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Educating the legal profession about gender



The recently released [NARS Report](#) is the latest in a [long list of studies](#) of the pervasive sexism in the legal profession. It makes a number of excellent and practical recommendations to facilitate women's engagement in legal practice and consequently their retention and advancement.

There are various arguments for the retention and advancement of women practitioners - from gender equality, to sustainability

of the profession, to the [administration of justice](#). Despite this, and the decades of recommendations on equality, the legal profession remains as sexist as ever.

This period of mounting awareness of sexism as a problem has coincided with what Thornton regards as a prevalence of the [corporatized law school](#). This has accompanied the [scaling back of the critical project](#) as a feature of legal education, including [gender perspectives in law](#). At the same time in higher education more broadly, [women's studies as a discipline](#) have been wound back.

In light of what seems to be an urgent issue for the profession, is it now time for legal education to integrate gender into the curriculum?

Self-images and life plans

I have been reading a book called [Individualization](#) by Ulrich Beck and Elisabeth Beck-Gernsheim (2002). It offers a sociological account of the shift in modern society from ascribed status (defined by tradition) to a personalised, individualised account of life. On this account, each of us makes our own self-image and life plan.

What has caught my attention is the account of the sharing of household labour. This is well known as a point of contention within intimate relationships. Data continues to reveal that [women disproportionately bear the burden of household labour](#) even where the couple purports to agree on an equal distribution.

Beck and Beck-Gernsheim point out that women now have internalised the message that they can aspire to a life outside the family. While family may continue to be an important part of their self-image, young women now incorporate a desire for independence and autonomy outside family. The picture for men seems different. While men may have changed their ideas, this has not translated into practice. 'Both men and women have a changed understanding of gender roles but women have done this more quickly so that their experiences of difference remain and have been growing.' (p103)

Kurt Wahl (1989) describes this as the 'modernisation trap'. This is a 'split between myth and reality - between internalised promises of...self-confident autonomy, family happiness and social progress...and...actual experiences of withheld recognition, contempt for human dignity and damaged self-esteem.' (p16, cited at p104)

Beck and Beck-Gernsheim go on to cite a number of studies of young women and their process of building their self-image. While I acknowledge that they are now somewhat dated (early 1990s) they still resonate with my own (anecdotal) experiences. The studies

About Me



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I lecture in land law at James Cook University and I write and think about the nature of property and its representations in the law; about issues affecting women; about justice generally; and about legal education

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revealed that girls had contradictory role expectations - career and maternity. While not problematic in itself, those interviewed denied any conflict. Many said they would do part time work once they had children.

This has a couple of implications. First, as Uta Meier pointed out, 'when they first start [part time work] they do not realise that a satisfying and meaningful career...is closely bound up with a normal work history, and thus a full time job.' (cited at p111) Second, motherhood comes at a cost in terms of wages. In Australia just this week, [Greg Jericho analysed income tax data](#) to show that women will keep earning less than men because of taking time out to be mothers.

The 'modernisation trap' and the legal profession

This account sounded familiar to me - not just in the context of the home, but in the context of the legal profession. Women who study law and have aspirations of rising through the profession as a matter of course instead experience barriers at almost every turn. Not all women, but as the data shows, a significant proportion of women.

It is entirely feasible to me that men in a masculine profession - even while acknowledging principles of equality - might continue to act based on their understanding of traditional (and gendered) roles. 'For men, the expectation and demands of women are not only uncomfortable but signal a cancellation of many privileges which they used to take for granted, an offence against deeply rooted elements of the male self-image and self-confidence.' (p105)

On the one hand, it is possible that men in practice adhere to traditional gender roles in the workplace. This inhibits women's full workplace participation. On the other hand, women's own expectations do not incorporate an understanding of the structural barriers to achieving their own life plan - such as the overwhelmingly dominant norm of full time work.

While NARS and similar reports attempt to address this 'expectation gap' in their recommendations, I suggest that we need to start with this in law school.

Legal education and gender

Many law degrees offer a foundation 'law in context' subject that would usually address feminist concerns with the law. Likewise, it is possible to teach a 'legal institutions' subject and mention (or critique) the predominantly male, white, heterosexual, able bodied (etc) identity of the judiciary.

My first observation would be that this is not enough to deal with the issue of gender in the profession. A more substantial engagement is required. By this I mean not just in terms of describing the situation or even analysing the nature of the profession. I think that work is required in engaging students themselves in a reflection of their own attitudes and values. This is done in other contexts - such as the meaning of justice. I see no reason why gender should not also feature in students' reflective practice.


Secondly, it is not enough to locate gender solely in, say, a first year unit isolated in its own conceptual boundary of an introduction to institutions. Gender issues are pervasive in the practice and enactment of the law and need to be scaffolded throughout the degree. At the very least, the issue needs addressing in the subject 'ethics'. There gender can be viewed in terms of the structure and norms of the profession, the role of the profession and the role of the student as a practitioner. Any legal placement or clinical legal subject is also well placed to promote student reflection on the issue of gender.

Gender is not a fringe feminist issue and it will not go away. Together with the critical project more broadly, it lies at the heart of access to justice and the sustainability of the profession. Legal education can no longer afford to ignore it in favour of a 'corporatised' positivist degree. Teaching the gendered nature of law and legal practice and encouraging student reflection on their own gender preconceptions opens the door to a broader context within which to understand law and also to student strategies for self-management. Both of these are recognised as central to a contemporary understanding of the law degree (see the [Threshold Learning Outcomes for Law](#)).

Importantly also, these issues are central to the sustainability of the profession itself.

*Image from <http://wonderings.net/vintage-postcards/la-femme-avocat/>

Posted by Kate Galloway at 09:49

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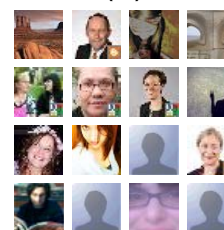
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