty of the modern intellectual is to state the obvious, to puncture the smelly little orthodoxies contending for our souls.'<sup>1</sup> To claim that a lecture about women who profess law is about the obvious needs some explanation. Although well over half of law undergraduates are women, in nearly all law schools they are likely to encounter more male lecturers than women. Some law students will never meet, or be taught by a woman law professor, and even fewer will see a female head of department or vice chancellor. All the indications are that, compared with their male counterparts, fewer women students will go on to the top of their chosen profession.

In the UK there are more men in academic positions in law schools than women by a ratio of about 60 to 40. There are more men than women in senior positions in law schools by a proportion of about 70 to 30. There are more men at the professorial level by a factor of 83 to 17. This translates to approximately 55 women law professors.<sup>2</sup> That is less than one woman professor for every law school in the UK. Nearly 60 per cent of law schools in the UK have *never* had a female professor. The same percentage of schools has never had a female head of school.

My argument is a simple one. We cannot afford to ignore the issue of women in legal education and women in the legal profession. We cannot afford to allow those who succeed to be assigned to token categories of 'exceptional' women or 'honorary men'. Universities, law schools and the legal profession are all engaged

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1 Theodore Dalrymple, 'Going to the Dogs' *The Australian* (28 March 2001) at 40.

2 There are no central statistics on law schools. This information is derived from a survey of Law schools I conducted on behalf of the Women Law Professors Network in 2000.

in intellectual challenge and questioning, that is to a large extent their 'stock in trade'. It may be an old-fashioned way to approach an academic lecture, but my underlying argument is that to expect these things to come right in time is an abdication of responsibility. Challenging and questioning should be at the forefront, and if we do not address the issue of women in universities, law schools and the legal profession, this is a major failure of public and personal responsibility.

The research I have recently completed is a study of UK women law professors in post in 1998. I sent questionnaires to 48 women. I received 37 responses and conducted 12 interviews.<sup>3</sup> Successful women often want to deny that gender has any impact on them at work. This is understandable: feminists often want to avoid appearing to essentialise women, non feminists want to identify with 'winners', not 'losers'.<sup>4</sup>

## 2. *Gender Disivions*

Three broad explanations are traditionally advanced to explain disparities between men and women in the world of work: structure, agency and culture. *Structures* include such matters as how work is organised, how work relates with family responsibilities, the criteria and procedures for appointment and advancement. *Agency* assumes that people have choices in the labour market, that taking time off to have children or to care for children is a matter for individual choice. If this means they fail to acquire the necessary skills and qualifications to proceed to certain positions they cannot complain. A recent report estimated that 25 000 women are dismissed from their jobs each year in the UK because they are pregnant. Whose agency are we talking about?<sup>5</sup> *Culture* broadly covers attitudes, expectations and perceptions imposed through accepted 'understandings' of the way the world works, giving certain social meanings to gender so that certain types of work are seen as in the female or male domain. Cultures operate at a number of levels from the broad social and political climate, to the higher education system, to individual universities, to departments and to groups or micro-cultures within departments.

This lecture touches on all three sets of explanation, applying them to the particular environment of the law school and noting the interplay between them. There has been far less work in the UK on women in legal education and the legal profession than here. I am painfully aware that I am trudging along clumsily in

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3 This talk draws on a number of pieces of my work (not to mention on my whole life!): Celia Wells, 'Working out Women in Law Schools' (2001) 21 *Legal Studies* 116; Celia Wells, 'Exceptional Women or Honorary Men? Notes from the Women Law Professors Project' in Michael Freeman (ed), *Current Legal Problems* vol 53 (2000) at 181-205; and on the draft report of the Women Law Professors Project, working tile - 'Women Law Professors: Making Sense of our Worlds'.

4 Louise Morley, *Organising Feminisms: The Micropolitics of the Academy* (1999) at 76.

5 Citizens Advice Bureau, reported by John Carvel, 'Pregnancy Costs Jobs of Thousands' *The Guardian* (March 21 2001).

footprints made eloquently and powerfully by others, particularly Margaret Thornton.<sup>6</sup>

It is only in the last 40 years that women have begun to appear in social science research. When the social sciences underwent a major expansion in the 1960s, it was still assumed, as had Marx, Engels, Durkheim and Weber, that men were the major breadwinners.<sup>7</sup> And, at that time, the majority of university students were still male. Twenty five years ago only one in fifteen school leavers went on to higher education, and two thirds of those places went to men.<sup>8</sup> Men were the major actors in the public realm.

Naffine, a leading Australian scholar of feminist theory, argues that the legal 'subject', the 'subject' of law, is quintessentially a rational individual, abstracted from his emotional and bodily dependencies.<sup>9</sup> But this subject is and always was a fiction. Whilst these characteristics of rationality and lack of emotion are culturally marked as masculine, they do not express the whole of men's lives: men have bodies, ties, emotions, and private lives. Not only did women sustain men physically and economically in the private sphere — this is a more familiar argument — they were also guardians of their feelings and emotions as well. Meanwhile men, divested of their emotions, and consigned to the responsibility of earning a family wage, were seen to represent both men and women. Law not only colluded in this ideology but actively promoted it through a number of mechanisms, such as the removal of domestic relations from contract law in *Balfour v Balfour*; the maintenance of separate rules on married women's property; the invention of the rule restricting married women's right to consent to sex; and pension splitting.

I have put this in the past tense, but these ideas, constructions and assumptions linger on with some tenacity. This approach was always gendered — it assumed a particular division of responsibilities between men and women. It was assumed to be natural. Although there have been major transformations in the gender division of labour and in the disciplines of sociology and law, there is a danger that we continue to make too many assumptions. One of those assumptions is that transformations are evenly distributed across nations, generations and types of work.

The major transformations in gender relations include increases in women's participation in higher education and in employment. Yet while (more than) 50 per

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6 Margaret Thornton, 'Discord in the Academy: The Case of the Feminist Scholar' (1994) 3 *Australian Feminist Law Journal* at 53; Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (1996); Margaret Thornton, 'Authority and Corporeality: The Conundrum for Women in Law' (1998) V *Feminist Leg Studies* 147.

7 Rosemary Crompton, 'The Decline of the Male Breadwinner: Explanations and Interpretations' in Crompton (ed), *Restructuring Gender Relations in Employment* (1999) 1.

8 Oxford and Cambridge were heavily dominated by men until the 1960s by a factor of 5:1 at Oxford and a staggering 10:1 at Cambridge: Albert Halsey *Decline of Donnish Dominion: The British Academic Professions in the Twentieth Century* (1995) at 66.

9 Ngaire Naffine, *Law and The Sexes* (1990). See also 'In Praise of Legal Feminism: A View from Australia' (2001) 21 *Legal Studies* (forthcoming).

cent of university students are women, there is still segregation by subject with significantly more women in arts and humanities than in science. Far more women are in full-time employment. Yet there is still a gender pay gap: this applies in universities as much as in other areas of work. Recent UK figures suggest that women in academic posts in universities on average earn 20 per cent less than men.<sup>10</sup> More generally, for younger professional women there is something approaching parity but this convergence excludes women who are single parents or who do not have the cultural capital to enter higher education.

As with all gender questions the picture is not a simple one; women do not reach the top positions in their sphere of work in the same proportion as they enter professions. Australia, for example, has only recently appointed its first woman police chief.<sup>11</sup> In addition, women do not always bring the same 'capital' to the job; they may have spent time out in child bearing or rearing; and the qualities and skills they do possess are not always valued. This has resulted in considerable polarisation between younger and older women in the labour market. The gender pay gap overall is partly affected by the fact that whenever an area of work becomes feminized, its status and overall levels of remuneration tend to fall. While more women are coming into academic jobs, they are concentrated at the junior levels at a time when higher education salaries are subjected to quite severe devaluation. The fact that both Sydney and London Universities have rather higher numbers of women law professors most probably reflects the competitive edge of the legal market of the bar, and of large city solicitors firms. University professors are the poor relations. Meanwhile women in legal practice are under represented in senior positions, including the judiciary, and over represented in lower fee earning work such as criminal law, public law, and family law.

These changes in the gender division of labour have profound implications for all areas of law. Second wave feminist theory pointed out that social structures are actively gendered, they do not simply reflect natural differences as assumed by earlier theorists. Although this insight has had deep and powerful effects on research, what we now have is a bewildering variety of seemingly contradictory theories. Working out a path between them is necessary if we are not to become distracted by internal debates about whether writing about women as a category is essentialist, and therefore bad; or whether it is vital, and therefore good.<sup>12</sup> Put simply, essentialism has become a dirty word. It is associated with the idea that talking about women as a group implies we are all the same. Usually it implies we are white, middle class, heterosexual, able-bodied, and reproductively fulfilled. Essentialism is also associated with the view that the category 'woman' is somehow immutable — always and every way a woman. This has two further implications: that women are born with a set of female characteristics and ways of

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10 Bett Report (1999) *Independent Review of Higher Education Pay and Conditions*, London: Stationery Office, and see Association of University Teachers (February 2001).

11 Martin Chulor & Misha Schubert, 'Gibes Greet First Female Police Chief' *The Weekend Australian* (17 March 2001) at 10.

12 For some useful correctives See Naffine, above n9 and Joanne Conaghan, 'Reassessing the Feminist Theoretical Project in Law' (2000) 27 *Journal of Law and Society* at 351.

behaving; and that we are 'women' and all the things associated with women in all situations and circumstances.

I do want to talk about women. I don't think we are all the same. I don't think it all comes down to biology. I don't think women are always the second sex. However, I do agree with the comment that:

being a male is a significant symbolic resource in many areas of life in general, and especially in work organizations. ...women and women's work are often devalued, but there are also situations and areas where men do not enjoy the privileged position that [women] do where formal power, status and income are concerned.<sup>13</sup>

### 3. *The Women Law Professors Project*

I am interested in examining gendered differences in law schools and in the legal profession, and in exploring what women's own perceptions of these differences might be. This particular research project is of a self contained group. It is more concerned with perceptions than explanations. Men and women are often thought to behave in certain ways according to gender stereotypes. This stereotyping is not just a one-way process whereby women think men 'do it one way' and men think 'women do it another way'. Gender expectations inform both how people behave and how they are thought to behave. There is a developing body of work on the effect of increasing numbers of women in the legal profession, exploring the question whether feminisation leads to different types of lawyering. This question also needs to be asked at the level of legal education.

I am with those who say that gender infuses so much of social organisation that it is implausible to maintain that gender has no influence at all in the way people do their jobs. And yet it is so pervasive that it is possible, indeed quite easy – because we are apt to assume 'natural' – to fail to recognise the impact of gender at all. In place of the polarisation of the positions that 'gender makes *all* the difference' to 'gender makes *no* difference' we should ask instead: How does gender operate to enable women and men to create social roles and to reconcile their gendered identities with the norms of their profession?<sup>14</sup>

The process of gender differentiation can be seen as a four dimensional figure. One, the production of gender divisions. We can see this in all professions, with women in subordinate (service) roles. Universities employ more women than men but they are concentrated in secretarial, clerical and administrative support roles while men dominate in academic and management posts. Two, the creation of symbols, images and consciousness that justify divisions: one might think of the entrance lobbies of most law schools with their portraits of male judges and the preponderance of photographs of male 'leaders' in university newsletters. Three, interactions between individuals in the multiplicity of forms that enact dominance

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13 Mats Alvesson & Yvonne Due Billing, *Understanding Gender and Organizations* (1997) at 37.

14 Susan Carle, 'Gender in the Construction of the Lawyer's Persona' (1999) 22 *Harvard Women's Law Journal* 238 at 244.

and subordination and create alliances and exclusions, and four, the internal mental work of individuals as they construct understandings of the gender structure and gender appropriate behaviours. '[S]uch internal work helps to reproduce divisions and images even as it ensures individual survival.'<sup>15</sup> My research is more concerned with the last two of these four dimensions.

The broad question of how gender might affect professional work can itself usefully be broken into three parts, suggests Susan Carle: ascription, roles and norms.<sup>16</sup> Ascription: who gets to perform what work, who gets the job and what jobs do they get once they are there. Roles: how does gender affect how work is performed. Norms: how does gender affect how work performances are 'judged'. Of course the evaluation question feeds back into the loop and as careers progress, determines who gets to perform which jobs. These provide useful, though inevitably fluid, headings under which to discuss my research. They intersect with structure, agency and culture.

I should explain why I think we should be interested in university law professors. The two immediate reasons are that universities exercise significant powers of selection, licensing and gatekeeping.<sup>17</sup> They influence and control definitions of knowledge.<sup>18</sup> Claims to truth are claims to power. And they do so with (largely) public money. Secondly, the professorial position is both a status reward but also in many cases means a change in role; it is a functional description as well.<sup>19</sup> Deans or heads of school are nearly always professors, as are pro-vice-chancellors, vice-chancellors or principals. These are the decision-makers in the institution. Yet 20 UK universities have no women professors *at all* (that is not just law professors); and 42 per cent of British universities have no senior women at the managerial level of vice-chancellor, pro-vice-chancellor, registrar, or librarian (although needless to say the majority of those who work in libraries are female). Forty four per cent of UK universities have one woman at that level. That leaves a mere eight per cent with *more than one* woman at the strategic decision-making level.<sup>20</sup> You will be pleased, though I hope not unduly complacent, to hear that only 17 per cent of Australian universities have *no women* at this senior management level, and 33 per cent have more than one. So it's not just the weather that's better.

Overall in Australia the gender breakdown in universities is not particularly encouraging: 34 per cent of men in academic posts are above Senior Lecturer level

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15 Nicky Le Feuvre, 'Gender, Occupational Feminization, and Reflexivity: A Cross-National Perspective' in R Crompton (ed), above n7, 150 at 153.

16 Carle, above n14 at 245.

17 Suzanne Stiver Lie, Lynda Malik & Duncan Harris, *The World Yearbook of Education 1994: The Gender Gap in Higher Education* (1994) at 4.

18 *Ibid.*

19 There are distinct institutional differences, both between pre- and post- 1992 universities, and between Oxford and Cambridge and the rest of the sector.

20 Lalage Bown, 'Beyond the Degree: Men and Women at the Decision-Making Levels in British Higher Education' (1999) 11 *Gender and Education* at 5. Her survey was conducted 1996-97.

compared with only 10 per cent of women. Thirty five per cent of women are below lecturer level compared with 14 per cent of men.

This leads into my report of the project itself, the first I believe of a discrete group of professors in one discipline.

(i) *Ascription*

One of the points that came out most strongly for me was the homogeneity of the group. While they varied in age from 35 to 65, and had been students and law teachers at very different periods, women law professors mainly share a professional social background. Only one or two came from working class families. Their education before university was also relatively uniform; a significant proportion went to private schools and nearly all the rest to selective schools. This is more significant than here where private education is more common. For example it is not at all odd or a matter for comment that my own children have gone to state schools. But then so did I. Even in terms of the universities where they took their first degree there was a lot of commonality. From this point of view most of these women were already on a track likely to lead them to the 'golden triangle' of English universities (Oxford, Cambridge, London). Edinburgh would expect to be included in the elite group; interestingly neither Cambridge nor Edinburgh has any women law professors and Oxford has only recently appointed one. Most of the women in this study benefited, through their social and educational capital, from being exceptions to the norm so far as expectations for girls' careers were concerned. Even now half of all university applicants come from the managerial and professional classes, three quarters are white and three quarters from the independent school sector.<sup>21</sup>

The combined benefits of class and male-ness were recognised by some of the women in the study:

*But I think class is another issue as well as gender in terms of being accepted. I also think women just don't have the arrogance that these men have. I think it makes us more aware of how people perceive us and I think we're much more wary about how we behave; they just carry on regardless and the guys seem completely immune as to how junior people do think of them.*<sup>22</sup>

Why did they choose an academic career? On the negative side, academic work was a substitute, or second best, for some of them because they felt they would be excluded from the bar which they perceived to be stuffy, inaccessible, and 'not for them'.

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21 University Central Admissions Service web site: <<http://www.ucas.ac.uk>>, an excellent statistical resource. There is no equivalent for information on academic staff.

22 It would have been interesting to append details such as age and length of experience to each quotation. Unfortunately the small size of the population would have made their authors too readily identifiable.

Several referred to the attraction of academic life in terms of flexibility when they had children. Two thirds of the women had been pregnant or had children during their careers. While most have either one or two children, two of the women had five or more. A fifth of the women reported that they had responsibility for looking after parents or elderly relatives. I did not ask about who did what in the home but a recently published wider survey of British academics, found that only five per cent of men with dependent children had main responsibility for childcare compared with 55 per cent of women.<sup>23</sup> Thus, gendered roles are pervasive, so much so that many women do not seem to recognise it themselves.

What did they think about the effect of gender on their careers generally? When I began the project I had already founded the Women Law Professors network. I mention this because all the women law professors, bar one, had agreed to join this email network. I take it that none of them thought gender a complete irrelevance, otherwise they would have questioned the point of the Network. Despite this, nearly a fifth of my respondents thought that gender had had no effect at all on their careers or on their relationships with students, with colleagues, heads of school or others in the university. They had somehow transcended gender. However, four out of five believed that gender did play a part, and that there was an increased tendency for it to do so with those in positions of authority such as a heads of department. The findings confirm the subtle patterns of different treatment that women perceive. More than one of those who initially did not report any gender effects nonetheless drew attention in their interviews to instances in their careers when they had experienced problems.

In fact, contradiction and agency keep appearing in the women's accounts. They often individualised or pathologised any negative experiences. 'I didn't have any problems', said one, 'oh except once when I was sexually harassed by my head of department'; or 'I didn't have any negative experiences', said another, 'except the time I was made redundant and I think it was because I was pregnant and not seen as the main breadwinner'; or 'I didn't have any negative experiences except I think I have always been paid less than my male peers'.

Internal mental work thus abounds. This belief in our own agency is well expressed by Julia Annas: 'People's desires can be in large part formed by the circumstances and options that they perceive as being open to them...'<sup>24</sup> Or as Naffine comments, 'agency is the ongoing endeavour to make sense of contradictory (cultural) practices without going mad, and without being struck dumb.'<sup>25</sup> I have experience of both.

One of the older women in the group said gender had never been an issue because, as she said:

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23 Margaret Blake & Ivana La Valle, *Who Applies for Research Funding?* (2000) Wellcome Trust.

24 Julia Annas 'Women and the Quality of Life: Two Norms or One?' in Martha Nussbaum and Amartya Sen (eds), *The Quality of Life* (1993) 279 at 282.

25 Above n9 (2001).

*Gender perceptions have not been a disadvantage I believe. For myself I have felt 'one of the boys' because at Cambridge and at the bar women were very heavily outnumbered and I have been accustomed to that and not worried by it.*

On the whole a different picture emerged when the women in the study talked about promotion. A definite politicization seemed to occur for a large number of the women who had been blissfully unaware of matters of gender when they first became law teachers. Once in post, all sorts of decisions will determine whether a person is likely to be promoted to professor. My study was not a comparative analysis of the success rates for promotion. It did not include women who had not been promoted nor did it look at men. However, it is widely accepted that, for whatever reason, women are promoted less frequently than men.

Academic work has both the benefits and the down sides of self motivation and direction. The 'assessment' of an academic CV for promotions and appointments is a subjective and inexact science (a point to which I return below). While women think it gives them flexibility to undertake childcare, their assessors may assume that as a result they have less commitment, whatever that means.<sup>26</sup> Although there has been some improvement on this front, universities have not traditionally felt the need for formal structures for career development, appraisal and mentoring. The path leading to promotion is not generally well marked and it may be some years before a woman realises that decisions about how her time is divided between teaching, administration and research, and perhaps more importantly the type of research she undertakes, will be of vital importance. Broader changes in the role of universities and the way they are structured are likely to exacerbate the gendered division of labour. In a comment on Australia, which applies with equal force in the UK, Lafferty and Fleming note that:

de facto privatisation, managerialism and restructuring on corporate lines has ushered in the implementation of market-driven principles that contradict those of gender equity. The devolution of budgetary responsibility to departmental heads has also meant that the career aspirations of many staff are dependent on the decisions of (predominantly male) departmental heads.<sup>27</sup>

In a recent survey I conducted on behalf of the Women Law Professors Network I found that only 40 per cent of heads of law school were required to undertake training in equal opportunities. Yet I can assure you that they all believe sincerely and passionately that they understand and support equal opportunities. That is more than half of the problem. Academics really are curious in my view. Rigour is espoused in all areas of substantive research but is dispensed with when it comes to acquiring the essential skills for practice of the trade, the skills of teaching,

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26 See Hilary Sommerlad & Peter Sanderson, *Gender Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (1998).

27 George Lafferty & Jenny Fleming, 'The Restructuring of Academic Work in Australia; Power, Management and Gender' (2000) 21 *Brit Jnl of Sociology of Education* 257 at 263.

writing and management. It is like taxi drivers having to learn the street map by heart but not how to drive the car.

Ascription decisions take place at all career stages. My respondents confirm that stereotyping abounds in deciding who is to do what jobs in universities, whether it be teaching, administration, or ensuring time for research.

*Years ago I remember complaining at a union meeting about how few women there were on a university committee. Within a week, someone rang to ask if I'd like to be on the committee which supervised the university nursery.*

*I wanted to teach conveyancing but was told I couldn't because I did not have a practising certificate. I was then asked to teach family law.*

*Once I was instructed to teach family law (which I had never studied) 'because I had a family.'*

#### (ii) Roles

The strongest theme in the interviews I conducted was the confirmation that women *believe that they take on more pastoral work* in universities. They think that students and colleagues believe that this is something women do better. And they believe that it is indeed often true that women do take these roles more seriously. I have of course chosen my words carefully. Like most of my study this is about what people believe and perceive, not what actually happens. What we have is not a description of 'reality'. Nonetheless it was said often enough, and even by those who otherwise denied that gender had ever trespassed the door of their ivory towers, that I think we should take it very seriously.

It is well known that this kind of work with students is not valued at all in universities when it comes to promotion. It is not 'counted' when teaching hours are allocated. It therefore may well amount to a discriminatory effect. In fact I think it may be worse than that and 'mark' women as not serious about research or scholarship, even if they patently are. Women may be left with no time for or be perceived as uncommitted to research. Different standards may be applied to women who fail their obligations than to men. Because research is *higher order* and *intangible* in the university value system, these 'failings' are not tolerated and at the same time the 'absent-minded' male intellectual is excused from the mundane work of administration.

The next quotation combines these two ideologies of care, at home and at work, and indicates that home is thought by others the priority.

*Gender has certainly been an important influence on my career. This has been an external influence (expectations from colleagues and deans that women are better at pastoral care and should therefore carry the burden of it, expectations that if I have a family to focus on then I shouldn't care*

*too much about promotion, and expectations that the privilege of career success is a male privilege.)*

It is not just that women are caught between two greedy institutions, those of work and family, but that work expects the family role to continue there. A manifestation of this is that women, along with minority group members, are also left to carry the responsibility of the equality or diversity agenda through membership of EO committees, representation on appointment panels and so forth.

*Gender only became consciously important to me once I got my first job and found myself in a minority of women teachers. Particularly during my time at O I spent a great deal of time campaigning on EO/harassment issues and mentoring/counselling students from other colleges and departments with no, or no sympathetic senior women. I now find my administrative load increased by the outcome of the EO policies viz. women on every committee etc...*

I have spoken with many male heads of school who agree that women do bear a disproportionate load but they are unable to agree that this can be taken into account in allocating teaching.

*(iii) Norms*

Several of the women identified the subjective aspects of assessment and evaluation of a person's contribution to the university. As one of them said:

*Despite universities asserting otherwise, many subjective assessments are involved in promotion decisions. As with most universities the promotion appointments and pay systems are deeply suspect with opaque criteria and male dominated snobbery driving the systems.*

Another emphasised the importance of knowing the right people:

*I do believe that referees for Chair candidates are enormously important. Now that I sit on the other side of the table I can confirm it....*

This again presents a problem for women. Should they ensure that they have aligned with heavyweight accepted (therefore male?) authorities to support their applications. Haight Farley's analysis of student evaluations over a three year period in one US law school suggests that different language is used in commenting about women. The same comments are interpreted differently and negatively (men are given to 'intellectual musing', women are 'confused', men speak fast because they are intelligent, women because they are nervous); and some comments are exclusively made about men (eg, they are 'masters' of their subject), or about women (comments on their appearance, use of their first name). It is difficult to believe that these hidden and subtle evaluative differences do not

affect the assessment of women academics in promotion decisions, which increasingly include an element of teaching performance. Research confirms that academic papers attributed to a female are rated less highly than those attributed to a male author.

A third of the women said gender had influenced the subjects they taught. This was not always a matter of *choice* on their part as we have seen. Interestingly a higher proportion said that gender had influenced their choice of research. Nearly a third said it affected their research area a lot and altogether nearly half suggested it had some influence. In terms of the subject specialisation there appears to be an over representation of public law (including European, international and criminal law), and of family law, and an under representation of property law, trusts and equity, maritime law and commercial law. This tends to fit with theories of gendered stratification within professional work, and we can begin to see the relationship between structure and agency, and the gendered processes of ascription, roles and norms in universities. Strung between the general level of structure and the individual experience of agency is the important dimension of culture and cultures.

#### (iv) *Cultures*

As Gherardi notes the 'success of some women does not transform [organisational culture]'.<sup>28</sup> In fact an important point needs to be made. Local cultures within the university, within disciplines, within the department and within factions are not separate gated areas, although some of their members might behave as though they were. Not only is there a continual process of inter-action and reaction between them, their values and attitudes are inevitably shaped by the broad social and political environment. Britain still maintains a relatively liberal welfare state economy. It has begun to embrace more proactive policies to underpin child care provision for working parents for example. But it is a long way from the Scandinavian models where second wave feminism has resulted in more substantial state investment in family friendly policies for those in employment.<sup>29</sup> Dual career families do not generally mean dual carers.

Two law schools cropped up in many of the interviews as sporting particularly negative organisational cultures. (No doubt there are others, including among the 30 or so law schools without a single woman law professor). It made no difference whether the person was talking about bad experiences in 1975 as a young lecturer or another in 1995 as a promoted senior woman. This confirms the findings of organizational writers that gender relations are a complex product of a number of personal as well as institutional factors and that once established they can be resilient and enduring. As does the fact that some of the women mentioned the overall impact of having a vice chancellor who was sympathetic to equal opportunities to the extent of being proactive in developing policies and practices

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28 Silvia Gherardi, *Gender, Symbolism and Organizational Cultures* (1995).

29 Rosemary Crompton & Fiona Harris, 'Attitudes, Women's Employment, and the Changing Domestic Division of Labour: A Cross National Analysis' in Crompton (ed), above n7.

to encourage diversity. This was attributed to the effect on the individual of having a wife in professional work or having daughters now entering professional careers. Again structure, agency and culture coalesce.

There are disciplinary or subject cultures too and indeed this is the premise from which Margaret Thornton begins her own study of women in the legal profession. One argument is that women's acceptance in the academy is contingent on their falling into one or other or a combination of these roles: the adoring acolyte, the body beautiful, the dutiful daughter, the Queen Bee. Women are only 'allowed in' to the legal profession on the (male) profession's own terms, and become judged through stereotypes based either on subordination or on unacceptable self promotion.

The dutiful daughter label is one with which many women in my interviews identified. Women are anxious to be seen to be good at their work, they are anxious to prove themselves competent and authoritative. The anxiety is there because there is an unspoken presumption that perhaps they are not competent and authoritative. I think that 'willing wife' captures the idea better especially for the more mature academic.

The idea of body beautiful did not strike a resonance with the women in my study. In fact they laughed. I do wonder whether law schools are generally a site for overt sexual put-downs of the kind that seem to persist elsewhere. A recent article in the Guardian newspaper on 'sex in the city' contained reports of women being referred to as 'tarts and slappers' and one said '[i]t was clear that only attractive females were being hired. There was an atmosphere of testosterone which meant clients were taken to lap-dancing clubs, places where women would be uncomfortable.' While women may feel out of place in some university common rooms, this does not sound like any law school common room that I have ever visited. Do academics play out their sexual roles in more subtle ways? Or does the continual presence and availability of young female students re direct their energies? This wasn't the focus of my study and I am reluctant to push the argument too far. What I can say is that both men and women I have talked to about this have been puzzled by the body beautiful type and the associated 'corporeality' argument. While the sexual patterning of work is pervasive, it inevitably takes different forms depending on size, demographic distributions, prevailing cultures and so on. In universities it may be more powerfully obscured through intellectualisation. It may be another example where the terms 'real world' and 'universities' are oxymoronic.

But, as many of the women in the Guardian article and in my study have commented, the subtle and indirect types of devaluation are often more difficult to deal with. It can be easier to deal with people who are up front patrician than with those who *say* the right things but continually *do* the wrong ones. Overall, microcultures (at departmental level and below) probably have the most wearing or damaging effects.<sup>30</sup>

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30 Louise Morley, *Organising Feminisms: The Micropolitics of the Academy* (1999).

Although my research subjects did not recognise many queen bees, this *is* a difficult construction to avoid for successful women.<sup>31</sup> On one reading they are the antithesis of the dutiful daughters, the worker bees. This is all part of the process of maintaining the status quo. Flattering successful women into believing they are exceptional justifies their being kept as a minority. They are recruited as ‘honorary males’ and by invitation join the dominant group of king bees. At the same time they may carry the dutiful (and therefore not exactly brilliant) image to prevent full admission or further progress. Only limited paths are available for women at this stage. Ascending the hierarchy will often mean for women an inevitable, tacit acceptance of the organisational culture. Gaining access to power for women may often be at the cost of their sense of identity as women, or their solidarity with others. As one writer puts it:

‘As long as women are still classed as ‘the other’ they must either lose or deny their difference to join the elite, or face endless conflict and self doubt.’<sup>32</sup>

Entry into the elite does not necessarily imply any major transformation of the principles of the gender differentiation process. This is crucially connected with issues of leadership.

#### (v) *Leadership and Management*

As I mentioned earlier, professorship is a gateway to management. Evidence of ‘strategic leadership’ is a criterion for promotion to a personal chair in some universities. Professorial appointment often coincides with the expectation that management roles will be undertaken. Thus decisions to promote or appoint at the chair level are often also decisions (sometimes explicit, sometimes not) that a person is suitable for management. The people who make those decisions are by and large men.

Management, like law, is an occupation that is historically and culturally associated with men. It is seen as intrinsically masculine: something men do. Leadership is constructed with a masculine subtext. Good managers are perceived as having masculine characteristics and, until recently, adjectives such as ‘competitive’, ‘aggressive’, ‘rational’ and ‘strategic’ were associated with good organizations.<sup>33</sup> Yet all of these are seen as undesirable traits in women. In an ironic reversal, ‘female’ characteristics have been adopted by management experts: ‘emotional intelligence’ is the new management catchphrase. Intuition, and the empathic qualities, are now to be nurtured. But so also is charismatic leadership, which is not associated with the feminine.

31 Meg Stacey, ‘A Flying Start’ in Miriam David & Diana Woodward (eds), *Negotiating the Glass Ceiling: Careers of Senior Women in the Academic World* (1998) at 83.

32 Sue Davies, Cathy Lubelska & Jocey Quinn, *Changing the Subject: Women in Higher Education* (1994) at 4.

33 Alice Belcher, ‘Gendered Company: Views of Corporate Governance at the Institute of Directors’ (1997) *V Fem LS 57* at 60, 62.

There is evidence that in general women hold fewer management positions (although care needs to be taken with how management is defined), and that women managers experience higher levels of stress both at work and at home. They often lack female role models, are exposed to sex stereotyping and their visibility puts pressures on them to succeed. Fifteen women in my study reported that they had suffered stress related illness. Although it appears from a recent report that academics do suffer a higher level of stress than other workers,<sup>34</sup> to report this level of *illness* is, it seems to me, significant. Women are socialised into acknowledging vulnerability more than men are which may affect both their experience of managing and the experience of those being managed by them. It may also affect their responses to questionnaires.

(vi) *Becoming Head of School*

Universities have traditionally been run on collegiate, or as it might less sympathetically be described, feudal, styles of management. As Jeff Hearn puts it neatly: the *non bureaucratic* male-dominated 'feudal' system has been replaced by *bureaucratic* male-dominated 'feudal' systems of management.<sup>35</sup> There is a clear trend towards corporate management.

Deans, heads of department, are increasingly appointed by v-cs as line managers rather than as academic staff temporarily obliged in the traditional collegial fashion to perform administrative tasks.<sup>36</sup>

Only a handful of the women had been head of school. Those who had nearly all agreed that it was a very stressful and difficult period, something that goes with the territory of the role as much as with gender. Some, however, had very negative experiences which they did attribute to gender perceptions on the part of both the men and the women in their departments. Many of the comments suggest a reluctance to acknowledge the impact of gender, while at the same time being unable to escape its overpowering effect on ideas of leadership.

*...Being a female HOD was not really a problem. Interestingly relations were harder with subordinate women than men, and I had no particular difficulty with male superiors (other than AB - but he was a pig to everyone). Over the years I have learned how to win crusty men over. It requires some abandonment of ego — I suppose the problem is that as a senior female, one still has to prove oneself a bit, whereas I think senior men are taken as being senior at face value.*

34 Dorothy Illing, 'Half of Uni Staff "Are Distressed"' *The Australian* (30 March 2001) at 4.

35 Jeff Hearn, 'Men, Managers and Management: The Case of Higher Education' in Stephen Whitehead & Roy Moodley (eds), *Transforming Managers: Engendering Change in the Public Sector* (1999).

36 Lafferty and Fleming, above n27.

While this one acknowledges gender more directly:

*Being a head of school is almost impossible anyway. The stresses and strains are momentous. As a woman, networks, support systems are harder to tap into: It is very lonely (a trip to the pub etc is difficult and easily misconstrued!)*

*I think it is easier to be seen as weak because I am not aggressive or vindictive.*

As does this one:

*As far as stress is concerned, I felt being Dean and H/D was far too pressured for me. The workload was enormous..I felt that I had to be very hands on, and very committed to staff, and this was draining .... Personnel matters were quite difficult at times. I saw the vulnerabilities of many outwardly strong colleagues. Perhaps they reacted to me differently from how they would have reacted to a male head of department, but they felt able to come to me with problems. I was not good at delegating because I did not want to burden colleagues.*

Another thought gender and management crucial:

*I think that gender is a crucial issue in management. It needs to be addressed and it isn't. The managed, both female and male, react differently to female managers. Men who are born to rule excite less enmity from women and men. It is not sufficient for women to be appointed to senior management so that employers can pat themselves on the back without doing anything to offer support in terms of the problems women may come up against because they are women. Male incompetence is more readily tolerated.*

#### **4. Concluding Comments**

You may have had the expectation that this lecture would enlighten you on the subject of women leaders in law schools. The sad truth is that there are few women leaders in law schools. In hardly any law schools do women professors outnumber men or even approach equal numbers. Only a small number of women have ever held head of department positions. Those who have done so mainly point to the difficulties of the job in general but also suspect, or in some cases are convinced, that gender plays an important role. Even those who do not want to attribute difficulties to gender find it difficult to escape from gender stereotypes about leadership. We can also note that 80 per cent of them thought gender was an important aspect of their own relationship with heads of school. It has been said that '[w]omen [academics] face essentially two criticisms. First, they are accused of not being "man" enough, and second, they are accused of not being "woman" enough.'<sup>37</sup> When successful, they are marginalised through labels such as

'exceptional', they are accepted as 'honorary men' and feel less excluded if they can think of themselves as 'one of the boys'. Promotion is hard to get, and yet often leads to further marginalisation and exclusion.

*When I was promoted to SL, attitudes of male colleagues changed. When they saw I wanted more, attitudes hardened. ... [w]omen who have become lecturers have already broken out of their perceived roles, and are seen as a threat... Someone else said that, nowadays, men can't stop women from succeeding, but they will never forgive us for doing so. This rings true for me, because actual success is tinged with a feeling of unworthiness.*

My research is but a small contribution to work on gender and professions, an area which is fraught with complexity and instability. Both gender and professions are socially constructed entities and structured in complex ways. The findings reveal that even a group as homogeneous as this displays considerable diversity in attitudes and perceptions of gender differentiation. The internal mental work, the making sense of contradiction and self-doubt, are on going. Rather than diminishing with success it often becomes much worse. Some women negotiate their way through 'transcending' gender, they have negotiated their understanding of their role without the (conscious) deployment of gender concepts.

The study lends reinforcement to the argument that women believe they are disproportionately engaged in caring roles at work and at home. It would seem that the majority of the women who were unaffected by gender nonetheless recognised that gender might be an issue in terms of representation or diversity, or that it might affect others. It was as though for these women, the negative individual impact would need to be very obvious and gross before it disrupted their overall perception that gender had been an irrelevant factor in their reception and treatment in universities. It is not uncommon for people to be able to recognise gender disadvantage in others' lives, but fail to see that the culture in which they are immersed is itself masculinist.<sup>38</sup>

I believe less that law is particularly problematic for women for we only have to look at the sciences, engineering, and almost any area of professional life to see similar, sometimes worse patterns. I believe more that academics, and lawyers, have public responsibilities which they are failing to discharge while they continue to believe that the problem does not belong to them. The claim that the problem belongs to them collectively can be made far more strongly than any claims we might want to make as privileged individuals about our right to occupy the positions we do. It is not yesterday's problem as many seem to think. It is definitely today's, almost certainly tomorrow's, and most likely next week's problem too. Dalrymple, whom I mentioned at the beginning, went on to say that the

37 Davies, Lubelska & Quinn above n32 at 340.

38 Stephen Whitehead, 'New Women, New Labour? Gendered Transformations in the House' in Whitehead & Moodley, above n35 at 1.

intellectual's struggle to deny the obvious is never more desperate than when reality is unpleasant and at variance with their pre-conceptions, and when full acknowledgement of it would undermine the foundations of his [he did say 'his'] world view.

Finally this quotation from one of the women in the project aptly summarises the unpleasant reality:

*The difficulties faced by women in 2000 are different from those confronting women entering academic life in 1971. The presence of women in greater numbers helps. However numbers alone is not enough. We need to monitor promotion and look at how far women are appointed to lead law schools. We need to ensure that senior women do not fall into the trap of believing that they should become gender neutral. Male colleagues are quick to make accusations that women favour other women. That men have always supported other men appears to them irrelevant. Regardless of theories of equality, practical problems which confront women more often than men must be recognised. It is not only childcare which falls predominately to women. The care of elderly parents often becomes the responsibilities of daughters rather than sons. There is no point in pretending female careers and external responsibilities are identical to male careers. Differences must be recognised and the talents of women and men constructively encouraged.*