

**RABENMUTTER¹ AND THE GLASS CEILING²: AN ANALYSIS
OF ROLE CONFLICT EXPERIENCED BY WOMEN LAWYERS
IN GERMANY COMPARED WITH WOMEN LAWYERS
IN THE UNITED STATES**

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1. The German-English translation for “Rabenmutter” is “unnatural mother,” “uncaring mother,” and “cruel mother.” Ode Dictionary, <http://ode.info/german-english/Rabenmutter+%7Bf%7D.html> (last visited Jan. 31, 2008). This is a German term that refers to mothers (raven) “who leave their children in an empty nest while they fly away to pursue a career.” Mark Landler, *Quoth the Raven: I Bake Cookies, Too*, N.Y. TIMES, Apr. 23, 2006, (Week in Review), at 3. This reference to “bad mothers” creates a hurdle to working professional women, produces guilt, and results in many German women deciding not to have children. See Tom Hundley, *Europe Battles Its Baby Bust Germany Moves to Erase ‘Rabenmutter’ Stigma While Others on Continent Wrestle with Birthrates Too Low to Sustain Populations*, CHI. TRIB., June 23, 2006, at 12; Landler, *supra*; *For German Women, Glass Ceiling Hangs Low*, DEUTSCHE WELLE, July 10, 2004, <http://www.dw-world.de/dw/article/0,1564,1263544,00.html>. People who study ravens, however, say the birds are attentive mothers. Landler, *supra*.

2. See Ira Gang, John Landon-Lane & Myeong-Su Yun, *Does the Glass Ceiling Exist? A Cross-National Perspective on Gender Income Mobility*, IZA Discussion Paper, Feb. 2003, at 3, available at <http://www.iza.org> (follow “Publications” link; then follow “Discussion Papers” link; then type “713” into DP no. search; then follow article link) (defining the transparent barrier in the U.S. and in Germany that impedes “qualified women and other minorities from advancing up the job ladder”). This study found that “males in Germany have an [sic] higher average probability of moving up to a higher income class [than women].” *Id.* at 18. The “glass ceiling” is a term of art from the 1970s that describes “the invisible, artificial barriers created by . . . institutional prejudices that prevent qualified [women] from advancing within their organization and reaching full potential.” Stacy van Hooven, *Circumventing the Glass Ceiling: Women Entrepreneurs and Other Emerging Trends*, The CEO Refresher, <http://www.refresher.com!/glassceiling.html> (last visited Oct. 13, 2006) (website requires membership; copy on file with author).

INTRODUCTION

Can women lawyers “do it all”—practice law, maintain a satisfying marriage or partnership, and have a family? German women lawyers answered that question with these comments:³

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3. Respondents’ comments and responses to this questionnaire are on file with the author.

DEMOGRAPHIC QUESTIONNAIRE

1. Name, address (optional):
2. Age:
3. Marital Status (circle): single; married/domestic partnership; remarried; widowed; divorced; separated.
4. Number, ages, sex of children:
5. Number of years married (or in a domestic partnership):
6. Occupation of your spouse/equivalent:
7. Date of law school graduation:
8. Highest degree held and in what field of specialization:
9. Undergraduate major (for B.A., B.S., or LL.B degree):
10. At present, in which of the following activities are you engaged? (describe the kind of law you practice and estimate the number of hours per week you devote to each classification)
Salaried employment:
Self-employment:
Consulting, free lance, independent research (please specify):
Volunteer and organizational work:
Housewife/mother:
Further education:
11. Have you taken significant amounts of time away from your legal career (e.g. to be with your children, to take care of an elderly parent, to try another career track)?
If so, how much time and why?
12. Have you been employed at other times (for example, before, during, and/or after college) and what type of employment?
13. Why did you choose law as a profession?

“Successful women lawyers are only the exception.” “We [women lawyers] need a forty-eight-hour day.” “Society does not accept women lawyers practicing business law.” “Law firms don’t offer—for those who want to have children—flexible part time schedules.” “Yes, if they are willing to live with complete self-neglect.” “Yes, but only if women are highly structured, well organized, and self disciplined.” “Working women are not supported within the [German] society.” “Women still do not have the same opportunities in professional life as their male colleagues.” “To do it all requires a partner who supports you by helping take care of the children.” “Yes, but work is extremely difficult and demanding and takes much more effort than for a male.”

These comments mirror those made by San Diego women lawyers in two studies I conducted in 1996 and 2002.⁴ The studies reported data collected from female attorneys living and working in San Diego, California, and follow-up interviews of a selected sample of those female attorneys who had participated in the earlier study. Evolved from my early research into adult female roles in 1976,⁵ the studies focused on professional women, their role conflicts, and solutions to those conflicts. Because I am the director of an LL.M. program for foreign lawyers and because I have had a large number of German

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14. When did you decide to become a lawyer?
 15. Why did you choose the area of law you’re practicing?
 16. Do you believe women can “do it all” in your culture (“do it all” means practice law, maintain a satisfying marriage, have a family)?
 17. Please complete this sentence:
One of the major problems facing women lawyers today is
 18. May I e-mail you for follow-up anecdotal information? If so, please provide your e-mail address:

4. See Jacquelyn H. Slotkin, *You Really Have Come a Long Way: An Analysis and Comparison of Role Conflict Experienced by Women Attorneys Today and By Educated Women Twenty Years Ago*, 18 WOMEN’S RTS. LAW REP. 17 (1996) [hereinafter Slotkin, *You Really Have Come a Long Way*]; Jacquelyn H. Slotkin, *Should I Have Learned to Cook? Interviews with Women Lawyers Juggling Multiple Roles*, 13 HASTINGS WOMEN’S L.J. 147 (2002) [hereinafter Slotkin, *Should I Have Learned to Cook*].

5. See Jacquelyn H. Slotkin, *Role Conflict Among Selected Anglo and Mexican-American Female College Graduates*, (1976) (unpublished Ph.D. dissertation, University of Arizona) (on file with the University of Arizona Library).

women in the program through the years, I have expanded my research to a population of German women lawyers.

Wiltrud Fromm⁶ and I are lawyers from different countries and different cultures. We have discussed the similarities and differences in legal education and the opportunities for women in the legal profession in Germany and in the United States. Wiltrud worked for eleven years in a law firm specializing in labor law, a male-dominated field in Germany.⁷ She was a partner who worked fifty to sixty hours a week. During the years when she experienced the most work pressure, she was single. Now she is in her early forties, married, considering having a child, and living in the United States. She has completed her LL.M. and has passed the New York Bar Examination. No longer a partner in the German law firm, Wiltrud says, she “will not ever be [a partner] again.”

I have been a life-long working wife and mother. I have balanced my professional education and career choices with an early marriage, my husband’s career, and raising children. My undergraduate training, graduate work, and pre-law work experience were in secondary education and educational administration. I graduated from law school at age forty; and after five years as a civil litigator, I returned to teaching. I am now a law school professor, a choice that has allowed me time for marriage, family, and professional satisfaction.

A *New York Times* article in April 2006 described Germany as a country with some of the “world’s most generous maternity leave policies,” but “[f]ew developed countries are more resistant to the idea of working mothers.”⁸ The philosophy about the role of women in German culture is summarized by a German slogan: Kinder, Küche,

6. Wiltrud Fromm, LL.M., attended legal studies at the University of Hamburg, University of Saarbruecken, and University of Marburg, passed her First and Second State Examinations, and specialized in labor law in Germany before moving to the U.S. She completed her LL.M. at California Western School of Law and was admitted to practice in New York. She was my student and my advisee during her LL.M. program.

7. This statement is based upon Wiltrud Fromm’s experience and observation as a business attorney in Germany in addition to information provided by other German attorneys who have attended the LL.M. program.

8. Landler, *supra* note 1.

Kirche (children, kitchen, church).⁹ This hostility towards working women is characterized by the term Rabenmutter¹⁰ and has resulted in a German societal prejudice: women who have children should not work. Many women feel they must choose between working and raising children. Many choose to forego having children.¹¹ Despite the generous leave policies, German culture still makes it difficult for women to work outside the home.¹² Obstacles to working outside the home include a lack of affordable child-care facilities, school scheduling with children home during the middle of the day, stores open only during normal working hours, and “virtually non-existent” part-time jobs.¹³

Wiltrud and I have discussed whether the societal and workplace Rabenmutter complex, in addition to Germany’s glass ceiling, makes it even more challenging for German women lawyers to have satisfying careers and a family than for American women lawyers. Barbara Schaeffer-Hegel, founder of the European Academy for Women in Politics and Business in Berlin, believes it is “harder to reconcile having a family and a career in Germany than it is in most developing countries and almost all industrial nations.”¹⁴ She believes that in other European countries and in the United States, “women achieve huge things a [sic] still manage to have kids” without feeling

9. Michelle Hagenbuch, *Women in a Unified Germany*, 14 PERSPECTIVES ON BUS. & ECON. (1996), available at <http://www.lehigh.edu/~incntr/publications/perspectives/v14/hagenbuch.pdf> (last visited Mar. 2, 2008).

10. Landler, *supra* note 1.

11. See Hundley, *supra* note 1. Germany now has one of the lowest birthrates in the world. See *id.*; See also Hagenbuch, *supra* note 9 (stating that there has been a decrease in birthrate and an increase in the abortion rate). In 2005, the number of children born was the lowest in a single year since 1945. Landler, *supra* note 1. If the trend continues, the German population is expected to decline 9% by 2050. See Hundley, *supra* note 1. Germany’s population is expected to shrink from today’s 83 million to 79 million in 2050; and by 2020, 30% of Germany’s population will be age sixty or older. *Id.* Hundley also states that the United States has a relatively healthy fertility rate of 2.11 births per woman while Germany’s current fertility rate is 1.37. *Id.* Demographers state a population needs a fertility rate of 2.1 babies per woman to sustain itself. *Id.*

12. Hagenbuch, *supra* note 9.

13. *Id.*

14. *For German Women, Glass Ceiling Hangs Low*, *supra* note 1.

like they are bad mothers.¹⁵ Further, she believes “the infrastructure is better and the prejudices against the women aren’t as big of a strain as they are [in Germany].”¹⁶

Just as German women lawyers struggle with the conflict between being mothers and spouses/partners and working within their chosen professions, female attorneys in the United States feel as though they struggle to do it all, if doing it all is even possible.¹⁷ In addition, U.S. women lawyers still face inequality in the legal profession: only a small percentage of top positions in law firms and law schools are occupied by women, and there continues to be a significant difference between the salaries paid to women and men attorneys in the same positions.¹⁸ Wiltrud and I have discussed whether the inevitable path for female lawyers who want to be influential professionals and have emotionally satisfying private lives means leaving private law firm practice.¹⁹

Women’s continuing struggle to bring equality to the workplace in both countries can be helped by a critical examination of the roles of women lawyers and their perceptions of themselves in the profession. Germany’s first woman chancellor, Angela Merkel, announced reforms making it easier for middle-class working women to have children. One of her steps in initiating reforms was appointing Ursula von der Leyen, a mother of seven and a physician, to be minister for family affairs.²⁰ Dr. von der Leyen will work on policies that encourage working women to have children and that challenge anti-working-mom beliefs.²¹

15. *Id.* See also Hundley, *supra* note 1 (explaining there are no Rabenmutter in France because educated Frenchwomen are encouraged and expected to pursue careers after they have children. France’s fertility rate is 1.89 births. The state funds extensive day-care facilities to make this possible).

16. *For German Women, Glass Ceilings Hang Low*, *supra* note 1 (stating that the daycare and preschool infrastructure in Germany is underdeveloped).

17. *See infra* Part II.B.

18. *See infra* Part II.B.

19. *See infra* Part II.B.

20. Landler, *supra* note 1.

21. *See* Judy Dempsey, *Coalition Tackles fall in German Birth Rate: Financial Package for Working Women Wins Wide Support*, INT’L HERALD TRIB. (Eur.), June 15, 2006, News. Chancellor Merkel’s reforms would offer working women two-thirds of their salaries for up to a year to encourage them to take time off after

The purpose of this article is to analyze and compare women lawyers in Germany with women lawyers in the United States: their legal education, gender proportion in the legal profession, work opportunities, satisfaction with professional choices, and role conflicts.²² Part I of this article will describe Germany's legal education and compare it with U.S. legal education. Part II will review the literature and issues relevant to German women lawyers as compared with U.S. women lawyers and will summarize and analyze how societal attitudes have affected women's choices in Germany and in the United States. Part III will compare demographic and role conflict data collected from a population of fifty-five German women lawyers with the data from a selected sample of female attorneys in San Diego, California. Part IV concludes with observations from this cross-cultural analysis of role conflict and with a call to restructure the legal environment in both countries to be inclusive and family-friendly—with the goal to find ways to promote and to retain female lawyers.

I. GERMANY AND THE UNITED STATES: LEGAL EDUCATION AND LEGAL SYSTEMS

All law students, in Germany and in the United States, must undertake identical academic requirements in their respective countries irrespective of their area of specialty or future career choices. However, the training of German lawyers differs from the training of U.S. lawyers. The following sections will describe both systems of professional legal education. In characterizing the different legal systems, Germany is a civil law jurisdiction where

childbirth. *Id.* Working mothers say more has to be done because there are not enough day-care centers for children under three, and the school day in Germany typically ends at noon or 1:00 p.m., making it difficult to be employed full-time. *Id.*

22. See Slotkin, *Should I Have Learned to Cook*, *supra* note 4, at 149-50. Role conflict is conceptualized, defined, and measured specifically for this research study. Role conflict is a statistically significant difference between a woman's actual expressed role score on the Fand Inventory of Feminine Values (now Maferr Inventory of Feminine Values) Form A (a measurement on the rating inventory of how a woman perceives herself) and a woman's expressed role preference score on the Fand Inventory of Feminine Values Form B (a measurement on the rating scale of how a woman perceives her "ideal" woman). *Id.* See also Slotkin, *You Really Have Come a Long Way*, *supra* note 4, at 32.

enacted statutes and customary law are the primary sources of law (case law is not a source of law).²³ The United States is a common law jurisdiction: its legal system is based upon common law, case law, and statutes.²⁴ The U.S. legal system is one of only a few countries that uses judicial decisions as a major source of law and uses those cases as precedent to predict future decisions.²⁵

A. Overview of German Legal Education

Before starting one's legal education in Germany, a prospective student must pass the *Arbitur*, a college-preparatory examination usually taken at the end of *Gymnasium* (high school) and approximately equivalent to the American Scholastic Aptitude Test (SAT).²⁶ The *Arbitur* generally entitles students to attend the courses and universities of their choice.²⁷ German high school graduates directly enter law school at the university level. With the exception of one newly founded school, all law schools in Germany are part of

23. See NADIA E. NEDZEL, *LEGAL REASONING, RESEARCH, AND WRITING FOR INTERNATIONAL GRADUATE STUDENTS* 2, 18 (2004). See also *Researching the Law of Germany*, <http://www.law.umn.edu/library/pathfinders/germanlaw98.html> (last visited Mar. 2, 2008) (providing a summary overview of the German legal system). The German legal system is based on five codes: civil, civil procedure, commercial, criminal, and criminal procedure. *Id.* The two sources of law in Germany are statutes and customary law. Statutes include the constitution, the codes, additional statutes, and regulations of the Federation, the Ministries of the Federation, and the states. *Id.* Customary law includes all general public practice recognized as binding (very limited source of new law). *Id.* Cases are not binding authority in Germany, and precedent does not "formally" exist in Germany. *Id.*

24. See NEDZEL, *supra* note 23, at 5 (explaining the nature of U.S. common law as compared with other legal systems). Nedzel states, "The *common law* is the law of the case, as interpreted by court; *civil law* is the law provided by legislation and expounded upon by legal scholars." *Id.* In Germany, for example, the "civil[] lawyer goes from the general law of legislation to the specific case at hand . . . in contrast the common law lawyer builds her legal reasoning from the specifics of prior cases to derive the general principles applicable to the situation at hand The result is often the same or similar under both legal systems, but the reasoning process and methodology used are different." *Id.*

25. See *id.* at 3.

26. Mareike Coppi, Bettina Joos & Ina Steidl, *Between Legal Studies and Feminism*, 3 *CARDOZO WOMEN'S L.J.* 451, 453 (1996).

27. NIGEL FOSTER, *GERMAN LEGAL SYSTEMS AND LAWS* 82 (2d ed. 1996).

state universities and charge no tuition.²⁸ Forty-one German universities have law faculties.²⁹

Legal studies at the university level are generally four years long; however, there is no set time limit to complete one's legal education. The minimum is seven semesters, and the average number of semesters completed by students taking the First State Examination is ten or eleven semesters.³⁰

Law students progress from a general curriculum of mandatory courses such as civil, criminal, labor, business, European Union, procedural, and public law (including constitutional and administrative law),³¹ to specialized areas and in-depth studies including philosophy, sociology, and international law.³² The format of instruction is generally large lecture format.³³ In addition, every student must pass a class in a foreign language or a language course focusing on legal issues.³⁴ Furthermore, legal studies may include classes in negotiation skills, rhetoric, dispute resolution, mediation, and communication skills.³⁵ Internships are available during semester breaks lasting at least three months.³⁶ All other details of legal education are regulated by the federal states (Länder).³⁷ Students are

28. See German Legal Education, DAJV (Deutsch-Amerikanische Juristen-Vereinigung E.V.), http://www.dajv.de/en/pdf/German_Legal_Education.pdf (last visited Mar. 23, 2008).

29. FOSTER, *supra* note 27, at 82.

30. TIMOTHY KEARLEY & WOLFRAM FISCHER, CHARLES SZLADITS' GUIDE TO FOREIGN LEGAL MATERIALS: GERMAN 36 (2d rev. ed. 1990).

31. See Philip Leith, *Legal Education in Germany: Becoming Lawyer, Judge, and Professor* n.6 (1995), <http://webjcli.ncl.ac.uk/articles4/leith4.html> (explaining that JAPO (Juristen Ausbildungs und Prüfungsordnung) is the basic legislation setting out courses, options, and examinations for a law student's legal education).

32. See *id.* n.7.

33. Coppi, Joos & Steidl, *supra* note 26, at 453 (describing the main teaching method as lecture with 300 or more students in the classroom. There are small study groups held by professors' assistants where study groups of twenty students discuss the subject matter, ask questions, and solve cases.).

34. See The German Judiciary Act [DRiG], Apr. 19, 1972, BGBl I last amended Jul. 11, 2002, BGBl I at 2592, § 5a(2), § 5d(1), *available at* <http://www.iuscomp.org/gla/statutes/DRiG.pdf>.

35. See *id.* § 5a(3).

36. See *id.*

37. See *id.* § 5a(4).

awarded a “Schein” or a certificate for completing written work or essays for courses taken.³⁸ No formal exams are administered during the student’s legal education at the university level.³⁹

Legal studies are completed by passing a First State Examination, administered by the Ministry of Justice for each of the sixteen Länder (states).⁴⁰ This examination consists of a paper (required in most German states), written examinations, and an oral examination.⁴¹ To prepare for the state exam, universities and private companies offer preparatory and review courses. The failure rate on the state exam averages about thirty percent.⁴²

After successfully passing the First State Examination, students apply to a particular federal state for two years of professional legal training, called the Referendariat.⁴³ Not only must every federal state accept other states’ First Examination results,⁴⁴ but each state also has the duty to employ all persons who pass the examination and apply in that state for the professional part of their legal training.⁴⁵ During the Referendariat period, the trainees are state employees and earn a small salary.⁴⁶ Mandatory placements are arranged, each for a minimum of three months:⁴⁷ at a civil court, in a prosecuting attorney’s office or at

38. See Leith, *supra* note 31.

39. *Id.*; see also Matthias Kilian, *Developments in the German Legal Profession in 2003*, <http://www.uni-koeln.de/jur-fak/dzevanwr/germanlegalprofession2002.pdf> (summarizing the new law governing legal education after June 1, 2003). “Universities are now required to teach ‘soft skills’ in addition to theoretical legal knowledge,” as well as “take legal practice into consideration and demonstrate the approach of a lawyer to a legal problem.” *Id.* Post-graduate level education focuses on the “training of lawyers rather than on the training of judges.” *Id.*

40. See Leith, *supra* note 31.

41. *Id.*; NIGEL FOSTER, *GERMAN LAW & LEGAL SYSTEM* 68-69 (1993); FOSTER, *supra* note 27, at 85-86 (estimating that 15,000 students per year choose legal studies, only about 7000 reach the first state exams, and 25% of those fail the exam).

42. Coppi, Joos & Steidl, *supra* note 26, at 454.

43. The German Judiciary Act [DRiG], *supra* note 34, § 5b(1).

44. *Id.* § 6(1).

45. *Id.*

46. Leith, *supra* note 31. Each student is given a grant for living expenses, and training costs are paid for by the Ministry of Justice. *Id.*

47. FOSTER, *supra* note 27, at 86.

a criminal court, with an administrative authority, in a private lawyer's office,⁴⁸ and at one or more agencies where "proper training is ensured."⁴⁹ In addition, four to six months must be spent in a placement of choice, which may be in a court or public agency, with a notary,⁵⁰ with a trade union, in business, or in a placement in another jurisdiction.⁵¹

The next step for a German lawyer-in-training is the Second State Examination,⁵² which consists of up to twelve written exams of three to eight hours duration each and oral exams.⁵³ Since the federal states are responsible for regulating examination details, the number of written exams may vary.⁵⁴ In addition, in some states writing a thesis is mandatory. In those states, there are fewer written exams to pass than in states that do not require a written thesis.⁵⁵

Only those who successfully pass both state examinations are allowed to practice as lawyers, judges, notaries, or public prosecutors.⁵⁶ Six percent of candidates fail the Second State Examination on the first attempt.⁵⁷ Again, all states must accept other states' examinations; therefore, candidates who pass the Second State

48. See Kilian, *supra* note 39 (referencing the nine-month requirement for law firm placement effective June 1, 2003).

49. The German Judiciary Act [DRiG], *supra* note 34, § 5b(2). After June 1, 2003, graduates must spend at least nine (instead of only four) months with a law firm during the two-year Referendariat period. Kilian, *supra* note 39. Regional Bars offer courses on lawyering skills, legal practice, and professional responsibility. *Id.*

50. FOSTER, *supra* note 27, at 86; FOSTER, *supra* note 41, at 80-81 (discussing the office of a notary in Germany. A notary is a legal specialist. Authentication by a notary is required for many transactions including real estate sales, sales of shares, and authenticating wills. Notaries have a monopoly over many types of commercial transactions. Notaries can be independent or public professionals. There are wait lists for notary appointments of up to fifteen years because the positions are lucrative and secure.).

51. FOSTER, *supra* note 27, at 86.

52. The German Judiciary Act (DRiG), *supra* note 34, § 5d(3).

53. FOSTER, *supra* note 27, at 86.

54. See The German Judiciary Act (DRiG), *supra* note 34, §§ 5b-d.

55. FOSTER, *supra* note 27, at 85.

56. See The German Judiciary Act (DriG), *supra* note 34, §§ 5b-d.

57. FOSTER, *supra* note 27, at 86.

Examination are free to choose their employment location in Germany.⁵⁸

German legal education is expensive for the taxpayer; students do not pay tuition.⁵⁹ Most students complete their educational requirements between twenty-seven and twenty-nine years of age and begin to earn a living in their early thirties.⁶⁰ “Around half of all German lawyers are career civil servants and stand under fairly direct control of the ministries of justice.”⁶¹

B. Overview of U.S. Legal Education

Training to become a lawyer in the United States today generally requires seven years of study. A four-year undergraduate bachelor’s degree from a university or college is required before applying to a post-graduate law school for a Juris Doctorate (J.D.) degree.⁶² No particular major course of study is required for undergraduates planning to study law.⁶³

A three-year, six-semester Juris Doctorate (J.D.) degree from an American Bar Association-approved law school qualifies graduates to take the bar exam in all U.S. jurisdictions. The American Bar Association has approved 196 law schools in the United States.⁶⁴

58. The German Judiciary Act [DRiG], *supra* note 34, § 6(2).

59. German Legal Education, *supra* note 28.

60. Leith, *supra* note 31.

61. Matthias vom Hau, *Culture, Timing, and the Legal Profession: Rueschemeyer’s Lawyers and Their Society Revisited*, 20 SOC. F. 327, 328 (2005) (reviewing DIETRICH RUESCHEMEYER, *LAWYERS AND THEIR SOCIETY: A COMPARATIVE STUDY OF THE LEGAL PROFESSION IN GERMANY AND IN THE UNITED STATES* (1973)).

62. See WILLIAM BURNHAM, *INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF THE UNITED STATES* 126-64 (4th ed. 2006), for an overview of legal education and admission to the bar. Graduation from law school was not always the most practical process for becoming a lawyer. *Id.* Until well into the twentieth century, reading and apprenticeships in law offices were available alternatives, though few jurisdictions approve this method of study today. *Id.*

63. Future lawyers may obtain undergraduate degrees in a variety of areas of specialization, such as sociology, music, film, nursing, business, economics, history, political science, English, pre-law, criminal justice, communications, philosophy, law, and society.

64. See American Bar Association, *ABA-Approved Law Schools*, <http://www.abanet.org/legaled/approvedlawschools/approved.html> (last visited Mar.

There are law schools not approved by the ABA;⁶⁵ however, eighteen of the fifty states require bar examinees to graduate from ABA-approved law schools to be eligible to take the bar examination.⁶⁶ Bar admission is regulated by each state and is required to practice law.

Unlike German legal education, which is undergraduate law study, professional law study in the United States is offered only at the post-graduate level. Admission to ABA-accredited law schools is competitive.⁶⁷ Law schools base admission upon many factors, including an applicant's undergraduate record (academic and extracurricular) and grade point average, Law School Admission Test (LSAT) score, letters of recommendation, personal statement, LSAT writing sample, and work and volunteer experience. And contrary to the free legal education in Germany, law school tuition in the U.S. is expensive. The average tuition in 2005 at ABA-approved private law schools was \$28,900.⁶⁸ Law schools in the United States confer approximately 40,000 J.D. degrees each year.⁶⁹

20, 2008). As of June 2007, there are 196 ABA-approved institutions; 195 are approved to grant the first degree in law (J.D.) and the U.S. Army Judge Advocate General's School, which offers an officer's resident graduate course beyond the first degree in law. *Id.* All ABA-accredited law schools satisfy the required legal education requirements to be eligible to sit for the bar examination in every state. American Bar Association, Frequently Asked Questions, <http://www.abanet.org/legaled/resources/faq.html> (last visited Mar. 20, 2008). Many states require a J.D. degree from an ABA-approved law school. ABA-accredited law schools meet the ABA Standards for Approval of Law Schools. *Id.* Non-ABA-approved law schools need not comply with the ABA standards (and the ABA makes no representation about the quality of the educational programs offered at non-ABA-approved law schools). *Id.* A vast number of ABA-approved law schools are also members of the Association of American Law Schools (AALS), an organization that focuses on the quality of legal education. *See* Association of American Law Schools, http://www.aals.org/about_memberschools.php (last visited Mar. 20, 2008).

65. Particularly in California. BURNHAM, *supra* note 62, at 128. However, non-ABA-approved law schools must have state approval to offer J.D. degrees. *Id.*

66. NAT'L CONF. OF BAR EXAMINERS AND THE A.B.A. SECTION ON LEGAL EDUC. AND ADMISSION TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2007, 10-11.

67. *See* BURNHAM, *supra* note 62, at 128-29.

68. The average law school tuition per year at private ABA-approved law school was \$28,900 in 2005, \$22,987 for non-resident students at public schools, and \$13,145 for resident students at public schools. American Bar Association, Law School Tuition Average and Median 1985-2005, <http://www.abanet.org/legaled/statistics/charts/stats%20-%2005.pdf>. "About 80 percent of law school students

First-year J.D. programs concentrate on mandatory courses: civil procedure, contracts, property, legal research and writing, torts, and criminal law.⁷⁰ Instruction in U.S. law schools is generally the case method and class discussion using Socratic dialogue, rather than pure lecture and assigned readings.⁷¹ No internship, clinical education, or practice skills are typically required, though skills courses are required for all ABA-approved law schools since fall 2006 under a new American Bar Association standard.⁷² Since 2004, the ABA standards also require all ABA-approved law schools to offer courses with “live client or other real-life practice experiences”⁷³ under the supervision of law school faculty.

obtain loans to pay for law school, and the average loan debt is \$76,763 for private law school graduates and \$48,910 for public school graduates.” Leigh Jones, *As Salaries Rise, So Does the Debt*, THE NAT’L L.J. (Feb. 1, 2006), available at <http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1138701909390>.

69. NAT’L ASSOC. FOR LAW PLACEMENT, MARKET FOR NEW LAW GRADUATES UP, APPROACHING 90% FOR FIRST TIME SINCE 2001, at 2, http://www.nalp.org/assets/316_erssselectedfindings05.pdf (reporting 42,672 graduates from 188 ABA-accredited law schools in 2005).

70. See BURNHAM, *supra* note 62, at 130. The first-year curriculum may also include appellate advocacy and constitutional law. The second and third year courses include professional responsibility and ethics, evidence, criminal procedure, tax, wills and trusts, corporations, remedies, family law, international law, and administrative law, in addition to multiple electives in trial advocacy, alternate dispute resolution, telecommunications, and business planning. See also Unanimous Vote of Harvard Law Faculty: Overhaul First-Year Curriculum, idealawg, http://westallen.typepad.com/idealawg/2006/10/harvard_law.html (emphasizing that twenty-first century legal education needs to change its 130-year-old curriculum with fewer hours of traditional courses and acknowledge the “global nature of the modern world” by emphasizing international and comparative law and creativity and problem-solving) (last visited Feb. 7, 2008).

71. See Janeen Kerper, *Creative Problem Solving vs. The Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351, 351-52 (1998). Dean Christopher Langdell of Harvard Law School developed the case method. Other methods of instruction have evolved in legal education such as the problem-solving method, law clinics and internships, and simulations. *Id.* at 351.

72. See ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 302(a)(4) (2005).

73. See BURNHAM, *supra* note 62, at 130; see also ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 302(b)(1) (2005).

A law school graduate with high grades, law review participation, summer clerkship, and a degree from a prestigious law school is highly employable. A survey of 2005 graduates of all law schools showed 89.6% had obtained jobs by February of 2006 with 74.3% accepting positions requiring admission to practice.⁷⁴ U.S. law graduates may earn higher degrees in law: a master's degree (LL.M.) and Doctor of Science in Law (S.J.D.). In 2000, over 3500 students graduated with LL.M. degrees and 50 S.J.D. degrees were conferred.⁷⁵ In the 2005 graduating class of law students, only 2.2% enrolled in advanced law degree programs.⁷⁶

In sum, the German and U.S. legal systems differ in practice and in education. The German legal system relies on the civil law tradition as the primary source of law, whereas the U.S. legal system uses the common law tradition. Germany's legal education includes a two-year training period after university-level legal schooling and before candidates may take their final law examinations to become judges, academics, or lawyers in private practice. U.S. lawyers-in-training must complete four years of undergraduate university training before being admitted to law school. Once students graduate from law school, they must pass a bar examination in each jurisdiction in order to practice law within that jurisdiction. The educational training in both systems is rigorous and takes many years.

II. WOMEN IN LAW SCHOOL AND IN THE PROFESSION IN GERMANY AND IN THE UNITED STATES

"German lawyers are a homogenous group of university-trained professionals; few come from working-class backgrounds."⁷⁷ In the United States, lawyers are from more heterogeneous backgrounds.⁷⁸ Over the decades, the number of women law students has increased

74. NAT'L ASS'N FOR LAW PLACEMENT, JOBS & J.D.S: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES—CLASS OF 2005 (2006), http://www.nalp.org/assets/316_erssselectedfindings05.pdf. Additionally, 7.5% take positions where a J.D. was preferred. *Id.*

75. *Id.*

76. *Id.*

77. Hau, *supra* note 61, at 328.

78. *Id.*

dramatically in both Germany and the United States. In Germany, women were first admitted to university law schools between 1900 and 1909, the first female lawyer was admitted to practice in 1922, and the first female judge was appointed in 1924.⁷⁹ The first woman lawyer in the United States, Mrs. Belva Lockwood, was admitted to practice in 1879, and by 1929, 100 women had been admitted to practice in twenty-six states.⁸⁰ In both Germany and the United States, women continue to be underrepresented as large firm partners, on law school faculties, in law school administration, and in corporations, and their incomes are well below their male counterparts.⁸¹

A. German Women in Legal Education and in the Profession

Germany's constitution⁸² gives men and women equal rights. In 1994, this equality was broadened—article 3, section 2 states: “The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist.”⁸³ However, German women still do not have the same opportunities as men in society, in politics or in work opportunities—and they are the majority of Germany's population (there are 2 million more women than men in Germany).⁸⁴ As of 2004, women

79. Ulrike Schultz, *The Status of Women Lawyers in Germany*, in *WOMEN IN THE WORLD'S LEGAL PROFESSIONS* 272-73 (Ulrike Schultz & Gisela Shaw, eds., 2003). See Coppi, Joos & Steidl, *supra* note 26, at 451 (noting that women were not admitted to universities until 1909).

80. See Alice L. O'Donnell, *Women and Other Strangers Before the Bar*, in *SUPREME COURT HISTORICAL SOCIETY 1977 YEARBOOK* (1977), available at http://www.supremecourthistory.org/04_library/subs_volumes/04_c02_i.html.

81. See Cynthia Fuchs Epstein, *Reaching for the Top: 'The Glass Ceiling' and Women in the Law*, in *WOMEN AND LAW* 126 (Shimon Shetreet ed., 1998); Schultz, *supra* note 79, at 272; Wendy Werner, *Where Have the Women Attorneys Gone?*, ABA Law Practice Management Section, *Law Practice Today* 2 (Nov. 2005), available at <http://www.abanet.org/lpm/lpt/articles/mgt05041.html>.

82. Grundgesetz für die Bundesrepublik Deutschland (federal constitution) GG art. 3.

83. *Id.* art. 3(2).

84. See generally Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, *Women in Germany*, http://www.bmfsfj.de/Publikationen/women-in-germany/first_overview.html (Overview) (last visited Mar. 31, 2008). To ensure equal rights for women with regard to marriage and divorce, the partnership principle was introduced to eliminate the housewife marriage model. *Id.* § 3.3. In

represented 42% of Germany's workforce.⁸⁵ Even though women have become indispensable in the workforce, their numbers are not mirrored in the professional world's middle and top management positions.⁸⁶

Law is a popular major in Germany. Today, almost half of all law students are women.⁸⁷ Women study law for many reasons: law is a helping profession, law provides future job security, law is a respected profession, and women want to "share male power."⁸⁸ Although women's results on the Second State Examination are significantly higher than the results of their male counterparts, women are underrepresented on law school faculties and as doctoral candidates working as assistants to law school professors.⁸⁹

A dramatic increase in women lawyers occurred over the last three decades as the number of women in legal education quadrupled.⁹⁰ Since 1990, the number of lawyers admitted to the

divorce proceedings, the guilt principle was replaced by irretrievable breakdown of marriage principle. Pension rights were adjusted to ensure equal division of pension rights accrued during marriage. *Id.* § 4.3. The act relating to family names in 1994 ensured equality of men and women with respect to the right to use a name where the man's family name is no longer given preference. *Id.* § 4.1. Since 1997, rape within marriage is a punishable offense. *Id.* § 9.2.

85. German Information Center: Facts about Germany—Life in Society, http://www.germany-info.org/relaunch/info/facts/facts_about/life.html (last visited Jan. 19, 2004). Women have become indispensable to business, industry, health care system, administration, and education. In 1997, 54.9% of pupils qualifying for university entrance were women. *Id.* In that year, 46.6% of all students in higher education were women. *Id.* And *female students get higher grades than men* (emphasis added). *Id.*

86. *Id.* Women also earn less than men. *Id.* See also Facts About Germany, <http://www.tatsachen-ueber-deutschland.de/en/society/main-content-08/women-and-men.html> (last visited Mar. 12, 2008) (referring to all women, not just women lawyers).

87. See Coppi, Joos & Steidl, *supra* note 26, at 462 (documenting that in 1996, nearly half of all law students were women).

88. *Id.* at 455-58. Textbook cases studied by law students are characterized by an underrepresentation of women. *Id.* Females encounter problems at the university: some identify difficulty speaking in class, issues with competition, and a disproportionate fear of examinations. *Id.*

89. *Id.* at 462.

90. See Schultz, *supra* note 79, at 273-74. In 1930, 2% to 3% of German law students and 74 of 10,000 judges were women. In 1933, only 252 of 18,766 advocates were female. In 1933, when the National Socialists seized power in

German Bar has more than doubled.⁹¹ As of January 1, 2005, 132,569 lawyers were admitted to the Bar.⁹² In the same year, the total percentage of female lawyers increased to 28.6% or 37,914 female lawyers.⁹³

Although more than a quarter of all practicing lawyers in Germany today are women, their representation in the legal field is less than 20% if maternity, educational leave, part-time employment, and underemployment are factored in.⁹⁴ In 1999, 26.3% of judges (5506 of 20,920) and 23.7% of the advocates (23,139 of 97,791) were women.⁹⁵ In 1997, 27.9% of public prosecutors were women.⁹⁶

Because some aspects of legal education in Germany are focused on training students to be judges,⁹⁷ about 50% of new judges and

Germany, women were expelled from law practice and barred from training and from the judiciary. Hitler signed a decree in 1936 prohibiting women from working in the legal profession. Real change did not occur until the late 1960s and early 1970s because it was considered inappropriate for married women to be employed. *Id.*

91. Matthias Kilian, *Developments in the German Legal Profession in 2005*, at 1, <http://uni-koeln.de/jur-fak/dzeuanwr/Developments%20in%20the%20German%20legal%20profession%20in%202005.pdf> (Documentation Centre for the Law of the Legal Profession in Europe, Cologne, Germany) (last visited Apr. 14, 2008). In 1990, the number of lawyers was 59,455. *Id.*

92. *Id.* at 1.

93. *Id.*

94. Schultz, *supra* note 79, at 275 (“The actual number of women in the profession does, however, not tell the full story. If maternity and educational leave, part-time regulations and underemployment are taken into account, their overall share in the workload of the profession and their representation of the profession in public is still under 20 percent.”); see also Kilian, *supra* note 91 (documenting the increase in female lawyers from 27.8% in 1990 to 28.6% as of Jan. 1, 2005, and a 4.6% increase over the previous twelve months). For a discussion of feminist legal science in Germany, see Susanne Baer, *A Different Approach to Jurisprudence? Feminisms in German Legal Science, Legal Cultures, and the Ambivalence of Law*, 3 CARDOZO WOMEN’S L.J. 251 (1996).

95. Baer, *supra* note 94, at 275 (Table 2).

96. *Id.*

97. Coppi, Joos & Steidl, *supra* note 26, at 455. The focus of German legal education is to train students to think like judges and to decide cases like judges, even if students plan to choose other practice areas. *Id.*

lawyers in public service are women.⁹⁸ Women law graduates want careers in the judiciary. Public service offers ideal working conditions for women, especially women who want families, high income, a set workload and regular schedules, paid maternity leave, pensions, health insurance, annual leave, and even the opportunity to work part-time.⁹⁹ Germany's legal culture is judge-centered.¹⁰⁰ Due to high litigation and appeals rates and the inquisitorial system, Germany has the highest ratio of professional judges to population among developed countries' legal systems.¹⁰¹ Judges are selected and appointed by the executive (Minister of Justice), parliament, or by a judicial selection committee.¹⁰² Though the numbers of female judges have steadily increased, women represent less than 12% of higher judicial offices.¹⁰³

Compared to male advocates, female advocates more often work in small firms or as sole practitioners (the lower paying positions in the profession).¹⁰⁴ The gender-based income differences are largely based upon women's preference for less "prestigious" specialty areas: family law, social welfare, and immigration law.¹⁰⁵ Women are under-represented in the larger, more prestigious firms.¹⁰⁶ More

98. Schultz, *supra* note 79, at 271 (providing a full discussion of the history of women in the legal profession in Germany and the current status of women lawyers in Germany).

99. *Id.* at 280-81.

100. Ulrike Schultz, *Regulated Deregulation: The Case of the German Legal Profession*, in REORGANISATION AND RESISTANCE 96 (William Felstiner ed., 2005).

101. *Id.*

102. See Volker G. Heinz, Rechtsanwalt and Notary, Berlin, Address at the Australian Bar Association Conference: The Appointment of Judges in Germany (July 7, 1998), <http://www.heinzlegal.com> (click on British flag for English version; follow hyperlink to "Publications and Speeches"; then follow hyperlink to "Speeches"; then follow PDF link to speech title).

103. *Id.* (stating that the only section of law where women dominate is as students in legal departments of universities).

104. Schultz, *supra* note 79, at 285.

105. *Id.* at 286.

106. *Id.* See also Von Heinrich Wefing, *Im Zweifel für den Mann*, FRANKFURTER ALLGEMEINE ZEITUNG, July 12, 2006, at 33 (translated by Katrin Ostler, Jan. 10, 2007, and Oliver Theiler, Jan. 16, 2007) (on file with author). The article refers to a study by Juve, a German publisher of law books and magazines. *Id.* According to the article, from three to ten percent of German women lawyers (depending upon the area) become partners in high profile law firms while the

women than men become advocates, rather than work in the judiciary or civil service often because they have no other choice.¹⁰⁷

In spite of the increase in women law students and women lawyers, “legal education has remained a more or less male reserve.”¹⁰⁸ Even with the growth in numbers of women law students, the numbers of women law professors and lecturers on law faculties have not substantially increased.¹⁰⁹ The percentage of female law professors is below six percent.¹¹⁰ The first woman professor was appointed to a chair in 1965, more than fifty years after law faculties started to include women.¹¹¹ The average age of those awarded faculty chairs is over forty.¹¹² Successful academic careers are “steeped in a macho culture,”¹¹³ and the qualification process for a professorship is tedious and long.¹¹⁴ One of the first women appointed dean of a law faculty was Professor Doctor Ursula Nelles at the Westfälische Wilhelms-Universität Münster (University of Münster) in 2004. In October 2006, she was appointed Rector¹¹⁵ of the university.¹¹⁶ Women’s progress in legal academia has been slow.

majority of women lawyers remain associates. *Id.* The reasons for these low numbers include the problems with handling work and family and the conservative structure of most law firms. *Id.* The article stresses that German law firms currently acknowledge the “no glass ceiling” approach in American law firms where female attorneys have the opportunity to work part-time. *Id.* German law firms are expected to adopt similar programs. *Id.* Ms. Ostler and Mr. Theiler are LL.M. candidates from Germany.

107. Schultz, *supra* note 79, at 288.

108. *Id.* at 276.

109. *Id.* at 279.

110. *Id.* at 278 (stating that in 1998, the percentages of women in academia were as follows: 5.6% were professors, 21% were lecturers, and 38.5% were “other” academic staff).

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* (stating that a doctoral thesis is required; in addition, a more extensive theoretical project, the habilitation thesis, is required to qualify for a professorship).

115. Rector is the equivalent of President or Chancellor of the university.

116. Interview with Benedict Hovelmann, LL.M. candidate at California Western School of Law, in San Diego, Cal. (Jan. 3, 2007). Mr. Hovelmann translated and verified the information at <http://www.uni-muenster/de/en> (last visited Jan. 3, 2007).

One organization that is helping bring equality to the legal profession in Germany is the German Women Lawyers Association. Re-established in 1978,¹¹⁷ the German Women Lawyers Association strives to “bring about equality and equal opportunities for women.”¹¹⁸ Its members work for law reform, including “divorce and its legal consequences . . . , improving the legal status of illegitimate children and their mothers, and enabling women to keep their family name throughout their lives.”¹¹⁹ The organization also “addresse[s] the discriminatory aspects of social security and retirement benefits.”¹²⁰ It created a bill on freedom of choice in the first three months of pregnancy, and champions “part-time work for women judges and civil servants and private sector [leaders].”¹²¹

Even with major advances in women’s rights in education and employment, many barriers exist for women with careers.¹²² One of

117. See Constitution of the German Women Lawyers’ Association, <http://www.djb.de/verein/satzung2005/constitution2004/> (last visited Mar. 8, 2008). The organization is composed of law, economic, and business graduates. *Id.*

118. See The German Women Lawyers Association, <http://www.djb.de/german-women-lawyers-association> (last visited Mar. 8, 2008). The precursor of this organization was the German Women Lawyers Society founded in 1914. *Id.* This organization was forced to disband in 1933 when Hitler was in power and was re-established in 1978. *Id.* Current activities include: surveying indirect discrimination in labor, social, and tax law; women’s policy development in the European Union; reforming the social welfare benefit systems using family-specific components; advocating for legal rights of immigrant populations and against trafficking of women; implementing the Violence Protection Act and other violence intervention measures; furthering equal opportunities in employment; reforming property law and maintenance payments to relatives; and addressing legal issues in reproductive medicine. *Id.* See also Birth of the European Women Lawyers’ Congress, http://europa.eu.int/comm/employment_social/equ_opp/news/lawyers_en.htm (last visited Mar. 8, 2008). The European Women Lawyers’ Congress was founded in 2000 in Berlin to focus on promoting and enforcing European equality law. *Id.*

119. The German Women Lawyers Association, *supra* note 118.

120. *Id.*

121. *Id.*

122. See Schultz, *supra* note 79, at 273. Economic prosperity from the 1970s led to growth in educational opportunities for men and women. *Id.* Additionally, with safe methods of birth control (the Pill), the numbers of women in legal education and in the profession increased. *Id.*

the primary barriers for career women is child care.¹²³ Mothers find it difficult to return to work because child care is expensive, difficult to find, and often available for only half days. Women in Germany have been fighting for child care facilities at the workplace.¹²⁴ An additional hurdle for career women in Germany is the income tax system. Married couples with only one employed spouse pay lower tax rates than married couples with both spouses working.¹²⁵

Women lawyers in Germany have made progress. Many of the international and large national law firms employ women advocates, and women have become partners in these firms. Today, women account for almost half of new judges, advocates, and public prosecutors in Germany.¹²⁶

B. U.S. Women in Legal Education and in the Profession

In an American Bar Association survey in 2000, one third of women lawyers expressed the belief that it was not realistic to successfully combine the roles of lawyer, wife, and mother.¹²⁷ The

123. Hagenbuch, *supra* note 9, at 4.

124. *Id.* One of the successes was the day-care center at the Max Planck Institute for Developmental Biology in Tilbingen, Germany. *Id.* Because many of the women research scientists wanted families and wanted to continue their research, a daycare facility was established in 1992. *Id.* Funds through the Max Planck Society have guaranteed the program's future. *Id.*

125. *Id.* at 4. Marriage affects the federal income taxes people pay. Many dual-employed married couples pay more taxes than if they were single. In both countries, the income tax systems discriminate against married, employed couples. In the United States, joint tax filing imposes a substantially higher rate than does individual filing, though marriage penalties have been the focus of recent changes in the tax code. For further explanation see Edward J. McCaffery, Marriage Penalty Relief in the New Tax Law, National Center for Policy Analysis, Brief Analysis No. 445, (June 26, 2003), <http://www.ncpa.org/pub/ba/ba445/index.html>; see also CONG. BUDGET OFFICE, FOR BETTER OR FOR WORSE: MARRIAGE AND THE FEDERAL INCOME TAX, (June 1997), <http://www.cbo.gov/showdoc.cfm?index=7&sequence=1>.

126. See Schultz, *supra* note 79, at 295 (documenting the changing image of the law and the working conditions brought about by the increased numbers of women in the profession).

127. ABA COMM. ON WOMEN IN THE PROFESSION, THE UNFINISHED AGENDA WOMEN IN THE LEGAL PROFESSION 14 (2001) available at <http://www.abanet.org/ftp/pub/women/unfinishedagenda.pdf> (last visited Oct. 16, 2006).

percentage of female lawyers who believe women can do it all has dropped since 1983, when 81% of female lawyers believed women could combine all roles, down to 64.5% who believed women could do it all in 2000.¹²⁸

The gender proportion in the legal profession does not mirror the gender proportion in law schools, where gender equality in numbers at law schools has almost been achieved. In 2006, there were 1,116,967 lawyers in the legal profession, and 30.2% were women.¹²⁹ Yet, in 2005, 48% of all law students were women.¹³⁰

In the graduating class of 2004, 56% of women law school graduates entered private practice; 10% went into business, 11.9 % government, 12.8 % judicial clerkships, 6.1% public interest law, and 1.7% into academia.¹³¹ According to the American Bar Association Section of Legal Education and Admissions to the Bar, in 2006, 20% of law school deans, 46% of associate or vice deans, and 69% of assistant deans/directors were women.¹³² For law school faculties, 35% of all faculty, 26% of tenured faculty, and 45% of tenure-track faculty were women.¹³³ Women accounted for 23.3% of district court

128. See Terry Carter, *Paths Need Paving: Although Trailblazers Have Led the Way for Women, the Road Ahead is Still Bumpy and Under Construction*, 86, A.B.A. J. 34 (2000).

129. See ABA COMM. ON WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN THE LAW 2006, available at <http://www.abanet.org/women/CurrentGlanceStatistics2006.pdf> (last visited Mar. 27, 2008) [hereinafter GLANCE AT WOMEN 2006]; see also ABA COMM. ON WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN THE LAW 2005, available at <http://www.abanet.org/women/ataglance.pdf> (last visited Mar. 27, 2008) [hereinafter GLANCE AT WOMEN 2005]. It is interesting to note that in 2003, 29.7% of lawyers were women, indicating a drop of .3% in two years, though the percentage of women law students remained the same as 2003. ABA COMM. ON WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN THE LAW 2003, available at <http://www.abanet.org/women/glance2003.pdf> (last visited Mar. 27, 2008) [hereinafter GLANCE AT WOMEN 2003].

130. GLANCE AT WOMEN 2005, *supra* note 129.

131. GLANCE AT WOMEN 2006, *supra* note 129.

132. See *id.*; see also American Bar Association, Law School Staff by Gender and Ethnicity 2002-2005, <http://www.abanet.org/legaled/statistics/charts/facultyinformationbygender.pdf> (charting law school administration and faculty information compiled by the ABA's Section of Legal Education and Admission to the Bar).

133. *Id.*

judges, 23.6% of circuit courts' (court of appeals) justices, and 28.2% of state courts of last resort.¹³⁴ Women made up 17.3% of partners, 44.1% of associates, and 47.9% of summer associates in private law firm practice in 2005.¹³⁵ This serious underrepresentation of women partners in law firms does not correlate with the overall number of women in and entering into the legal profession. The rate of women graduating from law school has risen from 39% to 49% since 1984.¹³⁶

The number of female partners in law firms, particularly in large law firms, has tremendous importance in evaluating women's success in the legal profession. Law firm partners represent the "most powerful and successful category of lawyers."¹³⁷ They influence and determine the direction of the firms, make hiring decisions, and share control of the financial interests in the business of a firm.¹³⁸

A lawyer is typically eligible for partnership after having worked between seven and ten years as an associate in the law firm.¹³⁹ Eligibility for partnership depends upon the individual firm's criteria, which includes billable hours requirements, ability to bring in clients (rainmaking), and other more personal and political expectations (which may include personality and the ability to cultivate and maintain relationships with clients and partners).¹⁴⁰ A relatively new status in private law firms, non-equity partnership, has made it even

134. See GLANCE AT WOMEN 2006, *supra* note 129; see also Alliance for Justice, Demographic Overview of the Federal Judiciary, http://www.afj.org/judicial/judicial_selection_resources/selection_database/byCourtRaceGender.asp (last visited June 2, 2006).

135. National Association for Law Placement, Women and Attorneys of Color at Law firms—2005, <http://www.nalp.org/content/index.php?pid=387>. Women comprise 16.6% of general counsels of Fortune 500 companies. See GLANCE AT WOMEN 2006, *supra* note 129. Women comprise 23.35% of District court judges, 23.6% of circuit courts of appeal, and 28.2% of state courts. National Center for State Courts, *supra* note 134 at 4. The number of female partners in San Diego firms is 19%. National Association for Law Placement, *supra*.

136. Werner, *supra* note 81, at 1.

137. Elizabeth K. Ziewacz, *Can the Glass Ceiling Be Shattered?: The Decline of Women Partners in Large Law Firms*, 57 OHIO ST. L.J. 971, 978 (1996).

138. *Id.*

139. Steve French, Note, *Pitfalls and Possibilities: A Comprehensive Look At Female Attorneys and Law Firm Partnership*, 21 WOMEN'S RTS. L. REP. 189, 191 (2000).

140. *Id.* at 190.

more difficult for women attorneys to reach partner status. This new type of partnership developed in response to the increasing competition in the business of law practice, which resulted in less profit to share.¹⁴¹ In contrast to equity partners who have a financial stake in the firm, non-equity partners are salaried. This has led to an extended work period as an associate before being elected to partnership.¹⁴² This extended work period for associates creates greater difficulties for females seeking partnership status because they are on partnership track during the time of their lives when they may be considering having a family.¹⁴³

Although men and women lawyers are similarly qualified, the compensation disparity between men and women is dramatic and statistically significant.¹⁴⁴ Women lawyers are less likely to hold the power positions in their law firms.¹⁴⁵ Generally, women legal professionals in the United States continue to have lower status, lower income, and specialize in lower prestige areas of the law, such as estate planning and family law.¹⁴⁶ The trend in the United States has

141. Paula A. Patton, *Women Lawyers, Their Status, Influence, and Retention in the Legal Profession*, 11 WM. & MARY J. WOMEN & L. 173, 190 (2005).

142. Martha Neil, *Brave, New World of Partnership*, 90 A.B.A. J. 30, 30 (2004).

143. See Patton, *supra* note 141, at 180.

144. See *A NAWL Report National Survey on Retention and Promotion of Women in Law Firms*, 92 NAWL WOMEN LAW. J. 10 (Oct. 2006) (explaining that, of 27 firms reporting median compensation for non-equity partner positions, the median compensation for men was \$239,000 and for women \$207,400. Of the 35 firms reporting male and female median compensation for equity partner positions, the average median compensation for the male was \$510,000 and for the female was partner, \$419,000, which is statistically significant at the 95% confidence level). See also ABA COMM. WOMEN IN THE PROFESSION, A CURRENT GLANCE AT WOMEN IN THE LAW 2001, available at <http://www.abanet.org/women/glance.pdf> (last visited Mar. 13, 2008) (reporting on U.S. Department of Labor, Bureau of Labor Statistics from 2000; salary/pay equity information and median weekly earnings for women lawyers working full time is \$1054 and for male lawyers working full time is \$1448 with women lawyers' median weekly salary only 73% of men's).

145. *A NAWL Report*, *supra* note 144, at 8.

146. See Epstein, *supra* note 81, at 105, 110; Carrie Menkel-Meadow, *Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers*, in *LAWYERS IN SOCIETY, AN OVERVIEW* 243-44 (Richard L. Abel & Philip S.C. Lewis eds., 1995).

been that women leave private law firms or avoid working in private law practice because of quality of life and job satisfaction issues.¹⁴⁷

III. GERMAN WOMEN LAWYERS AND U.S. WOMEN LAWYERS:¹⁴⁸ DEMOGRAPHIC COMPARISONS AND ROLE CONFLICT

The procedures used in this study of German women lawyers and in the previous study of U.S. women lawyers will be described in four sections: A) a description of the sample populations for each study and methods for selecting the populations; B) the research methodology for the instruments used in the studies; C) the treatment summary of the demographic data; and D) a summary of the data collected.

A. *Description of Population Samples*

1. *German Women Lawyers*

In late fall 2004, 220 sets of instruments, the modified Inventory of Feminine Values, Forms A and B,¹⁴⁹ and a personal data form were

147. Slotkin, *Should I Have Learned to Cook?*, *supra* note 4, at 151-57 (stating that women are trying to find professional satisfaction that allows them time for life outside the office).

148. For a full description of the 1996 study, its population, and the follow-up interviews in 2002, see Slotkin, *You Really Have Come a Long Way*, *supra* note 4; and Slotkin, *Should I Have Learned to Cook?*, *supra* note 4.

149. The Maferr Foundation, Inc., in New York City, copyrighted the Fand Inventory of Feminine Values in 1973. My modified forms of the Inventory consisted of substantively the same 34 statements devised by Alexandra Fand for her 1955 doctoral thesis. See, Alexandra Fand, *Sex Role and Self Concept: A Study of the Feminine Sex Role as Perceived by Eighty-five College Women for Themselves, Their Ideal Woman, the Average Woman, and Men's Ideal Woman* (1955) (unpublished Ph.D. dissertation, Cornell University) (on file with the Cornell University Library). I simplified and updated the language of the questions. Karen Bogard, Ph.D., director of the Maferr Foundation, gave me permission to use the simplified, politically-corrected, and updated Maferr Inventory of Masculine and Feminine Values. The Fand Inventory was standardized on a college-age population. Later research by Fand and Steinmann tested women ranging in ages from 28 to 53 to determine the Inventory's applicability to an older population. The test appeared appropriate for older populations based upon statistical analyses. Most items on the Inventory have face validity. Seven judges validated the Inventory statements which were counterchecked by clinical interviews. *Id.* at 39.

sent to female attorneys in Germany. Six were returned unopened due to incorrect addresses (providing a net population of 214). These female German lawyers were randomly selected from various law firm, legal organization, and university web sites and/or were personally known to Wiltrud Fromm or to me.¹⁵⁰ The subjects included women of all ages having graduated from various law schools in Germany with differing years of graduation.¹⁵¹ Employed in diverse areas of the law, these women were judges; partners and associates in small, mid-size, and large firms; sole practitioners; in-house counsel; law school professors; students (completing their Referendariat¹⁵²); and others not practicing law.¹⁵³

A cover letter informed the women of the purpose of the study and requested that they complete and return the enclosed materials in the addressed envelope (a U.S. dollar was enclosed to cover German postage). All materials—the letter, questionnaire, inventories, and informed consent form—were in English. Anonymity was promised to all participants and only I had access to the statistical data collected for each individual. The estimated time to complete the questionnaire and inventories was twenty to thirty minutes. Women received an e-mail reminder four weeks after the first mailing. Fifty-five of the 214 women returned the completed inventories, questionnaires, and informed consent forms for a return rate of 25.7%.¹⁵⁴

150. The women were from law firms, universities, private practice, and the graduate LL.M. program for foreign lawyers at California Western School of Law. The respondents worked in Hamburg, Kaltkirchen, Berlin, Duesseldorf, Frankfurt, Munich, Frieberg, Stuttgart, Oldenburg, Kassel, and in the United States.

151. Respondents' ages ranged from twenty-six to fifty-four years; they graduated between 1979 and 2003.

152. See *supra* Part I.A. for an explanation of the German legal education system.

153. See also Employment chart, *infra* note 184.

154. Comparison of Return for German 2004-05 Inventories and U.S. 1996 Inventories.

	Gross (mailed out)	Net (actually received)	Response
German	220	214	55 (25.7%)
U.S.	241	202	113 (55.9%)

2. U.S. Women Lawyers

The Inventory of Feminine Values Forms A and B and the personal data form were mailed to a randomly selected population of 241 female attorneys in San Diego, California (thirty-nine were returned unopened and six completed sets were returned after statistical analyses had been completed, for a net population of 202). Out of the 202 female attorneys who received the forms, 113 returned the forms completed (providing a return rate of 55.9%).¹⁵⁵ The subjects included women of all ages¹⁵⁶ and ethnicities,¹⁵⁷ graduates of various law schools with differing years of graduation,¹⁵⁸ and diverse areas of legal employment.¹⁵⁹

B. Research Methodology and Instruments Used

Like my previous studies in 1996 and 2002,¹⁶⁰ this study of German women lawyers was an investigation of an individual's perception of her actual expressed role (the perception of one's own self) as measured by Form A of the Inventory of Feminine Values¹⁶¹

One German lawyer did not complete Form B of the Inventory. Although her demographic data is included, her role conflict data is not included in the data analyses.

155. See Slotkin, *You Really Have Come a Long Way*, *supra* note 4, at 32. A cover letter informed women of the purpose of the study and a stamped, addressed envelope was enclosed. Only I had access to the statistical data gathered on each individual, and I promised each participant anonymity.

156. *Id.* at 33.

157. *Id.* at 32. Nine African American, thirteen Asian American, two Filipina, eleven Hispanic, and eighty White women returned the instruments.

158. *Id.* at 33.

159. *Id.* at 34 n.150.

160. See Slotkin, *You Really Have Come a Long Way*, *supra* note 4; and Slotkin, *Should I Have Learned to Cook?*, *supra* note 4.

161. Copyright permission granted by Karen Bogart, Ph.D., director of the Maferr Foundation. See also Slotkin, *You Really Have Come a Long Way*, *supra* note 4, at 32-33 n.137, for a detailed history of how I obtained permission to use and to revise the Inventory. The Fand Inventory consisted of thirty-four statements devised by Alexandra Fand for her 1955 doctoral thesis in four forms. Each form consists of a list of thirty-four items which are value-charged statements bearing on women's needs, rights, and obligations in her relationship with men, children, and the world in general. Half of the items were formulated to meet with the agreement

and her expressed role preference (the perception of one's ideal self) as measured by Form B of the Inventory. A statistically significant difference in the scores on the two forms of the Inventory would be an indicator of role conflict, a conflict between self-image and ideal-image along the dimension of what gives fulfillment in life: service to others, or personal growth through career and external achievement.¹⁶²

Forms A and B of the Inventory included the same questions; the questions were reordered with a different heading on each form of the Inventory. Form A's instructions were: "Please respond to the following questions with your true opinion. Keep in mind the way you really are." Form B's instructions were: "Think of the woman you would prefer to be, your ideal woman, and respond to each statement as you believe she would." The order of the questions was scrambled on the two forms to discourage comparisons between the responses to the same item on Forms A and B. The content order was the same: one other-oriented question (traditional housewife mother,

of the other-oriented woman (traditional housewife mother, family-oriented role). The other half was stated to correspond with the self-oriented woman (achievement, career-oriented role). A respondent indicates on the Inventory the strength of her agreement or disagreement to each statement on a five-point Likert scale. See Slotkin, *You Really Have Come a Long Way*, *supra* note 4, at 42-46 for the revised inventory in Forms A and B (e.g., I changed husband to spouse/equivalent, changed marriage to marriage/domestic partnership, and simplified and updated many of the original statements which describe today's traditional and non-traditional relationships).

162. See Slotkin, *You Really Have Come a Long Way*, *supra* note 4, at 28, various footnotes. For purposes of this study, the following assumptions were made: 1) Each woman has a perception of her own female role which she can identify. Similar assumptions have been made in other studies. See *id.* at 18 n.19, 22 n.58; 2) The Inventory of Feminine Values for investigating female roles and measuring the degree of other-orientation (women who fulfill themselves through others) and self-orientation (women whose fulfillment in life is by self-actualization) was appropriate to and inclusive for this study of role perception and role conflict. The t-test and matched pairs t-test were used to evaluate the significance of the differences between the means obtained from Form A and Form B of the Inventory. The t-test is used as the statistical treatment of sample means under investigation for statistical significance (mean differences for actual expressed role, expressed role preference, and role conflict). The matched pairs t-test was used for intragroup comparisons where each subject was compared with herself on two variables. Statistically significant role conflict means that the observed finding would occur by chance alone no more than one time in a hundred.

family-oriented role) and then one self-oriented question (the achievement, career-oriented role).

After the instruments were returned, I scored each set of instruments using the Maferr Foundation scoring form,¹⁶³ calculating three scores for each respondent: a score for Form A, a score for Form B, and a score calculated by subtracting the scores on Form A from the scores on Form B. The score on the Inventory represents the difference in strength of agreement with the seventeen family or other-oriented items and the seventeen self-achieving or self-oriented items. A respondent who took the same position on each item would have a score of zero;¹⁶⁴ a respondent who consistently took diametrically opposite positions on each item would have a score of -85 if she always took the strongest possible other-oriented position, and a score of +85 if she always took the strongest possible self-oriented position.¹⁶⁵ Positive scores between zero and +85 represent degrees of self-orientation; negative scores between zero and -85 represent degrees of other-orientation.¹⁶⁶ All demographic data were entered onto spreadsheets.

163. See Slotkin, *You Really Have Come a Long Way*, *supra* note 4, at 46.

164. For example, a respondent who answers “agrees” on each of the 34 statements (scored with a “2”), when calculated on the scoring sheet would have a score of zero.

165. For example, a respondent who strongly agrees on each other-oriented item and strongly disagrees on each self-oriented item would receive a score of -85. The respondent who strongly agrees on each self-oriented item and strongly disagrees on each other-oriented item would receive a score of +85.

166. See Fand, *supra* note 149, at 106-16. See also ANNE STEINMANN & DAVID J. FOX, *THE MALE DILEMMA: HOW TO SURVIVE THE SEXUAL REVOLUTION* 64-66 nn. 2-4 (Jason Aronson, Inc. 1974) (using a similar scoring methodology but based on a -65 to +65 scale). Fand’s Inventory was standardized on a college-age population. Anne Steinmann piloted her study with women whose ages ranged from 28–53 in order to determine the Inventory’s applicability to an older population.

C. Summary of the Demographic Data

1. German Women Lawyers

One area of analysis focused on the demographic data collected from study participants.¹⁶⁷ The German women ranged in age from twenty-six to fifty-four. Thirty-nine German female lawyers were married or in domestic partnerships (70.9%) for anywhere from two to twenty-seven years. Two were divorced, and ten identified as being in domestic partnerships.¹⁶⁸ Nine of the thirty-nine (23.1%) were married/domestic partners with other lawyers. The sixteen single German women ranged in age from twenty-seven to forty-four.

167. I designed the personal questionnaire (*see supra* note 3) to secure data relevant to the variables under investigation. Data categories included age, marital status, years married, number of children, year of graduation, employment, and spouse's employment.

Descriptive Statistics (means, standard deviations, number of respondents)

	Mean	Std. Deviation	N
Age	37.55	6.752	55
Marital Status	1.02	.933	55
Years Married	10	5.1980	27
Graduate	1993	6.353	54
Number of Children	1.56	.705	18

This is a list of descriptive variables from the survey (with the exception of spouse occupation, employment, and wife/motherhood variables).

168. Only 2 of the 10 self-identified domestic partnerships were same-sex relationships.

Of the thirty-nine married/domestic partners: one German lawyer had three children (2.6%), nine had two children (23.1%), twelve had one child (30.8%), and seventeen had no children (43.5%). One unmarried woman had one child.

Of the fifty-five respondents, three were completing their legal training (Referendariat) and fifty-two were lawyers or professors. Fifteen women (28%) had earned LL.M. degrees, and ten women (18%) had earned Ph.D. degrees in addition to completing their legal training.¹⁶⁹ No judges or public prosecutors responded to the study.

169. Correlations of Selected Survey Variables

	Age	Marital Status	Years Married	Graduate	Number of Children	Form A: Self	Form B: Ideal
Age							
Marital Status	.337*						
Years Married	.778**	-.218					
Graduate	.850**	-.345*	-.619**				
Number of Children	.132	.025	-.181	-.115			
Form A: Self	.239	.059	.168	-.175	-.233		
Form B: Ideal	.151	.087	.083	-.109	-.249	.620**	
Role Conflict Score	-.064	.021	-.106	.005	-.131	-.261	.583**

* Correlation is significant at the 0.05 level (2-tailed).

** Correlation is significant at the 0.01 level (2-tailed).

Respondents included five professors, two in-house attorneys, twenty-seven employed in large and mid-size firms, fifteen in small firms (or sole practitioners), and six “others” (including those in training, one completing an LL.M., one “in transition,” one undeclared, and one on leave from her law firm).

2. U.S. Women Lawyers

The 113 U.S. women respondents ranged in age from twenty-seven to sixty-six years.¹⁷⁰ All female lawyers had earned juris doctorates and graduated from law school between 1965 and 1992.¹⁷¹ Additionally, four had earned master of laws (LL.M.) degrees and seven had master’s degrees in non-law areas.¹⁷²

Seventy-five women (66% of respondents) identified themselves as married or same-sex domestic partners;¹⁷³ their relationships ranged from one to forty-eight years.¹⁷⁴ Of those who identified as married/domestic partners, forty-three (57.3 %) were married or had been married to an attorney, judge, or law school professor.¹⁷⁵ Twenty-four of the respondents who identified as married/domestic partners, remarried, or divorced, had no children, twenty-six had one child (and two were expecting their first child), twenty-six had two children, eleven had three children, four had four children and one had

These numbers illustrate the strength of correlation between the variables in the survey. A number closer to 1.0 represents a stronger relationship and a number closer to 0 represents a weaker relationship between two variables. For example, years married and age have a high correlation: the chances are the older one is, the longer their marriage, compared to younger people who have not been married as long. Another example is number of children and marital status: the low number/weak relationship between the two variables illustrates they do not measure similar effects.

170. Slotkin, *You Really Have Come a Long Way*, *supra* note 4, at 33. In the study of U.S. women attorneys, participants’ ages ranged from 27 to 66. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* at 34. In the U.S., 75 of the 113 women self identified as married or domestic partners (66.4%). *Id.* All U.S. domestic partnerships were same-sex relationships.

174. *Id.*

175. *Id.*

five children.¹⁷⁶ Thirty-eight of the 113 U.S. lawyer respondents were single (33.6%).¹⁷⁷

D. Data Analyses and Summary

The purpose of this study was to analyze and compare actual expressed roles (self perception) and expressed role preferences (ideal perception), to determine if role conflict existed in a selected sample of German women lawyers as compared with U.S. women lawyers. Data analyses found significant differences in actual expressed roles and expressed role preferences in both populations. All women studied—German women lawyers and U.S. women lawyers—were career-oriented. All perceived themselves self-oriented rather than other-oriented. On a continuum ranging from other-oriented to self-oriented, all women lawyers perceived their ideal significantly more self-oriented than their actual expressed role.

The German women's range of scores indicates all scores on self perception (actual expressed role on Form A of the Inventory) and all scores on ideal perception (expressed role preference on Form B of the Inventory) on the positive or self-oriented side of the continuum. The range of all scores on actual expressed role (Form A) was +3 to +36.¹⁷⁸ The range of scores on expressed role preference (Form B, ideal) was +6 to +45. Nineteen of fifty-four respondents (35%) moved in the direction of other-orientation on role conflict, though no one moved into other-orientation.

176. *Id.*

177. *See id.*

178. This chart compares the score ranges on Form A and Form B for the German women lawyers and U.S. women lawyers:

Range of Scores on MAFERR Inventory			
	Number	Self Perception (Actual Expressed Role Form A)	Ideal Perception (Expressed Role Preference Form B)
German Women Lawyers	54	+3 to + 36	+6 to +45
U.S. Women Lawyers	113	-6 to + 38	-8 to +45

In the previous study of U.S. women, 10 of 113 respondents scored on the other-oriented or negative side of the continuum on either actual expressed role or expressed role preference.¹⁷⁹ Thirty-four, or 30%, of U.S. respondents moved in the direction of other-orientation, and three attorneys moved into other-orientation on the continuum.¹⁸⁰

The mean score of actual expressed role for the fifty-four German lawyers was 22.45, and the mean expressed role preference score was 26.46 for a mean difference of 3.72; the mean score of actual expressed role for the 113 U.S. respondents was 17.65, and the mean expressed role preference score was 20.12 for a mean difference of 2.48.¹⁸¹ Tested at the .01 level of significance for role conflict, the difference in the scores for female German lawyers was statistically significant.¹⁸² In fact, both groups of respondents, German and U.S.,

179. Slotkin, *You Really Have Come a Long Way*, *supra* note 4, at 36.

180. *Id.*

181. This chart compares the mean actual expressed role score and the mean expressed role preference scores for the German women lawyers and the U.S. women lawyers:

MAFERR Inventory: Means, Mean Differences, Statistical Significance					
	Num-ber	Mean AER (Self)/Standard Deviation	Mean ERP (Ideal)/Standard Deviation	Mean Difference	Significance
German	54	22.45/7.55	26.46/9.388	3.72	Significant *p<.01
U.S.	113	17.65/8.94	20.12/11.18	2.51	Significant *p<.01

*Significant role conflict at p<.01 means this finding would occur by chance alone no more than one time in a hundred.

182. *Id.* For the 54 German women and the 113 U.S. women, role conflict was statistically significant: in order to test to see if the role conflict scores are statistically significant for each group of women lawyers, a t-test for comparing samples was used. Utilizing SPSS (Statistical Package for the Social Sciences), the role conflict scores were run through the paired samples t-test. The collected data was tested at the 99% confidence level. The significance of the two-tailed test is .01; therefore, the output of the role conflict score needs to be equal to or less than .01 in order to be statistically significant. Furthermore, the t-score must be greater than the t-distribution value. T-scores greater than the t-distribution value and two-tailed significance scores equal to or less than .01 illustrate statistically significant role conflict scores.

were experiencing statistically significant role conflict. The mean differences between the scores were slightly greater for the German lawyers than for the U.S. lawyers. As a group, the 54 German lawyers and the 113 U.S. lawyers perceived their feminine sex roles as self-oriented, with their ideal even more self-oriented.

Role conflict for the German respondents was further analyzed using t-test analyses of various dependent variables.¹⁸³ For example, employment status (big and mid-size firms, small firms, other) was not significant; there were no significant differences in role conflict scores based upon employment status.¹⁸⁴ T-test analyses of marital

	Number	Mean	Low/High Form B - Form A	Std. Deviation	Significance
German	54	3.72	-6 to +24	7.609	Significant p < .01
U.S.	113	2.51	-24 to +20	7.59	Significant p < .01

183. Other dependent variables such as number of children, ages of participants, number of years married, number of years in law practice, additional graduate training, and husband's profession showed no statistical significance.

184. Employment:

Role Conflict (Form B: Ideal minus Form A: Self)	Mean	Std. Deviation	Std. Error Mean	t	df	Significance (2-tailed)
Big and Midsize Firms	2.3077	5.31239	1.04185	2.215	25	Not Significant .036
Small Firms	4.5333	9.42540	2.43363	1.863	14	Not Significant .084
Other	5.5833	9.58853	2.76739	2.018	11	Not Significant .069

There is no role conflict based on employment status. This means that variation in employment—big firm, midsize firm, small firm and other (includes professors, referendariat, and non-law positions) among the women did not result in significant variation in the level of role conflict experienced.

status (single, married/domestic partner, divorced, remarried), indicated statistically significant differences in role conflict scores for the married group, and no statistically significant differences in role conflict scores for single, domestic partners, divorced, or remarried women.¹⁸⁵ Furthermore, role conflict was not statistically significant for mothers (22 women), but was statistically significant for non-

185.

	Single	Married	Domestic Partner	Divorced	Remarried
Number	16	27	8	2	2
Mean	2.69	4.0000	6.7500	.5000	1.0000
Std. Deviation	6.426	7.08194	11.60972	3.53553	8.48528
Std. Error Mean	1.607	1.36292	4.10466	2.50000	6.00000
T	1.673	2.935	1.644	.200	.167
Df	15	26	7	1	1
Sig. (2-tailed)	.115	.007	.144	.874	.895
Role conflict at the 99% confidence level	Not significant	Significant	Not significant	Not significant	Not significant

mothers (31 women).¹⁸⁶ T-test analyses of the U.S. population of women lawyers indicated no significant differences in role conflict due to any of the tested dependent variables.¹⁸⁷

In terms of the populations of women lawyers in Germany and in the United States, though sample sizes were approximately equal for both studies, the percentage of returned instruments, 25.7% for the German women and 59.4% return for U.S. women, was significantly different. The reasons for this difference are only speculative: the U.S. women in the earlier study were lawyers in San Diego, a city where I work and live. Whereas, German women had no connection with me, though my student, Wiltrud Fromm, a German lawyer, had signed the letters requesting participation in the study.

Differences also emerged based upon the statistical analyses of the data collected from the German women lawyers and the U.S. women lawyers. While there was no statistically significant role conflict based upon the various dependent variables tested for the U.S. women lawyers, role conflict was statistically significant for “married German women lawyers” and for the “non-mother” population of German women. The mean role conflict score for German lawyers was greater than the mean role conflict score for U.S. lawyers. Both groups experienced statistically significant role conflict even though the populations of women lawyers were sampled and tested at different times. Both groups of female lawyers describe their actual

186.

Effect of Parental Status on Role Conflict for German Respondents (Form B: Ideal – Form A: Self)								
	Num-ber	Mean	Std. Deviation	Std. Mean Error	t	df	Sig. (2-tailed)	Role Conflict
Moth-ers	22	3.3182	7.70520	1.64275	2.020	21	.056	
Non-Moth-ers	31	3.5161	7.26577	1.30497	2.694	30	.011	

187. Compared with the group of U.S. women respondents, t-test analyses indicated no significant differences in role conflict due to dependent variables including marital status, years married, domestic partnership, area of legal employment and others. See Slotkin, *You Really Have Come a Long Way*, *supra* note 4, at 37 n.164. Sample size does influence significance.

expressed roles as self-oriented and their ideal role even more self-oriented.¹⁸⁸

IV. CONCLUSIONS AND RECOMMENDATIONS

In Germany, as in the United States, access to the legal profession is no longer overtly discriminatory (half of all law students are women); rather, it is the culture in and out of the workplace, that place constraints upon women's professional achievement. In both countries, women are underrepresented in positions of power in law firms and legal academia. Women lawyers are earning less than their male counterparts. In both countries, women lawyers choose the public sector (judiciary in Germany and government and small firm positions in the United States) as an alternative to partnership in private law firms because of flexibility, work satisfaction, and more control over work schedules. Women, especially working mothers, often take themselves out of the running for power positions because of these cultural constraints.

Germany's laws and political role models should impact working mothers positively. Germany's Constitution Equality Article 3(2) states, "Men and women shall have equal rights. The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist."¹⁸⁹ Germany's Chancellor is a woman¹⁹⁰ (compared to the United States which has never had a woman president), however, merely having anti-discrimination laws and women in power positions, do not ensure that women will be able to achieve equality in the workplace.

There are external obstructions. Germany does not offer programs to support women entering the workforce. For example,

188. It would be interesting to have data on the general population of U.S. and German women to determine if all women perceive themselves as self-directed (or self-oriented) as women lawyers and whether their "ideal" is toward further self-actualization.

189. Grundgesetz für die Bundesrepublik Deutschland (federal constitution) GG art. 3(2).

190. See FOSTER, *supra* note 27, at 32-36 (explaining that Germany's Chancellor is the head of Germany's government; although there is a President, the position is chiefly ceremonial, not political).

day-care facilities in Germany are limited and expensive.¹⁹¹ In Germany, grocery stores are closed on Sundays and must close no later than 8:00 p.m. during the week. Women's failure to achieve professional equality in the workplace has been affected by these cultural attitudes and social structures. However, in November 2006, a revolutionary change occurred: stores in Berlin became the first German retailers to take advantage of a new law passed by the Berlin Senate allowing stores to be open twenty-four hours a day from Monday through Saturday, and ten Sundays annually.¹⁹²

191. For very young children, all-day daycare is only possible if space can be found. Every child in Germany is entitled to kindergarten at age three, but the hours are limited: mornings from 8:00 a.m. to noon and/or in the afternoon from 2:00 p.m. until 5:00 p.m. Who'll Take Care of My Kids? Child Care and Kindergartens, Guide to Researching and Studying in Germany, <http://www.study-in-germany.de/english/2.121.154.html> (last visited Apr. 5, 2008) (discussing kindergarten and daycare in Germany); see also Michaela Kreyenfeld & Karsten Hank, *Does the Availability of Childcare Influence the Employment of Mothers? Findings from Western Germany*, 19 POPULATION RES. & POL'Y REV. 4 (2000) (investigating whether the daycare "regime" limits mothers' participation in the labor market.); LOWEST-LOW FERTILITY IN GERMANY 1997-2002, Max Planck Institute for Demographic Research, <http://www.demogr.mpg.de/general/structure/division2/irg-sdf/132.htm> (last visited Jan. 9, 2007) (looking at the availability of public day-care facilities and the compatibility of child-rearing and employment as closely connected to fertility rates, and finding that child care constraints make it difficult for women to combine child-rearing and employment); Shopping: Stores and Opening Hours, Guide to Researching and Studying in Germany, <http://www.study-in-germany.de/english/2.121.48.html> (discussing stores' hours; many close as early as 6:30 p.m. On Saturdays, stores close in early afternoon). In the United States, quality all-day child daycare (public, private, institutional, and informal) and pre-school are readily available to help support working women. See Jeffrey R. Travers, Rochelle Beck & Joan Bissel, *Measuring the Outcomes of Day Care*, in LEARNING FROM EXPERIENCE: EVALUATING EARLY CHILDHOOD DEMONSTRATION PROGRAMS 109 (Jeffrey R. Travers & Richard J. Light eds., 1982), available at <http://books.nap.edu/openbook.php?id=9007&page=109> (detailing the heterogeneous collection of day care programs available in the United States.); see also Lisa Belkin, *What a Working Woman Needs: A Wife*, N.Y. TIMES, June 5, 2005, at 10.

192. See DW-World.de, *Berliners Celebrate New Shopping Hours*, Business 1, <http://www.dw-world.de/dw/article/0,2133,2243995,00.html> (last visited Apr. 2, 2008). In the United States, most grocery stores are open twenty-four hours a day, seven days a week. Services, such as dry cleaning, gas stations, clothing, and department stores, offer extended hours and are open on Sundays.

Beyond the statistical analyses based on the Maferr Inventory of Feminine Values, the more significant differences in this study were found in the professional¹⁹³ and sociocultural differences between Germany and the United States. Professional success and accomplishment (self-orientation, self actualization) may conflict with other-orientations even more in Germany because of the Rabenmutter cultural bias. The Rabenmutter culture (Germany's scarlet letter for working mothers) seems to make it harder for women in Germany to combine family and a career. Will Germany's first woman Chancellor, Angela Merkel, and her appointees, be able to solve the Rabenmutter cultural bias by offering more funding for childcare and increasing the availability of services for working mothers? Angela Merkel's proposals for Germany may offer genuine hope for women professionals if she is able to implement changes in the work and outside culture that help women manage to "do it all."

A December 2006 Yahoo! Newsflash described government financial incentives worth up to €25,200 (equivalent to \$33,300) available to German women expecting babies on or after January 1, 2007.¹⁹⁴ This seemingly female-friendly government benefit was introduced into law because of Germany's shrinking population and a birth rate which hit a post-war low in 2005 (because working women in Germany, if given a choice of working or raising children, are choosing to work).¹⁹⁵ Germany is trying to encourage working couples to have children. Though this seems like one solution to Germany's declining population, this government benefit may have the unintended effect of limiting a working mother's career potential and may be a step backward in eliminating the Rabenmutter cultural bias. Will jobs be available when women return to the workplace

193. See CAL. ST. B.J., Mar. 2008 at 3 (stating that there are 215,996 lawyers admitted in California). The most obvious difference is in the number of lawyers; there are fewer lawyers admitted to practice in Germany than in the State of California. Germany's total lawyer population is only 132,569. Kilian, *supra* note 91.

194. Erik Kirschbaum, *Pregnant Women Hope for Late Arrivals*, Yahoo! News, Dec. 27, 2006, http://news.yahoo.com/s/nm/20061227/od_nm/germany_babies_dc&printer=1 (stating that parents who take time off from work to care for newborns receive two-thirds of their net salary for twelve months).

195. *Id.*

after having children?¹⁹⁶ What good is it to offer women incentives to have children without providing them a means to do so and to have a fulfilling career?

Both Germany and the United States have recognized and are dealing with issues of equality for women in the legal profession. Men and women choose the law as a career for many of the same reasons: to help others, job security, respectability, and power. Presumably, men accomplish their professional goals while women continue to experience discrimination and unequal treatment in the workplace. Lawyers are by definition problem solvers. Both Germany and the United States have a complex problem that may require restructuring the legal environment to help find solutions to work-family issues and an inflexible work culture.

The legal profession, in both Germany and the United States, has not come close to achieving gender equality in terms of advancement and retention; however, women's greater representation in the legal culture should be viewed as a positive development for the profession.¹⁹⁷ Women lawyers in Germany and in the United States have "come a long way, but they still have a long way to go."¹⁹⁸ Women and men need to overcome societal restrictions and reconstruct the legal environment.¹⁹⁹ "The point of law should be to

196. In the United States, for example, under The Family and Medical Leave Act (FMLA), 29 U.S.C. §§ 2611-2615, covered employers must grant eligible employees up to twelve workweeks of unpaid leave during any twelve-month period for the birth and care of the newborn child of the employee. The employee must be offered the same or an equivalent position when the employee returns. See also David Crary, *U.S. Family-oriented Job Policies Weak*, Yahoo! News Feb. 1, 2007, http://news.yahoo.com/s/ap/200070201/ap_ono_bi_ge/workplace_families&printer;_ylt_A (noting that the United States is one of only five countries in the world that does not require paid maternity leave according to a Harvard and McGill University research study of 173 countries).

197. See generally Deborah L. Rhode, *The Unfinished Agenda: Women and the Legal Profession*, 2001 ABA COMM. ON WOMEN IN THE PROFESSION 13; See also Deborah L. Rhode, *Balanced Lives Changing the Culture of Legal Practice*, 2001 ABA COMM. ON WOMEN IN THE PROFESSION.

198. Slotkin, *Should I Have Learned to Cook?*, *supra* note 4, at 185.

199. See Thomas D. Barton, *Creative Problem Solving: Purpose, Meaning, and Values*, 34 CAL. W. L. REV. 273, 293-96 (1998). Barton suggests creative problem solving to generate alternatives to implement and facilitate change. *Id.* at 296.

shape an environment that is inclusive, non-punishing, and decentralized in offering choices²⁰⁰ to create a workplace environment that supports both sexes.²⁰¹

200. *Id.* at 296. However, this may be a public sector versus private sector problem. The public sector is more easily regulated with regard to gender equality. It is easier to hold the government responsible than it is a private employer because the power of private law firms is held by a limited number of people.

201. Rhode, *Balanced Lives*, *supra* note 197, at 11.

