

tremendous resources not only to the Report itself, but to subsequent efforts to analyse it and implement its recommendations both nationally and at our various law schools. It would be disturbing if we did not pause to assess whether the Report made no difference or a big difference.

Regardless of our sense of the impact of the MacCrate Report itself, however, it is worth returning to the document at least for its recommendations and its methodology. The Report's overall purpose is to help narrow the gap and to urge law schools as part of an educational continuum to improve their teaching of fundamental lawyering skills and values to help prepare law graduates for practice. The specific recommendations include the development and expansion of programs designed to strengthen instruction in lawyering skills that tend to get lesser treatment in law school curricula, to emphasise training in ethics and fundamental lawyering values, to promote justice, fairness and morality, and to emphasise the profession's expectation that lawyers will fulfil their commitment to provide legal services to those who cannot afford to pay. Even were we to conclude that the Report itself has lost much of its strategic value outside of clinical legal education, it would be hard to imagine that the goals articulated in the Report's recommendations have become passé.

GENDER ISSUES

The logician versus the linguist — an empirical tale of functional discrimination in the legal academy

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8 *Mich J Gender & L*, 2002, pp 247–270

Studies have indicated that men receive better grades than women at many law schools, and that men have reported more satisfaction and comfort

with law school than women. This paper introduces the concept of 'functional discrimination', addressing the ways in which law school functionally discriminates against women by significantly favouring logical intelligence. Logical intelligence is the capacity to calculate, quantify, and consider propositions and hypotheses. Linguistic intelligence is the capacity 'to think in words and to use language to express and appreciate complex meanings. While legal practitioners draw upon many of these intelligences, law school narrowly concentrates on logical intelligence. Law school creates an artificial hierarchy of intelligences that unfairly rewards those traditional students who think with logical intelligence at the expense of those non-traditional students who think with other intelligences.

Conservatives and feminists and everyone in between have proposed different explanations for the disturbing phenomenon of men feeling more comfortable in law school. Many blame the patriarchal nature of legal education. Others suggest that women and men have different learning preferences and that the male learning preferences are more easily adapted to the Socratic case method, the standard bluebook exam, and the hierarchical competitive nature of law school. Underlying many of these criticisms is the explicit and implicit assumption that female law students struggle with law school's preoccupation with normative notions of logic and reason.

This paper, focusing exclusively on gender, asks whether male and female law students express different preferences for logic-based learning models. A wide variety of educational theories and other theories have been used to conceptualise different learning preferences among law students but until now, none has focused on logical intelligence compared with the other intelligences. This paper describes an empirical study establishing that male

and female law students express differences in preferring logical intelligence to the other intelligences. This paper introduces the concept of 'functional discrimination,' addressing the ways in which law school functionally discriminates against women by significantly favouring logical intelligence.

While legal practitioners draw upon many of these intelligences, law school narrowly concentrates on logical intelligence. Traditional schooling, traditional intelligence testing, and most standardised tests are written for and reward logical thinking. Logical intelligence involves the capacity to formulate and apply abstract rules, use long chains of reasoning to develop theories, and understand and articulate logical patterns.

Most first year law students learn using the Socratic case method, which has been criticised for being too logical. Even though very few law students will practise appellate law after graduation, this is the predominant teaching methodology used in law schools today for doctrinal courses. In addition to teaching, most law schools emphasise logical intelligence in the evaluation of students as well. Many first-year courses evaluate students using standard bluebook examinations. These timed tests require students to 'issue spot' and apply the holdings of appellate decisions from their case books to a complex set of facts and to use the logic of precedential reasoning to predict possible legal outcomes. This logical testing has been criticised for ignoring the importance of creative synthesis and legal imagination. While ignored by a significant proportion of law school education, particularly the first-year courses, other intelligences are integral to the varied and multifaceted roles of lawyering.

Interpersonal intelligence is the capacity to understand and make distinctions between the intentions, motivations, and desires of other people. It also includes the ability to

counsel and nurture and work well with others. A lawyer uses interpersonal intelligence to interact with clients, judges, adversaries, witnesses, experts, and law enforcement. The lawyer relies on interpersonal intelligence to be an effective counsellor who communicates, listens, and empathises with a client. A lawyer then uses interpersonal intelligence to negotiate, mediate, persuade and otherwise advance her client's interests.

This study was conducted to determine whether male and female law students express differences in preferring logical intelligence to the other intelligences. The questionnaire asked the participant to select from a list of 25 words and 25 phrases describing various personal characteristics that 'best describe' them. Participants' selections were categorised so that each received a logical score, linguistic score, visual score, interpersonal score, and intrapersonal score. Each score signified how many times a participant chose a logical preference, a linguistic preference, an interpersonal preference, an intrapersonal preference, or a visual preference. The researchers found that the most statistically significant results came from the logical and linguistic intelligences as a function of gender. The most notable results showed that male law students significantly selected logical intelligence more than female law students and that female law students significantly selected linguistic intelligence more than male law students.

Law school commits functional discrimination because it does not give women students access to the prime benefits of the institution. Law school creates an artificial hierarchy of intelligences that unfairly rewards those traditional students who think with logical intelligence at the expense of those non-traditional students who think with other intelligences. Indeed,

law school grades in the first year are mostly based on blue book exams that test logical intelligence alone.

Many women feel alienated from a law school that does not recognise their linguistic capabilities. This alienation comes from the dominant logical discourse creating and controlling women's law school experiences in a way that is unauthentic for them because it does not include their way of thinking. Law school's preference for logical discourse and the 'imperfect fit' between language and experience lead to muting of women in the following ways: (1) women may be viewed as 'inarticulate' in the classroom because of their inability to express themselves using the dominant language; (2) women may be silent about matters which concern them because there is no mode of expression in the dominant logical model; and (3) the existence of a dominant logical discourse and the requirement that an individual engage in it means that alternative methods of expression will be suppressed or inhibited.

To train multifaceted lawyers, law schools need to functionally diversify. Functional diversity requires law schools to not only admit women, but to accommodate and change as a result of their admission. This symbiotic adaptation benefits the women students by including a diverse pedagogy from which they can learn from and feel comfortable. This adaptation benefits the men students who may be learning new skills that they need in order to be more effective attorneys. This adaptation benefits the legal community that needs versatile problem-solving professionals. Thus, it should not be logician versus linguist as adversaries.

INDIVIDUAL SUBJECTS / AREAS OF LAW

Teaching comparative law in the 21st century: beyond the civil/ common law dichotomy

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Law students will face a plethora of legal systems as they advise clients in the twenty-first century. The inexorable growth of world trade has multiplied the domestic variations of the common and civil law traditions that lawyers must address. Ultimately, many legal problems are reaching transnational and international proportions such that they must either be addressed within a regional legal system or be hurled into the loose structure of international law.

American law schools have chosen to deal with these issues piecemeal through a loose amalgam of law school courses under an international law heading. None of these courses offers a bridge to the others; each touches upon the others but is studied independently. Comparative Law could effectively serve as a bridge between these courses. But to do this, Comparative Law must be restructured from its current American-common-law/ European-civil-law myopia into an introduction to the broad diversity of legal systems throughout the world.

Most law faculty agree that Comparative Law is an essential offering in every law school's curriculum. Yet faculty advisers and students often treat it as an unnecessary course for eggheads. New approaches to teaching Comparative Law must be developed to bridge the relevancy gap while expanding students' legal horizons.

The goal of this article is to propose an introductory course, Law in Comparative Cultures, which exposes students to a panoply of international legal systems. As a starting point, there is recognition that the amount of material to be covered in most