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THE COMPARATIVE SOCIOLOGY OF WOMEN LAWYERS: The "Feminization" of the Legal Profession

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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 law practice. In other countries (New Zealand, for example), women were never legally prohibited from entering the profession, but they did not enter the field, and 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, changed social conditions, such as the international women's movement, the democratization of university education and new methods of birth control (Gordon 1982) and attitudes toward the family have affected enormous changes in the participation of women in the legal profession. To be sure there are some cultural or national variations, but there is substantial uniformity across countries.

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 (a component of the Research Committee on Sociology of Law of the International Sociological Association, including Canada, the United States, the United Kingdom, Scotland, New Zealand, Belgium, Germany, Norway, France, Italy, Spain, Yugoslavia, Brazil, Venezuela, Japan and India). 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 with 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 (Abel 1982), but the scarcity of data from this part of the world limits our ability to understand the impact of some colonial legal systems on the indigenous legal culture.

Second, the implications of what amounts to 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, based on the evidence of the currently existing data and suggestions drawn from feminist theory and research in the sociology of occupations. It may be too early to accurately draw the picture of what participation in the legal profession will be like for women, but perhaps by advancing a few interesting questions at this stage we can direct our attention to the most interesting subjects for study.

In short, this paper explores the several dimensions of the term "feminization" of the legal profession. On the one hand, we can consider the profession feminized simply by the increased number of women in the profession. 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 are recognized, appreciated and absorbed into the performance of legal tasks and functions (empathy, relatedness, nurturance, collectiveness) (see Lenz and Meyerhoff 1985 and Sherry 1986). For others the profession becomes "feminized" not by stereotypic attributions of gender qualities (Olsen 1986) but by a "feminist" influence on the profession which includes particular substantive changes, not only in the practice of law (i.e., adaptation of work to family) but in the 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 jursiprudence (Mackinnon 1983, Wishik 1985, Littleton 1986), are concerned with whether women who enter the profession will conform to a "male" model of what it means to be a legal professional or whether the profession will innovate and adapt to new, 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 when they report on the numbers and distributions of particular social groups in the professions (Curran 1985, Larson 1977, Epstein 1981). Statistical patterns

reveal much of the story of macro social change. Identifying the patterns of aggregate change is only part of the story, however. 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 deviants from the "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 (Menkel-Meadow 1983).

One of the significant themes in any study of women in thelegal 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 this study of the impact of a previously excluded group on the profession? Related to this theme is the question of what difference the entrance of women will 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 differentway? Or, as some have suggested, will women make contributions to the profession from their position as previously excluded outsiders (Epstein 1981) or as dominated and oppressed beings (Mackinnon 1985) 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 (Spangler 1986, Fenning 1985)? Next, what will the nature of women's contributions to the legal profession be--changes in the way law is practiced, change in the structure of work, changes in the substantive law, changes 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 those of macro questions. As women begin to approach constituting half of the profession (in most western countries women comprise about 40 percent of the present law student body) will the status of the profession decline? As women and the things they do have been devalued in various cultural forms, will the increase of the performance of legal tasks by women affect the social and political regard of these legal functions? We see evidence of this already, in the clustering of women in the legal jobs typically lowest in the social stratification hierarchy in virtually all countries. Or, 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 (Kanter 1978; Spangler, Gordon and Pipkin 1978) new questions emerge. Will only "exceptional" women succeed or rise in the professional hierarchy (Mackinnon 1986), or will average women do as well as average men? In short, what is the nature of gender discrimination--are exceptions, those who act like men, allowed to penetrate the restricted boundaries while those who act more like women are kept out? And, 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 or occupational stratification systems does the resistance become another form of the "women are inferior" argument--they can't be better than, above, superior to men. And what effect has the large influx of women into the profession had on those now excluded? As expansion of the profession recedes 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? As many of the national reports demonstrate, as gender barriers are eliminated or reduced the class barriers may get higher; the large numbers of women entering the

profession are largely from the middle class (Abel 1985). Does this suggest that class discrimination is more resistant to change than gender discrimination in the professions and elsewhere?

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 obtain in woman's participation in the professions or in the workforce more generally? It will be useful to compare women's participation in professions heretofore denominated "men's professions" and those denominated "women's professions," and man's participation in previously female dominated professions (nursing, teaching, etc.), a particularly difficult enterprise when conducted across cultures and nations.

In the sections that follow, these themes will be explored with the hope of illuminating some of the questions which future research will have to address.

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

Participation of women in the legal profession is remarkably uniform (with a few notable exceptions) in the western industrial nations. Since the 1970s women have entered the legal profession in dramatic numbers, in many nations accounting fully for the growth in the legal profession and for the growth in the number of law students studying for admission to the bar. Thus, the entrance of women in 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. At the same time that women are found in increased numbers in law schools and as law graduates, they are entering the profession at a time of increased unemployment of lawyers generally. Women are disproportionately represented among the among the unemployed, part-time employed and underemployed. Women 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. Depending on the country, the sphere or location of women lawyers may differ, but the spheres of women's activities are almost always those found at the bottom of the professional hierarchy.

Women in Legal Education

Women began entering the universities for law training, either as undergraduates or in law schools, in large numbers in the 1970s. The reasons may differ slightly from country to country, 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, the decrease in available teaching jobs in Germany (Blankenburg and Schultz 1985), but most nations felt the effects of the international women's movement of the time. What is most significant about the growth of women in positions of legal education is that while growth climbed rapidly in most countries, it has leveled off to a relatively static rate somewhere between 30 and 40 percent in most countries. Exceptions are France, Norway and Yugoslavia where women studying law now exceed 50 percent of the relevant student body (Abel 1985).

In the United States, for example, women were barred from many law schools until well into the 20th century; Harvard didn't except 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, enrollments 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 the mid-1980s (Epstein 1981; Curran 1985; Abel 1986). This rapid growth of women in legal education in the United States can be explained in part by the expansion of available seats; throughout the 1960s and 1970s new law schools opened with constantly expanding enrollments. Within the last three years, national enrollments have decreased, some schools have closed and legal educators have begun to talk about the effects on legal education of shrinking enrollments and dilution of student quality. For some years the increase in female students had little or no demographic effects on male students, but since 1973 virtually all expansion in the numbers of lawyers admitted to the bar has been due to the increase in female students. As expansion stopped and the places became more finite the number of male applicants to American law schools has actually decreased (.1 percent a year since the 1970s, while female enrollment increased at an average annual rate of 41.4 percent (Abel 1985).

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 enrollments in law programs at the polytechnics). In Canada the number of male students doubled between 1962/63 and 1980/81 while the number of female students increased 24 times. Women now represent approximately 30-40 percent of all new entrants to the profession in virtually all provinces (Arthurs, Weisman and Zemans 1984). There are some suggestions that there may be more women lawyers in French Canada than English, a fact which, if true, parallels the development in Europe where new entrants to the legal profession exceed 50 percent in France but have not yet reached the 30 percent mark in England (Abel 1986).

In continental Europe, where law is studied principally at the undergraduate level, 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 as of 1983.

In Brazil, where legal education serves as general education for the elite, women represented about 25 percent of all law graduates in 1980. In New Zealand, where women were never barred from legal practice by law, women comprised only 9 percent of the student body in 1981, but as of 1983 began to constitute a majority of the student body at Auckland University (Murray 1983).

In other countries women have yet to make a significant impact on the enrollment in formal law training; in India and Japan women continue to represent a small fraction of those calling themselves law students (Abel 1985; the national reports of India [Gandhi 1983] and Japan [Rokumoto 1984] do not even report on the numbers of women in the profession).

This picture of entrance into formal law training demonstrates several interesting patterns. First, the fact that we can even collect and report data on women studying to be lawyers is a relatively modern phenomenon, resulting from the increased formalization of legal education in the university in common law as well as civil law countries. Although the first women to be admitted to the bar in the United States read law with their husbands and used the apprenticeship system in the late 1800s (Chester 1985), by 1986 virtually all states had eliminated this form of legal education.

Second, the figures reported above tell us only about women's entrance into university law courses. The type of education varies radically from country to country and the effect of a university based education on the likelihood one will actually practice law varies greatly. In countries like Italy and Brazil, for example, the attrition rates within the years of law study are quite high due to the easy entrance requirements but large opportunity costs

in delaying earning capacity for as long as seven years. In other countries, the transition from legal education, to license, to practice 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 education has become more universally available (at least in some countries on the basis of gender) the entrance to the profession is controlled at later stages. In addition, the fact that enrollment has stabilized and leveled off at an almost uniform rate of 35-40 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 rate of attrition {while in law school, and for what reasons). In Brazil, for example, where women comprise 24.6 percent of law graduates, only 20.9 percent of law professionals are women. At what stage and in what ways are women eliminated from the study and practice of law?

Finally, it should be observed that the increase of women in legal education in many countries has come at the expense of the working class. As democratization of the university began to open doors to working class students, law students remain, in most counties, solidly middle or upper class and recent female admittees are disproportionately middle or upper class, reflecting old patterns in the recruitment to the legal profession (Abel 1985).

Women in the Legal Profession

Lest it be forgotten, one should recall 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 numbers of women in the legal professions of most countries. Even with an outpouring of over one-third of new admittees to the bar each year, women enter a formerly totally male population. Thus, 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. Most important in analyzing the data about entrance into the profession is to try to uncover the places and rates of female attrition, failure or discouragement. One crucial theme in understanding women's participation in the legal profession is to locate choice points where women either self-select to leave the training track or are forced out by external forces. These women are likely to be subject to less universalistic and more discriminatory controls, (e.g., apprenticeships). As an illustration of this point, consider an American example. There is much anecdotal information (N.Y. Times, Feb. 9, 1986) but little hard, empirical evidence that women are leaving large law firms before the partnership decision because they (1) fear negative decisions (women still do not represent more than 3 percent of the partners in major law firms [Epstein 1981; Fenning 1985]); (2) do not like the demands of the "greedy institutions" that require up to 2300 billable hours a year; or (3) find the work demands for partnership inconsistent with child-bearing plans. (Cf. Abramson and Franklin 1986 who report that many women in the Harvard Law School class of 1974 opted out of partnership ladders.) Assuming graduation from law school at about age 24, it takes about seven years to "make" partner, thus requiring primarily commitment to hard work during the best years of fertility. Thus, while rates of actual 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 congruence across nations (Abel 1985).

In the United States, admissions to the bar for women climbed radically

in the 1970s (with the general growth and expansion of entrants into the legal profession). By 1973, the number of males admitted each year leveled off but the number of females admitted to the bar continued to increase yearly through 1983. Likewise, in Canada, women represent between 35-40 percent of new entrants to the bar. In England and Wales 20 percent of those called to the bar are women (remember, their participation rate in legal education was about 34 percent) and in Scotland in 1982, 36 percent of new entrants were female (participation in legal education had risen to about 40 percent [Patterson 1984]). Many countries report that women may even 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 entered the profession (Johnson 1984).

Here the British case is illustrative for demonstrating the discrimination which appears to exist at the apprenticeship level. England and Wales report comparable numbers of men and women receiving honors; however, women have particular difficulty finding pupillages, tenancies (only 40-50 percent of women receive them compared to 6-60 percent males [Abel 1985]), and clients (over half of a group of women surveyed reported that they had difficulty in getting clients). Although women have been entitled to be admitted to the bar since 1919 by statute, the Sex Discrimination Act of 1975 does not apply to the bar because barristers are not "employees." In the United States, the U.S. Supreme Court recently rejected a similar argument made with respect to partnership decisions. Under the American civil rights law, a partnership, although not an "employment" decision, was held to be a "condition or term of employment" under the statutory language, for purposes of finding a major law firm may have discriminated unlawfully in denying partnership to a woman (Hishon v, King and Spaulding). 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. Many scholarships at the Inns of court have been denied to women. In 1975, when 17 percent of those called to the bar were women, only 12 percent actually started to practice. A similar story can be told with respect to solicitors where apprenticeships may not serve 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 practicing 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 (Abel 1985b).

Thus, while women appear to have greater increased participation in meritocratic university education, their actual participation in law practice is moving at a generally slower, but widely varying pace, as the controls of the university conclude and the controls of the presently male constituted profession take over. It should be noted that 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, others are socially constructed impediments that begin as external forces but appear to many to be internal by nature, i.e., choices by women not to pursue practice or some particular form of practice. In other words, as long as partnership decisions are timed to coincide with childbearing plans, women may be unable, as a class, to succeed in large numbers. Even where some firms, as in the United States, attempt to adapt their structures by permitting maternity leaves 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 (Abramson and Franklin 1986; Fenning 1985). Thus, women are perceived as "opting out" without any ques-

tioning of whether the work structure has within it impediments or obstacles that preordain the outcome. As is said in employment discrimination doctrine, such "neutral rules or constructs have disproportionate impacts" on particular segments of the workforce (here women). One significant theoretical and practical question that is implicated in 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. At the present time, the latter appears to be the case.

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 law 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 women are generally restricted from high status occupations, or because particular stereotypes of what women are good or poor at relegates 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, for instance) and "pushed," or more likely kept, out of what is generally considered to be high status work (usually private commercial work in western capitalist regimes). Another factor operates to increase gender segmentation of the workforce and that is the compatibility of particular occupations with life cycle choices. Thus, in most western European nations where government programs for child rearing leaves exist, women will be found disproportionately in governmental 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 leave for some years with reentry to the same job. Women currently represent 28 percent of jurists in 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 and less available due to economic conditions. Since women experience difficulty in obtaining private company jobs they appear to be turning to advocate positions. In 1983, women represented 36 percent of advocates (a position in the German legal profession typically entered into as a second choice when one cannot obtain a primary choice [Blankenburg and Shultz 1985]).

In Belgium, by contrast, where there are comparatively fewer judges and it is considered a very high prestige occupation, women represent a disproportionately low number of judges. With Belgium's international commercial occupations, women are also underrepresented in private commercial employment. Women are found disproportionately high in the non-profit sector in teaching and as advocates. Most significant, however, is the fact that although women represent 35 percent of the student population they represent 50 percent of those seeking work (highly represented in the unemployed), and 50 percent of all women attorneys can be found in Brussels where there is said to be easier acceptance (Huyse 1984). Similarly, in France women are found disproportionately in suburban practices, rather than in prestigious Paris practices.

In further contrast, while women seem to be employed in advocate positions in European nations (by default), in Norway women are underrepresented in the courts, in part because these professions are viewed in Norway as

requiring "aggressive defiance" and a connection to trade, both of which women are thought not to have (Johnsen 1984). Norwegian women are disproportionately represented in the lower posts within the central government. Of those in private practice, women handle two-thirds of all personal relations clients, and men handle three-fourths of all property-capital relations clients. (This is in a country which reports that men are clients more often than women; 13 percent of women surveyed indicated they had consulted a lawyer where 27 percent of men indicated they had consulted a legal professional.)

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 level of the nation greatly decreases the use of the 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). In this category, women represent only 6 percent of all police chiefs (Falcao 1984).

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 over-represented in public jobs, occupations of women tend to cluster at the lower levels. Of course, an important explanation of 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 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 law jobs, both federal an state, compared to about 12 percent for men [Curran 1985]). When women are found in the private sector, interesting clusters occur. They are found disproportionately in large firms (as junior associates) and in solo or very small practices rather than middle-level sized firms. Perhaps this is due to perceived locations of discrimination where large firms may be applying 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 over-represented in the large law firm associate pool comprising (in 1980) 15 percent of all associates but only 2 percent of all partners (Curran 1985). This latter figure is changing yearly; a recent study of partnerships in firms of over 100 lawyers in Los Angeles reveals that in 1983 only 3 percent of the partners were women, but in 1984, the percentage increased to 4 percent(Fenning 1984)--a bit of datum which partially confirms the age/relatively recent admission phenomenon. Still, given the rapid increase in entrance to the profession during the 1970s, partnership rates still seem quite low. A recent study of women in the class of 1974 at Harvard Law School revealed that although women graduates were more likely to work initially at large elite law firms, ten years after initial employment, only 23 percent of the women are partners while 51 percent of the men are partners. Over half of the 49 women studied who initially went to large private firms opted out, one way or another, to a different form of practice or no practice at all (Abramson and Franklin 1986). In similar patterns, 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 favored specialties, criminal law, domestic relations and general civil, 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.

Women are also over-represented at the lower ends of the occupational hierarchy. In the United States women account for almost all paralegals, paraprofessionals who perform routine legal tasks and "assist" male attorneys.

In Japan, women make up 67-78 percent of Japanese law clerks.

Most common law countries also report low representation rates of women in the elite circles of the bar associations, whether compulsory or voluntary. Thus, women are not found in the elite Councils of Law Societies in Scotland, England or New Zealand. Similarly, women are virtually excluded from the House of Delegates to the American Bar Association and are just beginning to find a positions in leadership positions in state and local bar associations. This, of course, is attributable 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 formed and supported their own bar associations which, in recent years, has led to some segmentation of the female bar. In Canada, for example, the Women's Law Association serves as a general membership organization, 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. Similarly, in a recent case before the California Supreme Court, two women's lawyer groups split as to appropriate political strategy. In a case involving the legal treatment of a professional degree at the time of marital dissolution, one women's legal group, Women Lawyers of Los Angeles, argued on behalf of the wife's (and women's) interest in considering a professional degree as community (thus, shared) property. At the same time, another women's legal group, The California Women's Lawyer Association, chose instead to identify with the professional class by seeking the treatment of a degree as separate property (thus protecting women's newly found professional status and income investment). Similar conflicts are currently facing women's lawyer groups as they are forced to choose positions in the litigation process involving the legal treatment of pregnancy disability leave. A case before the U.S. Supreme Court, Cal Fed v Guerra, centered around the "equal v. special" debate over pregnancy in relationship to a male disability (the federal approach), versus specification of it own rules (the California state approach). (Williams 1985, Littleton-McCloud brief 1986). As women continue to enter the profession, these more complicated variations within women's groups will likely become more pronounced in terms political/feminist philosophy, choices of subject specialty and task specialization, and assimilation to or rejection of traditional, conventional and male modes of work organization. Some women's groups, such as the California Women's Lawyer Association, will identify themselves with the professional class ("I am a lawyer first and woman second"), and others will identify themselves as women first, with class interests coextensive with other women. (See the wonderful contrasts in the personal stories of women lawyers in such recent books as Emily Couric's Women Lawyers: Perspectives on Success [1983], Betsy Covington Smith's Breakthrough: Women in the Law [1984], and Abramson and Franklin's Where They Are Now: The Story of the Women of Harvard Law 1974 [1986] for class and gender identifications.

Women Lawyers Incomes

As stratification within the profession's specialties and types of work are clearly demarcated for women, the available data on women's incomes is even stronger in its illustrations of disparities. In Ontario, Canada, a recent study reveals that while women seem to suffer little discrimination in obtaining jobs in the elite law firms, for all lawyers five years out of law schools, women suffered an income gap of $2,946 on an annual basis (Adams and Lahey 1982). In New Zealand, women have only a 2 percent chance of making over $50,000 annually (men have a 25 percent chance of obtaining this income level) and 7 percent of women earn under $7,000 where no men earn this little. In a poorer nation, Brazil, only 5 percent of men earn less than three times the minimum wage while 15 percent of women did and 21 percent of men earned 20

times the minimum wage while only 5 percent of the women did. In England, female barristers earned about half of what comparable male barristers earned (when controlled for age and type of practice) (Abel 1985). And 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 across the spectrum of occupations and specializations. For example, a 1982 study of lawyers in the state of Minnesota reveals that the median income for women lawyers was $27,960 annually compared to $43,690 for men. Even controlling for age, disparities continue to exists. In the cohort of graduates between 1975-81, women earned $26,810 compared with $33,410 for men (ABAJ, Sept. 1984).

The composite picture which emerges, even across all the difficulties of non-comparable data sets by years, or definitions of legal professionals or law occupations, 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, as well as low status and lower income. Given the continuing barriers and disadvantageous working conditions, the more interesting questions to ask are: Why do women continue to seek entrance to the legal profession? What do they find appealing in the profession and how will they change the profession, if at all, once they achieve a "critical mass," either in the profession as a whole or in particular segments of the profession, which now seems more diverse than unitary?

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 the increase in numbers of women in the profession. There are more women lawyers now than ever before and there will be even more in the coming years. What makes this an interesting social process to watch is the question of whether women will have a unique perspective to offer the practice of law or the development of substantive doctrine. Such questions implicate important issues in feminist theory. If women demand equality with men on the basis that they are the same as men, than more women in the legal profession should be no more significant than more blue-eyed lawyers. It is 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, that notions of difference can be introduced into what women may offer as contributions to the profession. This is a dangerous and problematic argument, though one I am willing to make (Menkel-meadow 1983, 1985a, 1985b) because of the possibility that arguments or claims about differences can be distorted back into claims about inabilities or stereotypic devaluing of what is labeled female (Mackinnon 1983, 1985).

The "difference" argument can be explicated as follows (see Jardine and Eisenstein 1984). First, we see and experience differences everyday. What is problematic is 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 (particularly in the context of the legal profession) possibilities. Second, to observe the differences is not to endorse them, or to necessarily have a view about their origin (social, biological, cultural or political). My own view is that the origins are mostly, though not exclusively social (i.e., 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]) (Mackinnon 1983, Littleton 1986). Thus,

what follows is more in the nature of a speculative suggestion of what contributions women may make to law and the legal profession from data and theoretical work that currently exist with projections into the future of what might happen with the greater participation of women in the legal profession. Much of what follows is derived from Anglo-American feminist theory and research, with contributions from France's own distinctive feminist theory (deCourtivon and Barks 1981). Thus it will be important to watch the cultural and national variations that clearly require further study and empirical verification.

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 said that it would have "most favorable" consequences) (ABJAD, October 1983). What might those consequences be?

The most commonly suggested difference is a perceived aversion to combativeness and extreme of the adversarial process. Women express dissatisfaction with the win/loss nature of litigation and the inability to effect solutions that take account of all the parties' needs (Fox 1978). 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, but by trying to keep the relationships of the parties in moral dilemmas constant. For example, using Kohlberg's Heinz' dilemma (should Heinz steal a drug he cannot afford in order to save the life of his wife?), Carol Gilligan has demonstrated that women 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 (Gilligan 1982). Instead, the pharmacist and Heinz should meet together and discuss their problem (as in mediation rather than litigation) directly and arrive at another substantive solution--installment 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.

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 the other side that an incompetent lawyer had failed to use, which 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 appropriate concern for the Other (the adversary is cared for, thought about, dealt with not as an "end" to be defeated in quite 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?

Thus, from the suggestive data, one could ask a series of questions that might explain some of the occupational segmentation demonstrated above. Do women seek judgeships or other non-adversarial jobs in disproportionate numbers? Are job choices in less adversarial systems (i.e., 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 channeled into certain jobs because of perceptions by others that thee 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 downsides. 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? 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 (i.e., client relations in large law firms)? It appears that, as in law, women in the corporate sector are allocated to particular jobs (personnel), as well as industries (retail clothing, banking, insurance) based on the negative attributions of stereotypes (people and service industries) when the mainstream and power lie elsewhere (marketing and manufacturing) (Wall Street Journal, March 24, 1986).

Women trial advocates have argued for a different style of trial advocacy--conversations with fact-finders rather than persuasive intimidation (USC Conference 1983). Women have expressed interest in broadening the nature of relevance, wanting to know more of the facts involved in a problem than that which is legally relevant--a search for what feminist theorist calls "contextualism and particularity" rather than application of a few facts to general, abstract principles of law (Gilligan 1982).

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 organized more equalitarian, less hierarchical work structures, involving more participatory decision making (Epstein 1983). This is thought to derive, in part, from the particular feminine methodology of the leaderless consciousness raising group. Such groups valued equality of hearing time where expertise grants a hearing, not an authoritative decision. And the emphasis in such groups on experiential sources of knowledge may lead to broader avenues of fact investigation and inquiry.

In those rare circumstances where women have risen to levels of leadership in the profession, (judgeships or senior, but not yet managing, partners, cabinet secretaries and deans) there is the controversial question of whether women will lead and manage differently--more nurturing, communicative, consensus building styles. The women in leadership debate flourishes not only in law, but in other professions as well: corporate leadership (Wall Street Journal, March 24, 1986), medicine and education (Astin and Leland 1986).

As a formerly excluded group, there is some evidence that women have attempted to demystify and deprofessionalize the law in greater numbers than men in an effort to empower other less powerful sisters (Pro se divorce project). Such developments in law parallel those in medicine where early women pioneers in the medical profession in 19th century America attempted to emphasize public health and preventive care and education over surgery, medicine and more interventionist forms of medical care (Lorber 1985; Moranz-Sanchez 1985).

Perhaps most related to women's roles in the profession is the obvious connection between 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 which attempts, in some segments of the economy, to permit women (and in some cases men) to take temporary leaves, most have not and thus issues like maternity leave, re-entry, seniority and assessments for partnerships become the women's province (Fenning 1984). Some have hoped/urged that women's 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 salaried and employed

lawyers in the United States, sociologist Eve Spangler concluded that male and female attorneys did not talk about their work differently except that women, and not men, seemed concerned about the relationship between career and family (Spangler 1986). Although some view this concern as a "simple" issue of working conditions or "fringe benefits" that may change as it becomes an issue for a greater number of employees, others view this an opportunity for women concerned with domesticity to create an "oppositional culture" in the workplace to place emphases on different issues and values in the means and ends of work (Kessler-Harris 1986; Westwood 1985). As Virginia Woolf urged, women should become professionals "without becoming professionalized" (Woolf 1938) to the male conception of what it means to work all day in a male constructed conception of the job.

Finally, there is the influence of women on the substantive law. It is clear that in many nations the influx of women in the profession coincided with law reform on issues affecting women (civil rights, discrimination laws, equality rights, abortion and divorce reform, pregnancy benefits and, in some countries, marital property rights). Yet it is not universally true that the entrance of women into the profession will lead to liberal social reforms. The data from Germany seem to suggest, for example, that recent women entrants to the legal profession are more politically conservative than their male counterparts (Blankenburg and Shultz 1984). Similar data in the United States are beginning to reveal that male and female college students who are attracted to law are success- and financial security-oriented, thus more conservative, and have more in common with each other than with others of their own sex who are attracted to other fields of study (Astin 1985; Komarovsky 1985). 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 to equity (comparable worth and equal value in Europe and the U.S.) and individualistic rights, in some contexts, have been broadened to 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 positions 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" (Wasserstrom 1977). 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 than that, some particular contributions of women will continue, but in what forms we probably cannot yet imagine. The hope would be that differences in approach and practice, as well as 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 [Rosenthal 1974; Heinz and Laumann 1982]), unnecessary and harmful contentiousness and dehumanizing segmentation, stratification and alienation in the workplace.

Much of what has been suggested above is as yet untested, as well as cultural and legal system-biased, 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 of practice, type of practice, and favored tasks and specialties, we should ask what are the social meanings of these readily observable social facts. I may be entirely wrong on the merits of differences I have suggested (many are derived from my own observations and studies of women lawyers); but if I have raised consciousnesses to pay attention to these questions, then I will have succeeded as sociologist of the legal profession.

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