

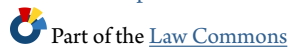
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Jill Howieson
University of Western Australia

Tomas W. Fitzgerald
University of Notre Dame, Australia, tomas.fitzgerald@nd.edu.au

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A cultural challenge for the Western Australian legal profession: a lack of diversity at the WA Bar?

JILL HOWIESON* AND TOMAS FITZGERALD**

At the request of the Western Australian Bar Association, the authors undertook a study into issues of diversity at the Western Australian Bar. Members of the Association had noticed, but not specifically studied, various demographic imbalances in the Bar's constitution. A review of the literature revealed that there was a paucity of statistical analysis of the makeup of Australian barrister associations generally, let alone into any specific reasons as to how and why a demographic imbalance might exist. Recognising that a clearer picture of the breakdown of the demographics of the Western Australian legal profession and of the specific cultures that might exist at the Bar was needed, the authors undertook a study that examined whether there was an existing legal monoculture at the Bar, and if so what some of the reasons for this might be. The authors conjectured that being ignorant as to how to become a barrister and having a sense of isolation from the legal profession generally, might be reasons for the cultural imbalance (if it indeed existed) and then set about to investigate this empirically. The results revealed that there might be hidden barriers that work to inhibit a broad range of legal professionals from progressing to the Bar. In particular, a knowledge of how to become a barrister, how legal professionals and students feel that they 'fit in' to the local legal culture and the various myths that exist about life at the Bar might be inhibiting the progress of a diverse demographic of people from joining the Bar. This article explores the research findings and makes the call for a dedicated research agenda to confirm the study results and to investigate how Australia might best prepare to achieve a diverse and balanced Bar; Bench and legal profession.

* Faculty of Law, University of Western Australia

** School of Law, University of Notre Dame

INTRODUCTION

“Whatever procedures are followed, governments are limited in the pool of people from which appointments [to the judiciary] are made. The Constitution does not specifically require it but judges in Australia [almost] always are lawyers. In almost all cases, they are practising barristers.”¹

Currently, “barristers in Australia constitute a small, elite group, enjoying high professional status and often high incomes”.² It follows therefore that their “distinct culture and invented traditions”³ will permeate into our society in the first instance via their legal assessment and argument of cases as barristers, and then via their judgements as they are elevated to the bench. This could present a substantial cultural challenge to the Australian legal system: not only because of the *risk of a perception that the profession is elitist*, but also because we currently know very little about the distinct culture and traditions that exist at the Bar and how these ‘cultures’ might influence our societal norms.

When one studies the local legal culture of a particular system, important results emerge. One begins to understand the pathways that exist towards certain cultural norms and the ways in which local legal cultures can influence the “implementation of certain rules, the anticipated parameters of the impact, and the ways in which the power of the culture can modify or harness the likelihood of producing certain outcomes.” Take for instance, the influence of Australian family lawyers. Studies that have documented and examined the local legal culture of Australia’s family lawyers have found that, “the profile of Australian family lawyers [is] one of lawyers who take constructive approach to practice, use a problem-solving negotiation style, and who belong to a cohesive legal culture.”⁴ This cohesive culture, in turn influences the ways in which family law disputants choose to resolve their disputes, and consequently, via the interaction between the lawyer and the client, influences the cultural norms that emerge regarding family dispute resolution. In particular, certain types of disputes (the less conflict laden or low financial assets) tend to proceed to mediation while other types of disputes (high conflict and high financial pools) tend to continue through to litigation.⁵

1 Constitutional Centenary Foundation, *The Appointment of Judges* (2001) <<http://cecs.law.unimelb.edu.au/files/FACT7-3.DOC>>.

2 Rosemary Hunter, ‘Women Barristers and Gender Difference in Australia’ in Gisela Shaw and Ulrike Schultz (eds), *Women in the World’s Legal Professions* (Hart Publishing, 2003) 103; Hunter, Rosemary (2003) *Women Barristers and Gender Difference in Australia*. In: Shaw, Gisela and Schultz, Ulrike, eds. *Women in the World’s Legal Professions*. Onati International Series in Law & Society . Hart Publishing, Oxford, pp. 103-121.

3 *Ibid.*

4 Jill Howieson, ‘The Professional Culture of Australian Family Lawyers: Pathways to Constructive Change’ (2011) 25(1) *International Journal of Law, Policy and the Family* 71.

5 *Ibid.*

The influence that our barristers have on our communities is also likely to be substantial yet to date there has been no systematic study of their culture, let alone the influence of the culture. Even more remarkably, there has been no systematic investigation of barrister demographics.

When researchers do begin to examine a particular culture under the microscope, then that culture becomes better appreciated. Once a particular culture is appreciated, “adjustments for local legal cultures may [then] become a part of the more sophisticated modelling of legal change.”⁶ As Sullivan et al state, “even if each local culture is unique in its circumstances, recognition of the existence of such cultures and efforts to learn more about their operation may guide reformers in both articulating perceived problems and proposing solutions. In either case, for those interested in effecting certain policy goals, acknowledgment of the role of local legal cultures may facilitate more effective implementation of legal change.”⁷

So, what does all this mean for the current legal environment in Western Australia and is legal change necessary?

In 2011, at the request of the Western Australian Bar Association (the WA Bar), the authors undertook a study into issues of diversity at the WA Bar. Specifically, the brief was to investigate the reasons that existed for the various demographic imbalances that members of the WA Bar had noticed, but not specifically studied. In considering the question, and aware that there was a paucity of statistical analysis of the makeup of Australian barrister associations generally (let alone of the particular local barrister cultures), the authors first turned to the literature in the field.

LITERATURE REVIEW

Upon embarking upon the literature review, the authors found that many ‘myths’ existed. For instance, various authors had proposed that gender, and specifically being female, was a significant barrier towards becoming a barrister, yet there was very little empirical data surrounding this proposal. Furthermore, most of the evidence was anecdotal and drawn from personal experience.

For instance, Needham, in giving a personal account of her 14 years’ experience at the NSW bar, commented that in relation to the difficulties she faced in working at the bar, “[t]he main problems arise from my family responsibilities rather than ... gender.”⁸ Needham cited the issue of part-time work, and the extent to which it is practicable to operate as a ‘part-time’ barrister as reasons for an ongoing challenge

6 Teresa Sullivan, Elizabeth Warren and Jay Westbrook, ‘The persistence of local legal culture: twenty years of evidence from the Federal Bankruptcy Courts’ (1994) 17 *Harvard Journal of Law & Public Policy* 801, 805.

7 *Ibid.*

8 Jane Needham, ‘Perceptions Are the Underlying Problem’ [2004] (Winter) *Bar News: Journal of the NSW Bar Association* 42.

when it comes to increasing participation of women at the Bar.⁹

Adamson also gives her observations from personal experience and suggests that there seems to be a significant disparity between the genders at the bar. She opines, “[w]hen a profession is dominated by one sex or the other, there is an obvious inference that there are arbitrary forces at work, which have nothing to do with merit.”¹⁰ Adamson wonders whether, “... unwittingly barristers overstate the risks of coming to the Bar, and discourage people, particularly women, becoming barristers.”¹¹

Again, in relation to women, Travers conjectures that one of the reasons for the under-representation of women at the Bar might be that women feel excluded from traditionally male social networks and therefore, from progression to the Bar.¹² Travers considers that women are excluded from being briefed on high-value commercial work, which would give them opportunities for career advancement. Travers also identifies that the issue of gender inequity is not limited to practice, and may well have roots in legal education, arguing that a lack of knowledge is a substantial cause of gender inequality.

Justice Kirby too, from his personal observations from the bench of the High Court, notes the discrepancies between the experiences of men and women in relation to the legal profession. He notes that in both 1997 and 2001, the number of women barristers who addressed the Full High Court from the central rostrum was a mere six.¹³ One of the key difficulties that Kirby J thought might explain the difficulty in maintaining senior women barristers was legal culture. In relation to legal culture in general, Kirby J states that

[o]rganising our lives, and reserving a proper space for a full and rounded existence as a human being, is one of the big challenges facing the legal profession of this country. Humanising the life of the legal profession is a demand that can be postponed no longer.

In relation to women in particular, Kirby J comments that

[J]udges too are sometimes blamed for insensitivity, as for example in pressing the hearing of cases beyond the normal court hours without regard to the needs of women advocates, in particular, to attend to their family responsibilities. Yet if complaint is made about such practical problems, women advocates may be denounced as grizzlers who would not, or could

9 Ibid.

10 Christine Adamson, ‘Equity is Equality’ [2004] (Winter) *Bar News: Journal of the NSW Bar Association* 33.

11 Ibid.

12 Jen Travers, ‘The Glass Ceiling’ (2008-2009) 11(1) *Newcastle Law Review* 93, 95.

13 The Hon Justice Michael Kirby, ‘Women in the Law – What Next?’ (Speech delivered at the Lesbia Harford Oration, Melbourne, 20 August 2001), Victorian Women Lawyers Association – Lesbia Harford Oration, Melbourne, 20 August 2001, <http://www.hwca.org.au/speeches/kirbyj/kirbyj_vicwomen.htm> at 12 January 2011.

not, face up to the practical necessities of life in a gruelling profession.

In focusing on both the pragmatic 'requirements' of legal practice and the culture of law, Kirby J invites improvement on both fronts. To redress inequity as regards women in the practice of law, Kirby J sees that active discrimination against women must cease, but also that, "...unconscious systemic bias [must be] realised and banished."

However, if there is an 'unconscious systematic bias' that exists in the Australian bar culture then currently we do not have the research to prove it. We are still in the early stages of empirical research into these issues. Further, the research in the field has tended to focus on the experiences of women and has seemed to ignore any systemic barriers that might preclude full integration of lawyers who are members of a racial minority, or any other minority. For instance, in 1995, Indigenous students comprised only 0.5% of Australian law students, some three times less than Indigenous representation in the general population. In 2009, Munya Andrews was the only woman Indigenous barrister practicing at the Victorian Bar. To date, there has been no robust study of these populations to understand precisely the nature and extent of the problem, or indeed, to check whether the perceptions of a racial bias meets reality.

Similarly, there have been no studies to see whether people who simply do not fit the 'local legal culture' face the same issues. For instance, there is a distinct lack of scholarship addressing the question of equity and diversity concerns faced by gay, bisexual, lesbian, or transgender people in the legal profession. As Kendall and EyoIfson contend;

[I]f the adverse consequences of being identified as lesbian or gay result in many employees opting to not disclose their sexual orientation and remaining invisible. This socially imposed silencing often precludes statistical proof of economic or other disadvantage, but should not be taken as indicative that such disadvantage does not exist.¹⁴

Kendall and EyoIfson allude to the idea, as the other authors have done, that there are possibly hidden 'cultures' that prohibit women, racial or other minority groups from feeling that they fully belong to the legal profession. However, an examination of what, precisely, that culture is and how we might change it for the better is long overdue.

Gleeson and Sofroniou recognise that "there does not appear to have been any formal study concluded into the question of the diversity of experience of lawyers becoming and staying as barristers"¹⁵ from different demographic groups or otherwise, and lament this situation. Like other researchers in the area, Gleeson

14 Christopher Kendall and Brian EyoIfson, "One in ten 'but who's counting?' Lesbians, gay men and employment equity" (1995) 27 *Ottawa Law Review* 281.

15 Justin Gleeson and Rena Sofroniou, "Why Are There So Few Women at the Bar?" [2004] (Winter) *Bar News: Journal of the NSW Bar Association* 27.

and Sofroniou tend to focus on the experience of women in the legal profession and cite statistics that indicate that there is a disparity between genders at the NSW Bar.¹⁶ They comment that these figures "...suggest that the Bar is less attractive to women than men" and make a strong call for more investigations into these reasons.

In summary then, the literature review reveals a core set of common conclusions about the causes of demographic inequity at the bar. Indeed, the causes are broadly mirrored in the overwhelming majority of the literature on point. Lack of support for family commitments, misinformation about the true nature of a barrister's practice and an inhospitable legal culture are viewed as the major barriers to demographic equity. However, notwithstanding this broad consensus, the authors conclude that the existing literature suffers from a lack of detailed statistical data on which to base its conclusions. This lack has also hindered commentators, who are able to outline only in broad strokes the more obvious difficulties, which inhibit the progress of a greater range of people to the bar.

THE NEED

While the contributions from the literature are valuable, the authors recognised that a clearer picture of the break down of the demographics of the Australian legal profession and of the pathways and barriers that exist for law students and practicing solicitors to become barristers was needed in order to formulate effective methods for combatting any difficulties that might exist. Ultimately, the authors identified that there was a need to examine critically whether there was an existing legal monoculture that people from diverse backgrounds simply did not 'fit in' to, and if such a monoculture existed, then to examine critically some of the reasons for this.

A first step in this investigation, therefore, was to integrate demographic data with self-reporting on how well lawyers and law students felt they 'fit in'. The authors believed that this would give excellent insight into precisely where the more difficult cultural problems existed, if they existed at all. The initial survey undertaken for this pilot project aimed to begin collating this data by asking 'sense of belonging' questions alongside demographic ones. The authors thought that an expansion of this kind of data would greatly assist in establishing where, if at all, existing legal culture is inhibiting the progress of people who do not fit the culture and give some insight into how we might tackle the problem effectively.

THE STUDY

Methodology

The study was conducted during March 2011. It involved sending online surveys to law students studying at the University of Western Australia, University of

Notre Dame, Australia and Murdoch University; lawyers practising in Western Australia; and barristers currently working at the Western Australian Bar. In addition, an advertisement was placed in the Law Society's Brief magazine inviting solicitors and barristers to complete the appropriate survey.

Surveys

The surveys consisted of demographic questions, questions from the Willms "Sense of belonging and engagement" survey¹⁷, and questions relating to the participants knowledge of how to become a barrister (students and lawyers), barriers to becoming a barrister and enjoyment of law school, legal practice or being a barrister.¹⁸

Participants

Four hundred and fifty-six (456) law students, 77 practising lawyers and 44 barristers in Western Australia completed the surveys. It is unclear how many emails reached their recipients but we have gauged that the approximate response rates were 25% for the law students, 15% for the lawyers and 12.5% for the barristers. The demographics for the participants are presented below.

- 1. Gender:** Of the student population, 275 students were female (60%) and 181 male (40%); of the lawyer population, 29 participating lawyers were female (38%) and 46 male (60%); and for the barristers, 14 were female (32%) and 29 male (66%).
- 2. Age:** Of the student population, the age range was from under 20 to over 40; for the lawyer population, the age range was from 20-25 to over 40; and for the barristers, the range was from 26-30 to over 40.
- 3. High Schools:** 242 students went to a private high school (53%), 188 went to a government high school (41%) and 22 went to another type of high school (5%); 37 lawyers went to a private school (48%) and 39 went to a government school (51%); 24 barristers went to a private high school (34%), 15 went to a government high school and 4 went to another type of high school (1%).
- 4. Marital status:** 370 students had never married (81%), 13 were divorced (<1%) and 69 were currently married (15%); 23 lawyers had never married (30%), 6 were divorced (8%) and 48 were currently married (62%); 6 barristers had never married (14%), 6 were divorced and 32 were currently married (73%).

17 J.D. Willms, J.D. *Student engagement at school: A sense of belonging and participation*. Results from PISA 2000. Paris, OECD, 2003.

18 For a full list of the survey variables see Appendix A of report: Jill Howieson and Tomas Fitzgerald, *Demographic Diversity in the WA Bar: A Consistent Failure to Frame the Right Question?* (2011) Western Australian Bar Association <<http://www.wabar.asn.au/images/Demographic%20Diversity%20in%20the%20WA%20Bar%20Report%2019-7-2011.pdf>>.

- 5. Law School:** 231 students attended UWA (51%), 162 attended Murdoch University (35%) and 61 were currently attending the University of Notre Dame (13%); 43 lawyers attended UWA (56%), 8 attended Murdoch University (10%); 6 attended the University of Notre Dame (8%) and 15 attended another law school (19%); 26 barristers attended UWA (60%), 2 attended Murdoch University (5%) and 15 attended another law school (34%).
- 6. Racial/Ethnic background:** 298 students described their racial/ethnic background as Anglo-Australian (65%), 2 described their background as Indigenous Australian (>1%) and 150 described it as something other than these (33%); 65 lawyers described their racial/ethnic background as Anglo-Australian (84%), 1 described his/her background as Indigenous Australian and 11 described it as something other than these (14%); 35 barristers described their racial/ethnic background as Anglo-Australian (80%), 1 described his/her background as Indigenous Australian and 8 described it as something other than these (18%).
- 7. Type of law firm/business:** 10 lawyers said that they currently worked in a small law firm (under 10 lawyers), 25 worked in a medium law firm (10-50 lawyers); 34 in a large law firm (over 50 lawyers), 5 in government and 3 were in-house or sole practitioners. 6 barristers said that they previously worked in a small law firm (under 10 lawyers), 5 worked in a medium law firm (10-50 lawyers); 22 in a large law firm (over 50 lawyers), 8 worked in government and 3 were previously in-house or sole practitioners.
- 8. Type of law practised:** For the lawyers the majority reported practicing commercial litigation (49%), followed by insurance law (12%), criminal law (8%), corporate law (8%), environmental law (5%), employment law (5%), family law (3%), mining and native title (2%), construction (2%), and tax law (1%). For the barristers the majority reported working in the commercial law area (61%), followed by criminal law (7%), family law (7%), construction (7%), admin law (5%), insolvency (5%), personal injury (5%) and wills and estates (2%).
- 9. Number of children:** 36 lawyers reported that they had no children (47%) and 40 said that they had children (52%), while 13 barristers reported that they had no children (30%) and 31 said that they had children (70%).

RESULTS

Wanting to become a barrister:

The numbers of students and lawyers who reported that they would like to become a barrister are presented in the table below. In terms of wanting to become a barrister, the majority of students (64%) reported that they did want to become

a barrister (agreed or strongly agreed); while the majority of practicing lawyers (64%) reported being either neutral, or disagreeing or agreeing with the statement “I would like to become a barrister.”

Table 1: Responses to the statement, “I would like to become a barrister.”

	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
Student	31	59	72	213	81
Lawyer	11	18	20	21	7

These results were illuminated further by the results that ‘wanting to become a barrister’ was strongly correlated with other variables, for instance:

- students, who were more likely to strongly agree that they wanted to become a barrister also reported that they:
 - had more knowledge of how to become a barrister (.13)
 - were male (.14)
 - had fewer years spent at law school (.11),
 - did not feel awkward and out of place at law school (.10), and
 - had a stronger sense of belonging to the law school (.13)
 - practicing lawyers, who were more likely to strongly agree that they wanted to become a barrister also reported that they:
 - were younger (.42)
 - worked in government or a small or medium law firm, compared to a large law firm (.24)
 - had fewer children (.27)
 - had practiced law for fewer years (.39), and
 - felt less lonely in the profession (.25).
- than those who reported not agreeing with wanting to become a barrister.

Knowing how to become a barrister:

The numbers of students and lawyers who reported that they knew how to become a barrister are reported in the table below. It was a clear finding that the majority of law students did not know how to become a barrister, while the majority of lawyers did know. Only 28% of students reported that they 'agree' with the statement "I know how to become a barrister", while an even smaller percentage reported (3%) that they 'strongly agree' with the statement. Only 53% of practicing lawyers reported agreeing or strongly agreeing with knowing how to become a barrister, with the others either neutral, or disagreed or strongly disagreed.

Table 2 : Responses to the statement, "I know how to become a barrister."

	Strongly disagree	Disagree	Neutral	Agree	Strongly agree
Student	31	59	72	213	81
Lawyer	11	18	20	21	7

Other results that illuminated the issues surrounding knowing the pathways to becoming a barrister included the results that knowing how to become a barrister was strongly correlated with:

- having a sense of belonging to the law school (.26) or profession (.28), and
- for students, they were more likely to know how to become a barrister if they:
 - wanted to become a barrister (.13)
 - attended a private school (.11), or
 - attended Notre Dame or Murdoch (.28) (UWA students reported less knowledge of how to become a barrister

Does gender make a difference?

As the majority of the literature refers to the different experiences of men and women in the legal profession and at the bar, the authors decided to conduct a set of analyses by breaking the data down by gender.

a. Gender ratio

Females were the majority gender at university (60%) but the minority in professional positions (39%) and a smaller minority as barristers (32%). (*Note that these numbers reflect participation for the surveys rather than an absolute*

gender ratio that exists for each type of group surveyed.)

b. Age of respondents

There was no significant difference found between the age profiles for females (Mdn = 20s) and males (Mdn = 20s) for the student survey. For the professional survey, the age profile was significantly younger for females (Mdn = 30s) compared to males (Mdn = 40s).²⁰ There was no significant difference found between the age profiles for females (Mdn = 40s) and males (Mdn = 40s) for the barrister survey. However it may be worth noting that whilst a third of the male barrister respondents reported that they were in their 30s or younger, there were no female barrister respondents younger than 40.

c. Type of high school

For the student survey, no significant difference was found between genders for type of high school attended. For students, the slight majority for both females and males were from a private high school background (53% and 54% respectively). A significant difference was found between females and males for the professional survey with a majority of professional female respondents (66%) reported having attended a private high school compared to a minority of professional male respondents (40%).²¹ The opposite pattern was found for the barrister respondents, with the majority of male (71%) respondents reporting having attended a private high school compared to a minority of female respondents (21%).²²

d. Number of children

For the professional respondents, there existed a trend in the data that females report having less children (Mdn = 0 children) than males (Mdn = 1 child). However this difference *just* missed out on reaching statistical significance.²³ For barrister respondents, there was also a trend in the data for females to report having less children (Mdn = 0) than males (Mdn = 2). However this difference also just missed out on reaching statistical significance.²⁴ Another thing to note about this data is that whilst around 50% of both female professionals and barristers reported having no children, for males approximately 40% of professionals reported having no children whilst approximately only 20% of male barristers reported having no children.

e. Wanting to become a barrister

For the student survey there was a significant difference found between females and males in their desire to become a barrister.²⁵ Whilst the median score for both males and females was 'agree', there was a higher proportion of male students

20	U = 424, z = -2.66, p < .05, r = -.26
21	$\chi^2(1, n = 74) = 4.59, p < .05$
22	$\chi^2(1, n = 38) = 7.17, p < .05$
23	U = 483.5, z = -1.93, p = .054
24	U = 132.5, z = -1.89, p = .06
25	U = 20740, z = -3.2, p < .05

whom agreed or strongly agreed (74%) that they would like to become a barrister compared to female students (58%). The opposite trend was evident for the professional survey respondents, with a lower proportion of male professionals reporting that they agreed or strongly agreed that they would like to become a barrister (28%) when compared with female professionals (48%). However this difference was not statistically significant.²⁶

Does a sense of belonging make a difference?

As the authors thought that a sense of 'fit' or 'belonging' to the law school, legal profession or to bar would also be important in identifying the different experiences of men and women, the next series of analyses focused on the effect of the participants' sense of belonging with desire to be a barrister, or knowledge of how to become a barrister.

a. Response to the statement "I have felt as if I belong"

No significant differences were found between genders on all three surveys for the statement, 'I have felt as if I belong'. However, there was a trend for female barristers to agree less with this statement compared to male barristers.

b. Response to the statement "I have made friends easily"

There were no significant differences found between genders for all three surveys for the statement "I have made friends easily."

c. "I have felt like an outsider"

There were no significant differences found between genders for student and professional surveys on the 'outsider' statement, but there was a significant difference found between females (Mdn = Neutral) and males (Mdn = Disagree) for the barrister survey. Female barristers tended to report feeling more like an outsider than male barristers did.

d. "I have felt awkward and out of place"

There were no significant differences found between genders for student and professional surveys on the statement 'I have felt awkward and out of place'. However there was a significant difference between females (Mdn = Neutral) and males (Mdn = Disagree) for the barrister survey.²⁷ Female barristers tended to report feeling more awkward and out of place than the male barristers did.

e. "I have felt lonely"

There were no significant differences found between genders on all three surveys for responses to the statement 'I have felt lonely'. However, there was a trend (not significant) for female barristers to agree more with the statement compared to male barristers.

26 U = 545.5, z = -1.36, p = .17

27 U = 155.5, z = -2.71, p < .05

f. Belongingness

On the 'belongingness' scale²⁸, there were no significant differences found between genders for the student survey or the professional survey. However, male barristers reported significantly higher belongingness than female barristers did.²⁹ Previous analyses show that this difference between female and male sense of belongingness to the barrister community was due to female barristers, overall reporting a higher level of 'feeling out of place', and 'like an outsider'.

Some other noteworthy correlations....

On the student survey,

- law students who reported more belongingness to their law school also tended to report more knowledge about how to become a barrister, $r = .25$.

On the professional survey,

- older respondents reported feeling more belongingness to the law profession, $r = .29$.
- those who reported enjoying being a lawyer also tended to have enjoyed law school $r = .25$, and felt a sense of belongingness to the law profession, $r = .32$.
- those lawyers who reported more belongingness to the law profession also tended to report more enjoyment being a lawyer, $r = .32$, more enjoyable experience of law school, $r = .52$, more knowledge about how to become a barrister, $r = .32$, reported having spent more time working in the law profession, $r = .37$, and tended to have more children, $r = .28$.

On the barrister survey,

- the only significant relationship other than a sense of belonging being associated with gender, was that enjoyment when working as a lawyer was significantly positively related to reported enjoyment of law school ($r = .36$), and with marital status ($r = .31$).

Qualitative data

There was an abundance of qualitative data received from the surveys and we have categorised it below according to the type of responses received. We outline the number of responses that fit into general categories that we have identified in relation to the particular questions asked. Additionally, we have included some examples of the types of responses in each category and the particularly nuanced answers.

The responses were to the open-ended questions:

Students: Please tell us what, if any, barriers you see to becoming a barrister.

Lawyers: Please tell us what, if any, barriers you see to becoming a barrister.

What else would you like to say about the legal profession or becoming a barrister?

Barristers: Please tell us what, if any, barriers you experienced in becoming a barrister.

Please tell us what, if any, challenges you experience being a barrister.

1. BARRIERS TO BECOMING A BARRISTER

STUDENTS' PERCEPTIONS

Categories

Students perceived the following broad categories of 'barriers' to practice as a barrister³⁰:

- grades (12.7%)
- lack of knowledge about being a barrister (12.2%)
- age (12%)
- gender (11.5%)
- lack of confidence in own ability (9.8%)
- lack of connections (8.1%)
- financial matters (5.3%)
- lack of advocacy experience (4.9%)
- family commitments (4.5%)
- racial/cultural background (3.2%)

Examples of answers

- *Don't exactly know what it [barrister] is as opposed to a solicitor/lawyer etc.*
- *It seems to be a largely male-dominated section of the legal profession.*
- *Age - I am 48 years old.*

- *I am currently looking for a job and it seems very hard to find one without having private school ties or friends and family in the legal profession who can assist; so I don't even want to think about progressing my career to become a barrister!*
- *Work/life balance (I have young children) and also that one must have a client list before becoming a barrister. I also hear that one must be prepared to have no income for about a year while the client base builds up.*
- *My grades, my performance in law exams.*
- *Information availability.*
- *Competition, difficulty to break-in.*
- *Tight competition for article positions. Also have a foreign accent.*
- *You need to be an exceptionally good public speaker.*
- *My communication skills, how to use the right words at the right times.*
- *The bar exam, and besides that having absolutely no idea how to become one - the general feeling about it is that it is difficult, however.*

PROFESSIONS' PERCEPTIONS

Categories

Practising lawyers perceived the following broad categories of 'barriers' to practice as a barrister:

- financial matters (37.9%)
- lack of advocacy experience (20.6%)
- lack of connections (15.5%)
- gender (6.8%)
- lack of confidence in own ability (6.8%)
- family commitments (5.1%)
- 'culture' of the bar (5.1%)
- lack of knowledge about being a barrister (1.7%)
- age (1.7%)

Examples of answers

- *Existence of a single dominant chambers and saving enough money to establish practice.*
- *I do not practise in litigation.*
- *Gaining prior experience before the Courts.*
- *Insufficient networks for referrals.*
- *Men are briefed much more than women.*
- *Possibility of financial insecurity.*
- *Don't understand the process. Not confident of generating sufficient work.*
- *Don't have enough capital to branch out alone; don't know how long it will be that I'll still require some sort of support on procedural / technical issues.*
- *'closed-shop' mentality of chambers, lack of guidance & mentors.*
- *Male dominated, isolated way to work.*

BARRISTERS' EXPERIENCE

The barristers reported experiencing the following 'barriers' to practice as a barrister. We have provided you with samples of the answers received and where the answers were the same, for instance 'nil' or 'none' we have given the number of times this response was given.

No barriers

- *Nil/none x 12*
- *No barriers in becoming a barrister, I was well supported.*
- *None really. I had been a litigation partner in a large firm and the transition to the Bar was relatively easy at the time I did it.*
- *None, other than a concern (which I was to quickly find out was unfounded) that I would not be briefed.*

Financial

- *Finance - I was concerned if I had money to come to the bar where I would get work from x 8*
- *It is a significant commercial and professional risk to change from being employed as a paid solicitor to having no guarantee of any income.*
- *Voluntary relinquishment of high fortnightly salary, when very limited family/partner financial backing available.*

Contacts/ profile

- *Lack of contacts in the profession.*
- *Some difficulties in getting work. Also, organising an appropriate table was very difficult.*
- *Obtaining clients of my own account rather than through a firm. Overcoming the entrenched views within the Western Australian profession that practitioners should go to the Bar young.*
- *A concern that I didn't have a high enough profile to attract work.*
- *Finding room in chambers.*

Information/experience/age

- *Informational vacuum.*
- *Suggestions from senior litigation solicitors that more experience is needed (but compare Sydney, Melbourne and London), to deter junior practitioners from going to the bar.*
- *Absence of programs to teach court craft/procedure. Requirement to have substantial capital saved to go to the bar.*
- *Age - people thought I was too young when I started at 29.*

Administration/support

- *There were quite a few administrative steps to undertake, which were time consuming and somewhat stressful at the time, but no substantive barriers.*

Fear

- *Fear of not being able to make a go of it. Knowing that there was no support or encouragement. People actively saying "where are you going to get your work from?" which is a serious issue for someone from government.*
- *The only barrier was the fear that I could not make a go of it.*
- *The fear of becoming self-employed.*
- *Self-confidence.*
- *Only my own worries.*
- *The perennial doubt - will I get any work. Also I have practised as a solicitor and appeared in court but will my advocacy skills be good enough?*

2. Reflections on the profession and the Bar LAWYERS

In response to the open-ended question related to reflections on the profession and the Bar, a sample of answers received follows:

- *Have felt more included in the legal profession the more I get involved.*
- *The profession is too conservative and one's individuality is not celebrated.*
- *There is no scope for genuine work/life balance. Most lawyers are superficial and some wholly dysfunctional, which makes it difficult to create or maintain genuine friendships. I wish I took up a trade.*
- *It's a wonderful profession - and I will not give up.*
- *The WA Bar lacks the established junior scheme enjoyed in the other states, and the profession does not actively support junior lawyers joining. This means less opportunity to acquire advocacy at a top level from a junior stage, but also experienced lawyers joining without any advocacy experience.*
- *It is a punishing profession, and requires a great support system, or great insensitivity to others, to succeed.*
- *Having a fused profession in WA complicates this issue greatly.*
- *Very difficult for younger practitioners who do not have the number of contacts that older practitioners have.*
- *It's a difficult profession (it's not for [the] faint at heart). There are better/easier ways of making a living x 4*
- *There is little/no sufficient support for the existence of a junior bar - compare Sydney/Melbourne.*
- *Ethics is a real issue. I have found too many lawyers are unethical and happily (and knowingly) mislead other practitioners or (even more so) the Court.*
- *I would probably go to the bar if "invited" or encouraged by a senior barrister, possibly only one, to do so.*
- *It is not something I would consider to be an option for a young lawyer-it does not feel like an option I could pursue anytime soon in my career.*
- *My understanding is that the profession is highly hierarchical and junior barristers require the patronage of senior barristers to succeed.*
- *There is still an establishment clique, of which the Supreme Court and Law Society appear to be the base.*

- *WA is an easier place to become a Barrister than NSW.*

BARRISTERS

- *It is a very enjoyable profession x 5*
- *I believe that it is the most fulfilling way of practising the law x 5*
- *It is very flexible and you are your own boss, which is the best thing about it x 5*
- *I like the independence and the focus on the law, rather than administering files in a private law firm x 4*
- *There are entrenched cliques at the WA Bar that wield highly disproportionate amounts of power.*
- *Presently, the three youngest barristers at chambers are, respectively, of Chinese extraction (1st/2nd Generation Australian), Indian extraction (New Zealander in Australia) and Greek (2nd/3rd generation Australian).*
- *The Bar is improving, but there is still a level of hostility towards minority groups.*
- *More support in the form of mentoring and senior members of the Bar is needed to make a very public show of supporting women both in briefing and at the firms who brief them. It is still all too often that decisions about briefing are done by men who brief another "good bloke" that they know.*
- *The bar can be lonely at times.*
- *It is very competitive.*
- *I'd recommend it.*
- *This game takes a lot of self-confidence and awareness.*
- *Being a barrister enabled me to be a sole parent.*
- *I enjoy the support of other barristers although it is something that I have found I must seek. It is an honour and a privilege to be a barrister.*
- *Great satisfaction when it all works! The bar is 'dog eat dog' and no barristers (few exceptions) care about others.*
- *Its great fun - working for yourself is fantastic.*
- *Don't go to the bar in WA too junior.*

1. DISCUSSION

Limitations

Before discussing the results of the study, it is worth noting the limitations of the study. As discussed above, the authors chose to keep the study as open as possible and chose not to focus on the experience of any particular 'cultural' group. This indirectly may have led to the study not identifying the experience of certain groups, perhaps, the gay, bisexual, lesbian and transgender communities, or particular religious groups. Further, the response rates were relatively low and those who already felt a sense of belonging to the law school or profession, or those who wanted to be barristers may have been more inclined to respond to the surveys. In any event, and despite the limitations (which future research could address), the results present an interesting picture of the local legal cultures that might exist in the Western Australian legal profession.

Knowing how to become and wanting to become a barrister

In summary, the results in relation to knowing how to, and wanting to, become a barrister show the following.

1. Students are reasonably ignorant of the pathways to becoming a barrister.
2. A reasonable number of lawyers are also relatively ignorant about knowing how to become a barrister.
3. Knowing how to become a barrister was strongly correlated with having a sense of belonging to the law school or profession, and for students, they were more likely to know how to become a barrister if they:
 - wanted to become a barrister
 - attended a private school, or
 - attended Notre Dame or Murdoch (UWA students reported less knowledge of how to become a barrister).
4. Wanting to become a barrister was strongly correlated with students who,
 - had knowledge of how to become a barrister,
 - were male,
 - had spent fewer years at law school, and
 - had a greater sense of belonging to the law school, and for practicing lawyers,
 - the younger they were,
 - if they worked in government or a small or medium law firm, compared to a large law firm,
 - the fewer children they had,

- the fewer years that they had been practicing law, and
- the less lonely they felt in the profession.

In light of the literature that suggests that knowledge of how to become a barrister is not very widespread, these results are possibly not very surprising.³¹ What is perhaps of considerable interest is the emergence of a ‘cultural’ footprint, whereby a sense of belonging is correlated strongly with knowledge of how to become a barrister. In terms of wanting to become a barrister, it is not clear what is behind the observed relationships. However, again the relevance of the cultural aspects, including a sense of belonging, emerges as an interesting feature of the desire to become a barrister, and as discussed below, as a matter which warrants further investigation.

Perceived barriers to becoming a barrister

The qualitative data further illuminated the **perceived** barriers to becoming a barrister. A summary of the issues that students thought were relevant to their progression to the bar included:

- their grades and a lack of confidence in their own ability,
- a lack of knowledge about being a barrister and a lack of connections, and
- age and gender (being female).

For practising lawyers, the main perceived barriers to becoming a barrister included:

- impact of the role of a barrister on their desired lifestyle,
- a lack of ‘contacts’ needed to obtain a position,
- financial insecurity,
- a lack of advocacy experience, and
- the perception that it was a male dominated profession.

Although it is unclear precisely what the link between grades and practice at the bar is, the responses from the students seem to indicate that they perceive practice at the bar as an ‘elite’ and ‘competitive’ undertaking. Further, and in accordance with much of the literature cited above, it appears that a lack of understanding about what practice at the bar is actually like – and the pathways to becoming a barrister – are other barriers that student perceive as impediments to becoming a barrister.

For practising lawyers, the fears of a lack of contacts and financial insecurity loomed large as obstacles towards progressing to the bar. That these were fears

noted by barristers as fears that they themselves had had, is discussed further below. For now though, the data suggests that better dissemination of information about how to become a barrister may well assist in combatting the broader 'cultural' effect identified above, and to the extent that any cultural effect does exclude women's equal participation, then the better dissemination of information could assist in resolving that disparity as well. Further, better systems to support those practicing lawyers who want to make the 'leap' but fear the financial consequences could also assist in this regard.

In terms of gender discrimination, it is interesting to note that 11.5% of women who gave a qualitative response *volunteered* that their gender was a barrier to their practice as a barrister. If nothing else this suggests that the perception that there is some gender bias has some traction among women. Whether or not the existing legal culture is discriminatory in this way, the perception needs to be addressed, lest it become a self-fulfilling prophecy.

Experienced barriers to becoming a barrister

The above section summarises the perceived barriers to becoming a barrister. In terms of the barriers that the barristers reported actually experiencing, the qualitative results revealed that a significant barrier to becoming a barrister was a financial one. Many of the barristers reported that finances were a perceived or experienced barrier to becoming a barrister. While the nature of work at the independent bar is such that income is not guaranteed, it is concerning to think that many see finances as an obstacle. The natural consequence of this is that the bar will self-select for those applicants for whom finances are – for whatever reason – of less concern. Again, this leads us back to the issue of a legal 'culture', which is reinforced by the structure of the profession.

Further, many of the respondents identified that a lack of advocacy experience was a barrier to practice at the bar. Indeed, one respondent noted that the structure of practice as a solicitor was such that one might come to the bar from a very senior position, with a great deal of experience in a certain area of law, but with no advocacy experience generally. Interestingly, far more practitioners than students identified a lack of advocacy experience as a barrier to becoming a barrister. It may be that allowing students and early career practitioners to garner more advocacy experience would help to remove one of the commonly reported barriers to practice as a barrister.

Finally, the practitioners identified a lack of contacts as a barrier to commencing practice at the bar. Again, this issue speaks to the 'culture' at the bar. Unless practitioners are given the capacity to develop contacts before taking up practice at the bar, the bar will self-select for those who already have those contacts, regardless of whether the need for contacts is a real or an imagined barrier.

Culture

In terms of the type of culture that students, lawyers and barristers perceive exists, or does exist, in the legal profession and at the bar, the following results were notable.

Gender and private school education

In terms of gender and private school education, the results show that there is an even mix of males and females from public and private schools at law school but over the years, things seem to change. In the profession, there were more females from private schools and males from public schools. At barrister level, men who have come from private school backgrounds dominated the population. Again, this result might have been an artifact from the types of students, lawyers and barristers who responded to the survey. However, regardless of its origin, this result warrants further investigation.

Gender, age, children and years in the profession

The results also show some gender differences with regard to age, having children and the number of years that lawyers stay in the profession. First, there are a high proportion of female lawyers and barristers who don't have children (around 50%) and whilst this is similar for male professionals, it is not the case for male barristers. Perhaps life at the Bar does not afford female barristers the luxury of having children whilst maintaining their career to the same extent that it might afford male barristers, or perhaps women who become barristers hold off having children. Second, it appears that men stay in the legal profession longer, which may or may not indicate that women seem to leave the profession for family commitments and then tend not to return. Further, it appears that men tend to go to the bar at a younger age than women do, which perhaps reflects that there are greater opportunities available for younger male lawyers to become barristers, than for women. These explanations are conjecture only and require further investigation. However, the picture that does emerge from these results seems to be that there is a different profile of the male and female populations at the bar.

Belongingness

In terms of having a sense of belonging to the particular cultures that exist in the profession or at the bar, the results reflect that 'sense of belongingness' broadly is a good predictor of knowledge of how to become a barrister and desire to be one. The data collected did not allow for a deeper analysis of why this might be so, but notwithstanding this, we might reasonably extrapolate that the extent to which members of the legal community feel like they 'belong' to the legal profession, the more they are likely to progress through its ranks.

FUTURE

So, does a monoculture exist at the WA bar? And if so, what does it look like, what are its traditions and what is its philosophy? The results do not go as far as giving us definitive answers to these questions but they do give us a good argument for the need for more data on the issues.

The results of the study give us some understanding of the cultures that might exist in the local Western Australian legal profession. While being mindful of the limitations of the study and in particular, the limitation that the demographic data derived only from those who participated in the surveys, it is nevertheless possible that a monoculture exists at the WA Bar. The results show that at barrister level, men who have come from private school backgrounds tend to dominate the bar population. These men may also be those who experienced less financial barriers towards becoming a barrister, or at least less financial angst, than their legal counterparts may have experienced. They also may be those who felt a greater sense of belonging to the profession and the bar. The data did not allow for a complete analysis of these results, but it seems a reasonable inference to make given that a private school background may lead to more financial security and to an understanding of the way that the legal profession 'works', and consequently, to a reasonably 'elite' culture at the Bar.

Further, in relation to gender, although there are few differences noted in students approaching the legal profession, it remains the case that women and other minorities are under-represented as barristers in Western Australia. This suggests very strongly that the issue is not one of exclusion from the Bar by overt discrimination. Perhaps it is a more subtle exclusion by making it difficult for women and people from other sectors of the legal community to make the transition to the higher levels of the profession by the creation of 'hidden' barriers such as a lack of contacts and support.

Whatever the case, it is clear that we require more data on understanding the existing pathways to the Bar (both 'hidden' and visible) before we can concentrate on making the pathways, and the Bar itself, more inclusive and accessible, if indeed it is closed and exclusive as the current data seems to suggest. First, we need some clear data on the demographic make-up of the Bar. Next, we need to understand how law students and legal professionals find out how to become a barrister and how their experiences and legal professionals find out how to become a barrister and how their experiences at law school (and even at high school) and in the legal profession influence their progression through the legal profession. It would also be helpful to track the career trajectories of practising lawyers and discover the reasons for people commencing in, remaining in, and leaving the legal profession at the various levels. In addition, data that explores the differences, if any, in the experiences of those working in criminal, family and civil law could give us insight into the various sub-cultures that might exist at the Bar. So too could data about the differences in experience for legal practitioners and barristers from differing genders, sexual-orientation, socio-economic and minority groups

prove valuable. Finally, the demographics of legal professionals and barristers moving to the Bench, the demographics and experiences of legal professionals in other states, and the education, support and policy changes that might be required to improve diversity at the Bar would assist us to understand the cultures at the Bar (and as it inevitably follows) at the Bench.

CONCLUSION

As Christine Adamson, notes, “[f]or the Bar to be an effective, useful and respected institution ... it should reflect at least the pool of people who are legally qualified, if not society as a whole.”³² This pilot study reveals that the current bar in Western Australia may not be reflective of our pool of legal professionals let alone our society as a whole. To remedy this: first, we need more concentrated research and analysis to identify the distinct culture that exists at the WA Bar (complete with its rules and traditions); then we need to examine the particular behaviours that have led to this ‘culture’; and finally, to change the culture (if culture change is required) we need to identify the particular behavioural, educational and political interventions that could assist.³³ This may sound like a heavy research agenda, but in the interests of a diverse and balanced Bar, Bench and legal profession, this seems to be an imperative. However, at least now, with the data from this study, we may be in a better position to know where to start to look for answers to some of the more complex cultural questions that surround the legal profession in Australia.

³² Adamson, above n 10.

³³ D Knott, S. Muers and S. Aldridge, *Achieving Cultural Change: A Policy Framework* (Crown Strategy Unit, London, 2002), cited in Howieson, above n 4.