

FROM SUPERGIRL TO INVISIBLE WOMAN

The divide between student perception and professional reality in corporate legal practice

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Women are both entering and leaving corporate legal practice in significant numbers. Young women are highly prominent and successful at Australian law schools, and the Honour Boards at those schools are replete with the names of academically successful young women. Of course, women also participate successfully in extra-curricular law school activities, such as mooting and student societies. At least some of these women will go on to take up positions at leading corporate law firms on good starting salaries. Yet women are still under-represented in the senior echelons of the legal profession. Women lawyers are 'clustered at the entry and associate levels and are generally leaving law firms without becoming partners'.¹ Female law graduates are more likely to be 'working part-time, to have a lower income, to be absent from the workforce (on a temporary or permanent basis) and to have lower status occupations'.² It might be said that women pursuing corporate legal practice move from supergirl to invisible woman.

There are a number of factors affecting the attrition of young women lawyers from corporate legal practice. Primarily, they relate to the workplace structure and culture of most corporate law firms, including gender

bias, inflexible work practices, heavy workloads, long hours and high stress levels.³ These issues tend, in particular, to confront women at the time when they opt to have children, and seek to combine parenting duties with legal practice.

Perhaps unsurprisingly, law students show little perception of, or interest in, these concerns. We have noticed that some law students tend rather to deify the corporate legal culture represented in the media, which inevitably presents law firms as populated by glamorous and flourishing male and female lawyers successfully managing their careers. In this article we examine the disjunction between female law students' expectations of their future career in commercial law, and the realities of commercial legal practice. We then make some suggestions regarding the responsibilities of law firms and law schools in addressing this dilemma.

Discourse is deceptive

Our perception is that the discourse amongst law students perpetuates a mythology where corporate legal practice is one of the highest status and most valued forms of career path for the ambitious young person. Legal careers where there are a higher proportion of women, such as community legal practice, academia (lower echelons), government or regulatory work, and corporate 'in-house' counsel, are not perceived to be as prestigious as corporate legal practice, or being a barrister. There is a very apt parallel with the medical profession; being a nurse or general practitioner is worthy, being a surgeon or a specialist is prestigious. Many law students perceive being in corporate practice as the best use of their intellectual talents, and as bringing them the greatest rewards. Certainly, this is not the view of all students but, interestingly, those students who see themselves as pursuing a different type of career often classify themselves as either lacking ambition or as 'alternative', thus indicating the strength of the dominant corporate law paradigm.

Students' perception about the relative merits of corporate practice might be referable to public images of lawyers.⁴ Popular television shows about lawyers typically present materially successful lawyers engaged in intellectually challenging, and often socially meaningful, litigation. Both male and female lawyers are well represented in these shows. Families are often absent or, if portrayed, are neatly contained in the private sphere separate from professional life. Promotional material for law schools follows a

REFERENCES

1. Victorian Women Lawyers, *Flexible Partnerships: Making it Work in Law Firms* (2002).
2. Jill Ewing et al, *Career Patterns of Law Graduates* (1990), citing Margaret Hetherton, *Victoria's Lawyers: The Second Report of a Research Project on 'Lawyers in the Community'* (1981) 155. For an international perspective see Ulrike Schultz and Gisela Shaw (eds), *Women in the World's Legal Professions* (2003).
3. See generally Ewing et al, above n 2; Law Society of Western Australia and Women Lawyers of Western Australia, *Report on the Retention of Legal Practitioners* (1999) Executive Summary.
4. See Desmond Manderson and Sarah Turner, 'Law Between the Global and the Local: Coffee House: Habitus and Performance Among Law Students' (2006) 31 *Law & Social Inquiry* 649.



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similar pattern. Marketing material for Australian law schools frequently portrays successful graduates as working in either the commercial sector, or as high-flying international human rights champions. Neither is particularly realistic representation of the range of legal careers open to law graduates, and certainly is not an accurate reflection of the career paths of most mid-career female law graduates.

Students believe the rhetoric of gender equality

A recent study of the career expectations and aspirations of law students indicates very little difference in the perceptions of male and female law students about the realities of legal practice.⁵ The law students surveyed show little concern about issues of gender equality, or of combining work with parenting responsibilities, in legal practice.⁶ Of the first year law students surveyed, 55 per cent were currently considering a career in the law, while another 42 per cent said they 'may consider' a law career, demonstrating that most students who start studying law have some genuine interest in practicing law.⁷ While most first year law students rated law as having a 'high workload', they expected that a legal career would offer them high status and income, as well as providing a challenging, stimulating work environment, with opportunities for advancement and to contribute to society. This suggests that law students believe corporate legal practice is a 'competitive meritocracy'⁸ where they can be rewarded for hard work and talent. These are worthwhile ideals. However, the reality is somewhat different.

The under-representation of women in corporate legal practice

Women figure prominently in the student demographics in Australian law schools, with estimates that around 60 per cent of law students are female.⁹ Women also account for about 45 per cent of all solicitors in New South Wales and Victoria.¹⁰ Yet women only account for around 19 per cent of barristers,¹¹ and 19.5 per cent of partners in private law firms.¹² Clearly, there is a dramatic attrition of young women from legal practice in the years between graduation and partnership.

Women change their career for a number of different reasons.¹³ It appears that some graduates of both genders leave legal practice simply because they do not like being a lawyer.¹⁴ Other reasons for the attrition

of women from legal practice coalesce around the issues of the male dominated culture and workplace inflexibility of many corporate law firms. There are numerous reports of discrimination and harassment of women lawyers.¹⁵ There may also be a deep-seated distrust in the minds of some male lawyers about the ability of women to practice law. In her study of women in the legal profession, Margaret Thornton argued that 'women have not been fully accepted as citizens of the jurisprudential community because of the way the feminine has been constructed in the western intellectual tradition'.¹⁶ She suggested that women are still perceived as lacking the intellectual qualities needed to practice law, describing a form of corporate 'biological determinism'.¹⁷

Another factor affecting the attrition of women from corporate law firms relates to the difficulty of combining private legal practice (as it is currently structured), with family and carer responsibilities.¹⁸ This difficulty arises not from some inherent conflict of sensibilities required in these spheres, but from the way in which the ideal of the legal professional has been constructed in corporate legal practice. Economic pressures on law firms have 'placed a premium on maximising billable hours and on developing new business'.¹⁹ High billing requires long hours and a willingness to be available virtually on demand. The ideal lawyer in private corporate practice has come to be conceived as a person with a 'single minded immersion in professional work'.²⁰ This is a person committed to the law firm, available for work at all hours, and without any competing responsibility for home or private life.²¹ It may be added that a supportive life partner is an added assumption to this characterisation.

Although appearing gender neutral, the ideal of the committed professional lawyer has reflected a person who is more commonly male than female.²² While a model of equal sharing between parents of childcare responsibilities might be highly desirable, in many households it is not currently the case. Women typically bear the major responsibility for caring for children within a 'traditional' family.²³ A woman lawyer with responsibilities for raising children will find it difficult to fulfill those responsibilities while also meeting the level of commitment required by many corporate law firms. The level of commitment expected virtually denies the possibility of any form of full participative parenting. Instead, lawyers in corporate legal practice are asked to act like the traditional absent father and delegate

5. See Melissa Castan, Jeannie Paterson, Paul W. Richardson, Helen M. G. Watt and Maryanne Dever, 'Early Optimism? First Year Law Students' Career Expectations and Aspirations' (forthcoming).

6. Ibid.

7. Ibid.

8. Eli Wald, 'Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes and the Future of Women Lawyers at Large Law Firms' (2010) 78 *Fordham Law Review* 101, 101.

9. A 2009 survey at Monash University found that nearly 60% of first year law students were women: see Castan et al, above n 5. See also Margaret Thornton and Joanne Bagust, 'The Gender Trap' (2008) 45 *Osgoode Hall Law Journal* 773, 774 (citing 56% of law graduates as female).

10. Virginia Harrison, 'Women Slide in Partnership Ranks', *The Australian* (Sydney), 25 June 2010.

11. *The Australian* (Sydney), 4 December 2009 (reporting the findings of a survey funded by the Law Council of Australia).

12. Harrison, above n 10.

13. On the experience of women lawyers in the United States see also Eli Wald, above n 8.

14. A survey by the Law Institute of Victoria of law graduates who had discontinued working in legal practice, found that similar numbers of female and male ex-practitioners cited 'lack of satisfaction' as a reason for their decision to leave practice (59% and 63%) — see Ewing et al, above n 2, 34.

15. Patricia Easteal, *Less than Equal: Women and the Australian Legal System* (2001); Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (1991); and Law Society of New South Wales, *After Ada — A New Precedent for Women in the Law* (2002).

16. Thornton, above n 15, 1.

17. Thornton and Bagust, above n 9, 808–810.

substantial responsibility for raising their children to someone else, such as their life partner, or outsourcing the responsibilities to a nanny or other carer.

Periodically, the legal press and general media will laud particular firms or workplaces for 'accommodating' women,²⁴ and developing a more flexible work environment, but in our view this only serves to emphasise the dominance of the mainstream model as to who can be a serious, committed lawyer. Allowing women lawyers to work from home or 'part-time' does not confront the inherently inflexible structure of corporate practice that equates time spent in the office with professional merit. It merely grants a 'concession' from this model. The reality of flexible and part-time work in this environment needs to be assessed in an accurate context. A 2001 survey by Victorian Women Lawyers ('VWL') found that, in the majority of firms surveyed, full-time lawyers work nine to 10 hours a day.²⁵ If lawyers in corporate law firms work 60 to 80 hours a week, part-time work might merely be close to the equivalent of the classic full-time 40-hour working week.²⁶ This type of approach in no way represents an imaginative and creative reconceptualisation of the contemporary relationship between work and home life.

Programs allowing workplace flexibility and part-time work can also sideline those lawyers who opt to participate. Margaret Thornton and Joanne Bagust argue that the concept of a 'work life balance' in law firms has 'assumed a gendered hue'.²⁷ They argue that strategies such as flexible work may be invoked to 'reify conventional understandings of the feminine to the disadvantage of women'.²⁸ If, as suggested, the ideal professional is a person with a full-time commitment to legal practice, then the decision of a lawyer to work part-time may be interpreted by the law firm as signaling a lack of commitment, and hence of merit, in the conventional understanding of those organisations.²⁹

Consistent with this, in 2000, Juliet Bourke's study of women in the legal and finance professions reported that part-time workers were allocated work that was 'marginal, less prestigious and less challenging'.³⁰ Similarly, a 2005 VWL study of solicitors employed on more flexible work schedules, in both private and public sectors, found that there were real barriers to the genuine acceptance of these practices in terms of workplace culture and expectations.³¹ Lawyers using flexible work practices considered that they did not receive a high level of organisational support.³² Only 44 per cent of these lawyers agreed that it was possible to work flexibly and to have a career within their organisation.³³ An earlier study by VWL reported that most firms had reservations about the possibility of part-time partners.³⁴

Why is under-representation of women in corporate legal practice an issue?

The low numbers of women remaining in corporate legal practice should be an issue of concern to the legal community. There are significant costs in the attrition of women from private practice. For women, as with men, there is a considerable investment of time

and energy in legal education and the early years of practice. For firms, the attrition of women from private practice represents costs in the form of replacing trained solicitors, and in the loss of continuity with clients. A study by the Victorian Law Foundation in 1998 estimated that the cost of replacing a 4th year solicitor ranged from \$61 400 for a small firm, to \$71 600 for a medium firm, and \$100 000 for a large firm.³⁵ At some point, the under-representation of women in corporate legal practice may become an issue for clients, who expect better gender equality.³⁶

The under-representation of women in the legal profession also represents the loss of a considerable pool of legal talent. The under-representation of women in legal practice deprives the law firms of a significant cohort of legal practitioners who would mentor younger women, and become leaders in their own firms and in the profession generally. It also means a smaller pool from which to draw judges and other leading members of the legal community. Potentially, the low representation of women in the legal profession means a perception of systematic gender bias in the legal system.

Illuminate different choices

Ideally, the profession itself should address the under-representation of women within its ranks. This should involve an imaginative reconceptualising of workplace structure and culture. Firms need to develop supportive structures for lawyers moving in and out of the profession. They also need to consider different ways of measuring commitment and merit, other than time spent in the office. Impetus for this change must come from within the profession. Certainly, women lawyers' and barristers' associations throughout Australia have to focus on the issues facing women lawyers.

We suggest that law schools (as well as student societies and representative bodies) should also recognise a responsibility to engage with this issue. Law schools might make a commitment to engage in a genuine dialogue with law students about the reasons for the under-representation of women in the legal profession, and indeed the lack of diversity in the profession generally. Better awareness of the possible hurdles facing women in corporate legal practice might allow young women lawyers to make more informed decisions about their career paths. Such awareness might assist women to make early career choices that give a greater range of flexible career options further down the track, and might also lead to increased structural change as young lawyers start using the proportion of women partners, or even overall awareness of gender issues, as relevant factors in selecting where they will work.³⁷

Of course, merely raising issues relating to work choices and work-family balance may not change young female law students' perceptions of legal practice. The myth of commercial legal practice as high status, lucrative, and intellectually challenging is very attractive. Issues of family responsibility and commitment are unlikely to be on the agenda, or to seriously impact on

18. See Juliet Bourke, *Corporate Women, Children, Career and Workplace Culture: The Integration of Flexible Work Place Practices into the Legal and Finance Professions* (2000) 311; Ewing et al, above n 2, 34; Law Society of WA and Women Lawyers of WA, above n 3; and Timothy L O'Brien, 'Why do so Few Women Reach the Top of Big Law Firms?' *New York Times* (New York), March 19, 2006.

19. Deborah L Rhode, *Balanced Lives: Changing the Culture of Legal Practice* (Commission on Women in the Profession, American Bar Association, 2001) at 19. See also Hilary Sommerlad and Peter Sanderson, *Gender Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (1998) 145.

20. Alison MacKinnon, *Love and Freedom: Professional Women and the Reshaping of Personal Life* (1997) 224. See also Bourke, above n 18; and Thornton, above n 15, 237–48.

21. See Maryanne Dever and Jeannie Paterson, 'Women and Careers' (2005) *Monash Magazine*.

22. See Bourke, above n 18, 42.

23. In the survey, the birth of a child was cited as a reason for career interruption by 35% of females, as compared to 1% of males; childcare was cited by 24% of females, as compared to 1% of males. It also found at that time women lawyers were more likely than males to be very involved in the care of children (94% females; 22% males) – see Ewing et al, above n 2, 2. Also see Keys Young, *Victorian Women Lawyers, Flexible Partnerships: Making it Work in Law Firms* (2002); and Lyn Craig, 'Does Father Care Mean Fathers Share? A Comparison of How Mothers and Fathers in Intact Families Spend Time with Children' (2006) 20 *Gender and Society* 259.

24. For example see 'Women Rank High in Partnership Promotions' *The New Lawyer*, 10 June 2010 <thenewlawyer.com.au/article/Women-rank-high-in-partnership-promotions/518707.aspx> at 21 June 2010, and the Equal Opportunity for Women in the Workplace Agency ('EOWA') <eowa.gov.au/Information_Centres/Resource_Centre/EOWA_Publications.asp> at 21 June 2010.

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the choices, of young students and young graduates upon entry into the profession. Our impression is that law students underestimate the causes of the low representation of women in private practice. Many female law students appear to assume that they can overcome any hurdles to success in the law through sheer talent and determination.³⁸ It may be that the issues surrounding the under-representation of women in the legal profession need to be embedded in a genuine feminist discourse about structural inequality in the profession generally.³⁹ In this way, university curricula might better expose the systemic gender bias inherent in many models of the 'professional' in modern society.⁴⁰

We have already noted that the role of the law school in influencing the expectations of its students goes beyond the influence of its lecturers. Law students may be influenced by other factors within the law school, such as the images portrayed in advertising by the law school, and by various promotional events sponsored by law firms (particularly in conjunction with the student representative bodies) which provide students with models of what it means to be a lawyer. Accordingly, it is important that law schools, law teachers, and law student bodies think carefully about the images being presented to students. Legal careers outside conventional corporate legal practice, such as government work, community legal centres, NGOs, 'not for profit' organisations, and in-house corporate counsel — careers where there is often a greater proportion of women practicing — should be included in law school promotional material, and not marginalised as somehow being 'alternative' or outside the mainstream. It goes without saying that these careers offer their own challenges and rewards. Many of them also offer the possibility of more genuinely flexible and diverse workplaces. Representatives from these areas of legal practice should also be given a role in law school and student career events. Their participation should be genuine and central, not just part of an 'add-on' to mainstream events.

It is, of course, possible that many law students do not contemplate a traditional linear career progression within a single workplace at all. They might contemplate a career full of changes in direction and location. There are many benefits in working in corporate legal practice: financial reward, intellectual stimulation, commercial experience, networking opportunities, and friendships. Law graduates may experience these benefits by working in one place for a few years,

and then moving on to different workplaces and environments. There are many opportunities that may open up for graduates following a few years of experience in private practice within a large firm. In this sense, the attrition of women from private practice might be symptomatic of a new trend in career aspirations of law students. Nonetheless, the point is that the best sorts of choices are informed choices. If young lawyers enter the profession with a relatively realistic vision of the opportunities available to them, and the hurdles they may face, they are in a better position to make the choices about the work-life balance they will pursue through different stages of their careers.

Conclusion

While increasing numbers of women are studying law, females remain under-represented in the senior ranks of the legal profession. One factor influencing the participation of women in corporate legal practice is the dominant conception of the legal professional as a person with a single-minded commitment to the firm. Many law schools properly promote participation in the legal profession as a reason for studying law. However, the full story should also involve a discussion with students about the range of possible work options available to them in the law, and a commitment to promoting a range of representations of 'legal practice' in the law school culture. In this way, concern with the inevitable progression of super girl to invisible woman may be replaced by a critical analysis of the very structure of legal practice.

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25. Victorian Women Lawyers, *A Snapshot of Employment Practices 2001: a Survey of Victorian Law Firms* (2001) 5 (41 firms of varying size surveyed). See also Law Society of NSW, *Family Responsibilities Study* (1998) (reporting working hours of 60 – 80 hours per week).

26. See, eg, Dominique Hogan-Doran, 'New Practices Create New Opportunities for Women in the Law' 37(2) (1999) *Law Society Journal* 72 (reporting on a part time litigation partner who works 30 hours a week in addition to being available full time by telephone and fax machine (sic)).

27. Thornton and Bagust, above n 9, 778.

28. Ibid 776.

29. Ibid 775–6.

30. See Bourke, above n 18, 56; and Thornton and Bagust, above n 9.

31. Victorian Women Lawyers, *A 360° Review: Flexible Work Practices* (2005) 5.

32. Ibid 19.

33. Ibid.

34. Victorian Women Lawyers, *Flexible Partnerships: Making it Work in Law Firms* (2002) 20.

35. See Annie Woodger, 'The Cost of Turnover in Law Firms' (1998) *Law Institute Journal* 134–36; and Michael Beaton-Wells, 'Implications of the Invisible Costs of Solicitor Turnover' (1998) *Law Institute Journal* 37–39.

36. See, eg, Chris Merritt, 'Gender Balance is Good Business', *The Australian* (Sydney), 25 June 2010 (reporting Norton Rose partner Don Boyd as saying 'the growing presence of women lawyers among corporate clients meant an increase in the number of women partners would have a beneficial impact on the firm's bottom line').

37. See, eg, Legal Affairs, 'The Firms Where Women Do Well', *The Australian* (Sydney), 25 June 2010.

38. See Ewing et al, above n 2, 50.

39. Thornton and Bagust, above n 9, 811 (noting an increasing turning away from a feminist curriculum in universities).

40. See also comments on medical practice in Dever and Paterson, above n 21.