

PANDORA'S BOX

AUGUST 1999



Women in Japan
and Vietnam

Domestic Violence
and Family Law

Advancing the
Status of Women
through Advocacy

The Women and the Law Society
(WATL)

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FOREWORD

By the Honourable Justice Roslyn Atkinson

The story of Pandora is not a happy one. She was according to Greek mythology the first woman. Zeus was the king of the gods who made Pandora. But in what circumstances? After Prometheus had stolen fire from heaven and bestowed it upon mortals, Zeus determined to counteract this blessing. He accordingly commissioned Hephaestus, the patron of craftsmen, to fashion a woman out of earth, upon whom the gods bestowed their choicest gifts. But Pandora was given a box containing all manner of misery and evil with strict instructions not to open it. He sent her to Prometheus' brother who married her. Then Pandora opened the box from which the evils flew out all over the earth.

This edition of *Pandora's Box* does not cause evils to fly out over the world. Perhaps it draws its inspiration from a later version of the Pandora myth which held that the jar contained not evils but blessings.

When I was a child, we had the story of *Pandora's Box* and the warnings it contained drummed into us at school in grade four. We were told that we should not forget what harm Pandora has brought to the world by her disobedience and curiosity.

I am pleased to see that the women law students are still refusing to give up these vices and are being intellectually curious and seeking answers.

This issue of *Pandora's Box* is a significant contribution to contemporary writing about the place of women in the law as victims, defendants, litigants and practitioners. There are of course many women for whom there are multiple layers of disadvantage and this edition of *Pandora's Box* fearlessly looks at the questions that need to be asked.

In the 1990s two significant works on the position of women in the legal system in Australia were published. They were the Australian Law Reform Commission Report entitled "Equality before the Law, Justice for Women" published in 1994 which dealt with measures to combat discrimination, access to justice and violence against women and a report of the Victorian Bar Council published in 1998 entitled "Equality of Opportunity for Women at the Victorian Bar". Both of these reports dealt with the problems caused by women's inequality before the law and in the practice of the law. Both made important recommendations about how we might commence to overcome these problems. The articles in this edition of *Pandora's Box* are an important update particularly on the recommendations of the Australian Law Reform Commission Report and how they have been or might be translated into practice.

The Women and the Law Society should be commended for its work. It performs a crucial role in providing women with the peer support necessary for a successful legal career and in developing a reflective understanding of the legal problems facing women in our society.

EDITORIAL

We see *Pandora's Box* as a forum for different women's voices to be heard. It is an annual journal featuring a collection of articles which bring different perspectives to women's relationship with the law. To this end we have deliberately sought contributions from a wide range of women on an equally diverse range of topics. We were delighted that so many women were willing to donate their time, thoughts, ideas and words. With the help of our contributors, we believe that we have achieved our goal of producing a high quality publication which reflects issues facing a vast number of women. It is democratic, inclusive and a rich source of information.

It is our hope that readers will open *Pandora's Box* and take the information inside it to hold, contemplate and, most importantly, use. We will have achieved our goal if the contents of this *Pandora's Box* are used to enhance awareness and understanding. Increased awareness and understanding will eventually lead to action.

Pandora's Box is dynamic and always evolving and progressing. This year we have contributed to this evolution by experimenting with a new-look format and extending the opportunity to contribute to a broader range of groups and individuals. We hope that this drive to make *Pandora's Box* better and better will continue in the future.

Editing *Pandora's Box* has been a unique, comprehensive learning experience. We have gained a great deal of awareness from being exposed to a wide variety of woman and their ideas. From this we have learnt that when women face adversity, they often walk away with greater strength. This strength, when nurtured in a diverse range of women, is a valuable asset. Thus this *Pandora's Box* is a celebration of women's strengths.

One surprising thing we noticed was the prevalence of domestic violence being discussed in articles. The fact that our contributors were able to write on any topic, but chose domestic violence, says a great deal. Dealing with domestic violence is not a popular or glamorous topic on the public agenda, but perhaps it should be.

For all their support, we would like to thank our contributors, the WATL executive, and sponsors Blake Dawson Waldron and O'Mara Patterson & Perrier. Special thanks must go to our layout design team: Sam Walker, Adelle O'Donnell and Joanne van Zeeland. Finally, we'd like to thank you, the reader, for your interest.

Marissa Ker and Charlotte Price
Editors, *Pandora's Box* 1999

IF I WERE STUDYING LAW IN VIETNAM: A COMPARATIVE ANALYSIS OF STUDENT LIFE IN VIETNAM AND AUSTRALIA

By Ann Black and Kimzung Do

Ann Black is a Lecturer at the TC Beirne School of law, UQ. She teaches Criminal law, Introduction to Law and Asian Legal systems. Currently completing an SJD on dispute resolution in Brunei, Ann nominates the law and legal culture of Asia as one of her key research interests. Kimzung Do is a lecturer in law at the University of Danang in central Vietnam and has been in Australia for 18 months completing a Master of Comparative Law degree at UQ.

Introduction

“The conditions here at this law school would be like a wonderful dream to students in Vietnam”, said Kimzung Do, highlighting the differences in law schools between Australia and Vietnam. Ann Black, in turn, wondered what it would be like to study law in Vietnam. Together Ann and Kimzung have derived a selection of comparative issues which give Australian law students some insight as to what it would be like to be studying law in a different cultural context.

Admission to Law School

Each law school in Vietnam, of which there are currently four, conducts its own entrance examination. Law is an undergraduate course so the majority of students will have just left high school.

Entry is extremely competitive because a career as a lawyer is nowadays well regarded. It is seen as modern and progressive. Entry is also competitive because the number of lawyers and law students on a *per capita* basis is comparatively small. The population of Vietnam is 76 million, and there are just four law schools, whereas Queensland, with a population of 2 million has five law schools and this state graduates more lawyers each year than does Vietnam as a nation.

Female students have always been treated equally in terms of gaining entrance and it appears that the numbers of law students would be roughly equal between the sexes.

Fees

Whilst there is small charge for sitting the entrance exam, the actual fees for attending law school are considerable for the families of the students. The living standards in Vietnam are much lower than in Australia and most students will need part time jobs in order to live. The children of very poor families whose parents were veterans of the Vietnamese war can be given fee reductions. Those students who do exceptionally well academically in their first semester results in law may be awarded a scholarship.

First Two Years of Law

In first year and second year students study general subjects such as History of Philosophy, Theory of State and Law, Marxist-Leninist Philosophy, Socialism, and the History and Principles of the Vietnamese Communist Party.

It is compulsory for all law students to study a foreign language throughout their four years of law studies. English is now the preferred subject because of the perceived employment opportunities, surpassing the other options of Russian and French. In addition, military training and physical education must be undertaken.

Final Years

Students specialise at the start of their third year by selecting one of the following four areas: economic, private, administrative or international law. By far the most keenly sought are economic and private law, as these can provide an entry into the world of corporations and large firms, including foreign companies investing in Vietnam. Female students in particular are less interested in administrative or international law specialisations as employment options will be limited to the government. Criminal law is an area of little appeal to women.

Three months of practical work has to be undertaken before a student can graduate with *Cu Nhan Luat*, the equivalent of LLB.

In their final year many students will write a thesis, which they will have to defend by answering questions from a committee of professors and specialists in that field. Not until the thesis is successfully defended will the student be granted her law degree.

Campus Life

Whilst there is not the equivalent of WATL or UQLS, there are various associations on campus supported by the Communist Party which assist students academically and socially.

The Youth Association is active in each university and all students are automatically members. It provides assistance with finding jobs, has tutoring schemes and organises seminars to show students how best to live and to contribute to their country. The Women's Association provides similar national direction for its members.

Opportunities to participate in sporting activities are limited especially for women, very few of whom would play any sport. There are not the facilities, such as UQ's sporting complex, athletic track or pool. However, both sexes can play table tennis, volleyball or badminton; and men can play soccer.

On campus there would be a refectory or canteen, and a student café. The prices at the café are very cheap in comparison to the UQ campus.

Students get to law school by bicycle, motorbike or bus. Students whose families are not close enough to enable daily commuting to the campus, would live in one of the colleges. These are less expensive than Australian colleges, and the cost is much lower than renting elsewhere.

Miss University Student

On Youth Day, 26th March, one of the special activities is the crowning of Miss University Student. Miss University Student will be selected firstly on the basis of her knowledge, and then on her beauty and talent.

The contestants have sections in which a jury panel made up of staff, Youth Association and student representatives judges the contestants on traditional dress, evening dress (which can be western style) and talent assessed by singing, dancing, playing an instrument, or performing a gymnastics routine.

Special Events

During the year there are many special holidays which enable students to take a break from the routine of attending class and studying.

As well as Teacher Day, there is Students Day on 9th January, however teachers are not required to give gifts to their students and entertain them. Instead students celebrate with a range of activities, such as playing games, singing, camping and concerts.

There is International Women's Day on March 8th and Vietnamese Women's Day on 20th October. Men would give gifts or flowers to their mother, sisters, wife, daughters and friends. Even the university would give gifts or flowers to its female staff, and special meetings with guest speakers would be organised to talk on issues relevant to women.

Of course the highlight of the year is Vietnamese New Year in February, which is spent always with family. This is in the mid-semester vacation period. Some students now have a celebration with their friends for western New Year.

What you would wear at Law School

There is a dress code that applies so students in Vietnam do not dress as casually for class as here in Australia. Several times a week, *Ao Dai*, traditional Vietnamese dress would be worn, and at other times, trousers, or dresses and skirts, but definitely not short in length. Shorts would never be worn by either sex, nor would girls wear singlets or strappy tops. Similarly, lecturers dress more formally – in the vein of Professor Tarr for men, and tailored suits or traditional dress for women lecturers.

Mooting

The closest thing to a moot is a special extra-curricular competition organised by the Youth Association. It is based on an oral argument presented in defence of a topic on an issue relevant to the socio-economic policy of Vietnam. There are many rounds in the competition and the final winner receives a sum of money, and much prestige.

Teaching and Law Lecturers

Subjects are taught in traditional lectures of five hours, in which there can be questions and discussions. Some subjects will have an additional three-hour seminar to complement the lecture. Students will do four or five subjects per semester.

Lecturers are treated with greater respect than in Australia. A special title is used when addressing a lecturer – *Thay* (male) and *Co* (female) together with their given name. A student would adopt respectful manners such as always using

both hands if you were to give an item to a lecturer, and would never arrive late for a class or leave early.

Teacher Day is a special day on 20th November when law students bring flowers and presents for their lecturers and in the evening perform for them by singing, dancing and playing both western and traditional instruments.

The Law Library

Far less time would be spent in the library at Vietnamese law school than at TC Beirne. There are several reasons for this. Law libraries are small and poorly equipped, with few books and even fewer journals. Whilst the majority of books are in Vietnamese, most journals are in foreign languages, and are generally used more by staff than students. The other reason is that students do not need to read cases. Judicial precedent is not a source of law, and being essentially a civil law, inquisitorial system the only formal source of law is legislative enactment – the constitution, civil codes, ordinances and regulations. Computers are a scarce resource. The catalogue for the library is on cardboard cards through which students manually search.

Career Prospects

Law courses are not directed at educating students to become solicitors or barristers who will work in private practice. The aim is to provide lawyers for the public sector. Law graduates will mainly be absorbed into the courts, arbitration bodies, administration, the procuracy, government ministries, the Peoples' Councils and Committees, state-owned companies and investment companies. In contrast, Vietnam's first private law firm was established in 1992 and the number of private practitioners is minuscule.

For those desiring a judicial career, they commence working as a clerk or secretary in a Court, and then may later be appointed as a judge. In the past many of the judges in Vietnam were appointed without having a law degree.

Women Lawyers

Since Independence and in accordance with Socialist policy, women have always been accorded equal status and opportunities in Vietnam. There have been long standing provisions for maternity leave, and for feeding and caring for babies for all women while at work. This applies to lawyers. Women who are effective in their job have equal chance of promotion. Women are well represented in the judiciary, including the current Deputy Chief Justice of the Supreme Court. There are many women in senior government positions in the ministries and as directors of companies, as it is considered that women have a very effective management style.

“IF WE DON’T KILL YOU WE’LL MAKE YOU A PARTNER”

By Meredith Hellicar
Chief Executive, Corrs Chambers Westgarth

Ms Hellicar has more than 20 years experience in the telecommunications resources and logistics sectors. She is director of James Hardie Industries Limited, Goldfields Limited and Musica Viva, chair of the Sydney Institute and is a member of the Corporations and Securities Panel. From 1992 to 1996 she was on the board of the NSW Environment Protection Authority. Ms Hellicar has a Bachelor of Arts and Masters of Law and was Australia’s 1993 Eisenhower Fellow to the United States to study change management in major corporations.

I am in the unique position of having joined a law firm as its leader without having worked in one before and, indeed without ever having practised law. When I was at university I thought that I would spend my life “in the law”, but the call of the big wide world was too much for me. Now, however, that the legal profession, or at least Corrs Chambers Westgarth, is recognising the need to be part of the big wide world and really care about its clients and staff, I thought it was time to come back to the law.

The legal profession has been, in the past, privileged to attract considerable respect from the general community. This respect is increasingly being questioned by the clients we serve and the people we employ. The legal profession has a constitutional guarantee of independence, at least at a federal level. Through the protection of its state-based legislation and self-regulatory models, the profession has insulated itself from competition, from change, from having to understand its clients and from having work hard to retain its people. Law firms at the top level provide, excellent legal advice, very high standards of service and offer challenging intellectual work for their people, but most firms have not yet grasped that this is simply not enough in today’s world.

Another characteristic of the legal profession is the dearth of females in partnership and other senior positions. This problem permeates general and specialist practices, small and large firms and the bar; its causes are complex. It is not just a matter of inflexible work practices and training programs at a time in lawyers’ lives when they have other legitimate priorities such as families to consider. These issues are as important nowadays to males and females alike, and are becoming wrapped up in the larger questions of striking a balance between work and the rest of one’s life. A related question is whether a good lawyer is a narrowly-focussed lawyer with little understanding of the clients with whom he or she deals.

The exclusionary and antiquated work practices within law firms must be challenged for the benefit not only of women and staff in general but for the benefit of the broader-based thinking that will bring to our clients. The problem is also a matter of the historical recruitment in one’s own image and the lack of recognition of the need for teamwork and leadership within law firms rather than individual prowess and anarchy.

In many ways current graduates are fortunate in that they will enter firms in an era of greater recognition of the need for a broader range of characteristics for partnership. These include the need for partners to be leaders, to be not just excellent technical lawyers and arms-length instruction takers, from clients, and givers, to staff, but also relationship builders, internally and externally.

I summarize the ingredients of excellent leadership as having a guiding vision, passion, integrity, trust, curiosity, daring and emotional intelligence. I see the role of a leading partner in a modern law firm as including the ability to establish direction, align people and motivate and inspire them. I’ll leave the reader to judge whether this will open more opportunities for women.

Why do I think these characteristics will be valued in law firms? Because too many young lawyers are turning their backs on the opportunity to be partners. They are happy to work extraordinarily hard in their twenties and early thirties, but at the time when they would previously have been thick in the fray of partnership, they are deciding that they want a life! It’s not that they don’t want to work hard, but they are turning their backs on the narrow, exclusionary mentality and the prospect of a lifetime filling in six minute time slots on green forms, trapped in the same routine for their entire careers.

Young lawyers have become increasingly explicit about their expectation of a variety of legal work in flexible working environments, about their need for wider training in leadership and management, and about their entitlement to career development strategies. They have voted with their feet, and law firms are now starting to respond to the cost to the profession of solicitor turnover, which has been horrendous. A recent study by the Victorian Law Foundation noted that one major city law firm calculated that the cost of turnover at the fourth-year solicitor stage was roughly equal to the firm’s annual profit, after allowing for notional partner salaries. As one commentator said: “The idea that a firm could double its profit by stemming solicitor turnover has powerful appeal.”

The more enlightened professional firms are responding with a long, hard look at the way they are structured, the way they measure success, and the way they develop and reward their employees. These firms are recognising that their people are the raw materials that need to be developed, supported and nurtured into their most valuable assets. At Corrs, we are undergoing an exciting process of transformation. We have a developing organisational philosophy based on listening to our staff, and shaping a working environment and career path that elicits their satisfaction and loyalty rather than applying the principle “*if we don’t kill you we’ll make you a partner.*”

At Corrs we have embraced “*value based leadership*”: leadership that ensures that the organization’s values are articulated, widely understood and communicated by the behaviours and values of the leadership team. We have focussed our organisation on client care and we believe that clients receive better service from well trained, motivated, satisfied and loyal employees. The client’s interests are paramount; supportive, collegiate relationships amongst staff are both expected and rewarded; the firm operates on the basis of trust and openness; and a team-based approach to work must be the norm.

Rather than a “funnel to partnership” characterised by expectations of extraordinary rather than just exemplary commitment, Corrs and other firms are responding to dissatisfaction about traditional ways of structuring law firms by developing processes to offer our young lawyers different ways of working with clients and of developing their skills.

DOMESTIC VIOLENCE: NOT JUST A LEGAL ISSUE

By Sophie Ismail

Sophie holds a Bachelor of Arts in history and government from the University of Queensland. She is currently travelling and working overseas and plans to return to UQ to complete her law degree in 2000. Issues in social justice, equity and feminism are of particular interest to Sophie. She was inspired to research and write this article after working at a community legal centre and meeting victims of domestic violence.

Domestic violence is not just a legal issue. It is an issue with its roots deep in the heart of the social, cultural and economic gender inequities of our community and its institutions. For this reason, any remedies must address these broader problems. Women suffer inequality in nearly every aspect of their lives; they have reduced access to financial resources, suffer discrimination at work, and are under-represented in political and legal institutions. This endemic sexism in our society is bound to be reflected in the legal system, and it is. A perfect example is the legal system's response to domestic violence.

The law is an essential part of any society's effective response to domestic violence, but unfortunately violence in the home is, and always has been, perpetuated and legitimised by the legal system; the very institution which is supposed to protect sufferers of abuse. The law should be a tool to identify and redress the effects of inequality and injustice in our society, not a method of legitimising and reinforcing those inequalities. The law has been notoriously conservative and slow to respond to social change, but as a community we must no longer accept this.

The history of the criminal law in Queensland reveals appalling inequities which women have had to cope with over the past 200 years and exposes the roots of current injustices. Domestic violence was prevalent in nineteenth century Australia and was not frowned upon by society. The legal system did not only *not* disapprove of male violence towards women in the home, it condoned it. In 1840 a man could lawfully beat his wife, as long as it was not, "in a cruel or violent manner". Even this excuse for a limitation on the free reign of the husband to do exactly as he saw fit was rendered useless in practice by the ridiculously high standard of violence required before it could be regarded as cruel in the eyes of the law. The eyes of the law were determined to look the other way.

It would be unfair to say the law hasn't changed at all since the nineteenth century, but it certainly hasn't changed enough. It has gradually moved from explicitly condoning domestic violence, to allowing sufferers to slip through the cracks of the system as a result of sexist attitudes and stereotypes. The well-used phrase, the "law does not exist in a vacuum" is relevant in this case. The idea that husbands owned their wives and had a right to "discipline" them with violence came from deeply ingrained inequality within the institutions of society.

The sexism that spawned such dangerous sentiments still exists, and so although the law no longer formally sanctions wife-beating, its indifference and insensitivity is equal to an implicit acceptance of domestic violence. The old common law rule that a man may beat his wife with a stick "no bigger than his thumb" has evolved into a man being allowed to use "rougher than usual handling" to get his wife into bed. It seems reasonable to ask, how far have we actually come? Although the South Australian Court of Appeal reviewed Jus-

stice Bollen's infamous words and held them not to be law, such statements are evidence that sexist attitudes within the judiciary are still an issue.

Although there is no longer any overt distinction between assault in the home and "real" assault, the mentality that first spawned that distinction still exists. It is generally accepted, even by sufferers of domestic violence, that police have more important things to do than to deal with family violence. This is despite the fact that in 1991, eleven out of the twenty three women killed in Queensland were killed by their male partner. Police, if they respond to a call for help in a situation of domestic violence, often arrive late with an unsympathetic attitude towards the women involved. The patriarchal nature of the police force means that officers can often relate to the perpetrator more than the sufferer. It is common for police to be called back to the same address many times and become frustrated as they cannot understand why the woman doesn't just leave. Education and funding are needed because it will take much hard work and commitment to reverse the sexist attitudes that have existed for decades.

The court system is also guilty of perpetuating stereotypes and being unsympathetic towards sufferers of domestic violence. Yet another example of sexist attitudes within the judiciary is a statement made by Justice John Bland of the Victorian County Court, in April 1993. The matter being tried was a rape case. His Honour said: "in the common experience of those who have been in the law as long as I have, 'no' often subsequently means 'yes'". It is amazing and frightening that such sentiments still exist in our legal system. This is partly the reason why only a small percentage of the perpetrators who get to court are ever imprisoned or even punished at all. Most of the remedies that are handed down are inappropriate, and many women have said that they have felt as if it was they that were on trial, rather than the perpetrators of the crime.

Magistrates, police and lawyers are likewise uneducated in the impact of domestic violence on a woman and this often leads to women feeling bullied and intimidated in court. One woman told the Law Reform Commission of her experience in the courtroom at the committal proceedings. The case was one of sexual assault:

"In the court room, I gave evidence for four hours. They asked me why I did not fight back, why I had so many drinks, why I had asked the accused to help me find a taxi and not someone else. Apart from the sexual assault counsellor I was the only woman in the room. The Department of Public Prosecutions said my evidence didn't stand up, that my story didn't hold, that I was a bad witness. What finally got me, was I never got to tell my story. It was as if what happened to me did not matter, they were so preoccupied with the words I chose to express it. It felt like a player in a game that I had never played before, and was treated as if I was cheating in some way."

It is possible for a woman to go from the stage of calling the police, to receiving legal advice, to getting the matter to court without once seeing another woman or talking to a social worker. Considering the psychological and emotional damage, and the shame and economic hardship associated with domestic violence, seeing a case through the legal system to its end takes enormous courage and strength. Many women, understandably, do not have the strength needed, so crime goes unpunished and the cycle of violence continues.

In order to cope effectively with domestic violence, the legal system must interact with the broader community, including men and women from all classes, races, sexual orientations and ages to identify and redress the sources of inequality in the law.

It must recognise that domestic violence is not just a crime, it is a huge social problem with extreme consequences for all involved. Governments and the private sector must tackle the problem of gender bias in all aspects of our society, and the legal system should not be allowed to drag its heels in the area of reform any longer.

Finally, it is most important for us all, as ordinary members of the community, to raise our voices and demand an end to inequality in the legal system and in all other institutions in our society.

After all, without the genuine support of the community, real change cannot occur. Although the history of the law and domestic violence in this country is not particularly encouraging, progress has been made and if we raise our voices high enough, they'll have to listen to us eventually!

OPERATING IN A HOSTILE ENVIRONMENT: THE EFFECT ON WOMEN OF THE 1995 REFORMS TO THE FAMILY LAW ACT AND THE RECENT CUTS TO LEGAL AID

By Zoe Rathus and Angela Lynch

Zoe Rathus has been practising as a solicitor since 1983, working mainly with women separating from violent partners. Currently, she is the Deputy Chair of the Taskforce on Women and the Criminal Code.

Angela Lynch has been practising a solicitor since 1993. Having worked in private practice, she's been the Principal Solicitor at the Women's Legal Service for the past five years.

Introduction

Over the last few years, the Women's Legal Service (WLS) has observed our clients' experiences in the Family Court and the system surrounding it with growing alarm. Significant amendments were made to the Family Law Act (FLA) in 1995, becoming operative in 1996, which were supposed to improve the Court's response to a history of domestic violence. However, as a result of other fundamental changes to the Act and the diminution in the availability of legal aid which occurred at about the same time, we are of the opinion that it has become more difficult for women to raise issues of domestic violence and child abuse in the family law system.

The FLA is only one part of a family law system which also involves the Family Court, Legal Aid, a variety of mediation services, legal practitioners, Family Report writers, child representatives and other agencies and individuals. This paper seeks to examine some of the major features of the family law system as the WLS observes it from the perspective of our clients.

Features of the new Family Law System

The following critical features now underlie the new family law system:

* The philosophy of the Family Law Reform Act (the "Reform Act"), now prescribed by the Act itself, overtly promotes on-going contact by children with both parents after a separation;

* The new terminology in the Reform Act contributes to this approach. The old terms of "guardianship", "custody", and "access" have been replaced by "parental responsibility", "residence" and "contact" and new concepts have been imported with these new words;

* Mediation is now described as "primary dispute resolution" (PDR) and is virtually mandatory before parties can expect a judicial decision;

* The severe cuts to legal aid funding force women to use informal mediation processes thereby destroying the "voluntary" nature which is espoused as a positive, necessary, feature of genuine mediation;

* Fewer women are able to litigate, thereby suppressing the development of jurisprudence relevant to women in the Family Court; and

* More people - both women and men - are representing themselves in the Family Court. The effects of this on Court administration, the development of jurisprudence and the quality of decision-making has not yet been fully understood or analysed.

The Men's Right Agenda

Many of the reforms and changes to process which have been implemented have occurred as a direct result of political pressure from men's rights groups. It seems to us that, in the mid-1990's, just as the Family Court was beginning to recognise the relevance of domestic violence in cases involving the post-separation arrangements for children, men's groups and economic rationalism have successfully infiltrated other parts of the law reform process to neutralise this.

An Interim Report published by the Family Law Council (FLC) in March 1998 on *Penalties and Enforcement* in the Family Court called for submissions from women's groups because over 90% of the preliminary submissions which the FLC had received were from men. Men have had a successful impact on the political debate about child support and, therefore, most of the reforms which recently been introduced relate to reduction in payments and privatising the scheme, which will render enforcement more difficult.

The latest government discussion paper on *Property and Family Law: Options for Change* promotes a starting point for division of property at 50:50, apparently because many people "believe that decisions about property re-allocation are biased towards one of the parties". We believe that this document has been strongly influenced by the perceived need to pander to the men's agenda.

The National Women's Justice Coalition and National Network of Women's Legal Services have raised their voices in the child support and property settlements debates, but women's groups need to learn to be smarter, particularly at a national level, if we wish to be influential.

United Kingdom Children Act

The reforms were based heavily on the UK *Children Act* 1989 which had only become operative in the United Kingdom in late 1991. There had been little opportunity for analysis of the social impact of the UK Act and we took the view that the Australian Government was acting with unnecessary haste to embrace untested legislative reform. In 1995 WLS lodged a submission with the Federal Attorney-General about the Bill and commented on the reliance on the UK legislation:-

The *Family Law Act* has now operated in Australia for nearly 20 years. Over that time, an enormous amount has been learnt about the social consequences of the legislation both in respect of arrangements concerning children and financial matters. The Family Court has developed sophisticated systems of case management and policy guidelines as a response to much of what has been learnt. Over the last few years the Family Court has dramatically improved its response to domestic violence by way of guidelines which apply to the operation of the whole of the Court, a number of

important judicial decisions and the genesis of a gender awareness programme within the Court. Family Court judges have spoken at conferences on the changing attitude of the court towards domestic violence and have frankly discussed the lack of recognition of this issue in the past.

It therefore seems ironic that at such a critical time in the development of the law and the Court, Australia should throw out its own work, knowledge and expertise and turn to the virtually untried and untested UK *Children Act* as a source for legislative change.

Some commentators in the UK have been studying the operation of the UK Act critically and have noted similar issues to the ones WLS has observed. In a recent article, Professor Carol Smart and Dr Bren Neale remarked:

In the space of two years cases are being decided in ways completely antithetical to the way they would have been dealt with previously, yet current decisions are always regarded as a sign of the good sense of the judiciary, rather than as shifts in ideology which should be subject to scrutiny. It is our concern that if anyone speaks out against the 'obvious merit' of contact they are now seen as arguing against virtue.

This is our experience in Australia, particularly within PDR processes. If a woman commences mediation from a position of wanting to limit contact because there is a history of domestic violence she may be told that it is irrelevant and that raising it will only make mediation and negotiation difficult.

The Smart and Neale article goes on to discuss the "robust" approach to enforcement of contact which is gaining ascendancy. Two recent cases are cited where women were jailed for refusing contact. In both cases the fathers were very violent and the children young. In one of the cases the woman was sentenced to 6 weeks' imprisonment, the children were placed in foster care and the father was given contact supervised by social services. The judge ruled that it would be far more harmful for the child to grow up without a relationship with her father than to see her mother go to prison. On the 21 June 1998 that the Brisbane *Sunday Mail* reported that a Victorian mother of a 5 year old was jailed for refusing contact. The mother alleged domestic violence and child abuse.

Family Reform Act

New Guiding Principle

One of the positive amendments introduced by the Reform Act extended section 43 of the FLA to include "the need to ensure safety from family violence" as one of the guiding principles of the Act. Given this clear policy directive, we would have thought that domestic violence, child abuse and the safety of women and children should have been accorded a high priority in decisions made after the Reform Act became operative. However, this does not seem to be the experience of our client group.

The Concept of Parental Responsibility

Before the Reform Act became law WLS was concerned that the mooted proposals would have many unacceptable consequences for women. We saw it as providing opportunities for violent men to harass and retain control over their former partners under the guise of exercising their newly coined "parental responsibilities". Women, on the other hand, would be easily cast as uncooperative and unyielding if their

actions to obtain safety for themselves and their children conflicted with the strong philosophy of "sharing".

Our submission on the Bill recorded our concerns regarding the separation of "parental responsibility" from residence. Under the old law custody orders carried with them the right and responsibility to make day to day decisions regarding the welfare of the children. The new proposals clearly separated "residence" from "parental responsibility". All that "residence" meant was that the child lived with that parent. Decision-making was still to be shared by the parents unless the "residence parent" also obtained what was to be called a "special purpose" order.

Where there has been a history of violence, the point of separation is often the most dangerous time for the woman. We submitted that for women with a history of domestic violence, it was essential that any residence order made in their favour also carries with it at least responsibility "for the day to day care, welfare and development of the child". This argument was not accepted and residence orders are therefore significantly less comprehensive than custody orders were. For some reason the term "special purpose" was abandoned. Instead, some women seek "specific issues" orders which gives them the power to make the day to day decisions while the children reside with them. However, women who cannot get Legal Aid are usually unable to negotiate such additions by consent.

Between March 1997 and March 1999 a team from Griffith University undertook research on the impact of the changes to the FLA by interviewing judges, registrars and counsellors from the Family Court, solicitors in private practice, barristers, Legal Aid and community legal centres. The solicitors specifically identified that the changes had led to an increase in the number of contact applications as well as an increase in the amount of contact sought. One of the solicitors, who takes referrals from men's rights groups, "said that many fathers who came by this route had a perception that the legislation entitled them to more contact than previously. The legislation has had the effect that children's matters were now being perceived increasingly as concerned with parental rights and entitlements". This is the complete opposite of the government's apparent policy objective at the time, which was to reduce notions of ownership in children. However, it is exactly the outcome predicted by women's groups.

In research undertaken by Regina Graycar, Margaret Harrison and Helen Rhoades on the effects of the changes to the FLA a survey was conducted with 61 family law practitioners in Melbourne in May 1997.

The responses given reveal changes in approach by the lawyers, the parties and the Court. Although four respondents suggested that contact was now "more likely to be set aside or not ordered where there is evidence of violence", other responses indicate increases in shared arrangements and contact:-

"I see subtle changes, for example more shared long term and day-to-day care, welfare and development orders",

"Contact: when a matter goes to judicial decision, the judges appear to give much more contact than the "standard" alternative weekends and half school holidays regime - and a lot of times over very strenuous and relevant objections of residence parents;" and

"Impact is still evolving. Fathers are fighting harder than ever for more involvement in children's lives and for an equal rights approach to children. A lot of litigation about

children seems to have been encouraged. It to some extent has been seen as a charter for non-residence parents' rights. Best interests of children perhaps diluted somewhat."

What Priority has Domestic Violence?

One of the greatest successes of the women's groups who had been lobbying for change was that the Reform Act included family violence as a relevant factor to be taken into account when deciding what is in the best interests of children in cases regarding where children live, contact with parents and other people and various other situations. It is obvious that where there is or has been domestic violence, this is central to the welfare of children. It should be at the front of all decisions about both residence and contact - whether those decisions are being made by a judicial officer or in the context of some form of PDR.

Domestic violence may mean that:-

- * The mother feels she is unable to have meaningful on-going discussions with her former partner about the welfare of the children;
- * The mother fears contact hand-overs;
- * The mother fears for the children's safety while they are with their father;
- * The children are frightened of their father; or
- * Contact exchanges are terrifying or traumatic for the children because they do not want to go or because they sense their mother's distress.

In our submission on the Bill we advocated for a qualification on the promotion of on-going contact between parents and children. This was ultimately included in section 60B(2) which states that the principles of on-going contact apply "except when it is or would be contrary to a child's best interests". Although this qualification has proven critical to the interpretation of the Reform Act, in our experience, it has been more difficult for women to obtain orders or agreements which limit or restrict contact since the reforms were implemented.

The Interim Report which has just been released by Graycar, Harrison and Rhoades suggests that it is now very difficult to ensure that domestic violence is taken into account, particularly at interim hearings. A review of judgments from the Family Court showed that: "there has been a dramatic reduction in the incidence of orders suspending contact at interim hearings since the reforms were enacted."

Before the reforms access was suspended in 24.2% of cases at interim hearings. After the reforms that dropped to 3.6%. It is concerning to note that, even since the reforms, no contact is awarded in 22.7% of cases at final hearing. That means that nearly 20% of the decisions to grant contact at an interim stage are being reversed after the Court has had an opportunity to properly assess the evidence. Such results indicate two things; firstly, allegations raised about domestic violence are generally borne out, and, secondly, children may well be at risk of violence in 20% of cases between the interim and final hearings. This can be for a period as long as 18 months to 2 years.

It is interesting to note that access was suspended in 20.8% of final pre Reform Act hearings. This is less than 4% different from the percentage at interim stage (24.2%) and

may mean that better assessment were being made under the old law. Both the Dewar and Parker Report and the Graycar, Harrison and Rhoades Interim Report tend towards a conclusion that the principle of the right to contact is significantly more influential than the relevance of family violence.

Has the Reform Act Kept People Out of Court?

The Act sought to increase the role of alternative dispute resolution, and hence make it "primary dispute resolution", PDR, within both formal legal processes and outside the legal system. It appears that PDR was expected to provide a more cost-effective means of resolving disputes between parties and that the availability of PDR avenues would minimise the need for matters to proceed to trial and also the number of applications brought in the Court.

Notwithstanding the amendments, which came into effect in mid 1996, over four thousand five hundred more files were opened in the Court in the 1996-97 financial year, as compared to the 1995-96 financial year:-

Residence applications were 47% higher than the previous year's figures for custody and guardianship. Contact applications in 1996-97 were 58.5% higher than 1995-96 figures for access and 37% higher than the previous peak in access applications in 1993-94. (FLC, 1996-1997, p 45)

It was precisely these kinds of applications which the 1995 amendments were predicted to reduce in number. From the statistics it seems that the changes in terminology and approach to parenting matters has not assisted in reducing, or even maintaining, the number of matters brought before the Court for consideration. We understand, from informal discussions with staff in the Federal Attorney-General's Department, that many of the applications swelling the numbers are being initiated by men.

The Dewar and Parker report comments on a "striking theme" which emerged from follow-up interviews with registrars:-

B the legislation seems to have intensified the pre-existing dispositions of parents - those who were in any case inclined to agree now have a much richer range of resources with which to frame that agreement, while those parents who were in any case inclined to disagree now have a much more powerful armoury with which to do so (p 18).

It was our concern at the time of enactment that the government was legislating for the wrong group. Those who can agree will do so no matter what the law says. Legislation should be for those who will not be easily able to agree. In that group will be found the families which have been traumatised by domestic violence and sexual abuse.

Encouragement to Use "Primary Dispute Resolution" (PDR) Mechanisms

One of the most serious concerns of the WLS is the way in which non-judicial mechanisms are being given primacy as the acceptable way to resolve issues at the time of a relationship breakdown. While it is valuable to encourage parents or former partners to reach agreement about future arrangements for their children or the distribution of their assets and finances, in many instances this may be extremely difficult and traumatic.

Those who promote mediation, particularly at policy level in government, claim that cases with a history of domestic vi-

olence are excluded. This appears to ignore the reality of what is known about the prevalence of domestic violence in the community and the way in which that relates to people who require formal intervention in dealing with separation issues. Many women who contact the WLS for assistance have suffered domestic violence ranging from severe verbal abuse to brutal physical attacks requiring hospitalisation.

In terms of understanding the extent to which family violence is likely to impact on the processes of the Family Court, it is interesting to note the statistics provided by the 1996-97 Annual Report relating to the Counselling Section. In accordance with the Court's Family Violence Policy:-

Single interviews are offered when there has been a history of domestic violence in the relationship and one of the parties indicates they are worried about their physical safety and are afraid of attending a joint interview with the other party (p 28).

Of the 25,869 cases in person dealt with by the Counselling Section, approximately one-third (8,597) cases were conducted by separate interviews because of family violence in 1996-97.

Because of the emphasis on reaching agreement through PDR, the process often appears to militate against acknowledgment of the relevance of domestic violence in children's arrangements and diminish the relevance of the best interests of the child.

WLS has long been concerned by the manner in which mediation processes are evaluated. The focus is usually on the proportion of cases which settle and apparent client satisfaction, rather than examining whether the agreements struck are "fair", "just" or in the best interests of the children. It seems ironic that so much thought goes into formulating legislation to regulate family law decision-making, but the policy concepts which direct this legislative reform play no role in the framework of mediation. The irony is exacerbated by the policy push for increased use of mediation resulting in agreements which fail to reflect the policy concepts which have informed the legislative reform.

For example, it is our experience that a woman has almost no chance of reaching a mediated agreement at the Family Court or Legal Aid that denies or restricts the father's contact with his children, no matter what she alleges in respect of violence and lack of care-giver experience before the separation. Some of our clients advise us that their solicitors have told them in Legal Aid conferences that domestic violence is not relevant to questions of residence and contact. However, the Court is bound to take the violence into account and it is possible that safer orders would be made if more of these cases were judicially determined rather than mediated.

Evidence and Procedure in Cases Involving Children

Family Reports

Another growing concern for us relates to the use of Family Reports. The way in which the Family Court has directly involved people with social science backgrounds in children's cases is one of its most innovative and vital features. However, the Court has come to place huge trust and reliance on the assessments of these experts. When they do not have a good understanding of the dynamics of domestic violence, the reports which emanate can be devastating for women.

Clients report instances where the report writer has appeared to be charmed by the violent man. The consequence of this is that the woman is described as difficult or unreasonable. Her attitude towards her former partner is seen as bitterness or irrational hatred. For years women working in the field of domestic violence have tried to explain that some men who are violent in their intimate relationships can be quite charming in public life.

At one of the first major conferences on domestic violence in Australia in 1985, Dawn Rowan, a refuge worker explained, "From the women in our client group, 80% of men who beat their wives are charming to everyone else and are not identifiable outside the family as violent or criminal."

Despite this, there are many report writers who appear to be attracted to these charming men who are able to present as unusual and caring fathers. It is our view that this unusual interest in their children is often a manifestation of an obsessive desire to control their wives and prevent them from creating a new and independent life.

It has been observed that there is often a small group of professionals who become willing to appear regularly in the courts as experts. This phenomenon is not limited to the Family Court and is probably a natural consequence of the fact that most professionals never want to go near a court! However, it means that a small group of people become well known and respected by the judges and their views become very influential. If one of these experts has a blind spot about an issue such as domestic violence, this can affect the lives of a significant number of women.

WLS has noticed the repeated influence of a couple of individual experts in the cases of our clients who have contacted us in desperation after apparently unsafe residence or contact orders have been made in response to a Family Report.

Interestingly, field workers such as refuge workers and domestic violence workers are not necessarily given a great deal of credibility in the Family Court and are not regularly called upon to give evidence or explain the conduct and responses of women who may appear to be acting "unreasonably" or "irrationally".

WLS has worked with a number of women who have lost residence of their children to violent men largely as the result of the assessment of the parties contained in the Family Report.

Child's Representatives

Similar problems arise with some child representatives. Many clients report that they feel no sympathy for their position from the child representative. This has always been the problem with the Family Court's philosophy that counsellors, judges and children's representatives should maintain neutrality. It has led to inappropriate processes and unsafe practices in the past.

Where the children's representative demonstrates no apparent understanding of domestic violence, a woman survivor feels alienated and desperate. She may then either appear to act hysterically in her desire to have her concerns heard or may become silent about her concerns, convinced that she cannot be heard.

Although there are guidelines for Children's Representatives which provide useful information on how to deal with

family violence, these do not appear to necessarily be followed by all children's representatives.

A WLS client reported recently that the children's representative refused to speak directly to her during the lead up to the interim hearing. This was despite the fact that the woman was acting on her own behalf because she had been refused legal aid on the merit test on the basis of an adverse family report. On the other hand the children's representative was in regular contact with the father's solicitor. The judge awarded residence to the father at that interim hearing notwithstanding the facts that the mother was unrepresented, she challenged the contents of the Family Report and she had always been the primary care-giver of the child both before and after separation.

The Litigant infers on

Our major concern is that the gendered aspect of this be fully understood. There is no doubt that either or any party can find themselves unwillingly representing themselves in the Court but in our experience, men sometimes choose this course, whereas women are rarely in that position voluntarily.

Men use self-representation as a way to shake off the moderating influence a lawyer might bring. It allows them to bring repeat applications without cost and to directly cross-examine their former partner.

Women are often fraught by the thought of representing themselves and become extremely stressed during their preparations and appearances. Due to the current lack of legal aid funding we are assisting a number of women to represent themselves in Court. We are assisting with the preparation of documents and providing advice on court procedures. Some of our clients are successful and others obtain appalling results.

Our workload has become totally skewed by these demands and we are unable to meet the need for new client appointments because of the on-going demands of these cases. Further, most women who do not live in the South East corner of Queensland have no access to such services. As a small organisation, we obviously do not make any real impact on the overall situation of women who are self-representing.

On a technical note, self-representation prevents the right of re-examination. A client of ours of who recently represented herself in the Family Court has reported that after she was cross-examined she had wanted to clarify some points which had arisen but could find no avenue to do that. We realised that the rules of procedure seem to exclude the right of re-examination for self-representing parties. Perhaps judicial officers need to be more creative or perhaps there is a need to re-visit rules relating to procedure where there are litigants in person.

We also believe that there is a subtle problem caused when women represent themselves. To some extent lawyers play a "shielding" role in the courts. Clients who are emotionally stressed by the proceedings can "let off steam" with their lawyer and present a calm exterior to the court. When the lawyer is removed they are exposed in all their vulnerability. Where a violent man is represented, his aggression is often concealed.

Meanwhile his frightened partner, who is terrified about the consequences of the hearing, is forced to be her own advocate. She is often battling against a Family Report that has

described her as "over-anxious" and has been frustrated and demoralised by her contact with Legal Aid. This creates an extraordinary disadvantage as she exposes her "hysteria". All that the father, and perhaps the Family Report, has said about her appears to be played out before the judge's eyes.

Enforcement of Contact Orders

We are noticing increasing numbers of women being dragged back to Court on contravention applications relating to contact, when the reason for non-compliance with the terms of the order relates to the man's ongoing violence or the reluctance of the children to spend time with the violent parent. Many of these orders seem to have been made by consent in circumstances where the women were unable to obtain legal aid to pursue the order they really believed would work and ensure the safety of themselves and their children. The men are frequently unrepresented.

Of great concern to us is the fact that it is almost impossible for the women to obtain legal aid to defend the proceedings because if they are technically in breach of the order, Legal Aid assesses their case as having no merit. We are aware of a number of cases where women have successfully defended these cases notwithstanding the "no merit" assessment from Legal Aid.

In our experience, the following are common features in enforcement proceedings against women.

- * History of domestic violence by the man towards the woman which has often been confirmed by the award of a protection order to the woman.

- * There have often been breaches of the protection order and successful prosecutions. Given the difficulty which women often experience in convincing the police to take any action, successful prosecutions are generally solid evidence of serious and repeated violence.

- * The woman often has some evidence of sexual abuse or neglect during contact.

- * One or both parties is/are unrepresented.

- * The relevant order will often have been made by consent.

- * Legal aid is only available for a conference and the woman understands that there will be no legal aid for court proceedings if the only dispute is about the terms of contact arrangements.

- * Where there have been significant court proceedings, including the preparation of a Family Report, the woman is often described as hysterical, difficult and derogatory towards the father, while he is found to be so charming that one wonders why she ever left him.

A number of judges interviewed in the Graycar, Harrison and Rhoades research commented that:

Contravention applications are being brought predominantly by fathers who act for themselves and interpret the Reform Act as giving them "more rights than they have". Several noted that such applications are frequently frivolous and without merit.

Consent Orders and Contempt

In research which has been conducted by the Australian Law Reform Commission and the Family Law Council on contact cases a relationship was noted between difficult contact cases and consent orders (ALRC, 1994, p 49).

Here we see a combination of the Reform Act, increased use of PDR and the new orthodoxy on contact leading to greater contact being ordered by consent. In some situations this is a wonderful outcome for children who will have a better opportunity to develop a meaningful relationship with their father. In other instances this will be a prelude to tense exchanges, fearful mothers, traumatised children and contra-vention applications.

The Attorney-General has recently made announcements that the Government will reform family law on parenting orders to improve enforcement. We believe that the real issue is whether appropriate parenting orders are being made in the first place. If not, introducing draconian measures to "improve enforcement" is potentially dangerous for children, women and men. These are generally situations of high conflict and tension, with a history of violence and the possibility of serious violence, including murder and murder/suicide, generally perpetrated by the father.

Legal Aid

Indirect gender bias

We believe that there is an indirect gender bias operating in the way that grants of aid are allocated. Merit is assessed on a basic system of "ticking boxes" under the heading of establishing whether there is a "genuine dispute". The problem for women is that, if they leave with the children and apply to legal aid so that they can have formal residence or contact orders in place, they will be refused because there is no "genuine dispute" from their perspective.

This leaves a woman who has separated from a violent man in a very difficult position. Either she gives him contact without the benefit of an order in place, and panics about the safety and return of the children, or she denies him contact. As many women actually want their children to continue a relationship with their father after separation, even if he has been violent towards her, this stark decision is very disturbing. She would like to give contact but wants the security of a court order.

If a woman in this case decides to deny contact, the man will automatically obtain legal aid because he is being denied contact and the box of "genuine dispute" is ticked. The woman is even at risk of the man obtaining legal aid and applying to a Magistrates Court for *ex parte* residence and a warrant for the return of the children. If he does not apply to a court, the father at least starts off as the "denied" father and

she as the "difficult and unco-operative" mother in the eyes of legal aid before any history of the case is revealed. The irony is that the mother may have even contacted legal aid for the sole purpose of trying to devise a situation under which she feels safe providing contact, but her contact with legal aid is unlikely to even be recorded. It may just have been a telephone call to the Call Centre in which she will have been advised that her situation does not warrant a grant of aid.

If the parties get to a legal aid conference the "right" to contact for the father dominates the process. There is almost no legal aid to litigate about the terms of contact arrangements, for example, whether contact should be overnight or supervised. Legal aid is only granted where there is evidence of sexual abuse. It seems ironic that when women want to give contact, but propose appropriate conditions, they are either forced into "standard" arrangements or find themselves acting for themselves in the Family Court.

Women will be told by their solicitors to settle at a legal aid conference if the father is requesting "standard contact", that is, every second weekend, half the school holidays and perhaps some other occasions. If the woman refuses to agree to this she will be judged unreasonable and therefore will not get further aid. Therefore, solicitors who are aware of this push their clients to settle, believing this to be in their best interests. The clients come away feeling brow-beaten and unheard. They have not even seen the outside of the Family Court.

If the woman applies for legal aid after this, or before, she will be refused on the basis of merit because what she is proposing, that is, a refusal of contact or a more limited arrangement, is not considered reasonable. The reasonableness of the man's proposal in the factual context of his relationship is not assessed.

This seems to be a fundamental flaw in the guidelines. It is only the party who is applying for legal aid who is judged under the merit test. Their precise proposal has to be considered reasonable. The fact that their main purpose is to oppose an unreasonable, and maybe dangerous Court application from the other party does not seem to be considered. In our view that should be the test. Is it reasonable for the legal aid applicant to oppose the proceedings or proposal made by the other side? The detail of their final position can be negotiated during the processes that should follow.

There is an irony here. Where the women have an obviously strong defence they can get legal aid and a lawyer. Where the defence is more subtle and requires a re-examination of the original order and an exposure of the extent of violence in the case, they are refused legal aid and must argue the case themselves. Some of our clients have won various applications in the Family Court after being refused legal aid on the basis of merit. This should call the efficacy of the merit test into question.

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IN DEFENCE OF THE REASONABLE WOMAN

By Dr. Sarah C Derrington

Sarah Derrington is a senior lecturer at the University of Queensland, teaching in maritime law, legal drafting, legal research and writing. Her position as the Head of the new Centre for Maritime Law reflects her interest in the field of maritime law. Prior to joining the staff of the University of Queensland full-time, Sarah taught maritime law part-time whilst in private practice at the Bar.

Until the latter half of this century, it would be fair to say that it was the commonly held view amongst the majority of Western civilisations that women were lesser beings than men: that they existed as a class of beings, “illogical, impulsive, careless, irresponsible, extravagant, prejudiced and vain, free for the most part from those worthy and repellent excellences which distinguish the Reasonable Man, and devoted to the irrational arts of pleasure and attraction”.

In other words, at common law, there was no such creature as the “Reasonable Woman”. By contrast, the “Reasonable Man” is the yardstick by which the conduct of a defendant in a negligence case is invariably judged. A P Herbert, in *Uncommon Law* (Eyre Methuen, 1969) describes the “Reasonable Man” as “an ideal, a standard, the embodiment of all those qualities which we demand of the good citizen”. He goes on to discuss a number of examples in which courts have been required to apply this exacting standard to the facts in question: “Did the defendant take such care to avoid shooting the plaintiff in the stomach as might reasonably be expected of a reasonable man? (*Moocat v Radley* (1883) 2 QB); Did the plaintiff take such precautions to inform himself of the circumstances as any reasonable man would expect of an ordinary person having the ordinary knowledge of an ordinary person of the habits of wild bulls when goaded with garden forks and the persistent agitation of red flags? (*Williams v Dogbody* (1841) 2 AC)”.

The “Reasonable Man” is really perfection personified. He is the one who, according to Herbert:

* Invariably looks where he is going, and is careful to examine the immediate foreground before he executes a leap or bound;

* Neither star gazes nor is lost in meditation when approaching trap-doors or the margin of a dock;

* Records in every case upon the counterfoils of cheques such ample details as are desirable, scrupulously substitutes the word “Order” for “Bearer”, crosses the instrument “A/c payee only” and registers the package in which it is dispensed;

* Never mounts a moving omnibus and does not alight from any car while the train is in motion;

* Investigates exhaustively the bona fides of every mendicant before delivering alms;

* Will inform himself of the history and habits of a dog before administering a caress;

* Believes no gossip nor repeats it, without a firm basis for believing it to be true;

* Never drives a ball till those in front of him have definitely vacated the putting green which is his own objective;

* Never from one year’s end to another makes excessive demand upon his wife, his neighbours, his servants, his ox, or his ass;

* In the way of business looks only for that narrow margin of profit which twelve men such as himself would reckon to be “fair”, and contemplates his fellow merchants, their agents, and their goods, with that degree of suspicion and distrust which the law deems admirable;

* Never swears, gambles, or loses his temper;

* Does nothing except in moderation, and even while he flogs his child is meditating only on the golden mean.

The question which is ultimately posited is why, in the mass of authorities which have accumulated over the years, there is no reference to the reasonable woman? The answer suggested is that no such being is contemplated by the law; that legally at least there is no reasonable woman. The observation is made that in legal textbooks, or at least in those which existed in the time period to which Herbert is referring, the problems relating to married women are usually considered immediately after the pages devoted to idiots and lunatics.

There is another interpretation. Whilst one might be surprised to find a man who fulfils that exacting list of qualities which apparently defines the “Reasonable Man”, one would not need to look far to find such a woman. Indeed, a cursory glance through the case law relating to negligence will reveal such a dearth of cases in which the defendant is female as to prove the proposition beyond doubt. The common law has never need to invent the fiction of reasonableness in relation to women – the reality speaks for itself.

THE LEGAL STATUS OF JAPANESE WOMEN: FROM *DE JURE* EQUALITY TO *DE FACTO* EQUALITY

By Mariko Bando

Mariko Bando is the Consul-General of Japan at Brisbane, Australia. Her appointment to this role in June 1998 saw her become the first ever female Consul-General of Japan. A graduate of the Faculty of Letters, Tokyo University, Ms Bando has held various positions in the Japanese Public service since she joined the Prime Minister's Office in 1969, including Director of the Office for Women's Affairs (later the Office for Gender Equality). From 1995 to 1998 she was the Vice Governor of Saitama Prefecture, Queensland's "sister state". In addition to her career in the public service, she has published books including "A New Generation of the Aged", "Consumer Society in Alternation", "Outlook of Career Women in the USA" and "New Age of Family".

After World War II - towards *de jure* equality

Constitution

The Japanese Constitution, promulgated in 1946, prohibits "discrimination in political, economic, or social relations because of race, creed, sex, social status or family origin" (Article 14). After the Constitution came into force, the civil code and the laws pertaining to election, education and labour were all revised or enacted in order to uphold the principle of equality between the sexes.

After nearly decades of campaigning for suffrage, women were granted the right to vote and hold public office. Japanese women voted for the first time in April 1947, half a century after Australian women.

The Basic Law of Education guaranteed women an equal opportunity to receive education according to ability. Public schools were made co-educational and women were allowed to enrol in universities that formerly admitted only men.

The Labour Standards Law, which came into effect in 1947, stipulated that men and women performing the same job must receive equal wages. It also established special provisions for women. It was concerned with the protection of female employees employed in factories or engaged in manual labour from hard or dangerous work. It was not concerned with giving equal opportunities to women.

However as more women advanced to higher education and a greater number of women entered professions, they advocated the elimination of these protective measures in favour of a guarantee of equal treatment. On the other hand, the unions advocated retaining protective rules for women who purportedly had more responsibilities to their families than male employees. The issue of protection of women versus equal opportunities for women has been a controversial one for women in the workplace in Japan.

Civil Code

Provisions in the *Civil Code* concerning family relations also underwent major changes after World War II. The *ie*, or household, which was the basic unit of the Japanese traditional family system, and the discriminatory practices inherent in it, were abolished.

The old *Civil Code*, enacted in 1898, strengthened the *ie* system considerably. The approval of the head of the family had to be obtained when marrying, and when deciding where to live, or what job to undertake. The *Code* also specified that

a married woman must have her name entered in the family register of her husband and must defer to his choice of domicile.

A married woman could not take legal action and was legally incompetent with regard to the disposition of property. The old *Civil Code* also specified that she must defer to her husband's authority. The husband was given the right to manage all property owned by his wife, and only the father exercised parental authority over children. Moreover, wives but not husbands, were legally obligated to remain faithful.

The new *Civil Code* completely abolished all provisions running counter to the principle of equality between the sexes, and firmly established the principle of equality between husband and wife.

The pre-war *ie* system was characterised by the succession to the role of household head by the eldest son or the legally adopted son. He was the sole legal heir, and the wife, younger sons, and daughters were denied the right of inheritance. The new *Civil Code* changed the single person inheritance system to one of joint inheritance, entitling the surviving spouse to one-third of the inheritance and children of both sexes to shares of the remaining two-thirds. The exercise of parental authority jointly by both father and mother became established as a matter of principle.

Recent Legal Changes - realising *de facto* equality

Changes in society led to changes in the lives of people, and the *de facto* inequality of women become obvious in the workplace and in the family.

Civil Code

Although the basic principle of equality between the sexes had already been established in existing laws, changes both in the socio-economic environment and in women themselves, required the enactment of new laws. The revision of the *Civil Code* in 1976 established the right of women to use their married surname after divorce. A further revision in 1980 increased the legal share of a surviving spouse's inheritance from one-third of the estate to one-half.

A legislative council of the Ministry of Justice drafted a revision of the *Civil Code*.

This revision included provisions allowing men and women to keep their own surnames after marriage, abolishing the six month waiting period required before a woman could remarry, and recognising a request for divorce (after five years' separation) from a spouse who is responsible for the breakdown of a marriage. However the revision was not proposed to the Diet because members of the ruling Liberal Democratic Party were afraid that it would lead to a breakdown of the family.

After Japan signed the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1980, it became necessary to amend the law governing the nationality of children of international marriages to introduce a flexible system whereby both Japanese men and women could pass their nationality to their children.

Equal Employment Opportunity Law

In 1985, the Japanese Diet passed the *Equal Employment Opportunity Law* which guaranteed equal employment opportunities and equal treatment in all phases of employment to women. The law obliges employers to make efforts to treat women equally in recruiting, hiring, job assignments and promotion. It also bans discrimination on the basis of sex with regards to employee education and training, welfare benefits, mandatory retirement age, and dismissal. No penalties were imposed, however, for violation of any of these regulations. This is a concession to employers who were reluctant to support this law.

The *Labour Standards Law* has also been revised to abolish restrictions on overtime for women in managerial and professional posts and relaxes the restrictions for other female workers. Formerly, overtime work by women was restricted to two hours daily, up to a maximum of six hours weekly and 150 hours annually. The revision loosens restrictions against women working on holidays and at night between the hours of 10:00 pm and 5:00am.

Restrictions on dangerous work such as operating boilers or working at heights have also been lifted, except in the case of pregnant women. Menstruation leave has been abolished. Measures to protect motherhood have been increased. Maternity leave has been extended from 6 weeks to 8 weeks after birth. It is up to the individual company whether or not to provide paid maternity leave. However, women are guaranteed 60% of their monthly salary through their health insurance scheme.

Parental Leave Law

The *Parental Leave Law* was enacted in 1992. Under this Law, in addition to the eight weeks off after the birth of the child, either parent can take leave until the child's first birthday. Since 1995, 20% of the parent's salary is provided during this leave through the employment insurance system. In addition, six months after the return to work, a lump-sum payment of 5% of the parent's salary will be provided.

Under further revisions in 1995, family nursing care benefits have been added to parental leave to ratify ILO Convention 156.

In 1998, the *Equal Employment Opportunity Law* was revised for the first time in twelve years, and created a new obligation on employers to make efforts to prevent sexual harassment.

Basic Law of Gender Equality

Japanese women are looking for equality which is not only *de jure*, but *de facto*. After the Beijing Conference on women, many grass-roots women's groups began to understand that our social institutions and systems still stem from traditional sex roles, and that physical, mental or emotional violence against women is still prevalent in our society.

Stereotyped gender roles, such as "men belong at work and women at home", are the source of the discrimination women suffer in terms of wages and working conditions. The taxation system and the social security system also encourage this discrimination by providing taxation advantages to families where there is a dependent spouse. It is necessary to get rid of such ideas and develop a comprehensive framework of workplaces, homes, schools and local communities to help create a society where both men and women can make full use of their abilities.

The government has begun to recognise that women's rights are a human right.

It has proposed a *Basic Law for Gender Equality* to put to the Diet, which is still being discussed. The purpose of this law is to bring women's rights to the fore, to check policies from the viewpoint of gender equality, to encourage a change in attitude, and to achieve *de facto* equality.

The government is planning to promote gender participation as an important pillar of its policies over the next century, upholding it in the administrative reforms to be carried out in the year 2.

ADVANCING THE STATUS OF WOMEN THROUGH ADVOCACY

By The Honourable Justice Margaret McMurdo

The Honourable Justice Margaret McMurdo has been the President of the Queensland Court of Appeal since August 1998. Previously, she had been a Judge in the Children's Court and District Court, worked in the Public Defender's Office and as a barrister in private practice. The following article is based on an address to the Zonta International meeting held in February this year. Zonta is a professional women's organisation and the theme of its meeting was advancing the status of women through advocacy.

Advancing the Status of Women through Advocacy is a topic which deals with two things about which I am passionate - firstly, advancing the status of women and, secondly, advocacy. I will address the issue through the subjects of the workshops to follow this address:

- * Preventing Female Genital Mutilation
- * Preventing the Physical Abuse of Women and Children on Aboriginal Settlements
- * Preventing Domestic Violence
- * Assisting the Victims Of Rape and
- * Implementing the Mandate of the Beijing Declaration.

What is advocacy? I have been a lawyer for the past twenty-two years and was an advocate as a barrister until my appointment as a judge eight years ago. To lawyers, advocacy involves pleading and arguing a case, usually in courts or tribunals, on behalf of their clients. Through advocacy, the rights of the citizen are protected against a heavy-handed police force, state or big business. By becoming an advocate for a particular client, a lawyer can, with the help of an independent judiciary, ensure the existence of the rule of law and all that flows from it: the protection of our rights and freedoms.

I treasure the value of advocacy in our society and know what it can achieve. Advocacy can be instrumental in maintaining the rule of law, by ensuring the abuse of power by the legislature or the executive is curtailed by the third arm of government, the courts. It is for that reason I regard it as such an honour to serve the Queensland community as a member of the Court of Appeal.

Access to effective advocacy has long been recognised as important to success in the criminal and civil courts. Concepts like rights, freedom, the rule of law and an independent judiciary are concepts which, like clean air and safe water, we take for granted. Yet even in Australia not all citizens have the same degree of protection provided by the rule of law. The horrifying statistics of the extent of violence in many Aboriginal communities in Queensland suggest that, if you are an Aboriginal person living in such a community, the rule of law does not provide the same protection enjoyed by those living in mainstream Australia.

Victims of domestic violence or rape or those subject to female genital mutilation may well doubt that the rule of law has protected their rights and freedoms.

The Report of the Fourth World Conference on Women of the United Nations in Beijing addresses these and other issues focussing on the advancement of women and ensuring the full implementation of the human rights of women and of the girl child as an integral part of all human rights and fundamental freedoms. Whilst the fine words of an advocate will not change the world, they are a good start.

"Advocacy" does not just include the lawyer advocate, but also lobbyists, whether professional institutes, unions or community groups who represent special interests. These include the Victims of Crime Association, Citizens Against Road Slaughter and Queensland Advocacy Incorporated, an advocacy organisation whose mission is to promote, protect and defend through advocacy the needs, rights and lives of the disabled, or even the Women and the Law (WATL) Society. The term "advocacy" includes social advocacy, the process of functioning, speaking, acting or writing on behalf of a perceived interest. A further type of "advocacy" is systems advocacy, advocacy that focuses on influencing and changing the system (society and the systems operating within society) for the benefit of a disadvantaged group. Systems advocacy includes matters such as policy and law reform. Zontians and members of other voluntary groups including WATL can change the system through advocacy by raising awareness, speaking out, writing letters to the print media and politicians, speaking on talk back radio, giving interviews, using their vote and encouraging others to do the same.

Advocacy also has its important wider meaning in terms of social and systems advocacy. Members of an increasingly well-educated and articulate society are conscious of the value and importance of improving the status of women through advocacy. They are also conscious of the importance of access to advocacy, in its widest sense, to the most vulnerable groups in our community, including our children, our indigenous Australians, and the victims of domestic violence and rape. Zontians and other concerned groups and individuals must take a leadership role in ensuring that disadvantaged groups have access to advocacy to achieve basic rights and freedoms if the inspirational words of the Beijing Declaration are to be anything more than words.

Jocelyne Scutt, an advocate committed to advancing the status of women, reminds us:

"...we can understand the position of women only through relearning history, and uncovering the history which has been kept from us, allowed to go out of print, or never reached the publishing house or printing press. ... changing the world is possible only with the benefit of knowing what has gone before, what women have done and been before, and what women can be and will become. ..."

There is a real need for women to continue to demand of economics and economists, of history and historians, and of the legal system and jurisprudence, lawyers and judges, that they reorientate themselves to accept that 52 per cent of the population are women and women's concerns are vital ... "

and that:

"...many social movements have been begun by women's action; the environmental movement has been dominated at various times by women being concerned about the effect of building developments or road-building on the local environment, and the destruction of parks and other similar areas. This experience has led to further political action by women, in various areas. And it is again when women take political action that we must remember not to downgrade the efforts made. There can be a tendency to believe that because there are major changes we want to see and for which we are striving, small changes we have effected are of no importance, or

'don't count'. Women must learn to recognise 'wins', and not to believe that we have not won if we don't achieve 100 per cent of a particular aim at first 'go'. The steps forward cannot be taken without the steps behind. Women of the future will be building on what we, the women of today, have fought for, achieved, won."

Not that all the achievements through women's advocacy are small ones. Hilaire Barnett points out:

".. it is 18th, 19th and early 20th century feminist campaigns for the elimination of discriminatory laws which prevented women from participating fully in civic life which marks the origins of contemporary feminist thought. The struggle for the franchise and the battle to be admitted to universities and the professions represented a seminally important, and ultimately largely successful, campaign on which subsequent work towards the full emancipation of women in society was founded."

She urges women to take part in consciousness-raising. "A process whereby women become aware, through discussion and debate of their own and others' situations and the disabilities which are imposed by society and law. ... In order to create the climate for change, women's voices must be heard: their experiences recounted and the commonalities and differences between those experiences perceived. Moreover, in the process of this story telling, the individual and the group becomes empowered through the release from isolation."

Consciousness raising is a process which may take place in private group settings, but it is also one which operates on a public institutional level, in the analysis of, for example, the manner in which the State and its laws discriminate against women, exclude them from the public domain, or, when including them, do so in a discriminatory and patriarchal manner."

Consciousness-raising is an important form of advocacy. The history of women advocates as lawyers in Australia is very recent. In Western Australia in 1896, Miss Edith Haynes was refused admission under the *Legal Practitioners' Act 1893 (W.A.)* which referred to "any person" in possession of qualifications being entitled to be admitted by way of articles as a solicitor.

Miss Haynes was allowed by the Barristers and Solicitors Admission Board to have her articles registered and took the preliminary examinations, but was warned by the Board that it could not guarantee her admission. In time, the court refused her right to sit for the final examination and on appeal the Court stated:

"I think that the right of a woman to be admitted is a misnomer ... The common law of England has never recognised the right of women to be admitted to the Bar. It is said that out here we have a statute which confers this right, and the learned counsel who appeared to represent the applicant said that the statute says 'every person' ...

"You must bear in mind that through the civilised world, so far as we know, we have not been able to ascertain any instances under the common law of the United States which is based on the common law of England, or of any instance in England or in any British speaking colony where the right of a woman to be admitted to the Bar has ever been suggested. That being so, it is said here that it should exist, because the words in the statute are 'every person'. That does not appear to me to be very forcible."

It was not until 1911 in South Australia that the *Female Law Practitioner's Act* was passed to allow women to practise law. Even in 1920, Ms Mary Kitson was prevented from becoming a public notary under the *Public Notaries Act* because the Act again referred to "any person". The Supreme Court held that no woman, however well qualified, could be a public notary under that Act. Queensland's first female solicitor, Agnes McWhinney was admitted in December 1915 and in 1926 Catherine McGregor MA was the first Queensland woman admitted as a barrister.

Until 1991, there were no women judges in Queensland, but that has changed quickly. Recently the State Attorney-General, Matthew Foley, has taken a deliberate decision to increase the number of women judges, at all levels of the judiciary.

There are a small but growing number of women magistrates, three women District Court judges, four women Supreme Court judges, of which I am one, one woman Family Court judge and one woman Federal Court judge in Queensland. The most senior woman judge in Australia is Justice Mary Gaudron, the only woman on the High Court.

Queensland now is leading the nation in its proportion of women in the judiciary but nonetheless this proportion of women judges remains low. It is said that at the Queensland Bar some male barristers are considering a sex change to increase their prospects of judicial appointment! That politicians see political advantage, or at least not disadvantage, in appointing women to the judiciary is a credit to the power of the advocacy of women's groups to effect social change.

Let us now look at the power of advocacy to affect the matters to be discussed in the workshops.

Preventing the practice of female genital mutilation

Some evidence of the power of advocacy to advance the status of women is that women in Queensland, through their advocacy skills and political power, were able to effect a reference from the Attorney-General to the Queensland Law Reform Commission resulting in the QLRC's Report on Female Genital Mutilation. The term "female genital mutilation" describes a variety of ritual practices. The first is the scraping or simple nicking of the clitoris or the excision of the prepuce or hood of the clitoris, known as "sunna" in some Muslim countries.

The second is excision, which includes the excision of the clitoral prepuce and the removal of the glans of the clitoris or removal of the whole of the clitoris itself and the removal of all or part of the labia minora. The third is infibulation, which consists of the excision of the clitoris, labia minora and parts of the labia majora. Two sides of the vulva are then sewn together, a small opening allowing for the passage of urine and menstrual blood. The legs of the girl are then bound together and she is immobilised for several weeks to ensure the wounds heal. This is the most intrusive procedure.

Most Australian women who are victims of female genital mutilation are refugees from the Horn of Africa countries, such as Eritrea, Somalia, Ethiopia and Sudan. The Commission also spoke to women from Kenya, Egypt, Malaysia and Indonesia. Those women have felt rejected and self-conscious, humiliated and victimised in Australian society and are sometimes fearful of taking their daughters to doctors or hospitals in case their children are removed from them. Queensland women, who were themselves victims, felt it was important to prevent girls from being similarly genitally mutilated in Australia.

At present, it is estimated that between 85 million and 114 million girls and women in the world are genitally mutilated.

The World Health Organisation lists the following countries as countries where this is most prevalent: Benin, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Djibouti, Egypt, Ethiopia and Eritrea, Gambia, Ghana, Guinea-Bissau, Kenya, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Somalia, Sudan, United Republic of Tanzania, Togo, Uganda and Zaire. There are also reports that female genital mutilation is performed in Oman, South Yemen, the United Arab Emirates, Indonesia and Malaysia and that such operations have occurred in migrant communities on very young girls in western countries, including Australia, although the extent to which any form of genital mutilation is practised in Australia, if at all, is not known.

The short term health complications arising from the procedure include pain; haemorrhaging from sections of the pudendal artery or of the dorsal artery of the clitoris or severe bleeding; septicaemia; infections including tetanus; accidental cuts to other organs such as the urethra, the bladder (frequently resulting in urine retention, incontinence and bladder infections), anal sphincter, vaginal walls or the Bartholin glands; a more severe form of mutilation being performed than was intended or even death.

Doctors from one African country estimate that the number of deaths resulting from female genital mutilation especially infibulation is approximately one-third of all girls in areas where antibiotics are not available. Medicine to stop the bleeding on one girl took skin off her entire body from waist to knee so that she was hospitalised for one month and could not go to school for three months.

More severe long term health complications arise, usually for infibulated women. These include chronic recurrent infections of the vagina, uterus and urinary tract, slow and painful urination, keloid and severe scar formation making walking difficult, sterility, the buildup of menstrual blood which is not allowed to escape and the swelling of the abdomen caused by the blockage of the menstrual flow, painful periods and sexual intercourse, further surgery to enable sexual intercourse to occur, child birth complications, including the need to cut the scar left by infibulation to allow the baby passage, long and obstructed labour which can lead to foetal death or brain damage to the baby, fistula formation which can lead to incontinence, haemorrhaging and infections.

It is likely that risk of maternal death is greatly increased. During child birth the risk of haemorrhage and infections is greatly increased and long term morbidity becomes cumulative and chronic. Excision may also result in the development of neuroma, a tumour which makes the area permanently and unbearably sensitive to touch, as well as vulval abscesses. After sunna circumcision, the exposed clitoris may become hypersensitive and painful to touch. Circumcision is often done with unsterilised instruments contributing to the spread of infections, including HIV. The Commission recognises that undoubtedly there are significant psychological effects which have not been documented.

The Law Reform Commission recommends:

* Appropriate education programs aimed particularly at the group most likely to be affected by female circumcision, girls, new immigrants, health and child protection workers, police and the Queensland judiciary.

* The establishment of a referral service to provide counselling, education and advice to those in special need.

* That female genital mutilation be an offence under the Queensland Criminal Code but that the commencement of that section be deferred until after the satisfactory implementation of education programs.

* That the Commonwealth government be involved in international educative efforts against female genital mutilation and provide all possible financial backing and assistance to those efforts and that Australian embassies in countries in which the practice is carried out should actively promote Australia's position in relation to female genital mutilation and should provide information regarding Australia's laws and attitude towards the practice to any person considering emigrating to Australia.

The Commission, with the assistance of the Office of Parliamentary Counsel, has drafted a Bill for consideration of Parliament. That was in 1994. The Bill has not become law. Some feminine sceptics have suggested that had the Bill related to a practice which injured the male genitalia it would have been one of Parliament's first statutes! Zonta can become an advocate to have the Bill made law and the recommendations of the Law Reform Commission implemented.

Preventing the physical abuse of women and children on Aboriginal settlements

In a series of recent articles in *The Courier-Mail*, attention has been drawn to the shocking violence against women and children in Aboriginal communities. Like all the problems to be discussed today, there are no easy solutions. Marina Paxman, in an article based on a paper distributed at the United Nations Working Group on Indigenous Populations meetings in Geneva and Brazil in 1992, notes:

"Traditionally, women in Aboriginal culture have a status comparable with and equal to men. We have our own ceremonies and sacred knowledge, as well as being custodians of family laws and secrets. Today, Aboriginal women are portrayed as passive victims of non-Aboriginal and Aboriginal men and of colonial assimilationist policies (for example, institutionalised and forced adoption of Aboriginal children). The effect of colonisation and patriarchy has been to undermine the status of Aboriginal women. It has led to a disempowerment, to downgrading of our role in society and to attempts to silence our cultural voice.

Solutions do exist yet they have to come from the Aboriginal community. Aboriginal women need to be involved in the process of re-defining and articulating customary law; that is, mechanisms of social organisation and social control which allowed Aboriginal society to function before invasion.

We can run and police our own lives in our own communities on our own lands using our resources and with compensation for the invasion of our nations. Aboriginal women have been significantly overlooked in the provision of services to assist with problems arising from alcoholism, domestic violence and lack of respite care. ...

Aboriginal sovereignty, land rights and a strong economic base incorporating Aboriginal community organisations (legal, medical/health, art and craft co-operatives, housing companies, education agencies, employment programs, sporting bodies, etc.) need to be supported and encouraged. Community development and social justice options offer the best chance for Aboriginal self determination.

Aboriginal run "safe houses", women trained and employed to investigate sexual offences, police aides trained not with an enforcement mentality but with implementing crime prevention programs, dispute resolution, crisis intervention, detoxification units are all alternative solutions to the enormous sums of money poured into policing Aboriginal communities and locking us up.

... Aboriginal women are clearly saying we are tired of the institutionalised violence and community violence we face every day. We are tired of government and public apathy towards our efforts to stop the human rights abuses of Aboriginal women and our communities.

Aboriginal women need to be systematically included in decision making. Currently, all too often, only Aboriginal men are being consulted and this dispossesses Aboriginal women of their place in society, causing attitudes which promote social disruption and violence. Women need to be included in decision-making processes otherwise further subjugation and dispossession of Aboriginal women in communities will continue."

I agree with Ms Paxman that the solution to preventing the physical abuse of women and children in Aboriginal communities must come through empowerment of the women and also the men in those communities. They have the solutions within them.

These problems belong to us all. But we cannot impose our solutions on Aboriginal communities. We must listen to their solutions and support and help them achieve those goals. As advocates, we can educate the community and lobby government for money to support their solutions. I believe great things will be achieved within these communities, given proper resourcing and support.

Safe houses, art and craft cooperatives, sporting clinics and gardening cooperatives, may be suitable projects to encourage. What human resources have we as Queenslanders been wasting in these communities? How many talented sportsmen and sportswomen have not had the opportunity to reach their potential? How many great artists, poets and story tellers have not had the chance to share their creativity with the wider Australian community? How many sensitive tourism opportunities have been untapped?

I have seen encouraging signs in the criminal justice system that empowerment in Aboriginal communities works. I was privileged to attend the "Coming Together on Local Justice" Conference in Cairns late last year. Respected members of Aboriginal communities, both male and female, are involving themselves in the control of crime in their communities through the formation of local Community Justice Groups.

These groups might assist a member of the community who has an overdue fine by arranging an extension or alternative community service work, rather than the current alternative of imprisonment. These groups offer support and organise appropriate community service for offenders, especially young offenders. Sometimes the shame offenders suffer within their own community can be a greater punishment than that handed down by a court.

Magistrates and judges are beginning to consult with community justice groups in order to determine the most appropriate sentence for an offender in a particular case and the *Penalties and Sentences Act 1992* may be amended to encourage the judiciary to consider the views of Community Justice Groups. The Supreme and District Court has recently

sat in aboriginal communities like Thursday Island, Mornington Island, Doomadgee and other remote centres. The result is the courts are better informed and are able to pass more effective sentences, and Aboriginal communities are having an input into a system which has, in the past, been alienating and excluding.

"Zonta" is a Sioux Indian word meaning "honest and trustworthy" and makes this Cheyenne proverb, quoted in the Aboriginal Law Bulletin by Judy Atkinson, apposite:

"A nation is not conquered until the hearts of its women are on the ground. Then it is done no matter how brave its warriors or how strong its weapons."

Ms Atkinson notes: "The fact is that the legal system is clearly unable to provide protection to indigenous women and their children from physical and sexual violations, and that many indigenous women long ago gave up on the system in seeking restitution of their right to be able to live in safety in their own homes and communities on their own lands."

She refers to the experiences of a Circle Court in British Columbia where indigenous people are sentenced in consultation with the stakeholders and elders of the community. She embraces the idea that sentencing in domestic violence can provide positive behaviour changing experiences by the example of an offender who was placed on 12 months probation.

During this time, he had to report to senior members of his community for the period of his probation; he had to perform community service, in this case organise and manage a youth rediscovery camp; he was barred from drink and had to attend an alcohol treatment program for the term of his probation; he had to assist in organising and then participating in, a support group for men who are violent; and he had to appear for review on a specified date.

Domestic violence offenders and their families in the wider community could also benefit from such thoughtful sentences.

Ms Atkinson concludes: "I do, however, have implicit faith in my own people to do the work of healing and rebuilding, of regenerating and restoring. All I ask of government and the legal institutions is that they support us in these endeavours."

The Queensland community eagerly awaits the report of the Aboriginal and Torres Strait Islander Womens Task Force on Violence, chaired by Ms Boni Robertson.

Preventing domestic violence

To some extent, gains made through advocacy of women's groups and feminist-led discussions of the dynamics of domestic violence have already resulted in significant improvements in our community's attitude to domestic violence.

Victims are able now to take out Domestic Violence Orders under the *Domestic Violence (Family Protection) Act 1989*. Complaints about the difficulties faced by women victims in the Magistrates' Courts resulted in a Women's Legal Service Survey in 1994. The information collated was used to develop a Domestic Violence Protocol in the Magistrates' Courts for complainants.

The community has a better understanding of how women can become trapped in the cycle, having been disempowered,

they are unable to break the cycle and end the domestic violence. The submission in the criminal courts once made on behalf of a perpetrator of domestic violence "Your Honour, it was only a domestic" no longer holds sway. Police officers, prosecutors, judges and legislators now usually recognise the rights of a woman in her home, and if they do not, it is likely they will suffer the wrath of the media and women's groups. There is a growing awareness that all domestic violence, even acts that do not lead to physical injury, are harmful because they subjugate women and instill in children a sense that violence is normal in relationships. Whilst there has been progress, that progress needs to be consolidated. Shelters for women and children still need funding and support. It is commendable that the Federal Government has shown some commitment to the issue through its Business Against Domestic Violence Program. The Beijing Declaration asserts that: We are determined to prevent and eliminate all forms of violence against women and girls."

To assist in implementing the Beijing Declaration, women and women's groups must remain staunch advocates for the rights of victims so that domestic violence is eliminated.

Assisting the victims of rape

Advocates for the status of women have also made significant gains for rape victims. When I started as a young barrister, the criminal justice system treated the victims of rape very poorly. The advocacy of women's groups means complainants now give evidence in closed court so that prurient salivating members of the public and the media no longer have the opportunity to hear and report the traumatic and intimate details. The identity of complainants cannot be published. Complainants may have a support person with them in court whilst giving their evidence. Complainants are now only rarely allowed to be cross examined as to their prior sexual history.

Complainants may request a screen to be placed between them and the accused. The law now recognises that rape can occur within marriage. If there is a conviction, victims of rape are entitled to some criminal compensation under the *Criminal Offence (Victims) Act 1995* including compensation for psychological or psychiatric damage. Recent media reports that compensation awards made by judges were being reduced by the Justice Department led to such an outcry by women voters and women's groups that it seems unlikely this will re-occur.

Nevertheless, significant problems remain, such as possible delay in victims receiving the compensation (in one case the court noted compensation was delayed for ten and a half months). Furthermore, a victim cannot be reimbursed for her expenses of bringing the application for compensation.

Despite these improvements, the road for the victim of rape where the issue is consent remains a very hard one. The difficult task for judges is that they must perform a balancing act, on the one hand protecting the rights and sensitivities of the complainant, whilst on the other, ensuring the accused person has a fair trial. Every person, including women, charged with criminal offences, are presumed innocent until the Crown prove the case beyond reasonable doubt. There will always be an inevitable tension between those competing interests if the accused claims the complainant was consenting or that he honestly and reasonably believed she was consenting.

We must educate ourselves, other women and the community with a view to ensuring a greater understanding of

victims of rape. Reformers must realise that not only must laws be changed but also popular understandings of how and why women and men act as they do in particular situations.

An exciting development showing the empowerment of women and the strength of women as advocates, is the Department of Justice's Task Force on Women and the Criminal Code which is consulting widely on the Queensland Criminal Code's impact on women. The Taskforce comprises sexual assault workers, women from non-English speaking backgrounds and Aboriginal and Torres Strait Islanders, disability workers, domestic violence workers, lawyers, police and representatives from government departments.

The Taskforce is to report on women as accused, sentencing options, women as victims (rape and sexual offences, domestic violence), criminal responsibility, judicial education, court design layout and sentencing and women as witnesses. The Taskforce wants to hear the voices of Queensland women.

Some may have read *Demonic Males* in which the authors point out the similarity between human DNA and the DNA of apes: human DNA and the DNA of chimpanzees is closer than the DNA of chimpanzees and other apes. The authors present a study of ape societies where male apes are perpetrators of domestic violence, rape and infanticide of the young fathered by other males. At one point the book appears to be attempting to excuse men behaving badly but the authors conclude by considering how male violence in human communities can be stemmed:

"The human political system most likely to favour a female competitive style is the one in which power has been de-personalised through the construction of stable institutions. Of the many styles of political institutions, the most de-personalised are the most democratic. Among the nation-states, therefore, institutional democracies present the best actual situations where women can hope to acquire political codominance with men.

"Institutional democracies are deeply imperfect, in several instances weakened by civic and economic crises, often still highly personalised and therefore inevitably patriarchal. But they are also remarkably flexible and resilient, and reduction in interpersonal violence seems most positively assured by faith in the evolution of institutional democracy.

"In true institutional democracies, political power ultimately comes from the ballot box. And it is to the ballot box that women in the real world can most effectively mass themselves ... and break through the trap defined by male interest. Feminist commentator Naomi Wolfe has remarked on the peculiarity that women in democracies, who after all represent half the voters, have not learnt to use their power more effectively. But the trend is there."

They add:

"We should accept the likelihood that male violence and male dominance over women have long been a part of our history. But with an evolutionary perspective we can firmly reject the pessimists who say it has to stay that way. Male demonism is not inevitable. Its expression has evolved in other animals, it varies across human societies and it has changed in history.

"Natural selection makes it inevitable for each individual to pursue his or her own interests, and for conflicts to arise and be resolved. In human affairs, conflicts have traditionally been resolved in favour of high-status men because they

were able to control power so effectively. But the nature of power, its distribution and effects and ease of monopolisation, all depend on circumstance.

“Add to the equation some of the more obvious unknowns, such as the democratisation of the world, drastic changes in weaponry, and explosive revolutions in communication, and the possibilities quickly expand in all directions. We can have no idea how far the wave of history may sweep us from our rougher past.”

It is through advocacy in its wide sense that we as women can change the system within society through speaking, acting and writing on behalf of those who are affected by female genital mutilation, or who are the victims of violence. I look forward to the stimulating workshops to follow. We will listen and learn and hopefully achieve outcomes which will enable us to move towards the implementation of the goals of the Beijing Declaration, with the elimination of violence against women and children, and the attainment of the economic and political empowerment of women.

EXAMINING THE GAP BETWEEN WHITE, MIDDLE-CLASS WOMEN AND ABORIGINAL WOMEN *VIS A VIS* THE LAW

By Kylie-Maree Scheuber

Kylie-Maree Scheuber is the winner of the 1999 WATL Student Paper Competition. She is a second year Arts/Law Student and part-time music and drama teacher. In 1997 she completed a Bachelor of Music from QUT in 1997 and in 1998 received a University Medal for academic achievement.

Indigenous women in Western societies suffer from disadvantages socially, economically and politically, and their position with regard to the law is no exception. As victims, offenders and litigants, the position of Aboriginal women in the Australian legal system is fraught with difficulties not shared by white, middle class Australian women. This is indicative of the difference between the experiences of black and white women in Australia - a difference with which mainstream feminism has struggled to come to terms. Recently, black feminist writers have pointed out the lack of understanding of indigenous women's experiences and demonstrated ways in which feminist discourse can encompass the experiences of Aboriginal women.

Aboriginal Women's Experience Within the Law Generally

Recognition of indigenous women's experience with the law historically is vital to an understanding of the different positions that white and black women currently occupy. Before white invasion in 1788, Aboriginal women held positions in society comparable to and equal with men. They enjoyed their own religious ceremonies and spiritual rights were passed on through the mother. They held positions of authority in relation to the law and were responsible for enforcing laws broken by other women. Invasion brought with it dispossession, rape, destruction of culture and labour exploitation.

Anthropologists traditionally ignored the status of Aboriginal women within their communities, presuming that they were an extension of the men of their group, as European women historically had been. A failure to consult Aboriginal women in anthropological studies and an imposition of the white legal system served to reinforce their loss of status. Thus while the white legal system prescribes a subservient role for women. For white women this has meant a maintenance of the status quo, while for black women it represents the loss of important legal and citizenship rights.

The imposition of the white legal system on indigenous people involved a disregard of Aboriginal customary law and lead to discrimination and abuse. White law enabled the government to "legitimately" deny Aboriginal people basic rights afforded to other citizens, to forcibly remove them to reserves, and to restrict them from living in certain areas.

The different experiences of white and black women are clearly demonstrated in the legal regulation of reproduction. While white women were campaigning for the right to choose not to have children: for access to contraception and abortion, Aboriginal women were fighting for the right to have children. White law allowed the Aboriginal Protection Board to forcibly remove Aboriginal children, usually of mixed parentage, from their families. These policies disproportionately affected women in two ways: firstly, it was the mothers who were usually left behind (white fathers had often already left), and secondly, the children removed were

predominantly female, as they were seen to carry the greatest risk of miscegenation.

This long history of discrimination is mirrored in the absence of Aboriginal women from positions within the legal system. Women in general are markedly under represented: while they make up half of law graduates, they are only a small fraction of partners in law firms and less than 10 percent of judicial officers. The number of women in parliament is increasing but as at the 31st March 1994, women made up only 10.2 percent of the House of Representatives and 22.4 percent of the Senate at a federal level. There exists a distinct lack of indigenous women at all levels of government and as lawyers, judges and magistrates. Sexism operates within Aboriginal land councils and legal services as well, with the highest-paid positions going to men.

Indigenous women have a different relationship with the law compared to white women. They live under the regulation of a law which represents the destruction not only of their culture and traditional legal system, but also of their status as equal to men and as enforcers of law. The same law has legitimated their removal from families, their dislocation from communities, the denial of basic rights and the regulation of every aspect of their lives. White and black women share the inequalities perpetrated against women by the legal system, but Aboriginal women have a significant history of discrimination by the law on account of their race, as well as their gender. It is little wonder then that Aboriginal women continue to suffer difficulties in their relations with the legal system.

Aboriginal Women as Victims

Aboriginal women suffer particular disadvantages within the legal system as victims. Despite concern over predominantly male Aboriginal deaths in custody, little attention has been given to the high level of deaths by homicide of Aboriginal women. Studies carried out in the early 1990s indicate that rates of homicide for female victims in certain communities rivalled the total number of black deaths in custody over a similar period. White women also experience violence as a serious problem, particularly within the home. However, violence against Aboriginal women is experienced at higher rates and is more frequently characterised by fatal outcomes and the use of weapons. It has also been acknowledged that black women suffer from three types of violence: alcoholic, traditional and "bullshit" violence, that is, violence against Aboriginal women which is claimed by perpetrators to be legitimate according to customary law.

Domestic violence is often treated as a marital problem, rather than as a crime, and this affects all women. However, for Aboriginal women the problem is exacerbated by police relations. Many indigenous women have trouble reporting violence, especially rape to young, white, male police officers who are often found to espouse sexist and racist attitudes. If a case goes to trial, the victim often finds that similar attitudes are entrenched within the legal profession, where, as noted above, Aboriginal women are severely under-represented. It is little wonder then that men committing violent crimes against Aboriginal women are rarely punished, especially in remote communities where victims may have little or no recourse to the law.

White and black women are victims of domestic violence. The difference lies in the magnitude and severity of the violence, and in the treatment of violence by the law. As one Cape York woman has expressed: "If a white woman gets bashed or raped here, the police do something. When it's us they just laugh. The fellow keeps walking around, everybody knows but nothing is done." White and black women are all victims by nature of their gender, but violence against indigenous women is not treated seriously because of their race.

Aboriginal Women as Offenders

Aboriginal women are disproportionately represented in the criminal justice system. In 1993, there were 178 indigenous women imprisoned per 100 000 people in Australia, compared to nine non-indigenous women. Recidivism rates for Aboriginal women are also higher (75 percent compared to 29 percent for non-indigenous women). The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) has found that racism, alienation, poverty and powerlessness contribute more to the imprisonment of Aboriginals than criminality. Most Aboriginal women are imprisoned for non-payment of fines, drunkenness and social security fraud - problems directly related to their position as the least employed and least economically secure group in society. For example, a 1991 report found that in Western Australia, 20 percent of Aboriginal women had been imprisoned for public order offences compared to less than 3.5 percent of white women. In contrast, 32 percent of white women were in jail for fraud and drug-related offences, compared to 2.5 percent of Aboriginal women.

The over-representation of Aboriginal women is due not only to socio-economic disadvantages but also to judicial and police attitudes. The ratio of police to civilians is most concentrated in areas with large Aboriginal populations. A 1991 Inquiry into Racist Violence found that Aboriginal girls and women are frequently sexually threatened and abused by police. The problem is exacerbated by racist attitudes among the judiciary and magistrates. For example, a 1991 report indicated that justices of the peace in Western Australia frequently referred to indigenous people as "primitive" and "natives". High fines imposed on Aboriginal people mean that many are imprisoned for defaulting and custodial sentences are frequently favoured for trivial offences because judges believe that indigenous people are less willing or able to serve non-custodial sentences. Aboriginal women are jointly affected by racism and sexism in judicial pronouncements: one Western Australian Justice of the Peace said, "Sometimes I sentence them (Aboriginal women) to imprisonment to help them . . . They get cleaned up and fed then."

A particular difficulty faced by all indigenous people in contact with the legal system is the sociolinguistic differences between Aboriginal and non-indigenous styles of communication. Eades has pointed to the inappropriateness of western styles of legal interviewing involving restrictions on time, direct questioning and impersonal contact, in dealing with Aboriginal clients. Many indigenous people speak a variation of standard English, known as Aboriginal English, which poses communication difficulties, especially when lawyers use complex legal terms. In addition to this, an Aboriginal style of communication has been identified, which involves the use of long silences, indirect questioning and a rapport with the interviewer, none of which is common in legal interviews in the Australian system.

The potential for significant hardship to Aboriginal people resulting from these difficulties was evidenced by the 1988 sentencing of Robyn Kina to life imprisonment for the murder of her boyfriend. Kina had stabbed the victim to

death following an abusive exchange in a relationship which had a history of violent abuse. At her initial trial, Kina was unable to discuss either self-defence or provocation with her lawyers because of difficulties with their style of communication. Her decision not to give evidence, which worked to her disadvantage, was based on similar reasons. It later emerged that none of the solicitors assigned to Kina had received training in Aboriginal communicative styles. Gender was an important factor in the disadvantage, because Kina was unable to communicate what was to her a shameful experience of sexual abuse, because of the difference in communicative styles.

The gap between white middle-class and Aboriginal women is evident in relation to their position as offenders. The former have very limited contact with the criminal justice system, while the latter are over represented. Black women suffer judicial and police bias because of their gender, but more visibly because of their race. The sociolinguistic and cultural barriers faced by black women when dealing with the legal system are things that white women can only attempt to understand.

Aboriginal Women as Litigants

Aboriginal women have challenged the legal system as litigants in two major areas: land rights and with regard to the "stolen generation". As such, they face many of the disadvantages outlined above - judicial racism, historical oppression and cultural differences. However problems faced by black women litigants are not experienced by white women, by nature of their roots in a history of bias and oppression.

The Hindmarsh Island case operates as an example of the difficulties Aboriginal women face in claiming their legal rights. Bourke points out that the Australian legal system does not accept claims to rights unless they are framed in objective, rational, universal language. When white lawyers distort Aboriginal culture to fit it into a white legal definition, the resulting descriptions may be very different to how Aboriginal people conceptualise them, and the resulting ambiguity leads to a lack of credibility of indigenous claims.

Black women suffer from this, and also from difficulties relating to gender. The credibility of Aboriginal women is seriously affected by stereotypes of Aboriginals as promiscuous drunks and liars and women as irrational and emotional. As a result of anthropologists' neglect of female Aboriginal subjects, there is not the same knowledge about women's land claims that there is about men's. As a result, claims like the one made in the Hindmarsh Island case come under special scrutiny because they appear to be gendered, while male claims are considered ungendered. That case illustrated a particular disregard for the rights of Aboriginal women, with an inquiry into "secret women's business" going ahead despite protests, because the public interest was considered more important than the privacy rights of the Aboriginal women.

Aboriginal women's claims to land are also hindered by the destruction of oral traditions caused by removal of children. Again, cases litigated by Aboriginal women have been subject to white, male notions of justice. In deciding whether removal of children amounted to genocide (*Kruger v Cth; Bray v Cth* (1997) 146 ALR 126), the court considered the acts not through the eyes of the female victims but in terms of whether the white male perpetrators had thought that what they were doing was justified. Ultimately it was held that the *Aboriginals Ordinance* did not authorise genocide.

The position of indigenous women with regard to the law is fraught with difficulties, whether their contact is victims, offenders or litigants. Some of these difficulties are gender-based, and to that extent they are shared by white women. However, race is just as, if not more significant as a cause of problems experienced by black women. Race is the basis for the difference that exists between the experiences of white and black women in Australia.

The Feminist Struggle

The gap between Aboriginal Australians and white middle class women is something that feminists have struggled to comprehend. The myriad of social, economic and political differences between black and white women, and their vastly different experiences of the law and the state are at the heart of this gap. Unfortunately, the difficulty many feminists have encountered in understanding these differences has resulted in an exclusion of black women's voices from mainstream feminist discourse. For example, Angela Harris has criticised Catherine MacKinnon for her inability to incorporate race into her theoretical framework.

What white, middle-class feminists have largely failed to understand is that, as illustrated above, Aboriginal women have experiences of life very different to their own, which cultivate different identities and aspirations for black women. For example, all women suffer sexism, but Aboriginal women suffer from the dual effects of sexism and racism, in which white women have historically played a significant role. As Behrendt points out:

White women were missionaries that attempted to destroy Aboriginal culture. They used the slave labour of Aboriginal women in their homes. White women were the wives, mothers and sisters of those who violently raped Aboriginal women and children and brutally murdered Aboriginal people. White women can be as racist as white men.

Black women therefore, have an understandable reluctance to align themselves with a group which has been responsible for much oppression against them. They are also reluctant to turn against black men, with whom they share the experience of their dispossession and discrimination. In any event, mainstream feminism has not worked to the advantage of black women: women were given the right to vote in all states and the Commonwealth by 1903, but Aboriginal women were granted the right to vote in 1967, at the same time that it was granted to Aboriginal men.

Due to their disadvantaged social and economic position, Aboriginal feminists have different goals to those of mainstream feminism. Black women are concerned with access to health, education and housing, with protection of sacred sites, and the fight against racism and over representation in the Criminal Justice system - problems which are foreign to the experience of white, middle-class women. Joyce Lader points out that black women have always been the main providers for their families and so feel little affiliation with the main concerns of the white feminist movement.

Towards the Future

It is difficult to reconcile the different experiences of black and white women in Australia and the different perspectives and goals that necessarily spring from them. Harris suggests that the answer may lie in the "telling of different stories" so that the diverse experiences of different women are acknowledged and respected and nobody is alienated.

A further solution may lie in the incorporation of the concerns of Aboriginal women into mainstream feminist discourse and praxis. White middle-class women could be active in campaigning for education for Aboriginal women about the legal system, for 'safe-houses' run by Aboriginal women, for the involvement of Aboriginal women in decision making processes and for implementation of some customary law to facilitate the empowerment of all Aboriginal people.

Scutt writes: . . . {It} would be wise of the Women's Movement to ensure that Aboriginal culture is enabled to live and gain its proper place in Australian cultural terms. White women will be advantaged if the visibility of black women in Aboriginal culture is properly recognised by dominant anglo-Australia.

If the advantages to be gained from incorporating the experiences of Aboriginal women into feminist discourse are not only in terms of social justice, but also gains for feminism at large, how great the incentive is to acknowledge and attempt to understand the gap between white and black women as soon as possible.

The judges of this year's student paper competition (Professor Tony Tarr – Head of the TC Beirne School of Law, Karen Schultz, Lecturer, TC Beirne School of Law and Nicole Lythall, Solicitor, of O'Mara Patterson & Perrier) commented on the high standard of entries. Each entrant was required to submit a 2000 word paper and present this orally. WATL hopes that this high standard of participation in the competition will continue in the future.

Jacqueline Bailey evaluated the United Nations' attempts to achieve the advancement of women, with particular reference to international co-operative initiatives, state sovereignty, state interests and the UN institutional framework.

Kimberly Wintour examined the role of trade unions in the pursuit of equal pay for women.

Sylvia Song discussed the concerning human rights implications of Australia's immigration detention policy.

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