"The Adequacy of their Attention"

Gender-Bias and the Incorporation of Feminist Perspectives in the Australian Introductory Law Subject

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> Legal education is the foundation of every lawyer's function and performance in the legal system.[1]

INTRODUCTION

In 1987 the Pearce Committee,[2] established by the Commonwealth Tertiary Education Commission (CTEC) to examine legal education in Australia's then twelve law schools,[3] made the following suggestion ("Suggestion 1"):

> That all law schools examine the adequacy of their attention to theoretical and critical perspectives, including the study of law in operation and the study of the relations between law and other social forces.[4]

This article considers to what extent feminist theoretical and critical perspectives have been incorporated into law school curricula, given the substantial period which has passed since the Committee's suggestion was made. This is partly in response to the consistent expressions of disquiet from feminists who argue that, stemming from an androcentric perspective of life and law, legal education delivers inaccurate messages about women and is gender-biased.

I have limited this study to a consideration of the curriculum of the first year introductory subject taught in Australian law schools. An examination of this subject is important as it is the commencement of an individual's socialisation as a law student and a future practitioner of the law. In this article, I have identified and considered, from a feminist perspective, the treatment of the legal rules and doctrines normally taught in introductory courses and also considered what may be absent from the course contents.

From my analysis, it is apparent that there has been a strong movement toward the incorporation of feminist (and other)

theoretical and critical perspectives in the introductory courses. However, there is still a significant number of courses that approach the subject-matter uncritically with very little or no feminist content. I argue, in this article, that a law course that uncritically presents legal doctrines risks adopting and perpetuating the unstated point-of-view of a particular cultural group in our society. I discuss the constitution of this cultural group and conclude, as have others, that it is largely comprised of affluent, educated Anglo-Celtic males. I argue that legal education should be openly self-conscious of the culturally-specific point-of-view of the law, and should recognise and address its own partiality.

The Pearce Committee and "Suggestion 1"

The Pearce Committee's terms of reference included "to consider and make recommendations on … appropriate aims and objectives for the provision of legal education; … the nature and quality of courses [and] the standards of teaching and research".[5] The Committee commenced its investigations in 1985 and provided its report to CTEC in 1987. In its report it is evident that the Committee had been mindful of the broad role that law schools needed to take:

> Their aims should include aims concerned with providing an education which develops qualities of the intellect, including the ability to engage in legal reasoning, the ability to evaluate the law and legal institutions in their social context and to assess their interactions with social, economic and other forces and the capacity to cope with change as well as acquiring knowledge of the existing law and its operation.[6]

The Committee made 48 recommendations to CTEC and 64 suggestions to Australian law schools, including Suggestion 1 regarding the adequacy of attention to theoretical and critical perspectives.

Since the Pearce Committee completed its investigations, the number of universities in Australia has increased dramatically. Institutions such as Australia's colleges of advanced education and institutes of technology, in the main, merged with each other and converted to universities, or merged with existing universities. At the same time, the number of law schools based in Australian universities more than doubled, with consequent increase in the number of Australian law students.[7]

Most of Australia's law schools have therefore been

established, and their curricula and pedagogical ethos developed, after the delivery of the findings of the Pearce Committee and its more than 100 recommendations and suggestions for the provision of legal education in Australia. One might reasonably assume that some of these law schools were created with the Pearce Committee's findings in mind, particularly Suggestion 1. Certainly, the almost simultaneous creation, at that time, of such a large number of new Australian law schools presented an unprecedented opportunity for the new schools to approach the teaching of law with the benefit of a recent, extensive survey of Australian legal education.[8]

Feminist Echoes

The criticism implied in the Pearce Report's Suggestion 1 has been made often by legal scholars, including feminist legal scholars, in Australia and internationally. Feminist scholars have argued that, to fail to consider and teach the law critically, and instead to consider and teach it in isolation from its relationship with the rest of the world, would be to fail to consider and acknowledge the underlying masculinity of law and legal systems.[9] They argue that legal education delivers inaccurate messages about women because these messages derive from an androcentric perspective. From this perspective, men represent a paradigm and women are portrayed as different: a difference that is thought to make women inferior to men. Yet, paradoxically, at other times, women are also portrayed as having needs and experiences that are no different from that of men because the male is the measure of the legal person — the subject of the law. Catharine MacKinnon, for one, argues that "in societies characterized by … male dominance and female subordination, the definition of what it is to be human, the standards and expectations of treatment, and the standpoint from which knowledge is validated is defined in terms of the male side of these experiences."[10] And, according to Mary Jane Mossman —

> in most university law courses, the rights and responsibilities that are analyzed are either explicitly those of men (for example, the reasonable man) or implicitly those of men (for example, the taxpayer or the shareholder, more often than the battered wife). In law school courses as in life, man is the central figure and woman is the Other.[11]

A development of this argument is, of course, that legal

education and the law present a very particularised male as the legal subject: the physically-able, affluent, educated Anglo-Celt.[12]

In 1994, Craig McInnis and Simon Marginson found that, since the Pearce Report, most law schools had attached "considerable importance to students developing a critical perspective of the law in a social context",[13] finding also however that "the emphasis and expression varies."[14] Their survey was not a task specifically undertaken from a feminist perspective, which remains an important enquiry.

Outline of Article

I begin my analysis, under the heading "Assumptions and Methodology", by giving an account of the approach taken in this study and the reasons for so doing. I provide a working definition of "gender-bias" to be used in the remainder of the paper before describing the feminist analysis to be undertaken and some important qualifications to the methodology I employ. Also discussed is why a feminist analysis of the introductory law subject, in particular, is useful and how the data used in the analysis of this subject were collected.

The main body of the article analyses the data under several broad themes. First to be discussed is the way in which the courses have treated issues of special relevance to women. There follows an attempt to identify the courses that have been taught with a largely conventional, non-critical approach; those that are taught within a critical or contextual framework; and those that have innovative content or teaching methodologies worthy of being highlighted.[15] This last grouping includes courses taught at Griffith University, Northern Territory University, the University of New South Wales and Melbourne University.

ASSUMPTIONS AND METHODOLOGY

Feminist Examination of Legal Education

Different people may have different understandings of the term "gender-bias" so it becomes important to explain how this term is being used in this work.

Gender-bias: a working definition

Studies on gender-bias and the law have provided us with

several definitions of the term "gender-bias." In 1994, the Australian Law Reform Commission, in its report on Equality Before the Law, adopted the view that gender-bias was "stereotyped views about the proper social role, capacity, ability and behaviour of women and men which ignore the realities of their lives and result in laws and practices that disadvantage women."[16] In a report on gender-bias and the Massachusetts judiciary, a more elaborate working definition of gender-bias was propounded. This definition makes explicit the Aristotelian notion of treating like cases alike and different cases differently.

> [G]ender bias exists when decisions made or actions taken are based on preconceived or stereotypical notions about the nature, role, or capacity of men and women. Myths and misconceptions about the economic and social realities of men's and women's lives and about the relative value of their work also underlie gender bias … [G]ender bias can arise from gender insensitivity that overlooks sex as a significant variable in cases where it is indeed significant. Because the social and economic realities of women's and men's lives are often different, there are circumstances in which it may be appropriate to include gender as a factor in judicial decision making.[17]

For the purposes of this study, legal education will disclose gender-bias if it portrays the stereotypical male and his values as the paradigm and ignores the diversity of the lives of individual men and women. Gender-bias will occur if there is an exclusion or de-emphasis of the experiences and priorities of women from legal education. Gender-bias is at particularly serious risk of occurring when the subject topics present the law as objective and impartial and universally-applicable to all humans, whether female or male; when teaching materials do not subject the doctrines or rules to a feminist analysis, particularly those that are inherently gender-biased or informed by stereotypes; and when these materials do not use relevant cases, articles or examples with women-centred issues, and women authors or protagonists. The extreme manifestation of gender-bias is an absence of women and women's needs from legal education, virtually giving the appearance that women do not exist.

Feminist analysis

This study first distils a core curriculum, that is, identifies from research materials the topics typically taught in an introductory course. The feminist analysis is then applied to the core curriculum. The analysis involves identifying in the introductory subject (where they exist) the specific rules and doctrines particularly relevant to

women, including those that operate in a discriminatory way.[18] The analysis then involves an examination of the extent of the inclusion in the curriculum of these rules and doctrines and their treatment during teaching, including course materials and textbooks.[19] A decision to include or exclude certain doctrines can be problematic in relation to the content of a course. For example, a decision to omit from the curriculum topics identified as women's issues, or to treat them cursorily, will perpetuate the exclusion or marginalisation of women and their discrete experiences and legal needs from the curriculum.[20]

Several qualifications are required, as attempting to isolate legal issues of particular relevance to women can be a "crude and somewhat misleading division of subject areas into women-centred and male-centred issues"[21] and may have little more than superficial validity.

First, arguably all legal issues, rules and doctrines are relevant to, and concern, women. Also, very few of these will be of concern only to women, for all issues that affect women can also indirectly benefit or disadvantage the men in their lives, including their employees, employers, fathers, husbands, partners and sons.

Secondly, attempting to identify doctrines and concepts of particular relevance to women suggests some reliance upon stereotypical notions of which social and legal issues would most concern women. This itself may help perpetuate inaccurate stereotypical ideas of women. However, there will inevitably be some laws that impact upon men and women in different ways. One reason may be the different social and occupational roles in which men and women find themselves. As I mentioned earlier, some feminists argue that women have been constructed by an androcentric society as different from and inferior to men. Nevertheless, it is a fact that women are generally physically and economically weaker than men, and more closely associated than men with child rearing and the family. Often, therefore, men and women have different experiences of life, and different needs and priorities under the law. As a result of these differences, the same laws may not have the same or similar outcomes for men and women. Another closely related reason for laws to affect men and women in different ways may lie in the beliefs of the people that make and apply these laws. Legislators, judges and lawyers may hold certain generalised and inaccurate attitudes about men and

women, their proper roles in society and their needs and priorities under the law, and may reflect these attitudes in their work. Men and women may be seen as having needs under the law that they may truly not have.

Thirdly, there is the risk that, where the focus is on a comparison between men and women, it may be easy to overlook the differences and diversity among women. The danger is that women might be homogenised and essentialised: that despite the diversity deriving from different racial, religious, economic and other characteristics, women will be seen as having the same needs and experiences.[22] It would be misleading to assume that the same laws will be particularly relevant to all women in the same way or to the same extent. Women are affected by laws depending on how they might already be placed in the community. For example, we might expect certain laws to be of greater, or of lesser, or simply of different relevance to an Aboriginal woman than, say, to a relatively affluent Anglo-Celtic woman.[23]

Finally, I acknowledge that, at the level at which this survey operates, the discussion relies upon the culturally-constructed bifurcation of all of humanity as either "man" or "woman", based on cultural understandings of sex and gender, and which Margaret Davies, for one, has so persuasively made problematic.[24] However, while acknowledging the foregoing risks of relying on cultural constructs and stereotypical notions of what may most concern women, I believe there is, nevertheless, some legitimacy and value in attempting to identify, for the purposes of this survey, laws that have a particular relevance to women. The primary reason for this view is the different lives men and women live, or are believed to live, in society under the law.

The Need for a Feminist Analysis

There are at least three closely-related reasons for conducting a feminist analysis of legal education. The first is that legal education is a socialising process.[25] All law students enter law school with the particular set of experiences, philosophies and prejudices that have formed the individual to that point. They remain in law school for several years and receive instruction on many theoretical, practical and sometimes critical issues relating to law. Any experiences, philosophies and prejudices that a student may encounter at law

school concerning men and women and their respective social roles will contribute significantly to the formation of the law graduate, as well as reinforcing or challenging any pre-existing biases.[26] Many law students complete second undergraduate degrees concurrently with their law studies. These non-law studies may reinforce (or may moderate) the ideas obtained from a legal education.[27] Important also is that the majority of students in Australian law schools are less than 21 years of age.[28] These younger students would have relatively little worldly life experience with which to moderate the messages they receive at law school.

The second reason for conducting this kind of analysis flows from the ultimate societal roles of most law graduates.[29] After their legal education, law graduates generally find positions in the well-remunerated, power-wielding strata of our society.[30] Law graduates, of course, predominate in private and Government legal practice, and the courts, but also figure prominently in the legal academy, commerce, industry and Parliament.[31] The law graduate's relationship with wealth and power may be recognised in the career aspirations of many parents for their children, that is, that they become lawyers.[32] However, my concern is not limited to those law graduates who occupy the more prestigious and influential of the positions to which law graduates can aspire. It extends also, at the other extreme, to those law graduates who, in private or public practice, choose to apply their skills to help the disadvantaged in society. As professional actors in the legal arena, a role largely denied the ordinary individual, all law graduates wield considerable power in that they are in a position to participate in, and influence, outcomes in the law and legal system, to shape its development, and to pursue or resist change to the legal status quo. Moreover, if we understand the law to be a major constructor and enforcer of social and cultural norms, and an agent of social and cultural control, those privileged to be actors within the legal system clearly also have the capacity to participate in and influence social and cultural outcomes, shape social and cultural development and pursue or resist change to the social and cultural status quo.

A third reason why a feminist analysis of legal education is important is that modern legal education affects the quality of legal services that women in our community receive. Legal practitioners are likely to provide inadequate legal services to their women clients if they have received a legal education that contains

inaccurate messages about women or that is virtually silent on women's different and diverse experiences in society and their consequent different and diverse needs under the law. Simply, they are unlikely to be able to recognise these issues when confronted by them in legal practice. The Australian Law Reform Commission, in its report Equality Before the Law, wrote that submissions it had received —

> reveal that women are dissatisfied with the service they receive from many lawyers. They refer to lawyers' lack of expertise in the kinds of problems women present and to a failure to see how a woman's perspective may not be properly represented in traditional legal thinking and practice. … Legal education has a critical role to play in training lawyers who can serve all clients, women as well as men.[33]

Similarly, after a legal education lacking in accurate or adequate information about women, women's experiences and needs are less likely to be adequately represented in the other legal planning and decision-making arenas inhabited by law graduates, such as parliaments and the bureaucracy.[34] The corollary of this is that the diversity of women's discrete social and legal experiences are unlikely to have as much of an impact in the development and creation of the law and our social and cultural norms as do the social and legal experiences of men.

The Importance of the Introductory Subject

In a work of this length, the scope of analysis of the content of the law curriculum is necessarily limited. However, a useful examination of the potential for inaccurate messages about women, and of gender-bias in the law curriculum, can be conducted of the subject which introduces students to the discipline and study of law.[35] This subject goes under various names, and the content and the methodology by which it is taught varies widely also. This subject typically seeks to explain to the student the philosophies, sources and institutions of Australian law, the methods of legal reasoning, procedure and research, and sometimes also study skills. I refer to it as the introductory law subject. One of the purposes of the introductory subject is to establish a doctrinal and philosophical foundation for the student's study of other subjects in the law curriculum: it tells students what the law is and locates its place in society. Analysis of the introductory law subject, and of the materials prescribed to students for reading, is particularly

important because this constitutes the students' first exposure to detailed descriptions of the structure, operations, purposes and effects of the Australian legal system. For most law students, this is the commencement of their socialisation as law students and future practitioners of the law. Although the messages received by law students in their introductory course are capable of being moderated by courses they undertake later in their degree, it is likely that the influence of this subject, precisely because it is a student's first exposure, will extend throughout their law studies and into their professional lives. It will help form the basis of their methodologies as practitioners and, hence, their understanding, application and interpretation of the law to legal problems and dispute resolution.

A further reason for examining the introductory subject, as opposed to compulsory subjects taken in later years, is that the teacher of the introductory subject has considerably greater latitude in the design of the curriculum. Unlike most of the other subjects in the core curriculum, admissions authorities do not prescribe the content of the introductory subject.[36] Therefore, there is scope for innovation and creativity in the materials chosen to teach the course and in the methodology employed to teach the subject. More so perhaps than in other subjects, materials provided to students of the introductory subject can consist of a diverse mix containing extracts from specialist and non-specialist texts, journal and newspaper articles, as well as cases and problems. The corollary of the capacity for greater flexibility in curriculum design is the potential this represents for the subject's content to betray a certain cultural or institutional ethos. This is not only the case where individual introductory courses adopt a critical stance. Introductory courses can betray a particular ethos even where teachers limit themselves to specialist texts in the area, and do not take advantage of the potential for greater flexibility in curriculum design. Adopting such a narrow approach and presenting to students the views of a limited number of scholars is itself taking a position and expressing a value.

To some it may appear that there is little fertile ground for a feminist analysis of the introductory law subject. I would argue, however, that the ways in which legal education reflects gender differences and hierarchy are pervasive and often barely visible. An American academic once refused feminists' participation on a

contract law project because he considered that "feminist theory … was unlikely (ever) to contribute significantly to contract law because 'the male bias of our society … has not had important consequences for contract law'."[37] However, as the work of feminist scholars in many other fields of law has established, the reality is that inaccurate content relating to men and women and their social roles, is not always easily identifiable and can be quite insidious: gender-bias needs excavating. A short-sighted or blinkered attitude will only impede the advance of knowledge of the interrelationship between the social roles of men and women and the law. This indicates also a further reason for examining the first-year introductory subject: that if gender-bias can be established in a seemingly innocuous subject in the law curriculum, it may suggest a need to place other subjects under similar close scrutiny.

The Data

The objective of this study was to conduct a very detailed analysis and critique of the contents of the introductory law subject. The ultimate aim was to conduct an analysis of a sufficient number of introductory courses such that any general tendencies could be identified and generalisations made with relative confidence. After communicating with each Australian Law School teaching a law degree[38] and requesting the course outlines and reading lists of their introductory courses, I have been able to include in this analysis 36 introductory courses from every such law school bar one.[39] These include law schools at the elite, so-called sandstone Universities. Australia's prestigious law schools[40] tend to educate people who later occupy positions high in the legal hierarchy, including Australia's QCs, judges and politicians, whose legal education should come under particular scrutiny. I also considered it important to canvass the private universities as well as the State or public institutions. This was the case especially with the recently established University of Notre Dame Australia whose law school has, as its philosophy, the teaching of law within an ethical, Catholic context.

The commentary in this study is derived from a study of the course outlines and other material provided to me by the law schools that responded to my requests for information. However, it

is necessary to make some further observations on the data I obtained which may have an impact on the accuracy of descriptions and conclusions drawn. First, the information I was provided with differed in quantity and detail between law schools: some law schools provided me with very detailed information on course contents, while others provided only course outlines and reading lists. Secondly, I did not have access to subject teachers' lecture notes. Consequently, my ability to describe exactly what was included in the content of introductory courses was limited and the information I did obtain was derived entirely from information in course outlines and descriptions of curricula that varied in detail. Moreover, this has been neither a properly longitudinal nor latitudinal study. Instead, I have aimed to take a snapshot of the teaching of a particular law subject in any one of the four years 1995 to 1998 inclusive. Despite the limitations of these data, I believe that useful and reliable conclusions can be provided from the data. While the introductory courses can and do change from year to year,[41] in any one year alone they are being taught to several thousand law students.

TREATMENT OF WOMEN IN THE INTRODUCTORY SUBJECT

This part will identify and consider the treatment of the legal rules and doctrines normally taught in the introductory subject with particular attention to those of special relevance to women. Attention will be given to the manner in which women are treated, if at all, in the course contents.

The introductory law subject typically covers certain issues fundamental to the Australian legal system. These are commonly the history and sources of law in Australia, the structure of governments and courts in Australia, issues of jurisdiction, the judicial and legislative processes, the doctrine of stare decisis and the rules of statutory interpretation. Introductory law courses usually also incorporate a practical component on skills of legal research and writing. Generally, the introductory subject provides law students with a basic overview of Australia's legal system. Most common core components to introductory courses can be summarised under broad headings, including Legal History and Sources of Law; Legal Systems and Hierarchies; Legal Reasoning;

Dispute Resolution; and Legal Research. These are my own headings and are used, largely for convenience, to place common and related topics within broad classifications for the purposes of my discussion and analysis of the introductory law subject. The foregoing description of the content of introductory courses should not, however, be taken to imply that this is the constitution of each of the courses selected for analysis, however, it is at least broadly representative of Australian introductory law courses.

Legal History and Sources of Law

Legal and constitutional history

Australian legal and constitutional history is a very common topic in the introductory law subject. This includes the history of the Westminster system, and the history of common law courts and of equity. Introductory law courses usually also incorporate discussion of the development of nationhood and self-government in Australia, including the establishment of the Australian court system, the move towards federation and the creation of an Australian Constitution.[42] Some courses, for example, "Introduction to Law" (1996) at Flinders University, "Law in Society" (1996) at the University of Wollongong and "Introduction to Legal Systems and Methods" (1997) at the University of New England, also touched upon the issue of an Australian republic.

The very important part played by women of different social and cultural backgrounds in the development of Anglo-Australian legal history and Australian nationhood was discussed in one law school only. This was in the course "Legal System – Torts" (1994-1996) at the University of New South Wales. This course included illuminating discussions on the effect on Aboriginal women of European law and society, the fundamentally different experiences relative to men of transported convict women and first settler European women, including their access to voting rights, and the status of both convict and settler women as sexual commodities for men.

As far as instruction on Australian constitutional law is concerned, admittedly, this topic is not taught extensively in the introductory subject. The scope for introducing feminist materials in the constitutional law component of the introductory subject is, therefore, limited, and in the case of the courses surveyed, was

wholly absent. However, Sandra Berns, Paula Baron and Marcia Neave offer some suggestions that demonstrate that the ostensibly "aridly formalist and procedural"[43] subject of constitutional law is, nevertheless, open to feminist analysis and critique.[44] Their suggestions include the role played by women and women's issues in the formation of the Federation and the Australian Constitution, and the exclusion of women from the notions of active citizenship and human or political rights.

Sources of law

A consideration of the sources of Australian law, including its English sources, is also common in introductory courses. Students are taught the common law rules governing the reception of English law in Australia. The question of whether Australia was a settled colony at the time of reception is sometimes made problematic as in "Legal Process" (1995) at the University of Western Australia Law School[45] and "Introduction to Law" (1996) at Flinders University. It is also not uncommon for introductory law courses to include discussion of the common law recognition of custom and the incorporation of Aboriginal customary law in the Australian legal system. For example, at Australian National University Law School, the course "Legal System and Process" (1996) included discussion of Aboriginal customary law as a further source of Australian law.

Introductory courses invariably incorporate a discussion and comparison of the two main sources of law: legislation and case law. Common law jurisdictions are contrasted with other legal systems such as those in civil law countries. Students are taught the distinction between private law and public law, common law and equity, crimes and civil wrongs, and substantive and procedural law. A discussion of the sources of Australian law also covers the processes by which law is made by courts and Commonwealth and State Parliaments. This includes the passage of laws through the Houses of Parliament, the process of amendment, consolidation and repeal of legislation and the relationship of delegated legislation to Acts of Parliament. One course, "Law in Society" (1996) at the University of Wollongong, through the medium of the World Heritage Properties Conservation Bill (Cth) and the World Heritage Properties Conservation Act 1983 (Cth), considered the effect of politics and policy on the creation of a statute, and queried what

effect political processes have on the legitimacy of the laws created by Parliaments.

The distinction between private law and public law, and the related ideas of the public domain and the private domain, have each been the subject of considerable feminist attention and criticism.[46] In their report on legal education, Berns, Baron and Neave have suggested that it is important that students be required to reflect on the nature and function of the categorisation of some law as public law and some as private law.[47] They argue that:

> the basic premises of liberal political theory emphasises public law as the domain of juridical equals. Private law is very different. Private law regulates consensual relationships among formally equal individuals. Under normal circumstances, the state will not inquire into the actual content of these relationships. The state is, however, concerned with the circumstances of their formation. So long as they are entered by juridical equals and not induced by improper means such as force or by fraud equality is maintained.[48]

These authors explain that it is not the concern of private law that individuals may consent to "hierarchical and inegalitarian relationships",[49] as these individuals are assumed by the law to be equals. The difficulty, however, is that, as women are generally physically and economically weaker than men, women more than men suffer from violence and exploitation in private and public relationships that, in fact, are both hierarchical and inegalitarian.[50] Teaching the distinction between private law and public law without a feminist analysis can disguise the androcentricity of this division. As a result of women's position of disadvantage in society, the "equals" this division assumes cannot include women.[51]

There was some exploration of these feminist issues in several of the courses. One, "Legal Institutions" (1996) at the University of Sydney, incorporated a discussion of the public and private distinction, including issues such as domestic violence and rape in marriage.[52] "Foundations of Legal Studies" (1995) at La Trobe University also explored the public/private legal dichotomy. The course notes explained that —

> liberal legalism is predicated on the assumption that there is a clear line of demarcation between public and private life. This will be shown to be a myth. Not only are the boundaries permeable, but the meaning of what is public and what is private is constantly being contested.[53]

Students of this course were exposed to considerable feminist literature generally, including in this area.[54]

A related feminist concern is the division of private law and public law into various discrete, independent branches. Legal analysis and dispute resolution involves the reinterpretation of individual human problems to fit within pre-constructed legal categories. For example, insulting words spoken in public may be defamatory; falling into an open, unguarded council ditch may be negligence on the part of the council; parental conflict over children may be a custody dispute. Law students are taught to approach the resolution of human problems by this method. An important question, therefore, is from whose standpoint these legal categories have been constructed. Feminists argue that it is an androcentric standpoint and that women have not participated in the construction of these categories.[55] This becomes most evident when we see how ill-fitting some women's experiences are within these categories. For example, there existed a vacuum in the law of self-defence which ill-suited it to the experiences of some women victims of violence. This led to the development of the battered woman syndrome. Occasionally, women's discrete experiences of life, such as sexual harassment in the workplace, do not fit neatly within any category. Without a legal category into which their experiences may fit, these women often cannot be recognised as having legal problems and therefore are denied access to legal or quasi-legal dispute resolution. None of the courses in this study engaged with this important feminist discussion.

Legal Systems and Hierarchies

Introductory courses usually also include an exploration of the Australian legal system in the State and Federal context and its various components such as parliaments, courts, the Crown and the executive. Introductory courses typically examine the hierarchical structure of courts and legislatures in Australia, and their relationship with the British Parliament and courts. Students are taught the jurisdictions of the various courts: original and appellate; and criminal and civil, and, sometimes, those of tribunals and commissions in the Federal and State hierarchies. The powers of the Commonwealth, State and Territory Parliaments are contrasted and fundamental constitutional issues are raised. These include parliamentary sovereignty, the extent of and limits to Federal and State legislative powers, the effect of inconsistency of laws, and

representative and responsible government. The doctrine of the separation of powers is discussed, including the difference between executive, judicial and legislative power, and the necessary interrelationships of the Crown, judiciary and legislature. The principles of the rule of law and responsible government led to discussion of administrative discretion and review of administrative decisions in the course "Law in Society" (1996) at the University of Wollongong.

Usually in tandem with instruction in the doctrine of precedent, students are taught which decisions of courts in the hierarchy of Australian courts will bind other courts, and more technical issues including the resolution of equally-divided appellate courts and whether courts are bound by their own decisions. This includes a consideration of the historical connection of British courts with Australian courts, particularly the Privy Council, and the effect of the Australia Acts.

No course introduced any feminist content in teaching of this broad area. Some commentary on the androcentric nature, history and constitution of these law-making institutions was nevertheless possible.[56]

Legal Reasoning

In the broad area described by this heading, introductory courses teach methods and tools of legal reasoning and judicial decision-making. Primary among these are the doctrine of precedent and the methods and rules of statutory interpretation.

Case law and *stare decisis*

Students are given instruction in the reading and analysis of cases, including identification of the various parts of a reported case, such as the catchwords, headnote and the judge's Order. A common topic in introductory courses is the distinction between, and identification of, the *ratio decidendi* and the *obiter dicta* of a case, therefore establishing which part of the case is binding under the doctrine of precedent. Students are also taught the methods by which courts may avoid a precedent, namely, by distinguishing or overruling it, and about decisions that are *per incuriam*.

The process of common law reasoning and *stare decisis* has been subjected to feminist criticism in that, without statutory intervention, the common law is often slow to respond to women's

needs and experiences of life, and helps perpetuate the existing androcentricity of the law. The common law has, for example, been slow to recognise what is known as the battered woman syndrome to assist women who have been victims of domestic violence. These important feminist issues were raised in two law schools. The course "Legal Process" (1997) at Monash University involved the teacher using the development of the common law defence of provocation to illustrate issues of common law reasoning. This allowed discussion of whether the common law should recognise differences between men and women, or cultural differences, in the defence of provocation. Cases used in this discussion mainly involved killings by men of women with whom they were in intimate or sexual relationships, for example, their wives and, in one case, a prostitute.[57] However, the cases of *R v Kina*[58] and *R v Muy Ky Chhay*[59] were discussed in the context of the legal recognition of the battered woman syndrome and its implications for self-defence.[60] Newcastle's law school also included a similar discussion during its teaching of the topic of the common law and stare decisis in "Legal System and Method" (1996). Including feminist perspectives on the topic can help students to understand that the doctrine of stare decisis, an apparently neutral legal doctrine, is capable of having a gender-biased effect on the law and one which is not readily adapted to dealing with the diversity of women's experiences of life.

Statutory interpretation

The teaching of the rules of statutory interpretation encompasses instruction in the structure of a statute, including features such as citations, dates of assent and the marginal notes; the reading of a statute; the general[61] and statutory[62] rules of construction; the legal presumptions of construction;[63] and the syntactical presumptions commonly expressed as Latin maxims.[64] The rules on the use of material intrinsic[65] and extrinsic[66] to the statute as aids to its interpretation are also taught.

The concept of the legal person can be used to demonstrate to the student some of the instances of overt gender-bias in the law through the medium of the apparently neutral legal doctrines of statutory interpretation. In the way most course contents are presented, the concept of the legal person is one often simply overlooked or taken for granted, but it is one issue on which

feminist jurisprudence, in particular, has shed light. The legal person is one who can enter into legal relations, own and deal with property, enter into contracts and other transactions, and sue or be sued, or otherwise enjoy the benefit and suffer the disadvantages of our laws. A legal person can be either a human being or a corporation. However, some feminists have argued that for most of our history the legal person has been more closely identified with men than women.[67] Berns, Baron and Neave have attempted to show how the historically gender-biased nature of the legal person can be demonstrated to law students studying the introductory subject.[68] These authors use the body of cases from the late 19th century and early 20th century in which women litigated so that they might enjoy the public rights available to "persons".[69] Women were very often refused these rights as courts held they were not "persons" for the purposes of the relevant legislation. These rights included the ability to practise law, vote and stand for elected office, and graduate from universities. Berns, Baron and Neave argue that —

> the real problem did not lie in simply allowing women to study law or medicine or to enter professional practice. The real problem lay in allowing women to enter public life.[70]

No law school introduced these important themes in their teaching of this topic.

Law-making by the judiciary

The sometimes controversial role of the judiciary as law-maker is also taught during the introductory subject. In "Legal Process" (1997) at Monash University, the law-making role of the judiciary is discussed in the context of several landmark cases, including *Mabo v Queensland*,[71] *Australian Capital Television Pty Ltd v Commonwealth*[72] and *Dietrich v the Queen*.[73] "Introduction to Law" (1996) at Flinders University also discussed these issues in relation to the Dietrich decision.

For many feminists, however, the law-making role of the judiciary is not as important an issue as an understanding of the values inherent in those decisions. With the preponderance of judges being males of an affluent, educated Anglo-Celtic background,[74] feminists have argued that it is the values of this social stratum that prevail in judicial decisions. There is the further suggestion that greater numbers of women on the bench would not

only better represent women in our community, but would result in a differently-natured decision-making process.[75] One course only, "Foundation of Legal Studies" (1995) at La Trobe University, dealt with this issue. It placed important issues, such as the social composition of the legal profession and the "desire of the legal profession for homogeneity",[76] under close critical scrutiny. The course notes identified the composition of the legal profession as "overwhelmingly … Anglo-Australian, middle class men" and asked "what are the societal implications of this phenomenon? To what extent is a judge … able to act as an independent agent?"[77] For example, as alluded to earlier, feminists have made the rules of statutory interpretation problematic. These critics emphasise that the meaning judges give to statutes will be seriously influenced by their social and political positions.[78]

Problem solving

Many introductory courses teach a methodology by which law problems, exercises and exam questions might be answered. For example, problem-solving by the MIRAT methodology is taught at Bond University Law School. MIRAT is an acronym which describes the steps and elements in legal problem-solving, namely,

Material/missing facts
Issue(s)
Rule (principle) of law/research
Application/argument
Tentative conclusion.[79]

MIRAT is advocated by Bond Law School as the method for students to use when answering tutorial and examination problems, in written assignments and case analysis. The Queensland University of Technology, in "Research and Legal Reasoning" (1996) teaches problem-solving by the ISAACS method:

> Identify a legal issue arising from the facts
>
> State the relevant law and the
>
> Authority for it.
>
> Apply the law to the facts
>
> Come to a conclusion on that issue, then repeat the above steps for another issue
>
> Synthesise the partial conclusion into an overall conclusion.[80]

Who really thinks this way?

A very important feminist theme, and one which is relevant to the whole area discussed under the heading "Legal Reasoning", asks: "who really thinks this way?" For example, there are some feminists who argue that, generally, women do not inherently approach legal problems in the manner traditionally favoured by law schools.[81] These feminists posit that the rights-based and justice-based model of legal reasoning taught in contemporary law schools is more associated with the values and priorities of men in our society. On the other hand, women, they argue, are more concerned with the maintenance of relationships and would seek to solve legal problems in a way that promoted this goal. It is important to point out that these very ideas are themselves much in dispute among feminists.[82] The essentialist nature of these ideas is evident. Further, radical feminists would say that any differences between men and women in approaches to legal problems are merely the product of social and cultural construction.[83] Nevertheless, these interesting and significant ideas were overlooked and not dealt with in any of the courses the subject of this survey.

Dispute Resolution

Adversarial dispute resolution

Issues connected with the adversarial dispute resolution process also commonly find a place in introductory courses. These include an examination of the adversarial trial and discussions of the development of the jury system and the role of lawyers, the jury and the judiciary in trial outcomes. For example, "Legal Process" (1995) and "Legal Process and History" (1995), the introductory courses at the University of Western Australia Law School and the University of Technology, Sydney, Law School, respectively, covered issues of adversarial dispute resolution in lectures on civil and criminal procedure, including a discussion of the basic rules of evidence.[84] The University of Western Australia Law School's course also contrasted for students the adversary system in Australia with the civil law model of civil and criminal procedure.

Two courses in particular appeared to be largely structured around the theme of the law as a mechanism for resolving disputes. Adelaide Law School's introductory course, "Law and Legal

Process" (1995), presented conventional introductory subject topics within the practical setting of law as a means for dispute resolution, yet incorporated a critical analysis of the law and dispute resolution mechanisms. The course demonstrated a particular conceptualisation of law: "that law is a purposive exercise, that rules are commonly regarded as central to achieving those purposes, and that rules reflect values and represent distributions of power."[85] The course covered the efficacy of the adjudicatory and adversarial approaches to dispute resolution, especially in the context of the Hindmarsh Island Bridge dispute. The course ventured beyond the traditional content of the introductory subject, in keeping with its aim to encourage students to be reflective and critical about rules and dispute resolution processes, their objectives and outcomes. "Law in Society" (1996), at the University of Wollongong, began with a consideration of the Tasmanian Dams Case[86] and the Mabo[87] case. This operated to found a relationship between a legal system and prevailing social concerns, and to establish the law as a system of dispute resolution for conflicts of some social importance. In approaching dispute resolution from this perspective, "Law in Society" (1996) also explored the links between society and the legal system; the way in which prevailing social concerns or values find legal expression; and the functions and effects of legal institutions. Later in the course, teaching further challenged conventional forms of dispute resolution. Students were asked to consider the following questions: "To what extent is the ideal model of adversary adjudication realised in real life? … Does the use of the jury system lead to just or unjust outcomes? … What do you consider to be the primary obstacle to courts achieving justice that is accessible?"[88] In a similar vein, "Foundation of Legal Studies" (1995) at La Trobe University discussed the "ramifications of the assumption that the courtroom is the locus of justice."[89]

There have been many feminist critiques of the adversarial, confrontational trial as an inadequate and, at times, inappropriate method of dispute resolution.[90] Any discussion of the trial as a means of dispute resolution is, arguably, seriously lacking without a consideration also of these feminist analyses. For example, considerable feminist attention has been directed to the experiences of female sexual assault victims at the hands of the defendant's cross-examining counsel. These issues were raised in one course

only, "Law in Context" (1996) at the Australian National University. Here the course required students to consider whether, in respect of women, who are "already at a disadvantage … , the structure of the criminal legal process serves only to exacerbate feelings of alienation from society at large."[91] The adversarial dispute resolution process is largely taken for granted, uncritically, by the majority of the introductory courses. Consequently, the adversarial process is made to appear capable of achieving objective and fair outcomes for all. Yet, many would contest this claim on the grounds that adversarial dispute resolution does not give due regard to the differences among and between men and women, including the differences in their experiences of life and the law.

Alternative dispute resolution (ADR)

Courses in some law schools also include a discussion of alternative dispute resolution. For example, the courses, "Legal Process and History" (1995) taught at the University of Technology, Sydney, "Introduction to Law" (1996) at Flinders University and "Introduction to Law and Legal Writing" (1996) at the University of Queensland discussed the various means of dispute resolution and arbitration, mediation, conciliation and negotiation as alternatives to litigation.

However, ADR has not been without its own critics. There are some feminists who argue that ADR does not provide an unproblematic answer to the difficulties women face in the adversarial process.[92] ADR mechanisms presuppose an equality of bargaining power between the parties to a dispute. Potentially, women, who are generally in poorer financial circumstances than men, may have inferior access to information about their legal rights, leading them to compromise their rights too readily in ADR processes. More importantly, where women are affected by domestic violence, sexual abuse or sexual harassment, and the other party is their partner or employer, the considerable power imbalance can seriously affect outcomes.[93] Other social or cultural differences may also exacerbate women's position in ADR processes. These issues appear to be highlighted in the course "Foundation of Legal Studies" (1995) at La Trobe University, which notes that women have been excluded from the formal justice system and discusses "the pros and cons of mediation as an

alternative mode of dispute resolution."[94] Also, "Legal Institutions" (1996) at the University of Sydney incorporated a discussion of ADR, primarily mediation, and its impact on women participants. This was the limit of the discussion of this issue among the courses as a whole.

Legal Research

A common and important component of introductory courses is legal research skills. Instruction is given in areas such as legal writing and law library research. This includes the location, manually and on electronic databases, of primary authorities such as case law and legislation and the updating of these authorities, and the location of secondary sources such as materials in journals, texts, digests and reference books. Instruction in the use of electronic or computer-based systems is a prominent part of legal research in introductory courses.

This topic in the introductory subject can be somewhat dry and uncontroversial. However, it also presents an opportunity to introduce to the student some feminist or woman-centred concerns and this is particularly important where a course is otherwise silent or relatively silent on women's different and diverse experiences of life and the law. For example, in "Introduction to Law" (1996), University of Western Sydney, Macarthur, feminist as well as other current social issues were explored by students during their compulsory library research exercise. Topics included the battered woman syndrome, anti-stalking laws, euthanasia, liability of the Crown for transmission of the Human Immuno-deficiency Virus (HIV) in prisons, adoption, and the decriminalisation of homosexual activity.

Professional Legal Issues

The legal profession

Some law schools give students information on the role of the legal profession in the legal system and the professional duties, responsibilities and ethics of lawyers. For example, "Legal Process" (1995) at the University of Western Australia Law School, covered topics such as the admission rules for legal practitioners, monopolies enjoyed by lawyers, and the division and

fusion of the profession. Similar issues were discussed in "Introduction to Law" (1996) at Flinders University and "Legal Process" (1997) at Monash University. "Foundations of Legal Studies" (1995) at La Trobe University, "Introduction to Law and Legal Writing" (1996) at the University of Queensland and "Legal System and Method" (1996) at the University of Newcastle all gave classes on professional ethics among legal practitioners. The course "Law in Society" (1996) at the University of Wollongong engaged in a discussion of issues relating to the legal profession, including regulation, lawyers' duties and conflict of interest.[95]

It is still a significant issue for feminists that, although women have for some time now represented half of all law students,[96] they are not represented in similar proportions in the higher echelons of the legal profession, the Bar or the Bench, law schools, Government, or Parliaments generally.[97] These are the power-wielding strata in our society. Even where women are represented in these institutions, they often face direct and indirect discrimination, particularly in relation to their combined work and family lives, that makes it difficult for women to participate in the workplace to the same extent and with the same success as some males.[98] Moreover, the further removed a woman is from the paradigm of the affluent, educated Anglo-Celtic male, the greater the discrimination she might expect to encounter in the workplace.[99] These are important issues to raise with students. In a tutorial in "Introduction to Law" (1996), University of Western Sydney, Macarthur, there was some treatment of the problems faced by women in the legal system, both as practitioners and as consumers of legal services.[100] It is of some concern that this important issue was dealt with in only one of all the courses included in this survey, and then only as a part of one tutorial.

Legal aid and access to justice

Legal aid, and the dearth of government funding made available for legal aid, is an important, related issue in this area because women, being relatively poorer, are less likely than men to be able to afford private legal services. Students of "Law in Context" (1996) at the Australian National University considered the operation of the legal system in practice, including the roles and ethics of lawyers, and access to justice and legal services within the criminal and civil adversarial dispute resolution systems. "Legal

Institutions" (1996) at the University of Sydney also conducted a discussion of access to justice issues, including those raised by Dietrich v the Queen.[101]

Finite legal aid resources raises significant issues of concern to women in relation to access to justice.[102] Without some exposure to these issues, the provision of legal aid can appear to students to be neutral, in its availability and effect, in relation to men and women, and also among women. For example, criminal law trials, where the preponderance of defendants are male, continue to receive priority funding at the expense of family law and civil matters, thus denying poor or financially-dependent women legal representation.[103] "Introduction to Law" (1996) at Flinders University, "Introduction to Law" (1996) at the University of Western Sydney, Macarthur, "Introduction to Law and Legal Writing" (1996) at the University of Queensland and "Legal Process" (1997) at Southern Cross University all discussed funding and access to justice and the experiences of the legal system had by women, including victims of domestic violence. Readings in this area at the University of Western Sydney included the Australian Law Reform Commission's Interim Report No 67, Equality before the Law: Women's Access to the Legal System.[104] The University of Queensland also offered readings and other materials on women's specific experiences with access to justice.[105] In this course there were lectures on "The Challenge of Inclusion" which discussed the need for Australian laws to take account of the diversity in the population, including not only women generally but also Aborigines, migrants, children, the aged and the disabled.

Professional skills

A few law schools included a certain amount of instruction in professional skills, such as legal writing and negotiations, in their introductory course. For example, "Legal System and Method" (1996) at the University of Newcastle included training in the skills of interviewing, drafting, file maintenance and negotiation. Also, an introduction to legal negotiation was a component of the course "Introduction to Law" (1995) at Bond University Law School. "Legal Process" (1995) at the University of Western Australia also provided students with a copy of the article "Plain English for Lawyers",[106] which included a small section on non-sexist legal language.[107]

Topical Legal Issues

At some law schools, teaching in the introductory subject was enlivened by a discussion of contemporary and topical legal issues. "Legal System and Method" (1996) at the University of Newcastle Law School discussed legal approaches to the terminally ill and topical issues such as euthanasia. In a section of "Legal Process & History" (1995) at the University of Technology, Sydney (1995) entitled "Future Challenges", issues raised included law and technology, improving access to justice and the possibility of a national legal system. Some topical legal issues of concern to women which may equally find a place in discussions of this nature, but generally did not, include abortion, pornography, and discrimination in the workplace.

Problems, Exercises and Hypotheticals[108]

The use in tutorials or other classes of hypothetical problems allows scope for a course to introduce materials concerning women. For example, in "Legal Process" (1995) at the University of Western Australia, issues concerning women were raised in the context of claims for damages brought for the loss of a wife and/or mother. Other tutorials taught in that subject, as well as tutorials taught in "Introduction to Legal Systems and Methods" (1997) at the University of New England, used many of the exercises found in Laying Down the Law.[109] Although none of these exercises identified doctrinal material of concern to women or subject to feminist comment, many involved women as parties in cases or as hypothetical characters in problems.[110] Where a course contains little or no doctrinal material with feminist themes, it is helpful to introduce women and women's issues in class exercises so that the student is exposed to at least some content concerning women. For example, "Legal System and Method" (1996) at the University of Newcastle taught class problems and exercises involving females, including one concerning abortion.[111] By contrast, there are several problem questions and a trial examination question provided in the first semester materials for "Legal Process" (1997) at Monash University. In none of these questions do any female characters or protagonists appear, nor any doctrinal or other issues of particular relevance to women.

CONVENTIONAL AND UNCONVENTIONAL COURSES

Conventional Courses

A conventional course is one that does not appear to stray outside the typical core components of the introductory subject. The course outline allow little or no scope for a socio-political analysis of the law, and no significant room for the Pearce Committee's Suggestion 1 to be implemented. Instruction in the various components of this course could be very detailed and legalistic and taught instrumentally, rather than critically. Such a methodology would tend to place law within a practical, rather than socio-political, context. Individual courses that appeared clearly to fall into this category include "Elements of Law" (1995) at James Cook University of North Queensland;[112] "Introduction to Law" (1995) at Bond University School of Law; "Legal Process" (1995) at the University of Western Australia; "Legal System and Process" (1995) at The Australian National University; "Legal Method" (1996) at Flinders University; the "Law Induction School" (1996) at Deakin University; and "Introduction to Legal Systems and Methods" (1997) at the University of New England. However, at many law schools, as mentioned above, some introductory courses were taught with others in the first year curriculum. The other subject in the pair was, in some cases, complementary and added a critical component lacking in the first. For example, at the Australian National University, "Legal System and Process" (1995) and its companion course, the more critical and analytical "Law in Context", are taken by all law students in their first year of study. Also, at the University of Notre Dame Australia, the apparently conventional treatment of the usual introductory topics is complemented by the discussion of ethics, philosophy and theology in three other discrete first year subjects.[113]

Some of the conventional courses did include a small critical component in their curriculum. For example, "Legal Process" (1995) at the University of Western Australia appears to have provided its students with a largely uncritical approach to the subject, while covering the fundamentals in some detail. However, it did include critical discussion of some issues. The course included a lecture on law reform, but this teaching appears to have been limited to the operations and characteristics of law reform commissions. Also, as mentioned above, at the Australian National

University, "Legal System and Process" (1995) provided the student with a conventional education in this area. However, the Law School does include in the course's objectives "the impact of imported law on the indigenous Australian community; and the philosophical underpinning of the legal system"[114] and, to that end, some discussion of the common law recognition of customary law is included in lectures. Similarly, "Introduction to Legal Systems and Methods" (1997) at the University of New England included Feminist Legal Theory as a "main concept to be understood" in its broad ranging discussion on the nature of law.[115] No further feminist issues were apparently taught during the remainder of the course.

The above-mentioned courses do not fare well in comparison to what might be a feminist application of the Pearce Committee's Suggestion 1 for legal education. There is little or, in some courses, no attention given to the androcentric origins and perspectivity of the law and legal education, and the feminist commentary on these issues. Consequently, there appears to be little discussion of the different effects of the law on those social groups outside the paradigm of the privileged, Anglo-Celtic male.[116] The law could appear to the students of these courses to be a genuinely universally-applicable system, capable of producing just and fair outcomes to all members of the community in a jurisdiction at all times, when in fact this conflicts with the experience of the law in Australia had by women.[117] Arguably, in the absence of any compensating critical studies to moderate the influence of this non-critical teaching, students of these courses are unlikely to acquire the skills or knowledge that would equip them to approach, critically and consciously, the remainder of their law studies and ensuing employment in the legal arena.

Critical Courses

Several of the introductory courses taught the typical core topics of the subject within a critical or contextual framework. These courses demonstrate to a greater extent the implementation of the Pearce Committee's Suggestion 1. A student of these courses would arguably have a better grounding in the skills necessary to think critically in the remainder of their law studies than students who have been taught the introductory law subject in a largely

conventional, uncritical manner, and this is indeed the stated objective of several of the introductory law courses.

Many of the law schools engaged in a discussion of various legal theories, including natural law and positivism, and contrasted them with liberal legalism, the prevailing notion of law in the Anglo-Australian legal system. This allowed the teachers to draw from the rich store of feminist and other critical jurisprudence and legal writing. Many of these courses, in fact, contained few of the usual topics of the introductory subject, such as the course, "History and Philosophy of Law" (1996) at the University of Melbourne Law School.[118] This course offered students a theoretical grounding to law in a conventional Western legal system. It then placed these ideas under challenge by juxtaposing them with ideas of law derived from non-conventional and non-Western legal systems. The aims of "History and Philosophy of Law" (1996) included imparting to students skills that would enable them to think reflectively and critically about the law throughout the rest of their law degree, and have an awareness of issues such as gender and sexuality in the study and practice of law.[119] In order to achieve this, class, race and gender themes, and a general critique of liberal legalism, were used in the course to challenge certain existing, Western notions of law and its role in society. A considerable part of the course dealt with various aspects of liberal legalism, for example, the ideas of liberty, rights, equality and the rule of law. Students were introduced to Marxist, feminist and postmodernist critiques and those from the Critical Legal Studies scholars.[120] Unique aspects of this course were the inclusion of a comparative analysis of the Malaysian legal system as a non-Western legal system; a discussion of Confucianism and legalism; and a discussion of "law in action in Japan".[121] The course moved closer to the traditional topics of introductory law courses later in the second semester when there was a discussion of law in society and law in the courts. This section of the course covered issues such as law reform, the legal profession and judicial decision making.[122]

Similarly, the course "Foundation of Legal Studies" (1995) at La Trobe University taught very little of the traditional topics of the introductory subject and what it did include was subjected to apparently strong analysis and critique. This course refers students to many challenging critical works on the various topics taught.

Feminist materials featured conspicuously among these references.[123] The aim of this subject was to "show that law is not an autonomous and scientific system, but is a politically and ideologically contingent body of knowledge which reflects the dominant values of society."[124] For example, in a module entitled "The Nature of Law and Legal Method", topics discussed included "a consideration of the ways in which liberal values … are incorporated into law" and "the rule of law and the role played by judicial hierarchies in upholding the rule of law."[125] A further topic entitled "The Myth of the Neutrality of Law" discussed "the fundamental tenet of legal positivism that law is neutral, objective and fair … that law is the embodiment of justice."[126]

Another course which did not contain any of the typical contents of introductory courses was "Law in Context" (1996) at the Australian National University.[127] Rather, it presented the student with a rigorous intellectual analysis of the law and its interaction with the various strata in society. This subject had, as its objective, to introduce "students to ideas and perspectives from the areas of legal philosophy, sociology, economics, and politics so that they are better prepared for later law subjects."[128] The teaching incorporated discussions of major philosophies critical of law, such as feminism and Critical Legal Studies, and also analysed law from the perspective of race and class. An objective of the course was to encourage "students to ask some basic questions about law and its processes. For example, why is the law like this? Who benefits? Who loses? How could it be different?"[129] The course closely examined the various shades of liberal philosophy in order to help students discover the nature of the liberalism said to be informing Australian law and society. It took students through the theories of individualism, equality, formalism, justice, utilitarianism and the rule of law. Feminist legal theory and feminist critiques of liberalism occupied a discrete two-hour lecture, but, to some extent, feminist analyses were also threaded through other sections of the course. For example, students were asked to consider the effect of the criminal legal process on women in society and were also asked to consider a feminist critique of the Political Advertising Case.[130]

The usual topics of the introductory subject also did not figure prominently in "Legal Institutions" (1996) at the University of Sydney, but there was some instruction on common law and legislation, statutory interpretation, legal reasoning and judicial

method. One of the aims of the course was to enable students "to see the law in its wider social context and have the skills to respond to and direct change in law and society where necessary."[131] This aim was dealt with more in the second part of the course which discussed law in a social context, primarily by examining liberal theory and its tenets of rights, justice and equality. Feminist themes appeared significantly at this point, especially in the area of equality, alternative dispute resolution and in the law's treatment of the private and the public domains. To a lesser extent, feminist scholarship in books and journal articles was also employed in the first part of the course. There was also some use throughout this subject of cases with themes concerning women.[132]

"Legal Process & History" (1995) at the University of Technology, Sydney,[133] also required students to engage in a critical evaluation of the law. The course prefaced its teaching of the sources of law with a discussion of theories of law, particularly natural law and legal positivism, and law, justice and morality. "Introduction to Law" (1996) at Flinders University conducted similar classes, including a discussion of feminist jurisprudence, and feminism and pornography. The course, "Introduction to Law" (1996) at the University of Western Sydney, Macarthur, covered the topics normally included in the introductory subject, but this core element was extended by the inclusion of more critical and contextual perspectives of the law, including feminist, Marxist, class and race or ethnicity themes. The course also considered the various notions of law that have existed including customary law, natural law and positivism. The final lecture of the course asked students the question: "why have law?".[134] Students were also asked to consider whether law is a system of morality and control.

In the context of a discussion of the development of the equitable jurisdiction and the equitable doctrine of unconscionability, "Law in Society" (1996) at the University of Wollongong considered the relationship between law, justice and morality. "Introduction to Law" (1998) at the University of Canberra also held classes on legal theory and the "differing theorisations of law", including natural law, positivism, Marxism and post-modernism, but not feminist legal theory. "Research and Legal Reasoning" (1996) at the Queensland University of Technology taught critical theory, including positivism, realism, Marxism, and Critical Legal Theory, but, again, no feminist

jurisprudence. "Law in Context" (1996) at the Queensland University of Technology held similar classes, with some emphasis on liberalism, but again it would appear that no feminist legal theory was taught.[135]

Courses with Innovative Content or Methodologies

Worthy of special note are several courses that stand out because of particularly innovative approaches to the subject-matter.

"Law and Legal Obligations" (1997), Griffith University

This course consisted of two streams of instruction. The first stream taught the usual topics of the introductory course. The second stream taught aspects of civil legal obligations in contract and the tort of negligence, and also restitution and equity. According to Marlene Le Brun, one of the first teachers of this course, it provided "an example of an attempt in Australia to design an interdisciplinary, holistic, integrated and student-centred, if not humanistic, approach to first year legal education."[136] The first semester of this course taught basic principles of contract law, including contract formation, offers, acceptances, consideration and privity of contract, and also some issues of negligence, including duty of care and its breach, causation, remoteness of damage and defences as well as damages. Concurrently with these topics, students were taught legal reasoning, and how to deal with statute and common law. Ms Le Brun observed that —

> the course has been designed to introduce students to the various interpersonal relationships which law regulates by concentrating on Contract Law as the backbone of the year of study. Contract operates as the lens through which students consider the nature of law, legal obligations, and the legal process as well as an area of study in its own right. Wherever possible, information about introductory legal concepts, illustrations of the process of law, and the development of legal skills appropriate to the first year of study flow from Contract Law so that students can integrate introductory and process knowledge with their increasing understanding of substantive law. In addition, in order to minimize any propensity to "pigeon-hole" law, students explore the nature, construction, and reproduction of legal knowledge while they learn about the interrelationship between contract, tort, restitution, and equity.[137]

The second semester developed both streams of instruction and dealt with identification and interpretation of contractual terms and exclusion clauses, performance, discharge and breach of

contractual obligations, vitiation and frustration of contracts, and remedies. The second stream, in the second semester, dealt with legal theories such as liberalism, natural law, and positivism. It also discussed critical legal theories and their application to contract and the tort of negligence. Other issues such as access to justice, legal ethics, and the law and indigenous peoples were also taught in this segment of the course.

Despite the innovation taken in teaching the introductory topics, this course did not include any feminist content on these topics, nor any critical feminist commentary on any of the several areas of substantive law covered in the course.[138]

"Legal Process" (1996), Northern Territory University[139]

This course was also taught in a unique fashion. In first semester, students were given instruction in some of the major fundamental issues common to the introductory subject, such as the sources of law, judicial precedent and statutory interpretation. Teaching in the second semester, however, put to the test the ideas discussed in the first semester. Course materials for the second semester explained that —

> for the purposes of Semester 1 it was assumed that a legal system comprising the concepts and institutions that were examined [in the course] was desirable. In this semester we critically analyse this assumption as well as the concepts and institutions explained in Semester 1.[140]

The objective of the second semester was for students to understand and critique the influence of liberal political theory on legal concepts and institutions.[141]

Challenging the fundamental ideas of law and legal institutions is not an uncommon pursuit in the introductory subject. However, "Legal Process" set out to do so by adopting a particular perspective in its analysis — that of women in society. The teacher of the second semester of this course, Martin Flynn, explained to students in their course materials why he had chosen a feminist perspective.

> I have decided that the most efficient and (hopefully) interesting way of realising the objectives of the unit is, for the most part, to focus on the operation of the legal system in a particular context, namely, in relation to women. There are a number of reasons for doing this. First, there is a range of legal literature concerning women and the legal system that deals with issues raised by each of the unit objectives. Secondly, the issues raised by the unit objectives are vast. It may assist your

> understanding to focus on the practical application of the issues to a particular context. Finally, listing a selection of the headings of an introductory chapter of the recently published report of the Australian Law Reform Commission "Equality Before the Law: Justice for Women" (1994) indicates the relevance of the [sic] this topic to the unit objectives: "Women suffer inequality in the workplace", "Women are restricted in contributing to legal and political institutions", "Women experience violence".[142]

Consequently, lecture and tutorial topics in the second semester included feminist critiques of liberal philosophy and the Australian legal system, and considered how the legal system has dealt with issues of law reform, women's equality, discrimination, bias, and violence against women.[143] Lecture and tutorial readings, in this part of the course, were drawn largely from the Australian Law Reform Commission Report No. 69, earlier related publications[144] and three other major feminist sources: Regina Graycar and Jenny Morgan's book, The Hidden Gender of Law;[145] their report, Work and Violence Themes: Including Gender Issues in the Core Law Curriculum;[146] and Ngaire Naffine's Law and the Sexes.[147] Graycar and Morgan's report, as its name suggests, includes feminist and critical material directly relevant to the topics commonly found in the introductory subject.

"Legal System – Torts" (1994-1996), University of New South Wales[148]

This is one of three introductory courses among Australian law schools that combine the usual introductory topics with teaching in an area of substantive, private law.[149] "Legal System – Torts" (1994-1996) dealt with some of the usual introductory topics within the context of a particular theme, namely, the road to Australian legal independence and nationhood. The course discussed aspects of Anglo-Australian legal history, the effects of European settlement and the reception of English law on the Aboriginal inhabitants and the early European settlers, and the development of responsible self- government in the colonies. However, many of the skills of statutory interpretation, legal research, legal reasoning and problem-solving were taught through the medium of the numerous cases and statutes that operate in the area of tort law. The substantive tort law component of "Legal System — Torts" (1994-1996) was considerable and was taught later in the year after some of the fundamental introductory topics were discussed. Tort topics discussed included the intentional torts, negligence and damages.

The conjunction of the introductory topics with a substantive area of the law allowed for the introduction of social issues and critical themes in the teaching of this course. Critical material appeared in sections on court process and legal reasoning and the latter included some Critical Legal Studies and feminist critiques.[150] Later in "Legal System – Torts" (1994-1996), there was a discussion of feminist and Critical Legal Studies critiques of the law as an institution.[151] Critical feminist material figured prominently in this course including in a discussion on the impact of Western law and society on Aboriginal women,[152] the disparate experiences of transported convict women and first settler European women in Australia's early history of European settlement,[153] and the status of convict and settler women as sexual commodities for convict and settler men.[154] Also discussed was the early exclusion of women and some men from suffrage.[155] Feminist material, or material concerning women, also appeared in case studies in the topic "Courts in Action".[156] Feminist issues or critiques also appeared in the substantive tort law teaching of "Legal System – Torts" (1994–1996). This included the issue of sexual harassment as a tort;[157] recovery by mothers for nervous shock caused by the negligent deaths of or injuries to their children;[158] the liability of public authorities for failing to protect citizens from harm;[159] compensation for child sexual abuse or incest;[160] the concept of the "reasonable person";[161] and women and the quantum of damages.[162]

"Torts and the Process of Law" (1996), University of Melbourne[163]

Like "Legal System – Torts" at the University of New South Wales, "Torts and the Process of Law" (1996) taught the topics of the introductory law subject in the context of a substantive area of the law, in this case, the tort of negligence, and the recovery of damages or compensation. This course incorporated to a very high degree feminist, cultural and economic criticisms of its subject-matter, although critical content was largely limited to the torts issues raised in the course. For example, the following issues were discussed critically from feminist, cultural or socialist perspectives: the breach of duty; the standard of care; nervous shock; the concept of the so-called reasonable man; foreseeability and proximity; assessment of damages; mitigation; and migrants and workers'

compensation schemes. Contentious feminist issues raised were a mother's tortious liability toward her foetus; liability of the police service toward rape victims; loss of consortium; domestic violence; sexual abuse; and medical injuries.[164] Printed course materials incorporated approximately 20 newspaper cuttings and some case law relating to women's encounters with tort law, including doctors' liability for undetected cervical cancer; product manufacturers' liability for injuries caused by silicon breast implants and dangerous Intra-Uterine Devices and for toxic shock syndrome caused by tampon use; a mother's liability for injury of her foetus; and a sexual abuser's liability in tort to their victim.[165]

There was some critical consideration of the usual introductory topics in "Torts and the Process of Law" (1996). Feminist themes arose in the discussion of the judicial system and the selection and appointment of judges, and of the notion of objective and value-free decision making among the judiciary.[166] Here, students were referred to readings about gender-bias and the judiciary and the training of judges in these issues, including the Commonwealth Attorney-General's Discussion Paper: Judicial Appointments — Procedure and Criteria (1993), which referred to Australia's judges as being predominantly males of Anglo-Saxon or Celtic background.[167] Also, some of the hypotheticals and library research exercises involved women, including those who had been victims of domestic violence.[168] In undertaking legal writing, students were referred to a publication on gender-neutral communication.[169]

CONCLUSION: A BIAS IN LEGAL EDUCATION?

My findings suggest there is some validity in the feminist argument that legal education is gender-biased in favour of men.

The Relative Absence of Feminist Critical Commentary in Introductory Courses

Feminist scholars have argued that legal education is gender-biased because it portrays men as the human norm whereas women are depicted as different and inferior to men.[170] In Anglo-Australian and North American societies masculinity traditionally denotes power, aggression, independence, assertiveness, and activity in the public sphere of life. Femininity, on the other hand, is equated with weakness, nurturing, timidity, dependence, and passivity in the private sphere. The purpose of this study has been to test, from a

feminist perspective, whether these stereotypes of men and women are reproduced in legal education or whether, in respect of the introductory subject, Australian law schools have developed a model of legal education that assists students to "evaluate the law and legal institutions in their social context and to assess their interactions with social, economic and other forces".[171]

In 1994, Craig McInnis and Simon Marginson found that, since the Pearce Report, most law schools had attached "considerable importance to students developing a critical perspective of the law in a social context."[172] My curriculum study essentially reflects the findings of McInnis and Marginson in relation to the period 1995 to 1998. I have found that the majority of the introductory courses have been taught with a critical approach to the subject topics and, as foreshadowed at the beginning of this article, there is also a considerable diversity of approach taken, consistent with the freedom teachers of this subject have to design their courses. There is a strong tendency among law schools to teach the introductory subject critically with theoretical analyses of its topics. I found that there are more courses that took a critical perspective than those courses that were wholly uncritical in their attitude. However, although there was some feminist discussion in most law schools, feminist critiques relevant to the introductory topics were not incorporated in the curriculum as frequently, or to the same extent, as other critiques. In many introductory courses, there was no feminist content, nor any content concerning women's distinct, yet diverse, legal needs or experiences. These courses have failed to demonstrate a feminist application of the Pearce Report's Suggestion 1. Areas of major concern among these courses generally were the failure to incorporate discussion on topics of critical importance to women. These include the public/private distinction, access to justice, and adversarial and alternative dispute resolution processes. Importantly also, there was inadequate attention to the socio-economic constitution of Australia's parliaments, courts and legal profession, and the effect of this on decision-making and law-making in the community. Generally, inadequate regard was given to women's specific, diverse legal needs and experiences. These courses stand in contrast to those that incorporated significant feminist critiques. Notable for the extent of their feminist content are "Foundation of Legal Studies" (1995) at La Trobe University and "Legal Process" (1996) at Northern

Territory University. The teaching of the Northern Territory University course, in particular, might give heart to feminist scholars as, in the second semester, there was a deliberate feminist focus on the introductory law subject topics.

The failure of some courses to incorporate, to a significant degree, women-centred issues explains the continuing feminist concern that legal education is gender-biased, that it marginalises or excludes women, regarding them as the "other". By ignoring the reality that women have discrete and diverse legal experiences and needs, and by presenting the law as having universal applicability despite the differences among and between men and women, all women are reflected as having needs and experiences that are the same as those of some men, the paradigmatic legal persons. While one can excuse an introductory course for not being "A Feminist Introduction to Law",[173] an inadequate feminist critique acts to the disadvantage of women in our community.

What should our Expectations be of those Involved in Legal Education?

We all have particular cultural understandings of the world, biases derived from our upbringing, education and life experiences. Whether we are female or male, we are affected by moral and social issues, our sexuality, our religion and our level of affluence. Those involved in legal education and legal practice are no different. Moreover, legal educators and practitioners constitute a homogenous, privileged and socially-unrepresentative group with limited experience of the world outside that group. This may lead members of this group to misrepresent and stereotype women, unintentionally and unavoidably. It is important to acknowledge the characteristics of this group or subculture for, essentially, this subculture creates and defines the law and influences the content of legal education.[174]

Identifying the social characteristics of the subculture that predominates in the law commences with an examination of the locus of law making and interpreting activities, that is, courts, parliaments and the legal profession. The legal academy also contributes with the education of future judges, legal practitioners and some politicians, and in the influence upon legal thinking of the writings and research of academic staff. One characteristic of

these institutions is that they are largely or, in respect of the judiciary, overwhelmingly, constituted by men.[175] Moreover, in all these legal institutions, as in most professions, even where women have recently come to be represented in reasonable numbers, males dominate in the higher, more powerful, echelons.[176] The dominance of males in the formation of ideas of law is further emphasised when the historical and philosophical foundations of Anglo-Australian law are considered. Contemporary ideas of law derive from Judeo-Christian principles, Roman law, Greek philosophy,[177] and from clergy and philosophers who were virtually exclusively men. Moreover, not only are the individuals belonging to these legal institutions mainly male, but they are also homogenous in other respects. Those who inhabit Anglo-Australian legal institutions have been found to share several common characteristics: their general acculturation has been very similar. These individuals are mainly privileged, Christian, politically conservative and Anglo-Celtic.[178] These characteristics describe the archetypal individual of the subculture that creates and dominates the law. This individual's characteristics, values and priorities are those predominantly reflected in the law and hence legal education.

It is important to emphasise, though, that I am describing a general tendency of members of this subculture to exhibit certain biases and preconceptions. Not all individuals belonging to the subculture that dominates the law will possess the characteristics I have described above. Not all are privileged, Christian, politically conservative, Anglo-Celtic men. For example, the subculture includes women and non-Anglo-Celts. It may include others who do not share all the paradigmatic characteristics, but who nevertheless identify politically with, or who have partaken of similar acculturating experiences as, the paradigm individual. The converse is also true. Some of those similar in characteristics to the paradigm individual may hold views that differ to some extent, or wholly, from this subculture. Here, another subculture or subcultures has had greater influence upon the formation of the views of the individual.

Any cultural bias that might be detected in legal education should not necessarily be interpreted as an individual fault or wrong-doing of the person concerned. For those individuals, that cultural point-of-view is the normal and natural way of seeing or thinking about the law and its related social issues. They may feel

that their standpoint is capable of achieving the best outcome for all individuals in society. Those engaging in legal education may, therefore, themselves be oblivious to any gender-bias or other cultural biases it contains and to its consequences. However, the Law School is placed within an institution, the University, one of whose central functions is to encourage reflective deliberation. Therefore, legal educators should endeavour, and perhaps they are duty bound, to reduce the influence on their work of their own particular socialisation. This is, admittedly, a difficult task as we wear our cultural socialisation like spectacles: we see the world through it. What expectations therefore can we legitimately hold in respect of legal academics? It is not difficult to imagine academics setting about their task with enthusiasm and a sincere desire to impart as clearly and succinctly as possible the often difficult legal rules and doctrines operating in a particular area. This is perhaps the minimum we should expect of any legal scholar. The issue of how much more than this we can reasonably expect is quite contentious, including whether legal scholars should go about their task self-consciously and reflectively. Not every course can include feminist, class and race critiques of its topic. Not every legal scholar is capable of such an analysis, or concurs with it or sees it as their task.

I do not argue that legal education should or can reflect a non-biased position for, as many have argued, the condition of freedom from bias — called objectivity, impartiality and neutrality — is highly problematic and probably does not exist.[179] Nor do I argue that legal education should only reflect the position that I prefer, that is, one based upon my understanding of the world. This would only be replacing one set of cultural biases with another. Even the findings in this study would not lead me to advocate, as a model for all introductory courses, a course similar to that taught in the second semester at the Northern Territory University. No law subject can be taught ethically from either a wholly androcentric or a wholly feminist perspective; both these positions may exclude or marginalise the perspectives of other social and political minorities, those based, for example, on income, race or religion. What I do argue for is an extension of what has already begun to occur in Australian law schools by academics engaged in critical legal scholarship. This is a challenge to rules and doctrines that are inherently gender-biased, a recognition of, and resistance to, the

presentation of the law as objective and impartial, and a greater role for women and issues of special relevance to women throughout legal pedagogy.

The community as a whole is entitled to expect that all those involved in legal education should, at the very least, acknowledge the culturally-specific perspective of the law. There needs to be an open self-consciousness about the fact that legal education does tend to disclose the understandings of a particular cultural group to the exclusion of other cultural groups. It follows that there needs to be a corresponding endeavour to embrace other perspectives. Legal scholars should refrain from claiming that the law can be taught, harmlessly, "the way it is".[180] The self-conscious and reflective legal educator (and, as we have seen, there are already many in Australia) will appreciate the culturally-derived partiality and specificity of the law and legal education. He or she will appreciate that, without a careful consciousness about their discourse, in their teaching they will themselves reflect the understandings of a particular cultural group to the exclusion of others. Good legal education is conscious of, and reflects upon, its prejudgments and the effect they have on different cultural groups. This, of necessity, will involve a discussion in all discrete law subjects of the social effect of the relevant rules in operation, and their impact upon women, the poor, the Aboriginal members of our society — in short, the non-paradigm Australian. Isolating feminist material in courses that might be called "Women and the Law" is no longer adequate. Further, courses like these also risk reinforcing the difference and deviance of women from the paradigm Australian — the affluent, educated Anglo-Celtic male.[181]

If the legal subject is the affluent, educated Anglo-Celtic male — the person whose experiences, values and needs informs the law and legal knowledge — then all women and most men are excluded from the paradigm. The Law School, by failing to take a reflective and critical approach to the teaching of law, must accept that, to a certain extent, it is complicit in this exclusion. This suggests the enormous power of the Law School to participate in the creation and development of the law to reflect a limited set of values and experiences.

Legal educators, as University teachers, should be reflective and inclusive. It follows that they should not present any point-of-view as a universal, objective truth about the whole world, and all those

who live on it.[182] Good legal scholarship will endeavour not to be complicit in propagating culturally constructed stereotypes about women and falsehoods about the reality of women's lives and their place in the world.

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1 LG Espinoza, Constructing a Professional Ethic: Law School Lessons and Lesions (1989) 4 *Berkeley Women's L J* 215 at 215, quoted in Australian Law Reform Commission, *Equality Before the Law: Women's Equality* Report No 69, Part II (Canberra: AGPS, 1994) 135 [referred to as ALRC Report Part II].

2 The Committee was convened by Professor Dennis Pearce of the Australian National University. The other members were Professor Enid Campbell and Professor Don Harding.

3 These were the law schools at the New South Wales Institute of Technology (now University of Technology, Sydney) and Queensland Institute of Technology (now Queensland University of Technology), the Australian National University and at the Universities of Adelaide, Macquarie, Melbourne, Monash, New South Wales, Queensland, Sydney, Tasmania, and Western Australia. The Pearce Committee also included in its investigations the Department of Legal Studies at La Trobe University, which was at that time not offering a Bachelor of Laws degree.

4 Commonwealth Tertiary Education Commission, *Australian Law Schools: A Discipline Assessment* (Canberra: AGPS, 1987) (Pearce Report) [referred to as Pearce Report] vol 1, lxxv (emphasis added).

5 *Id* at lii.

6 *Id* at 18. The Committee was here speaking of the aims of certain law schools outside the university sector as distinct from the university law schools, but it noted that the former "have and should have similar aims to those of the university law schools, at least in relation to their undergraduate LLB courses or any equivalent of the LLB". Non-university based legal education, for example, the Admissions Board courses conducted in New South Wales, is still available to some intending practitioners. However, as the overwhelming majority of law students are located in university-based law schools, this paper considers only courses taught at those law schools.

7 New law schools have since been established at the Universities of Canberra, Deakin, Flinders, Griffith, James Cook, La Trobe, Murdoch, New England, Newcastle, Northern Territory, Western Sydney and Wollongong and will shortly be established at the Victoria University of Technology and Central Queensland University. Also, since the handing down of the Pearce Report, Australia has seen the foundation of three private Universities, two of which, Bond University and the University of Notre Dame Australia, have established law schools.

8 Marlene Le Brun wrote, in relation to the then new law school at Griffith University, that "one very persuasive argument can be advanced for the creation of a new law school. In short, a new law school can provide legal educators with an ideal opportunity to change the direction of legal education significantly": M Le Brun, Law at Griffith University: the First Year of Study (1992) 1 *GLR* 15 at

15.

[9] There are numerous writings on this issue. See, generally, the many feminist authors referred to in this article and in R Graycar and J Morgan, *The Hidden Gender of Law* (Sydney: The Federation Press, 1990) ch 2. Further evidence in support of this assertion is anecdotal and derives from the comments made to me, or in my hearing, by law teachers since the commencement of the research underlying this article.

[10] C MacKinnon, Feminism in Legal Education (1989) 1 *Legal Educ Rev* 85 at 87. She continues, on the same page, that "if one applies a critique of male power to Anglo-Canadian-American legal doctrine and practice, one sees that law is not written from the standpoint of the realities of women's experiences, but from the standpoint of the realities of men's experience".

[11] MJ Mossman, "Otherness" and the Law School: A Comment on Teaching Gender Equality (1985) 1 *Canadian J Women and the Law* 213 at 213-14. See also N Naffine, *Law and the Sexes: Explorations in Feminist Jurisprudence* (Sydney: Allen & Unwin, 1990); E McDonald, The Law of Contract and the Taking of Risks: Feminist Legal Theory and the Way It Is (1993) 23 *U Vict Well L Rev* 113; C Rogers, How Legal Education Will Assault You As A Woman (1993) 23 *U Vict Well L Rev* 167; and MM Shultz, The Gendered Curriculum: Of Contracts and Careers (1991) 77 *Iowa L Rev* 55.

[12] See, for example, M Davies, Taking the Inside Out: Sex and Gender in the Legal Subject, in N Naffine and R Owens eds, *Sexing the Subject of Law* (Sydney: LBC Information Services, 1997) 28 and n7.

[13] C McInnis, S Marginson & A Morris, *Australian Law Schools After The 1987 Pearce Report* (Canberra: AGPS, 1994) 157.

[14] *Id.*

[15] For the purposes of this paper, the content of a course includes, as far as was apparent to me, the content of the textbooks, journal articles and other reading materials to which students were referred during the course. However, in view of the large amount of data to be dealt with in this paper, these materials will often not be separately identified in this paper and their content will be attributed to the course in which they were used.

[16] ALRC Report Part II, *supra* note 1, at para 2.3. See also Senate Standing Committee on Legal and Constitutional Affairs, *Gender Bias and the Judiciary* (Canberra: AGPS, 1994) para 1.55 [referred to as *Gender Bias and the Judiciary*].

[17] Supreme Judicial Court, Commonwealth of Massachusetts, *Report of the Gender Bias Study of The Supreme Judicial Court* (Boston: Supreme Judicial Court, 1989) 14 (emphasis in original). See also Maryland Special Joint Committee on Gender Bias in the Courts, *Report of the Special Joint Committee on Gender Bias in the Courts* (Annapolis: Special Joint Committee on Gender Bias in the Courts, 1989) iii.

[18] This is based on the methodology described in N Erickson, Sex Bias in Law School Courses: Some Common Issues (1988) 38 *J Leg Ed* 101.

[19] For example, where a discriminatory law is discussed in a textbook, Nancy Erickson suggests that relevant issues for the teacher and student are "whether the casebook author identified the rule as sex discriminatory, whether the author commented on the discrimination, whether the author included materials on how to eliminate or correct for legal rules based on sexual stereotypes, and whether the author quoted from or cited materials that present a feminist viewpoint": *id* at 106.

[20] MJ Frug, Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook (1985) 34 *Am U L Rev* 1065 at 1087-93 and S Berns, P Baron and M Neave, *Gender and Citizenship: Materials for Australian Law Schools* (Canberra: Department of Education, Employment and Training, 1996) 283-87. Nancy Erickson wrote that "women students may take superficial coverage as evidence that their experiences and concerns are devalued in legal education": Erickson,

supra note 18, at 105.

[21] C Boyle, Book Review of Sharpe, *Injunctions and Specific Performance* (Toronto: Canada Law Book Co, 1983) and of Waddams, *The Law of Damages* (Toronto: Canada Law Book Co, 1983) published in (1985) 63 *Canadian Bar Rev* 427 at 430.

[22] See A Harris, Race and Essentialism in Feminist Legal Theory (1990) 42 *Stan L Rev* 581 and K Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics (1989) *U Chi Legal F* 139.

[23] The same observation applies also to men, of course. As the comparison in this discussion is fundamentally between women and affluent, educated Anglo-Celtic men, it would be easy to overlook the differences and diversity among men, and their needs and experiences may, as a result, also be homogenised and essentialised.

[24] Davies, *supra* note 12.

[25] Pearce Report, *supra* note 4, at 30-31.

[26] How individuals will be affected is, of course, dependent on where those individuals are first ideologically situated. See MJ Frug, *supra* note 20, who, in her analysis of a contracts case book, characterised its potential readers as one of eight types, eg The Feminist, The Individualist and The Civil Libertarian, and discussed how each of these types might be affected by reading the case book.

[27] Law students usually have a broad choice of second undergraduate degrees, including Arts, Economics and Science. However, aside from acknowledging its potential significance, it is beyond the scope of this study to consider the effect of these studies on the legal education received by students in law schools. The Pearce Committee found it important that some law students would have this interdisciplinary exposure. They wrote that "an important aspect of … evaluative and critical work in law involves seeing law, legal institutions and legal processes from an interdisciplinary perspective, examining the role of law in contrast to other means of social control, evaluating the effectiveness of legal institutions and methods and considering proposals and alternatives in the light of insights from other fields": Pearce Report, *supra* note 4, at 22.

[28] In a survey of Australian law students, Christopher Roper found that approximately 66.5 per cent of first year and 68.8 per cent of final year students in Australian law schools in 1994 were under 21 years of age: C Roper, *Career Intentions of Australian Law Students* (Canberra: AGPS, 1995) 28-29.

[29] A 1994 survey of law students from 24 Australian law schools found that approximately 60 per cent of first year students and 75 per cent of final year students intended seeking admission to practice law upon the completion of their degree: *id* at ch 5.

[30] See D Kennedy, Legal Education as Training for Hierarchy, in D Kairys ed, *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1982).

[31] McInnis, Marginson & Morris, *supra* note 13, at 26-28.

[32] D Weisbrot, *Australian Lawyers* (Melbourne: Longman Cheshire, 1990) 20.

[33] ALRC Report Part II, *supra* note 1, at 134. John Goldring argued that "understanding legal material, in terms of both internal consistency and structure, and of its relations to the social context, is essential to sound professional judgements and evaluations": J Goldring, Thinking About First Year Law Teaching (1995) 2 *Canb LR* 137 at 139.

[34] "Legal education clearly has a critical role in helping future lawyers detect and eradicate gender bias from common law and statutes": ALRC Report Part II, *supra* note 1, at 134.

[35] Some universities taught the introductory topics in two or more distinct subjects, for example, "Legal Method" (1996) and "Introduction to Law" (1996) at Flinders University.

[36] See, for example, *Rules of Court Regulating the Admission of Practitioners* 1993

(SA) r 7.

[37] MJ Frug, Rescuing Impossibility Doctrine: A Postmodern Feminist Analysis of Contract Law (1992) 140 *U Pa L Rev* 1029, at 1030 (containing a quotation from Professor W. David Slawson). See also Boyle, *supra* note 21, at 427-29.

[38] Namely, those of the following universities: Australian National University; Bond University; Deakin University; Flinders University of South Australia; Griffith University; James Cook University of Northern Queensland; La Trobe University; Macquarie University; Monash University; Murdoch University; Northern Territory University; Queensland University of Technology; Southern Cross University; University of Adelaide; University of Canberra; University of Melbourne; University of Newcastle; University of New England; University of New South Wales; University of Notre Dame Australia; University of Queensland; University of Sydney; University of Tasmania; University of Technology, Sydney; University of Western Australia; University of Western Sydney; and the University of Wollongong. Information about the University of Canberra law school's curriculum was derived from its Internet web site.

[39] The only law school that was not included in this study was Murdoch University as I received only a reading list from that law school but no further information on the course. The first year course "Legal Reasoning" offered by La Trobe University was also not included, as no materials were able to be provided to me in relation to that course, however, its companion, complementary course, "Foundation of Legal Studies" (1995), was included. For similar reasons, I have not included the two Queensland University of Technology courses, "Introduction to Study in Law" and "Legislation" but I have included the course, "Law in Context" (1996). I have included information from Griffith University, Monash University and the University of Tasmania about their particular introductory courses although in each of these cases my comments will need some qualification as only the first semester's material in each of these full year courses was able to be provided to me.

[40] Here, I am especially referring to the law schools at the Universities of Melbourne and Sydney.

[41] Hence, in the text I have made clear, in parentheses, the year that the courses included in this analysis were taught.

[42] Statutes commonly made reference to include the *Colonial Laws Validity Act* 1865 (Imp); *Commonwealth of Australia Constitution Act* 1900 (Imp), *Statute of Westminster* 1931 (UK), *Australia Act* 1986 (Cth & UK) and the relevant State's Constitution.

[43] Berns, Baron & Neave, *supra* note 20, at 195.

[44] Berns, Baron & Neave, *supra* note 20, at 195–245. It is not my intention to refer the reader of this paper to materials which might have substituted for any that teachers of these courses actually used. My several references to this work of Berns, Baron & Neave, and also to that of R Graycar and J Morgan, *Work and Violence Themes: Including Gender Issues in the Core Law Curriculum* (Canberra: Dept of Education, Employment, Training and Youth Affairs, 1996), are generally only in the context that these are the most apposite Australian writings on the topic.

[45] Which included a discussion of the primary cases in this area, ie *R v Jack Congo Murrell* (1836) 1 Legge 72; *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141; *Coe v Commonwealth* (1979) 24 ALR 118; and *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

[46] See, for example, M Thornton ed, *Public and Private: Feminist Legal Debates* (Melbourne: OUP, 1995). Essentially, the public domain is the regulated domain, associated with parliaments, commerce and the professions, while the private domain, or personal privacy, remains relatively unregulated and protected from state interference and has become associated with thoughts, individual liberties, personal relationships and the home.

[47] Berns, Baron & Neave, *supra* note 20, at 169.

[48] *Id*. Later in this publication, the authors refer to the public/private dichotomy as that of "market/family": *id* at 283 ff.

[49] *Id* at 170.

[50] *Id* at 169-78. Catharine MacKinnon has argued that "the negative state, which draws a public/private line on a jurisprudential level, assume[s] that the sexes are equal in the home and in society so long as government does not interfere": MacKinnon, *supra* note 10, at 91.

[51] Teaching the distinction between private law and public law without a careful, general critical analysis can also disguise the cultural specificity of the public law/private law division. It is not only women who cannot participate in the law as "equals". He who is not "a middle class man of the market" may also be excluded. See Naffine, *supra* note 11, at ch 5.

[52] "History and Philosophy of Law" (1996) at Macquarie University explored the "boundaries of the 'private' domain" and whether this question can "be settled by the mechanical application of rules to the facts of a case": Macquarie University, *Law 112 History and Philosophy of Law: Study Guide* (Sydney: Macquarie University Law School, 1996) 9. Unusually, this course also appeared to leave it to the students themselves to study the usual issues of an introductory topic. The subject guides advised that "for an introduction to the study of law generally, using legal materials, introduction to legal reasoning, court structure, being a lawyer, etc" the students could refer to R Chisholm and G Nettheim, *Understanding Law* 4th ed (Sydney: Butterworths, 1992), C Enright, *Studying Law* 4th ed (Sydney: Federation Press, 1991) or S Frazer, *How to Study Law* (Sydney: Law Book Co, 1993).

[53] La Trobe University, School of Law and Legal Studies, *1 LLB FOLS: Foundation of Legal Studies: Subject Guide* (Melbourne: La Trobe University School of Law and Legal Studies,1995) 6.

[54] Another course, "Public Law" (1996), at the University of New South Wales, examined the public law elements of Australia's legal system, namely, administrative law, constitutional law and public international law. According to a lecturer in this course, Robert Shelly, the content and contact hours of this course were halved for 1996. Consequently, many topics were removed, including a feminist critique of the public/private distinction. The course for 1996 contained no material of a feminist nature: from correspondence with Mr Shelly held by the author.

[55] Graycar and Morgan, *supra* note 9, at 3-5; Berns, Baron & Neave, *supra* note 20, at 283–87 and Shultz, *supra* note 11. Graycar and Morgan also argue that a law text that reflected "the concrete realities of women's lives will need a very different framework from a traditional subject-bounded law text. It follows that a law book which is able to respond to women's lives must cross doctrinal boundaries and in doing so, restructure and redefine legal categories": Graycar and Morgan, *supra* note 9, at 5.

[56] See the discussion to follow on law making and the judiciary, and the legal profession.

[57] For example, *Holmes v DPP* [1946] AC 588; *Bender v DPP* [1954] 2 All ER 801 and *R v Voukelatos* [1990] VR 1.

[58] Unreported decision of the Court of Appeal, Supreme Court of Queensland, 29 November 1993.

[59] (1994) 62 A Crim R 1.

[60] The discussion on these issues was then extended when the teacher asked why women appear only as victims in cases of this nature: Monash University, Faculty of Law, *Legal Process, Stream A 1997, Part 1, First Semester, Reading Guide, Supplementary Materials and Problems*, (Melbourne: Monash University Faculty of Law, 1997) 81-82. The lecturer of this course, Ms Sue Campbell, said that the second semester materials, not available to be included in this study, would also contain some issues concerning "gender": from correspondence with Ms Campbell held by the author.

[61] Including the literal rule, the golden rule and the mischief rule of statutory interpretation.

[62] *Acts Interpretation Act* 1901 (Cth) and its State equivalents.

[63] Such as the presumption against extra-territorial operation of legislation, the presumption against legislation binding the Crown, and the presumption against retrospective operation.

[64] The main rules include *ejusdem generis*, *expressio unius est exclusio alterius*, *generalia specialibus non derogant*, *leges posteriores priores contrarias abrogant* and *noscitur a sociis.*

[65] Such as its title, marginal notes, headings and preamble.

[66] Including parliamentary debates and other parliamentary publications on the subject of the statute, and the various Acts Interpretations Acts.

[67] Indeed, married women were once categorised, with children and the mentally incapable, as persons who were "civilly dead" and unable to transact in their own right. See Berns, Baron & Neave, *supra* note 20, at 148-51.

[68] *Id* at 144-60.

[69] Cases such as *Jex-Blake v Senatus of the University of Edinburgh* (1873) 11 McPherson 784; *Re Bradwell* (1873) 83 US 130; *Ex parte Ogden* (1893) 16 NSWLR 86 and *Re Kitson* [1920] SASR 230.

[70] Berns, Baron & Neave, *supra* note 20, at 152.

[71] (1992) 175 CLR 1.

[72] (1992) 177 CLR 106.

[73] (1992) 177 CLR 292.

[74] ALRC Report Part II, *supra* note 1, at ch 9 and *Gender Bias and the Judiciary*, *supra* note 16, at paras 5.48-5.52.

[75] This is a reference to the idea that, jurisprudentially, women speak in a "different voice". See Berns, Baron & Neave, *supra* note 20, at 308-15 and C Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge MA: Harvard University Press, 1982).

[76] La Trobe University, School of Law and Legal Studies, *supra* note 53, at 9.

[77] *Id* at 8.

[78] Regina Graycar and Jenny Morgan have suggested how these issues might be introduced to students when teachers are discussing the rules of statutory interpretation in Graycar and Morgan, *supra* note 44, "Legal Process II", at 39-41.

[79] Bond University School of Law, *Introduction to Law (LAWS 100) Course Materials, September Semester 1995* (Bond University School of Law, 1995) 69-73. The same or similar methodology can sometimes be found under other acronyms including IFRAC or IRMAT.

[80] Queensland University of Technology, *Research and Legal Reasoning LWB 134, Study Guide* (Queensland University of Technology, 1996) 26.

[81] Central to these arguments is the work of Carol Gilligan, in Gilligan, *supra* note 75.

[82] For example, D Rhode, The "Woman's Point of View" (1988) 38 *J Legal Ed* 39.

[83] For example, see C MacKinnon, Feminism, Marxism, Method and the State: Towards Feminist Jurisprudence in KT Bartlett and R Kennedy eds, *Feminist Legal Theory: Readings in Law and Gender (New Perspectives on Law, Culture, and Society)* (Boulder: Westview Press, 1991), at 181-200.

[84] The adversarial and jury systems were also taught in "Introduction to Law and Legal Writing" (1996) at the University of Queensland, "Introduction to Law" (1996) at Flinders University, "Legal Process" (1997) at Monash University, and "Introduction to Law" (1998) at the University of Canberra.

[85] University of Adelaide Law School, *Law and Legal Process Seminar 2 Materials* (Ref. No. 46/95) (Adelaide: University of Adelaide Law School, 1995)

2.

[86] *Commonwealth v Tasmania* (1983) 158 CLR 1.

[87] *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

[88] From University of Wollongong, Faculty of Law, *Law in Society LAW 100 Autumn 1996 Subject Outline* (Wollongong: University of Wollongong Faculty of Law, 1996) 23.

[89] La Trobe University, School of Law and Legal Studies, *supra* note 53, at 4.

[90] For example, Berns, Baron & Neave, *supra* note 20, at 261-68.

[91] Australian National University Law School, *Law in Context: Course Information and Lecture Guide* (Canberra: ANU Law School,1996) x. The question also referred in the same fashion to other disadvantaged groups, namely the poor, the uneducated, and Aborigines.

[92] For example, KM Mack, Alternative Dispute Resolution and Access to Justice for Women (1995) 17 *Adel L Rev* 123.

[93] Berns, Baron & Neave, *supra* note 20, at 269-282.

[94] La Trobe University, School of Law and Legal Studies, *supra* note 53, at 10.

[95] University of Wollongong, Faculty of Law, *supra* note 88, at 27.

[96] ALRC Report Part II, *supra* note 1, at 136.

[97] Australian Law Reform Commission, *Equality Before the Law* (Canberra: AGPS, 1994) Report No 69, Parts I and II, *passim* [referred to as ALRC Report Parts I and II].

[98] For an interesting modern and historical account of women in the legal profession, see J Hagan and F Kay, *Gender in Practice: A Study of Lawyers' Lives* (New York: OUP, 1995); M Harrington, *Women Lawyers: Rewriting the Rules* (New York : Alfred A. Knopf, 1994) and KB Morello, *The Invisible Bar: The Woman Lawyer in America 1683 to the Present* (Boston: Beacon Press, 1986). See also Berns, Baron & Neave, *supra* note 20, at 295-07.

[99] See generally the references in the preceding footnote.

[100] Students of this course were also asked to consider the attitude of the legal system towards Aboriginal Australians. Critical Aboriginal perspectives of the Australian legal system are another example of what could, and arguably should, be included in introductory law courses.

[101] (1992) 177 CLR 292.

[102] See, for example, R Graycar and J Morgan, Disabling Citizenship: Civil Death for Women in the 1990s (1995) 17 *Adel LR* 49.

[103] Berns, Baron & Neave, *supra* note 20, at 241-45.

[104] Australian Law Reform Commission, *Equality Before the Law: Women's Access to the Legal System* Interim Report 67 (Canberra: AGPS, 1994) [referred to as ALRC Interim Report].

[105] The teacher of this course, Mrs Ann Black, provided students in tutorials with "Learning Baskets" which contained diverse media, such as videos, cassettes and cartoons, as well as conventional written material, on the issue of women and access to justice.

[106] R Wydick, Plain English for Lawyers (1978) 66 *Cal L Rev* 727.

[107] *Id* at 752-54.

[108] This information was not available in respect of all courses included in this study.

[109] C Cook et al, *Laying Down the Law The Foundations of Legal Reasoning, Research and Writing in Australia* 4th ed (Sydney: Butterworths, 1996).

[110] These exercises were numbers 1, 3, 7, 9 and 10.

[111] Female characters also figured in problems used in "Introduction to Law and Legal Writing" (1996) at Queensland University; "Introduction to Law" (1996) and "Legal Method" (1996) at Flinders University; "Research and Legal

Reasoning" (1996) at the Queensland University of Technology; "Law and Legal Obligations" (1997) at Griffith University; and "Introduction to Law" (1998) at the University of Canberra.

[112] This course was typically conventional. However, as preparatory reading for the course, two texts of quite diverse approach to the study of law were recommended in the alternative to students: M Davies' *Asking the Law Question* (Sydney: Law Book Co, 1994) and C Enright's *Studying Law* 5th ed (Sydney: The Federation Press, 1995). Arguably, the student who chose to read Margaret Davies' challenging book would find quite incongruous the uncritical nature of the course itself.

[113] However, the extent of any critical or feminist material in these three courses is not clear to me from the available resources.

[114] Australian National University, Faculty of Law, *The LLB Handbook 1996* (Canberra: ANU, Faculty of Law, 1995) 49.

[115] This discussion included some legal theory and some teaching on the sources of law: University of New England, Department of Law, *Legal Studies 100, Introduction to Legal Systems and Methods, 1st Semester 1997, Study Guide* (Armidale: University of New England Department of Law, 1997) 12.

[116] Even discussions of native title and Aboriginal customary law treat Anglo-Australian law as the paradigm.

[117] See generally ALRC Report Parts I and II, *supra* note 97.

[118] The usual topics are the province of "Torts and the Process of Law" (1996), the companion course to "History and Philosophy of Law" (1996) at the University of Melbourne Law School. "History and Philosophy of Law" (1996) followed very closely the book R Hunter, R Ingleby and R Johnstone, *Thinking about Law: Perspectives on the History, Philosophy and Sociology of Law* (Sydney: Allen & Unwin, 1995) which one of the lecturers described as the "core of the subject": from correspondence held with the author.

[119] University of Melbourne Faculty of Law, *History and Philosophy of Law, Teaching Materials Volume 1* (Melbourne: University of Melbourne Faculty of Law, 1996) 1-2.

[120] *Id* at 4-5.

[121] *Id.*

[122] *Id.*

[123] See La Trobe University, School of Law and Legal Studies, *supra* note 53.

[124] *Id* at 4.

[125] *Id* at 6.

[126] *Id* at 7.

[127] This was the task of the companion first year course at ANU Law School, "Legal System and Process" (1996).

[128] Australian National University Law School, *supra* note 91, at 1.

[129] *Id* at i. The teaching followed very closely the chapter outline of the book, *Law in Context*, which itself originated from course materials for the first Law in Context course in 1990: S Bottomley, N Gunningham and S Parker, *Law in Context* rev ed (Sydney: The Federation Press, 1994) iii.

[130] *Australia Capital Television v Commonwealth* (1992) 177 CLR 106.

[131] University of Sydney, Law School, *Legal Institutions, Course Guide* (Sydney: University of Sydney Law School, 1996) 1.

[132] For example, *Richter v Walton* (New South Wales Court of Appeal, 15 July 1993, unreported), *Scandrett v Dowling* (1992) 27 NSWLR 483 and *R v L* (1991) 103 ALR 577.

[133] Two courses at the University of Technology, Sydney, cover the material usually included in single introductory law courses, "Legal Process and History" and "Legal Research". Seminars are used in the former course to "provide an

opportunity for students to focus on particular issues of interest in relation to the legal system and the legal process and to develop their skills in legal problem-solving and critical analysis in a more informal context": from information provided to me by Faculty of Law, University of Technology, Sydney. "Legal Research" covers the usual material of a course of this nature, for example, location and use of primary and secondary legal sources, and computerised legal research.

[134] University of Western Sydney, Macarthur, *F1001 Introduction to Law, Subject Outline*, (Sydney: University of Western Sydney, Macarthur, Law School, 1996) 8.

[135] My ability to comment on the exact scope of this course is limited as I had only available to me the first semester materials for this full year course.

[136] Le Brun, *supra* note 8, at 15.

[137] *Id* at 22.

[138] However, this finding is subject to the caveat expressed earlier concerning the possible fallibility of conclusions drawn from the material course teachers were able to provide me.

[139] The companion course to "Legal Process" is "Legal Research and Writing" (1996). This latter course, as its title suggests, provided skills-based instruction in the use of a law library, legal analysis and legal expression: Northern Territory University Faculty of Law, *LWO101 Legal Process, First Semester Course Outline* (Darwin: Northern Territory University Faculty of Law, 1996) 4.

[140] Northern Territory University Faculty of Law, *LWO101 Legal Process, Semester 2 Unit Outline* (Darwin: Northern Territory University Faculty of Law,1996) 1.

[141] *Id*.

[142] *Id* at 2-3.

[143] *Id* at 3.

[144] Australian Law Reform Commission, *Equality Before the Law* Discussion Paper 54 (Canberra: AGPS, 1993) [referred to as ALRC Discussion Paper]; ALRC Interim Report, *supra* note 104; and ALRC Report Parts I and II, *supra* note 97.

[145] Graycar and Morgan, *supra* note 9.

[146] Graycar and Morgan, *supra* note 44.

[147] Naffine, *supra* note 11.

[148] The lecturer of this course kindly provided me with extensive course materials which were derived from the 1994, 1995 and 1996 courses. The companion first-year course to this course was "Public Law".

[149] The others are "Law and Legal Obligations" (1997) at Griffith University and "Torts and the Process of Law" (1996) taught at the University of Melbourne.

[150] University of New South Wales Faculty of Law, *Legal System – Torts, Topic 5 Reading Materials* (Sydney: University of New South Wales Faculty of Law, 1995) 28-48, 56-71.

[151] This discussion is largely supported by extracts from Davies, *supra* note 112: University of New South Wales Faculty of Law, *Legal System – Torts, Reading Materials, Volume 2 Topic 8* (Sydney: University of New South Wales Faculty of Law, 1995) 71-89.

[152] University of New South Wales Faculty of Law, *Legal System – Torts, Reading Materials, Volume 1* (Sydney: University of New South Wales Faculty of Law, 1996) 108-11.

[153] *Id* at 120-27, 142-44.

[154] Discussed in an extract from M Aveling, Bending the Bars: Convict Women and the State, in K Saunders and R Evans eds, *Gender Relations in Australia* (Sydney: Harcourt Brace Jovanovich, 1992) 120-22 and in an extract from J Kociumbas, *The Oxford History of Australia Volume 2 1770-1860: Possessions* (Melbourne: OUP, 1992) 123-27.

[155] University of New South Wales Faculty of Law, *Legal System – Torts, Session One, Topic Three Reading Materials* (Sydney: University of New South Wales Faculty of Law,1994) 29-35.

[156] These included *R v L* (1991) 103 ALR 577 (a case on spousal rape); *Nguyen v Nguyen* (1990) 169 CLR 245 (compensation for loss of domestic services after accidental death of wife and mother); *Chamberlain v R* (1984) 153 CLR 521 (regarding the conviction of Lindy Chamberlain); *Mangion v James Hardie & Co Pty Ltd* (1990) 20 NSWLR 100 (action by three women to recover compensation for the industrial disease related deaths of their husbands): University of New South Wales Faculty of Law, *supra* note 150, at 22-27.

[157] University of New South Wales Faculty of Law, *Legal System – Torts, Topic 6 Reading Materials* (Sydney: University of New South Wales Faculty of Law, 1994) 27-40.

[158] University of New South Wales Faculty of Law, *Legal System – Torts, Topic 7 Volume 1 Reading Materials* (Sydney: University of New South Wales Faculty of Law, 1994) 140-57.

[159] University of New South Wales Faculty of Law, *Legal System – Torts, Reading Materials, Volume 3*, (Sydney: University of New South Wales Faculty of Law, 1995) 6-16.

[160] *Id* at 95-114.

[161] University of New South Wales Faculty of Law, *Legal System – Torts, Reading Materials, Volume 4* (Sydney: University of New South Wales Faculty of Law, 1995) 32-38.

[162] *Id* at 167-69, 180-95.

[163] This course has been designed to complement another full-year, first year course taught at the Law School, namely, "History and Philosophy of Law".

[164] University of Melbourne Faculty of Law, *Torts and the Process of Law, Subject Outline and Reading Guide*, (Melbourne: University of Melbourne Faculty of Law, 1996) 4, 16, 19, 23-25, 37, 38, 39, 40, 42, 46, 49.

[165] University of Melbourne Faculty of Law, *Torts and the Process of Law, Printed Materials* (Melbourne: University of Melbourne Faculty of Law, 1996) 16-25, 143-56.

[166] University of Melbourne Faculty of Law, *supra* note 164, at 13-14.

[167] University of Melbourne Faculty of Law, *supra* note 165, at 73-97.

[168] University of Melbourne Faculty of Law, *Torts and the Process of Law, Assignment and Research Materials* (Melbourne: University of Melbourne Faculty of Law, 1996) 21.

[169] That is, University of Melbourne Equal Opportunity Committee, *Watch Your Language: A Guide to Gender-Neutral Speech and Writing* (1987).

[170] See MacKinnon, *supra* note 10; Mossman, *supra* note 11; and Naffine, *supra* note 11.

[171] Pearce Report, *supra* note 4, at 18.

[172] McInnis, Marginson & Morris, *supra* note 13, at 157.

[173] Christine Boyle argued in her book review that "the authors did not set out to write feminist books so why should they be criticized for not having done so?": Boyle, *supra* note 21, at 429.

[174] "The law inevitably reflects the values, concerns and interests of the present and past lawmakers": ALRC Report Part II, *supra* note 1, at 14.

[175] ALRC Discussion Paper, *supra* note 144, at para 6.3 and *Gender Bias and the Judiciary*, *supra* note 16, at para 5.47.

[176] For example, women legal practitioners tend to be found segregated in areas of legal practice which carry less prestige, power, remuneration and influence in the profession, namely, family law, welfare law and administrative law. Women constitute only a fraction of partners in law firms and are far less likely than men

to practise at the Bar. This phenomenon has been extensively documented. See House of Representatives Standing Committee on Legal and Constitutional Affairs, *Half Way to Equal: Report of the Inquiry into Equal Opportunity and Equal Status for Women in Australia*, (Canberra: AGPS, 1992) paras 3.3, 4.1.5-4.1.6, 4.6.11-4.6.12; ALRC Discussion Paper, *supra* note 144, at paras 7.3, 7.4, 7.8-7.9; Australian Law Reform Commission, *Equality Before the Law: Justice For Women* Report No 69, Part I, (Canberra: AGPS, 1994) para 2.24; ALRC Report Part II, *supra* note 1, at para 9.23; *Gender Bias and the Judiciary*, *supra* note 16, at para 5.54; and NSW Department for Women, *Report: Research on Gender Bias and Women Working in the Legal System* (Sydney: New South Wales Department for Women, 1995) paras 2.5.1-2.5.2, 2.7, 2.9.2, 2.11. See also M Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Melbourne: OUP, 1996).

[177] Cook et al, *supra* note 109, at 2.

[178] On the social and cultural origins of Australian judges, see ALRC Report Part II, *supra* note 1, at para 9.40 and *Gender Bias and the Judiciary*, *supra* note 16, at paras 5.48-5.52. The British experience is that judges have tended overwhelmingly to originate from the upper and upper middle classes: J Griffith, *The Politics of the Judiciary* 4th ed (London: Fontana Press, 1991) 30-35. David Sugarman has written about the subculture of early English law dons. He argued that they displayed an obvious social homogeneity and were "a highly cohesive group. Nearly all were personal acquaintances for a considerable number of years. They shared, to a remarkable extent, the same social origins, clubs, universities, the sprinkling of practice and similar politics": D Sugarman, Legal Theory, the Common Law Mind and the Making of the Textbook Tradition, in W Twining ed, *Legal Theory and Common Law* (Oxford: Basil Blackwell, 1986) 33. Sugarman was not explicit that they were also all men.

[179] The objection to objectivity is not new. Mark Tushnet wrote that the argument that objective knowledge exists is "confronted by the reality that knowledge is produced by individuals located inextricably within the arena about which they are said to have knowledge": M Tushnet, Legal Scholarship: Its Causes and Cures (1981) 90 *Yale LJ* 1205, at 1220. There is a very substantial literature on this point. For an idea of the nature of the scholarship in this area see Naffine, *supra* note 11, at 44-47; Davies, *supra* note 112 *passim*; and the work of Catharine MacKinnon. See also the discussion in Enright, *supra* note 112, at 214-15.

[180] "But why don't we just teach law the way it is?" was the approximate response of a senior male academic to the suggestion, at a meeting at which I was present, that a minor assignment in the introductory law course include questions about the specific court room experiences of women generally, and men and women from non-English speaking backgrounds.

[181] ALRC Report Part II, *supra* note 1, at 144-50. By the same token, it is equally objectionable to restrict the perspectives of other socially disadvantaged groups to "[insert name of socially disadvantaged group] and the Law" courses.

[182] Christine Boyle argues that "'Men and the Law' is tolerable as an area of intellectual activity, but not if it is masquerading as 'People and the Law'": Boyle, *supra* note 21, at 430-31.