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## “Forty Years On: Women Lawyers? Still on That? and Ecofeminism . . . Again?”

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**“FORTY YEARS ON: WOMEN LAWYERS? STILL ON THAT? AND  
ECOFEMINISM . . . AGAIN?”**

Daniel M. Warner\*

With Graphics by Steven Hancher\*\*

*Abstract*

Forty years ago, environmentally concerned law students put hope for sustainability in two trends. First, the burgeoning number of women law school students held promise: upon reaching professional stride in their forties and fifties (the late 1980s and 1990s), surely their influence would disabuse law and society of enough of its patriarchal, hierarchical domination—domination over nature here—to move society toward a new, sustainable course. Second—and related—the emerging philosophy of ecofeminism promised to call out the ecocrisis and push on with positive responses. But women never assumed influential roles in the important “big firms,” and ecofeminism lost focus and dissipated in a hail of infighting and misogynic ridicule. After the inevitable collapse of corporate-capitalism, though, the sensibilities of women lawyers and of ecofeminism must prevail.

## Summary Outline

### I. Introduction.

The so-called environmental crisis is now pretty well established as a fact of our age. But some people realized when they were children that there can't be infinite growth in a finite space. Some concerned young men and women in law school during the mid-70s Club-of-Rome era put hope in two trends, both involving the burgeoning influence of women: women lawyers and eco-feminism.

### II. We do despair about the state of the environment.

A. The environmental crisis at the global level: "Quite simply, our business practices are destroying life on earth. Given current corporate practices, not one wildlife reserve, wilderness, or indigenous culture will survive the global market economy. We know that every natural system on the planet is disintegrating. The land, water, air, and sea have been functionally transformed from life-supporting systems into repository for wastes. There is no polite way to say that business is destroying the world."

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C. The crisis at the local level.

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1. The rise of women lawyers.

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B. Ecofeminism.

1. The rise of ecofeminism.

2. The collapse of ecofeminism.

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### IV. After the Economic Crash—after the "Great Disruption."

A. The inevitability of the "crash."

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1. Society will have more women lawyers (and male lawyers with similar values).

2. Society will require a significant dose of ecofeminism.

## V. Summary and Conclusion.

## VI. Appendices

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B. Appendix 2: Comparisons of Current business practices that contribute to the ecocrisis; characteristics of law practice that women tend to find offensive; and characteristics that women lawyers tend to, or would like to, bring to the practice.

C. Appendix 3: Data on income disparity.

D. Appendix 4: Survey of Attributes and Attitudes of Male and Female Lawyers in Whatcom County, Washington, March 2011.

E. The Graphic Representation of this Article

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## FORTY YEARS ON: WOMEN LAWYERS? STILL ON THAT? AND ECOFEMINISM . . . AGAIN?

### I. INTRODUCTION.

“[T]he so-called ‘environmental crisis’ is now pretty well established as a fact of our age.”<sup>1</sup> Paul Gilding, the Australian environmentalist and entrepreneur, reports on Global Footprint Network’s calculation that the Earth is now running at something like 140% of capacity and will near 200% by 2030.<sup>2</sup> James Gustave Speth writes, “It is likely that societies are already too late to head off very serious climate change impacts. The worst impacts can still be averted, but action must be taken with swiftness and determination or a ruined planet is the likely outcome.”<sup>3</sup> These projections are nothing new; in fact, nearly forty years ago, the Club of Rome published its project on the Earth’s predicament.<sup>4</sup> No doubt some people, such as this author, realized when they were children that there can’t be infinite growth in a finite space.

Some environmentally concerned young men and women in law school forty years ago, during the early-70s Club-of-Rome era, put hope in two trends, both involving the burgeoning influence of women. First, the growing number of women in law school looked like a very promising development: we hoped that by the time these women reached their professional stride in their forties and fifties (the late 1980s and 1990s) surely their influence would disabuse law and society of enough of its patriarchal, hierarchical domination—domination over nature in this case—to move society towards a

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<sup>1</sup> WENDELL BERRY, *The Idea of a Local Economy*, in *IN THE PRESENCE OF FEAR: THREE ESSAYS FOR A CHANGED WORLD* 11 (2001)

<sup>2</sup> PAUL D. GILDING, *THE GREAT DISRUPTION: WHY THE CLIMATE CRISIS WILL BRING ON THE END OF SHOPPING AND THE BIRTH OF A NEW WORLD* 44 (2011).

<sup>3</sup> JAMES GUSTAVE SPETH, *THE BRIDGE AT THE END OF THE WORLD: CAPITALISM, THE ENVIRONMENT, AND CROSSING FROM CRISIS TO SUSTAINABILITY* 29 (2008).

<sup>4</sup> DONELLA MEADOWS, ET AL., *THE LIMITS TO GROWTH* 23 (1972). Donella Meadows wrote:

If the present growth trends in world population, industrialization, pollution, food production and resource depletion continue unchanged, the limits to growth on this planet will be reached sometime within the next one hundred years. The most probable result will be a rather sudden and uncontrollable decline in both population and industrial capacity.

new, sustainable course for humans and the environment.<sup>5</sup> Second, the emerging scholarship of ecofeminism seemed likely to call out the ecocrisis problem and push on with positive responses. But Plan A, women lawyers to the rescue did not work. And Plan B, ecofeminism did not work. Now what?

Following this introduction, Part II examines the rise and fall of (A) the influence of women lawyers, and (B) of ecofeminism and their relationship to the environmental crisis. Part III posits that, although in the late 20<sup>th</sup> and early 21<sup>st</sup> centuries women lawyers did not achieve power and influence in the “big firm,” and ecofeminism apparently dissipated, their day will come. The societal changes that will follow the inevitable end of the fossil-fuel era will favor the qualities and worldview of women more than men and enable them to make major contribution to the necessary reordering. Part IV features appendices, including results of a survey exploring the contention here that on environmental and social issues women’s attitudes are more conducive to a sustainable society than men’s traditionally (or stereotypically) have been.

Appendix V is a graphic illustration of this law review article—a comic-book version, so to speak. As discussed in the paper, one of the causes of ecofeminism’s decline was a dispute between two branches of it, the culturalists and the socialists (not political socialism). The former wanted to express their themes (of oppressive masculinity and its manifestations in the environmental crisis) in ways that traditional, male-dominated “research” found outlandish and inadequately academic: in poetry, dance, and art. The socialists thought such expressionism made ecofeminism “soft” and disreputable; the culturalists decried the socialists as having been co-opted by the reigning masculine mindset, and as evidence pointed to the socialists’ rejection of non-“masculine” academic expression. The graphics are an alternative expression, to capture the article’s meaning outside the traditional “academic” format.

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<sup>5</sup> MONA HARRINGTON, *WOMEN LAWYERS: REWRITING THE RULES* 7 (1993) wrote:

I see [women lawyers] virtually at the center of the struggle, at a point of particular sensitivity and enormous tension, whether they choose to be actively involved in the politics of change or not. This is so because the law is powerfully implicated in the ordering and reordering of the society, both as conservator of the old and formulator of the new. . . . And women entering the law are necessarily claiming equality authority to make the rules—a claim flatly contradictory to the old order, which assigned that authority, in the law and elsewhere, to men.

## II. The State of the Environment.

### A. *The Environmental Crisis at the Global Level*

“Mass Extinction Now in Motion, Scientists Fear: Human Enterprise Blamed”<sup>6</sup> — It is hardly even remarkable to read this headline. Mass extinction is taking down significant parts of non-human creation, because “evolution gave rise to an intelligent, technological creature that also happened to be a rapacious carnivore, fiercely territorial and prone to short-term thinking.”<sup>7</sup> In January 2011, UN Secretary General Ban Ki-Moon, speaking at the World Economic Forum in Davos, Switzerland, condemned the global economy’s infatuation with growth<sup>8</sup>. He said,

For most of the last century, economic growth was fuelled by what seemed to be a certain truth: the abundance of natural resources. We mined our way to growth. We burned our way to prosperity. We believed in consumption without consequences. Those days are gone... In the 21st century, supplies are running short and the global thermostat is running high. Climate change is also showing us that the old model is more than obsolete. It has rendered it extremely dangerous.

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<sup>6</sup> Faye Flam, *Mass Extinction Now in Motion, Scientists Fear: Human Enterprise Blamed*, MCCLATCHY TRIBUNE NEWS SERVICE, BELLINGHAM HERALD, July 31, 2011, p. A1, available at <http://phys.org/news/2011-07-history-species-scientists.html>.

<sup>7</sup> *Id.* quoting the biologist E.O. Wilson. A major claim by Riane Eisler in her well-known book *THE CHALICE AND THE BLADE* (1987) is that only recently (the last 6000 years) in human evolution have we become rapacious (p. 43, et al.); her hopeful point is we are not hard-wired that way (pp. 186-89). See generally Riane Eisler *THE CHALICE AND THE BLADE* (1987).

<sup>8</sup> Secretary-General Ban Ki-Moon’s remarks to the World Economic Forum Session on Redefining Sustainable Development, Davos, Switzerland, Jan. 28, 2011. <http://www.un.org/apps/sg/sgstats.asp?nid=5056>.

Over time, that model is a recipe for national disaster. It is a global suicide pact.<sup>9</sup>

Paul Hawken, writing in 1993, put it rather less tactfully:

Quite simply, our business practices are destroying life on earth. Given current corporate practices, not one wildlife reserve, wilderness, or indigenous culture will survive the global market economy. We know that every natural system on the planet is disintegrating. The land, water, air, and sea have been functionally transformed from life-supporting systems into repository for waste. There is no polite way to say that business is destroying the world.<sup>10</sup>

Strictly speaking, Hawken is surely wrong: humans cannot destroy life on earth.<sup>11</sup> In geologic time the earth will prevail, and nonhuman life, at least, will go on for another four to seven billion years until the sun burns out.<sup>12</sup> In human time, however, Hawken is correct. The figures in Appendix 1, in the familiar “hockey stick” chart format, show ecosystem changes attributable to

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<sup>9</sup> Secretary-General Ban Ki-Moon’s remarks to the World Economic Forum Session on Redefining Sustainable Development, Davos, Switzerland, Jan. 28, 2011. <http://www.un.org/apps/sg/sgstats.asp?nid=5056>.

<sup>10</sup> PAUL HAWKEN, *THE ECOLOGY OF COMMERCE: A DECLARATION OF SUSTAINABILITY* 3 (1993). Wendell Berry’s take on it is this: “Nothing now exists anywhere on earth that is not under threat of human destruction. Poisons are everywhere. Junk is everywhere.” WENDELL BERRY, *SEX, ECONOMY, FREEDOM & COMMUNITY* 31 (1992). “[W]e witness destruction of life in dimensions that confronted no previous generation in recorded history. . . . [T]oday entire species are dying—and whole cultures, and ecosystems on a global scale, even to the oxygen-producing plankton of our seas.” JOANNA MACY, *COMING BACK TO LIFE; PRACTICES TO RECONNECT OUR LIVES, OUR WORLD* 15 (1998).

<sup>11</sup> THOMAS BERRY, *THE GREAT WORK: OUR WAY INTO THE FUTURE* 59 (1999). Thomas Berry (1914-2009) was a Catholic priest and a cosmologist. On the issue of man-made extinctions, he wrote, “There is no question of the extinction of life in any total sense, even though many of the more elaborate forms of life expression can be eliminated in a permanent manner. What is absolutely threatened just now is the degradation of the planet.”

<sup>12</sup> Jerry Coffey, *When Will the World End?* UNIVERSE TODAY, Feb. 4, 2010. George Bernard Shaw reportedly comforted “a visitor who had mentioned that one of Shaw’s fellow playwrights in America was troubled about the state of the world. ‘Tell him not to worry. If, as I believe, man is about to destroy himself, he will be replaced by something better.’” JOSEPH WOOD KRUTCH, *THE MEASURE OF MAN: ON FREEDOM, HUMAN VALUES, SURVIVAL AND THE MODERN TEMPER* 20 (1953).



human activity.<sup>13</sup> “[W]hat most scientists project if present trends continue is that we are moving toward an even more chaotic time, when our world will see increasingly massive political, economic, and environmental dislocations.”<sup>14</sup> Business as usual is unsustainable.

### *B. The Crisis at the State Level*

Focusing on the state level, consider the report from former Washington State Governor Gary Locke’s 2002 “Governor’s Sustainable Washington Advisory Panel.”<sup>15</sup> The governor charged the panel to examine the state’s environment and to suggest what might be done to improve it and move the state toward sustainability.<sup>16</sup> In February 2003 the Panel reported to the governor<sup>17</sup> that the state of the environment was “sobering indeed.”<sup>18</sup> To paraphrase the report, “Today’s reality”—as one section of the report is titled—is that our health is at risk, social inequities are on the rise, our natural systems are in disruption and are declining, there is loss of economic vitality and economic opportunity, and biodiversity, natural habitat, and state icons (salmon, orcas) are threatened.<sup>19</sup> The Advisory Panel further admonished,

If our present behavior continues unabated, we--and our children and grandchildren who come after us--will live in a state

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<sup>13</sup> WILL STEFFEN, ET AL., *GLOBAL CHANGE AND THE EARTH SYSTEM: A PLANET UNDER PRESSURE*, 5-6 (2004). For a comprehensive but readable description of “today’s destructive environmental trends” showing how they “profoundly threaten human prospects and life as we know it on the planet,” see SPETH, *supra* note 3, at 17-46.

<sup>14</sup> EISLER, *supra* note 7, at 173.

<sup>15</sup> GOVERNOR’S SUSTAINABLE WASHINGTON ADVISORY PANEL, *A NEW PATH FORWARD: ACTION PLAN FOR A SUSTAINABLE WASHINGTON* (2003) [hereinafter *ADVISORY PANEL*] available at [http://www.cascadiaconsulting.com/uploads/Attachment\\_5\\_WA\\_Action\\_Plan.pdf](http://www.cascadiaconsulting.com/uploads/Attachment_5_WA_Action_Plan.pdf). Gary Locke is now the US ambassador to China, whose minister of environment, Zhou Shengxian said recently, “The depletion, deterioration and exhaustion of resources and the worsening environment have become bottlenecks and grave impediments to the nation’s economic and social development.” Thomas L. Friedman, *The Earth is Full*, N.Y. TIMES, June 7, 2011, available at <http://www.nytimes.com/2011/06/08/opinion/08friedman.html>.

<sup>16</sup> *ADVISORY PANEL*, *supra*, note 15, at Introduction.

<sup>17</sup> *ADVISORY PANEL*, *supra* note 15.

<sup>18</sup> *ADVISORY PANEL*, *supra* note 15, at 5

<sup>19</sup> *ADVISORY PANEL*, *supra* note 15, at 5-6.

that is likely to offer little of the quality of life that has made Washington so attractive. Indeed, we have already lost much of what was enjoyed by Washingtonians just a few generations ago. It is critical that we take responsibility for the consequences of our actions and attempt to reverse current patterns. Our solutions must be thoughtful and far-reaching, affecting the fundamental choices and actions of our government, our businesses, our communities and our families. This is the essential challenge of our generation.<sup>20</sup>

In the decade since that report was published, there have, alas, been no “thoughtful and far-reaching”<sup>21</sup> changes in Washington State that would show we have taken responsibility for our actions. It is not surprising.

### *C. The Crisis at the Local Level.*

At base, because all real estate is “local” to someplace, the entire environmental crisis actually begins at the local level (and must be addressed there). Today it seems that no “respectable” politician can argue against growth and expect to win elections. The clamor, of course, is for more growth. As one state legislative representative wrote to a local newspaper, “Today's down economy has forced us to look for new and innovative ways to create jobs and increase economic growth.”<sup>22</sup> This growth sprawl has various deleterious effects: loss of the sense of “place”<sup>23</sup>; destruction of agricultural, forest, open space and animal habitat; air, water, noise and light pollution, traffic congestion, and so on.<sup>24</sup> All of this reduces the quality of local life,<sup>25</sup>

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<sup>20</sup> ADVISORY PANEL, *supra* note 15, at 7.

<sup>21</sup> *Id.*

<sup>22</sup> Jeff Morris, *Border Plan Promotes Needed Economic Growth*, THE BELLINGHAM HERALD, Dec. 18, 2011, p. A3.

<sup>23</sup> See, e.g., Daniel M. Warner, *No Place of Grace: Recognizing Damages for Loss of Home-Place*, 8 WIS. ENVTL. L.J. 3 (2002).

<sup>24</sup> Francesca Ortiz, *Biodiversity, the City, and Sprawl*, 82 B.U. L. REV. 145, 145-49 (2002).

<sup>25</sup> A professional poll of Whatcom County residents taken in 2009 asked, among other things, whether the county would be a better or worse place to live in the next fifty years. “While a majority of residents found it likely that the County will double in size, economic growth will receive more emphasis than environmental protection, more people will be living in their neighborhood, and traffic congestion will cause job loss in the County, majorities found all these trends to be undesirable.” Memorandum from Davis, Hibbits, & Midghall to Whatcom

and in some people's minds, overall happiness.<sup>26</sup>

In 1976, Harvey Molotch at the University of California, Santa Barbara, published his influential essay "The City as a Growth Machine."<sup>27</sup> Professor Molotch argued that "the political and economic essence of virtually any given locality, in the present American context, is *growth*," and that growth is "the key operative motivation toward consensus for members of politically mobilized local elites."<sup>28</sup> For the majority of local residents, Molotch observed, growth "is a liability financially and in quality of life . . . [It] is a transfer of quality of life and wealth from the general public to a certain segment of the local elite. To question the wisdom of growth . . . is potentially to threaten such a wealth transfer and the interests of those who profit by it."<sup>29</sup> The group of elites who profit by growth is "in vast [economic] disproportion to their representation in the population[] . . . businessmen, particularly property owners and investors in locally oriented financial institutions who *need* local government in their daily money-making routines, lawyers, syndicators, and realtors."<sup>30</sup> This necessarily includes local bankers and contractors, too, and these people with a powerful interest in growth are attracted to local politics "to wheel and deal to affect resource distribution though local government."<sup>31</sup> They are "not statistically representative of the local population as a whole,"<sup>32</sup> but they control the discourse, and "any political change which succeeded in replacing the land business as the key determinant of the local political dynamic would . . . weaken [their] power. . . ."<sup>33</sup>

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Legacy Project Steering Committee, *Whatcom County Values and Beliefs Survey*, p. 18 (Feb. 3, 2009), available at <http://www.co.whatcom.wa.us/executive/news/2009/03/introduction.pdf>.

<sup>26</sup> See, e.g., Daniel M. Warner, *Uses of Subjective Well-Being in Local Economic and Land Use Policy*, 23 J. LAND USE & ENVTL. L. 263 (2008).

<sup>27</sup> Harvey Molotch, *The City as a Growth Machine*, 82 AM. J. SOC. 309 (1976).

<sup>28</sup> *Id.* at 309-10 (emphasis in original).

<sup>29</sup> *Id.* at 320.

<sup>30</sup> *Id.* at 314 (emphasis in original).

<sup>31</sup> *Id.* at 317.

<sup>32</sup> *Id.* at 318.

<sup>33</sup> *Id.*

The moneymaking machine runs, ultimately, on local real estate. Eben Fodor writes,

The engine of the growth machine is powered by the fortunes resulting from land speculation and real estate development. The primary business interests are the landowners, real estate developers, mortgage bankers, construction companies and contractors, cement and sand and gravel companies, and building suppliers. . . . They tend to be wealthy, organized and politically influential in most communities.<sup>34</sup>

None of this is remarkable. But it is worth reflecting that behind all the landowners and mortgage bankers and cement and sand and gravel companies are *lawyers*, giving advice, doing their clients' will, acting as mouthpieces, apologists, or hired guns for the worsening crisis.<sup>35</sup>

The solution must be found in an enhanced sense of *community*, where people care about the welfare of their place and their neighbors. As Gilding notes, though, most thoughtful people do not deny that infinite growth in a finite space is impossible, but few seem willing or able to do anything significant about it except watch the "bloody mess" unfold. He says about audience reaction to his speeches,

Most audiences, whether activist, corporate, or government, agreed that the path we were on was, in summary, completely unsustainable, that we couldn't change until the crisis hit, and then it would be big, bloody mess. We all know where we're heading. . . .

...We know it from the science, we know it from the politics, and we know it in our hearts.

... We have been borrowing from the future, and the debt has fallen due. We have reached or passed the limits of our cur-

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<sup>34</sup> EBEN FODOR, BETTER NOT BIGGER: HOW TO TAKE CONTROL OF URBAN GROWTH AND IMPROVE YOUR COMMUNITY 30 (1999).

<sup>35</sup> Edward J. Sack (General Counsel of the International Council of Shopping Centers, Inc., in New York): discussing, et al., lawyers arguing for "an application for a zoning variance" and the use by developers of attorneys engaged for that purpose, wrote in 1993: "[T]he 'hired gun' concept . . . appears to have increasing prominence in the legal profession." *Ethics in Real Estate Regulation*, 7 PROB. & PROP. 51, 53 (1993).

rent economic model of consumer-drive material growth. We are headed for a social and economic hurricane that will cause great damage, sweep away much of our current economy and our assumptions about the future, and cause a great crisis that will impact the whole world and to which there will be a dramatic response.<sup>36</sup>

Gilding is right to move beyond arguing that the crisis can be averted. The planet is already overburdened and people in developing countries aspire—understandably—for the material comforts those of us in wealthier countries have had for three generations.

He argues, “We have two good reasons to change. First, we have no choice, and that’s always a good reason! Second, the old model has passed its use-by date anyway; *it has* delivered, but it can’t any longer.”<sup>37</sup> So, it is not going to last—it is going to change.

### III. HOPE FOR CHANGE, AND DISAPPOINTMENT

But, again, a lot of people have known for at least 40 years that the system is unsustainable. To some students starting law school in the early 1970s—the whiff of ‘60s-era counter-culture still in the air—the two developments previously noted seemed promising harbingers of the necessary cultural, economic, and environmental change toward sustainability. Now, forty years later, those expecting significant things from the increasing number of women in law school and from ecofeminism are disappointed: little has changed. But as John Kenneth Galbraith wrote in 1958, “I am not wholly barren of hope, for circumstances have been dealing the conventional wisdom [the status quo] a new series of heavy blows. It is only after such damage has been done . . . that ideas have their opportunity.”<sup>38</sup> The coming crisis is inevitable and after the crisis, those developments—women lawyers and ecofeminism—will have their opportunity.

#### A. *Women Lawyers.*

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<sup>36</sup> GILDING, *supra* note 2, at 5.

<sup>37</sup> *Id.* at 194.

<sup>38</sup> JOHN KENNETH GALBRAITH, *The Affluent Society* 17 (Fortieth Anniversary ed., Houghton Mifflin Co. 1958)

### 1. *The Rise of Women Lawyers*

If first-year law students forty years ago expected to find an almost all-male class they may have been surprised to discover that a significant percentage of their classmates were women. The students may have hoped, as did this author, that women lawyers, when they moved into the ranks of partners in the big, influential firms, would bring to the profession, to society, and to the environment a more caring perspective that would help change the course toward sustainability. Such a hope was not unfounded.

Women and men often have different motivations for attending law school. “[W]omen . . . go to law school, for substantially more idealistic reasons than men. . . . they [are] concerned about children, family, civil rights, and those generally in the position of the underdog.”<sup>39</sup> Men, conversely, “go [to law school] for the egotistical interest in money-making and because a law degree is useful in politics and business.”<sup>40</sup> Akhila Kolisetty, a 23-year-old female who *blogs*<sup>41</sup> and plans to go to law school, is an example of this. She wrote that she aspired to be a public interest attorney “in pursuit of social change and justice.”<sup>42</sup> The graph below shows the percentage of women law students from 1972 to 2008. In 2011 the American Bar Association reported that among ten top law schools, women made up an average of 46.7% of the enrollment<sup>43</sup>

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<sup>39</sup> Marina Angel, *Women in Legal Education: What It's Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMP. L. REV. 799, 808 (1988).

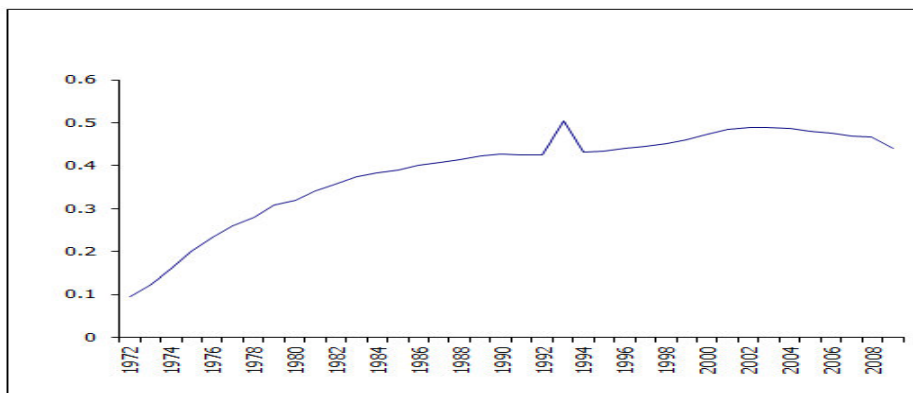
<sup>40</sup> Lee E. Teitelbaum, et al., *Gender, Legal Education, and Legal Careers*, 41 J. LEGAL EDUC. 443, 448 (1991); see also Kingsley R. Browne, *Sex and Temperament in Modern Society: A Darwinian View of the Glass Ceiling and the Gender Gap*, n. 740, 37 ARIZ. L. REV. 971 (1995) (“[M]en were more likely to view as important in career choices the opportunity to be a leader, while women were more likely to view the opportunity to be helpful to others or to society as important.”).

<sup>41</sup> For a discussion of the (surprising and interesting) importance of blogging for women lawyers, see Alison I. Stein, *Women Lawyers Blog for Workplace Equity: Blogging as a Feminist Legal Method*, 20 YALE J.L. & FEMINISM 357 (2009).

<sup>42</sup> Akhila Kolisetty, *Caring Is So Cliché: The Curse of Youthful Idealism*, JOURNEY TOWARDS JUST. BLOG, Apr. 3, 2010, at <http://akhilak.com/blog/2010/04/03/caring-is-so-cliche-the-curse-of-youthful-idealism/>.

<sup>43</sup> Debra Cassens Weiss, *Men Outnumber Women at Most Top Law Schools*, A.B.A. J., May 9, 2011, available at

### Women as a Percent of J.D. Enrollment, 1972-2010<sup>44</sup>



Not only do men and women have different reasons for going to law school, they look at the world differently after they graduate. Women law school graduates, as reported in a University of Michigan alumni survey, “report that they are more concerned with the effect of their work on society and are more compassionate, honest, and liberal than the men report themselves to be.”<sup>45</sup> The men “report a greater desire for money; they say they and are more

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[http://www.abajournal.com/news/article/men\\_outnumber\\_women\\_at\\_most\\_top\\_law\\_schools\\_but\\_the\\_imbalance\\_is\\_greater\\_at/](http://www.abajournal.com/news/article/men_outnumber_women_at_most_top_law_schools_but_the_imbalance_is_greater_at/).

<sup>44</sup> American Bar Association, *First Year and Total J.D. Enrollment by Gender 1947 – 2010*, at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/1947\\_2010\\_enrollment\\_by\\_gender.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/1947_2010_enrollment_by_gender.authcheckdam.pdf). The author’s parents both graduated from the University of Michigan School of Law in June 1941. Examining the class portrait, it appears that there were 198 students; three of them—or 1.5%—were women; see [http://quod.lib.umich.edu/b/bhl/x-bl007064/BL007064?back=back1144695036;chaperone=S-BHL-X-BL007064+BL007064;chaperone=S-BHL-X-BL007064+BL007064;evl=full-im-age;med=1;quality=3;resnum=1;start=1;subview=detail;view=entry;rgn1=bhl\\_fn;q1=bl007064](http://quod.lib.umich.edu/b/bhl/x-bl007064/BL007064?back=back1144695036;chaperone=S-BHL-X-BL007064+BL007064;chaperone=S-BHL-X-BL007064+BL007064;evl=full-im-age;med=1;quality=3;resnum=1;start=1;subview=detail;view=entry;rgn1=bhl_fn;q1=bl007064). In the author’s University of Washington Law School class entering in September 1972, 32% of the class were women. WASH. ST. BAR NEWS, *Law School News*, at p. 31 (Nov 1972).

<sup>45</sup> Kenneth G. Dau-Schmidt, et al., *Men and Women of the Bar: The Impact of Gender on Legal Careers*, 16 MICH. J. GENDER & L. 49, 127 (2009).

confident, better dealmakers, and more aggressive than the women report themselves to be.”<sup>46</sup>

Thus, forty years ago, it was not absurd for those of us alarmed about the state of the environment to think that the increasing number of women attending law school would bode well for the environmental movement’s success. It was—and is—obvious that addressing the issue would require a more caring ethic, less competitiveness, less striving for materialistic success, less cynicism, and more altruism. The thought was that when women rose in the ranks of the law, by the late ‘90s, especially in the “big firms,”<sup>47</sup> they would help bring about these necessary changes. That did not happen.

## 2. *The Collapse of Women Lawyers as a Change Force*

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<sup>46</sup> *Id.*

<sup>47</sup> Robert L. Nelson described the importance of the “big firm” nearly 30 years ago (and his comments are still valid): “The large law firm is an institution that embodies . . . power in the American legal system. Its influence is widely and variously asserted: Its lawyers handle the most consequential of economic transactions and litigated disputes, exercise leadership in bar associations and organized effort at law reform, participate in the ‘political communities’ that surround and shape the formal organs of state power, and are reputed to be the most effective representatives of the interests of clients in courts, regulatory agencies, and legislatures.” Robert L. Nelson, *Ideology, Practice, and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STAN. L. REV. 503, 503 (1985). In their 2008 article discussing the big firm, Marc Galanter & William Henderson write, “If the recent past is a reliable guide, the institution of the large law firm--its power, influence, and prestige--will once again be a dominant theme in this discussion.” Marc Galanter and William Henderson, *The Elastic Tournament: A Second Transformation of the Big Law Firm*, 60 STAN. L. REV. 1867, 1867 (2008). Mona Harrington describes the importance of the big firm this way:

Lawyers advise corporate clients on the raising of capital by stocks or bonds or loans; the purchase and sale of real estate; the acquisition of other companies; the organization of funds for employee health insurance, workers’ compensation, unemployment and retirement; the liability for harm done to other companies or individuals the liability for taxes and the procedures to protect the safety of employees and the public and the safety of the environment. In short, helping to organize the uses of capital through corporate channels is what lawyers mainly do, and they do it mainly in big law firms, which is why the firms occupy a central position in the profession.

HARRINGTON, *supra* note 5, at 16.



A great deal of scholarship examines why women feel alienated and oppressed during their law school years.<sup>48</sup> Law school graduation rates have nearly evenly split between men and women, and for years law firms have taken in new associates in proportional numbers to their graduation rates. But “something unusual happens to most women after they begin to climb into the upper tiers of [the big] law firms. They disappear.”<sup>49</sup> Indeed, most recently there has been a slight decline in the number of women law students<sup>50</sup> and “a

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<sup>48</sup> See, e.g. Morrison Terry, et al., *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267, 284-309 (1998) (detailing women law students’ experiences with sexual harassment (hostile environment), the silencing of women in the classroom, hostility of male students towards females, loss of self-confidence, sense of alienation and self-doubt, lack of female faculty, abuse of the confrontational Socratic method by male faculty, curriculum and classroom materials that “contribute to an environment in which woman are outsiders or simply invisible,” and unhappy interaction with faculty. The authors conclude, “There can be no doubt that law schools and legal education implicitly favor men over women in almost every way imaginable.”); see also Morrison Torrey, *Yet Another Gender Study? A Critique of the Harvard Study and a Proposal for Change*, 13 WM. & MARY J. WOMEN & L. 795,797 (2007). Torrey observes that “numerous studies have rendered the sexual, racial, and heterosexual biases of the law school experience irrefutable” and she cites several of them; Felice Batlan, et. al., *Not Our Mother’s Law School? A Third-Wave Feminist Study of Women’s Experiences in Law School*, 39 BAL. L. F. 124, 128-132 (2009) (especially Section III, “Literature Review,” referencing dozens of studies).

<sup>49</sup> Timothy L. O’Brien, *Why Do So Few Women Reach the Top of Big Law Firms?* N.Y. TIMES, Mar. 19, 2006, available at <http://www.nytimes.com/2006/03/19/business/yourmoney/19law.html?pagewanted=5&page>. The Economist generalizes the issue to note the lack of women in senior management more broadly:

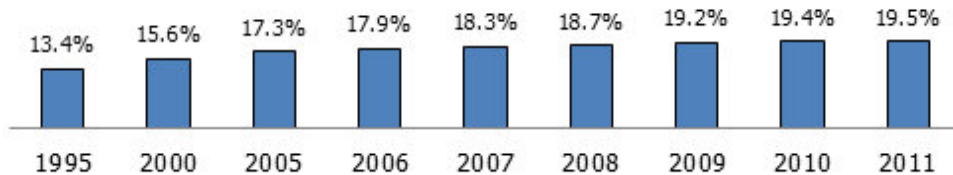
America’s biggest companies hire women to fill just over half of entry-level professional jobs. But those women fail to advance proportionally: they occupy only 28% of senior managerial posts, 14% of seats on executive committees and just 3% of chief-executive roles, according to McKinsey & Company, a consultancy. . . . [I]t is tough for women to climb the corporate ladder with [their childrens’] teeth clamped around their ankles.

Shumpeter, *The Mommy Track: The Real Reason Women Don’t Rise to the Top*, ECONOMIST, Aug. 25, 2012, available at <http://www.economist.com/node/21560856>.

<sup>50</sup> Vivia Chen, *Women Spurn Law Schools*, CAREERIST (May 16, 2011), <http://thecareerist.typepad.com/thecareerist/2011/05/fewer-women-at-nations-lawschools.html>, May 16, 2011; see also Institute for Inclusion in the Legal Profession Review 2011: The State of Diversity and Inclusion in the Legal Profession, Table 4,

slight decline in the percentage of women lawyers who are associates and non-equity partners in the nation's largest firms. This narrowing of the pipeline bodes ill for advancing significant numbers of women into the ranks of law firm leadership in the foreseeable future."<sup>51</sup>

**% Women Partners in Law Firms from 1995-2011, Select Years<sup>52</sup>**



The increased number of women in law school and in the legal profession has not brought about much, if any, change in the legal culture or in society. This is partially because women do not achieve partnership in big law in numbers at all comparable to men,<sup>53</sup> and because women leave the profession,

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[http://pdfserver.amlaw.com/nlj/Final\\_IILP\\_2011\\_Review.pdf](http://pdfserver.amlaw.com/nlj/Final_IILP_2011_Review.pdf) (showing that women's highest percentage of J.D. Degrees awarded occurred in 2004 and has since been on the decline).

<sup>51</sup> Barbra M. Flom and Stephanie A. Scharf, National Association of Women Lawyers, *Report of the 2011 NAWL Survey on the Retention and Promotion of Women in Law Firms*, <http://nawl.timberlakepublishing.com/files/NAWL%202011%20Annual%20Survey%20Report%20FINAL%20Publication-ready%2011-14-11.pdf>.

<sup>52</sup> National Association for Law Placement, *Law Firm Diversity Wobbles: Minority Numbers Bounce Back While Women Associates Extend Two-Year Decline*, Nov. 3, 2011, <http://www.nalp.org/uploads/PressReleases/2011WomenandMinoritiesPressRelease.pdf>; National Association for Law Placement, *Law Firm Diversity Demographics Show Little Change, Despite Economic Downturn Representation in Some Markets Declines While Others Show Small Gains*, Oct. 21, 2009, <http://www.nalp.org/uploads/PressReleases/09NALPWomenMinoritiesRel.pdf>; National Association for Law Placement, *Minority Women Still Underrepresented in Law Firm Partnership Ranks—Change in Diversity of Law Firm Leadership Very Slow Overall*, Nov. 1, 2007, <http://www.nalp.org/minoritywomenstillunderrepresented>; National Association for Law Placement, *Women and Attorneys of Color Continue to Make Small Gains at Large Law Firms*, Nov. 17, 2005, <http://www.nalp.org/2005womenandattorneysofcolor>; National Association for Law Placement, *Presence of Women and Attorneys of Color in Large Law Firms Continues to Rise Slowly*, Nov. 15, 2005, <http://www.nalp.org/2000presenceofwomenattorneysofcolor>

<sup>53</sup> O'Brien, *supra* note 49.

finding it distasteful much more often than do men.<sup>54</sup> There is copious literature on the point that women lawyers, after graduation, do not “prosper” in the sense immediately relevant (they don’t make as much money as men).<sup>55</sup>

Women in law school become convinced that their particular experiences have no place in the law; they are silenced and shut out. That silence precludes women’s knowledge from entering legal thought and influencing its content.<sup>56</sup> As then Dean of the Harvard Law School and now Supreme Court Justice Elena Kagan said, “*Women lawyers are not assuming leadership roles in proportion to their numbers. And that is troubling not only for the women whose aspirations are being frustrated, but also for the society that is losing their talents. What we have here is a kind of brain drain, and we are all the poorer for it.*”<sup>57</sup> This brain drain operates in democratic institutions, too. “[B]eing in a numerical minority [in law school, in the big firm, and in local,

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<sup>54</sup> Women lawyers suffer more cognitive dissonance than men lawyers do: “[G]iven that women [lawyers] exhibited a much stronger general moral orientation of care, the rising demands for speaking from the perspective of a professional role made it increasingly difficult for them to voice their personal morality” DANA JACK & RAND JACK, *MORAL VISION AND PROFESSIONAL DECISIONS: THE CHANGING VALUES OF WOMEN AND MEN LAWYERS* 55 (1989). “Th[e] notion that effective lawyering requires one to possess traditionally ‘male’ traits reinforces the negative implications that underrepresentation by women presents. [I.e., that they are not suited to the profession.] These innate gender roles come into play within the typical law firm, and thus, women’s underrepresentation, exacerbated by the trend of early departure from the practice of law, highlights a number of concerns....” Leslie Larkin Cooney, *Walking The Legal Tightrope: Solutions For Achieving A Balanced Life In Law*, 47 *SAN DIEGO L. REV.* 421, 424 (2010). “The term cognitive dissonance is used to describe the feeling of discomfort that results from holding two conflicting beliefs.” Kendra Cherry, *What is Cognitive Dissonance*, ABOUT.COM PSYCHOLOGY, at <http://psychology.about.com/od/cognitivepsychology/f/dissonance.htm>.

<sup>55</sup> See, e.g., Jeff Blumenthal, *Study: Women Lawyers Still Paid Less than their Male Colleagues*, *Washington Business Journal*, Nov. 12, 2010, available at <http://www.bizjournals.com/washington/print-edition/2010/11/12/study-women-lawyers-still-paid-less.html?page=all>. Blumenthal reports: “women who take time off for child care are often taken off the partnership track, but the study found that women who don’t step off the track still earn less than their male counterparts.”

<sup>56</sup> HARRINGTON, *supra* note 5, at 59.

<sup>57</sup> Elena Kagan, *Remarks on the Status of Women in Law at the Leslie H. Arps Memorial Lecture Before the Association of the Bar of the City of New York*, 40 (Nov. 17, 2005) (emphasis in original), [http://www.law.yale.edu/documents/pdf/women\\_and\\_the\\_legal\\_profession\\_a\\_status\\_report.pdf](http://www.law.yale.edu/documents/pdf/women_and_the_legal_profession_a_status_report.pdf).

state, national and international legislatures] lowers the status of women in the group and thus their participation and authority in group discussion.”<sup>58</sup>

This dearth of women in power has undermined the hope that the feminization of law would lead to improvement in the patriarchal, hierarchical, competitive and domineering attitudes that contribute to the ecocrisis. And,

[W]hen women drop out of the practice of law at greater numbers than men, their departure calls into question whether gender differences will actually produce the different laws, practices, and legal methods postulated by scholars who looked to a time when women's values would be recognized and accepted in our legal system.<sup>59</sup>

Herein lies a conflict: the precise things that women do not like about practicing law are the very things that are responsible for the ecocrisis. Appendix 2 lists “current business practices that contribute to the ecocrisis”; the middle column lists characteristics of law practice and the larger legal culture that women tend to find offensive; and the right column lists characteristics that women lawyers tend to bring, or would like to bring, to the practice and culture of law. In law, business, and politics “we might expect a gender gap in participation and authority where women are a minority—where there are more active confident (male) participants to whom the women defer.”<sup>60</sup> Moreover, “[i]n settings with many men, the interaction tends to take on more stereotypically masculine characteristics of individual assertion, agency, competition, and dominance; in contrast, in settings with many women, people tend to interact in a more stereotypically feminine style that emphasizes cooperation, intimacy, and the inclusion of all participants. . . . [The] literature . . . suggests that women will participate less than men in predominately male groups and will increase their participation and influence as their proportion increases.”<sup>61</sup>

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<sup>58</sup> Christopher F. Karpowitz, et al., *Gender Inequality in Deliberative Participation*, 106 AM. POL. SCI. REV. 533, 534 (2012), available at [http://journals.cambridge.org/download.php?file=%2FPSR%2FPSR106\\_03%2FS0003055412000329a.pdf&code=dd9ba2adfdaf76a0b5d589f01343f27c](http://journals.cambridge.org/download.php?file=%2FPSR%2FPSR106_03%2FS0003055412000329a.pdf&code=dd9ba2adfdaf76a0b5d589f01343f27c).

<sup>59</sup> Cooney, *supra* note 54, at 424.

<sup>60</sup> Karpowitz, *supra* note 58.

<sup>61</sup> *Id.*

Posit, then, that the characteristics typical of business(men) in the first column (Appendix 2) are among those that are, as Hawken put it, “destroying life on earth”<sup>62</sup>: an economic system and a culture built on hierarchical structures; fierce competitiveness; toughness; an ideology of self-interest; a justice or rights ethical theory where rules are handed down from above and applied without regard to the broader consequences; a denigration of the home place; a fascination with money-making as a status assignor (with concomitant conspicuous consumption); and excessive abstraction—lack of an understanding of the importance of integrity or wholeness.<sup>63</sup>

## B. Ecofeminism.

### 1. *The Rise of Ecofeminism*

The rising number of women in law school in the 1970s was not the only hopeful change. For those concerned about the environmental crisis forty years ago, ecofeminism was welcomed. It looked to auger well for the liberation of nature from human (heterosexual male) domination.<sup>64</sup>

The political movement of ecological feminism began in the 1970s as part of the peace and women’s liberation movements. French feminist Fran-

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<sup>62</sup> HAWKEN, *supra* note 10.

<sup>63</sup> THOMAS BERRY, *THE DREAM OF THE EARTH* 37 (1988) (describing the industrial age as a period of “technological entrancement. During this period the human mind has been placed within the narrowest confines it has experienced since consciousness emerged from its Paleolithic phase. Even the most primitive tribes have a larger vision of the universe, of our place and functioning within it . . . .”)

<sup>64</sup>. “Drill, Baby, Drill!” this was the rallying cry at the 2008 GOP convention, originating in a speech by ex-Maryland Lt. Governor Michael Steele in support of domestic energy production. Mary Lu Carnevale, *Steele Gives GOP Delegates New Cheer: ‘Drill, Baby, Drill!’* WALL ST. J., Sept. 3, 2008, available at <http://blogs.wsj.com/washwire/2008/09/03/steele-gives-gop-delegates-new-cheer-drill-baby-drill/tab/article/>. This is a piece with Charlene Spretank’s comment on “modern technocratic society fueled by the patriarchal obsessions of dominance and control [where] efficiency of production and short-term gains [are put] above all else—above ethics or moral standards, above the health of community life, and above the integrity of all biological processes, especially those constituting the elemental power of the female.” Charlene Spretank, *Ecofeminism: Our Roots and Flowering*, in *REWEAVING THE WORLD: THE EMERGENCE OF ECOFEMINISM*, Irene Diamond and Gloria Orenstein, eds., 10 (1990).

coise d'Eaubonne coined the term "ecological feminism" in 1974 to call attention to women's potential to bring about an ecological revolution."<sup>65</sup>

It is not easy to generalize about ecofeminism. Elizabeth Carlassare, writing in 1994, thought ecofeminism would be better considered a *discourse*, not a set body of knowledge.<sup>66</sup> "Ecofeminism derives its cohesion not from a unified epistemological standpoint, but more from the shared desire of its proponents to foster resistance to formations of domination for the sake of human liberation and planetary survival."<sup>67</sup> Nevertheless, it is necessary to generalize somewhat here. Ecofeminism holds that there are important parallels between the masculine, capitalistic oppression, domination, compared to the subordination of women and the oppression, domination, and subordination of nature. It also holds that current social organizations need to be replaced by nonhierarchical, non-dominating forms. Rosemary Radford Ruether, writing in 1975, put it this way:

Women must see that there can be liberation for them and no solution to the ecological crisis within a society whose fundamental model of relationships continues to be one of domination. They must unite the demands of the women's movement with those of the ecological movement to envision a radical reshaping of the basic socio-economic relations and the underlying values of this society. . . . [We must be about the business of] transforming that worldview which underlies domination and replacing it with an alternative value system.<sup>68</sup>

Karen J. Warren claims there are five basic characteristics that mark ecofeminist philosophy.<sup>69</sup> Of particular interest here are two points: (1) there are important interconnections among the unjustified domination of women, other oppressed people, and nature; and (2) solutions to environmental prob-

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<sup>65</sup> KAREN J. WARREN, *ECOFEMINIST PHILOSOPHY: A WESTERN PERSPECTIVE ON WHAT IT IS AND WHY IT MATTERS* 21 (2000).

<sup>66</sup> Elizabeth Carlassare, *Essentialism in Ecofeminist Discourse*, in *ECOLOGY* 221 (Carolyn Merchant, ed., 1994). <http://ww.w.alastairmcintosh.com/general/resources/1994-Carlassare-Ecofeminist-Essentialism.pdf>

<sup>67</sup> *Id.*

<sup>68</sup> ROSEMARY RADFORD RUETHER, *NEW WOMAN, NEW EARTH: SEXIST IDEOLOGIES AND HUMAN LIBERATION*, 204 (1975).

<sup>69</sup> WARREN, *supra* note 65, at 43.

lems should include ecofeminist insights into interconnections among the oppression of women, other oppressed people, and nature.<sup>70</sup>

That is, women know what it is to be oppressed and abused by a capitalistic patriarchy, and they see a relationship between that oppression and the abuse of nature, which is driving the ecocrisis. The privileged class does not see the oppression—any oppression—readily, because it is inevitably blinded by the justification society has created to support the oppression.

Ecofeminists hoped to replace the patriarchal beliefs, languages,<sup>71</sup> rituals, and practices with more enlightened ones, to reveal the complex nature of reality and to disabuse human culture of its destructive attitude toward the environment. “Let us understand,” wrote Riane Eisler, “that we cannot graft peace and ecological balance on a dominator system; that a just and egalitarian society is impossible without the full and equal partnership of women and men.”<sup>72</sup>

Some of this ecofeminist work was theoretical: in the ‘70s and ‘80s ecofeminist academic “think-tanks” explored the connections among “the politics of women’s health, poverty, food security, forestry, urban ecology, indigenous people and environments, technology . . . animal rights, birth and female infanticide, work, play, militarism, philosophy, and spirituality.”<sup>73</sup> Es-says examined the links regarding race and toxic waste, colonialism and the modern development of non-Western countries.<sup>74</sup> Scholars took up issues of community-focused, bio-regional ecofeminism; they looked at speciesism, Western medical science, and masculinized violence as manifested in the cul-

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<sup>70</sup> *Id.*

<sup>71</sup> It is interesting to note that the 2003 amendments to the Uniform Commercial Code eschew the use of the sexist masculine pronouns “his” and “him.” For example, Article 2-403(2) formerly read: “entrusting of goods to a merchant . . . gives him the power to transfer all rights of the trustee . . .” The 2003 amendment reads: “entrusting of goods to a merchant . . . gives the merchant power to transfer all of the trustee’s rights. . .” However, the most recent version of the UCC incorporates the old language. U.C.C. § 2-403(2).

<sup>72</sup> EISLER, *supra* note 7, at 34.

<sup>73</sup> Greta Gaard, *Ecofeminism Revisited: Rejecting Essentialism and Re-Placing Species in a Material Feminist Environmentalism*, 23 FEMINIST FORMATIONS 26, 29, available at <http://gretagaard.efoliomn.com/Uploads/EcofeminismRevisited2011.pdf>

<sup>74</sup> See, e.g. NATURE IN LITERARY AND CULTURAL STUDIES: TRANSATLANTIC CONVERSATIONS ON ECOCRITICISM (Catrin Gersdorf and Sylvia Mayer, eds., 2006).

tures of domestic relations, homophobia, prohibitions against contraceptives, modern slavery,<sup>75</sup> hunting, militarism, and science and technology; “all legitimated and normalized through religion, culture, and language.”<sup>76</sup>

Some of this work was practical. In the 1980s, American ecofeminists had considerable success in linking militarism,<sup>77</sup> corporatism, and unsustainable energy production by joining together the peace movement and anti-nuclear protests.<sup>78</sup> Ecofeminist activism also bore fruit in pushing for the adoption of the US Environmental Agency’s Superfund Act addressing toxic waste disposal issues. Activists organized resistance to hazardous-waste dumps, and helped make the connection between environmental toxins and breast cancer.<sup>79</sup>

Ecofeminism itself, however, never became the third wave of feminism, building on the legacy of the 19<sup>th</sup> and early 20<sup>th</sup> century suffragettes and on the women’s movement of the 1960s.

## 2. *The Collapse of Ecofeminism*

Three factors led to ecofeminism’s fall. First, feminist studies lost the insight “that yoked together world patterns of environmental degradation with women’s oppression.”<sup>80</sup> Ecofeminism abandoned diversity of argument and stopped exploring the connections between the objects of oppression, and in-

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<sup>75</sup> Women, children, and immigrants—legal and illegal—are still being enslaved in the United States. Dan Archer, *Slavery Lives on in the United States*, TRUTHOUT, Feb. 15, 2012, <http://www.truth-out.org/human-trafficking/1329157025>.

<sup>76</sup> Gaard, *supra* note 73, at 30.

<sup>77</sup> Obviously militarism has not been overcome: the US has been involved in at least three major wars since the early 80’s: Gulf War I, Iraq, and Afghanistan. Indeed, one of the disturbing manifestations of current society is the increase in a “fortress world” mentality as seen in “gated communities, armed civilians, private security protection, and mercenary armies.” SPETH, *supra* note 3, at 43; *see also, e.g.*, Charles Glass, *The Warrior Class: A Golden Age for the Freelance Soldier*, HARPER’S MAG., Apr. 2012, at p. 28.

<sup>78</sup> Gaard, *supra* note 73, at 28-29.

<sup>79</sup> *Id.* at 31.

<sup>80</sup> *Id.* at 31 (quoting Charis Thompson, *Back to Nature? Resurrecting Ecofeminism after Post-structuralist and Third-Wave Feminisms*, 97 *ISIS* 505-512 (2006)).



stead “addressed the nature of oppression itself,”<sup>81</sup> examining the “logic of domination” that justifies abuse and subordination.<sup>82</sup>

Second, as ecofeminism gained headway, it gained critics. Greta Gaard describes ecofeminism’s critics as making “sweeping generalizations,” which, she adds, have been repeatedly disproven, that ecofeminists are “essentialist,<sup>83</sup> ethnocentric, anti-intellectual goddess-worshippers who mistakenly portray the Earth as female or issue totalizing and ahistorical mandates for worldwide veganism.”<sup>84</sup>

Here, Gaard touches on a particularly bitter disagreement between branches of ecofeminism. Social ecofeminists argued that political changes in social, economic and institutional systems are necessary to address the oppression of women and of the environment.<sup>85</sup> Cultural ecofeminists made an essentialist argument: because women actually give birth to the next generation of the species, they have innate characteristics involving nurturing that cannot be changed; instead, a change in our world view would be required to make those characteristics as valued as masculine characteristics. The culturalists argued that “changes in human consciousness and spirituality are inseparable from the changes in institutions that are required for the liberation of women and nature. To them, oppression is a sign of spiritual crisis—political and cultural transformation will not occur without a concurrent shift in human consciousness.”<sup>86</sup>

But the culturalists’ emphasis on women’s inherent closeness to nature, on their nurturing and caring proclivities, which was claimed to afford them a special sensitivity to environmental abuses, was used against them by the social branch. The social branch marginalized the cultural branch as “irrational” (how often the epithet is used to devalue women!). They claimed the

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<sup>81</sup> *Id.*, 31-32.

<sup>82</sup> WARREN, *supra* note 65, at 46-47.

<sup>83</sup> “Essentialism” in ecofeminism asserts that there are innate links between women and nature on account of women’s essential predisposition toward nurturing and caretaking. It was criticized as being used historically “to oppress women, limit their sphere of activity, and squelch their potency as social and cultural agents.” Carlassare, *supra* note 66, at 222.

<sup>84</sup> Gaard, *supra* note 73, at 32.

<sup>85</sup> Carlassare, *supra* note 66, at 227.

<sup>86</sup> *Id.*

culturalists' (essentialist) apolitical viewpoint regressively conflated and perpetuated patriarchal associations of women's biological destiny with naturalism; this is compared to men's progressive destiny with civilization (and science and technology). This association has traditionally been used to subordinate women to men. On this theory, the social branch said, women will always be different and unprogressive, and unliberated.

And the social branch also criticized the cultural branch because culturalists tended to eschew materialist ("rigorous"—i.e., masculine) academic-type economics research in favor of spiritual, poetic and intuitive ways of expression and of knowing. They would find God in stories rather than in dogma. "Although the ultimate goals of both positions are the same, namely, women's liberation and an end to ecological degradation, social ecofeminist criticisms of cultural ecofeminism privilege one means of achieving these goals over another, a transformation of social structures over a psychic transformation."

To an outsider—and the politics of ecofeminism are arcane—it appears that ecofeminism collapsed not only because it lost its focus and because of bitter infighting, but for a third reason: misogynic ridicule.<sup>87</sup> In any event, the word itself, "ecofeminism" is no longer very current. But it seems obvious that there is common ground among issues of sexism, ageism, racism, homophobia, speciesism, classism, nationalism, capitalism, militarism, corporatism, economic imperialism—all the "isms"—and the abuse and oppression of the natural world, so ecofeminism cannot be dead, only moribund. "Only moribund" because here is an essential truth: the earth cannot sustain life as we know it within our current social and economic culture; we must adopt a more caring attitude. Is it so bad to suggest that women, by dint of something inherent in their nature, may show the way when society is re-ordered after the Great Disruption?

### 3. Masculinism and the Ecocrisis—Trophy Wives

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<sup>87</sup> A male feminist scholar, Simon Estook, is quoted by Gaard as explaining why he stopped using the term "ecofeminism": "I think mainstream ecocritics (many of them men and certainly some of them women) react strongly against ecofeminism simply because it is mainly done by women. . . . most men see ecofeminism as at best peripheral and at worse as a threat (which really means most men see *women* as peripheral or a threat). Perhaps I'm wrong, but raw sexism in its most basic form, if you ask me, is the first thing behind the backlash [against ecofeminism]." Gaard, note 70, *supra* at 43; emphasis and ellipses in original.

It is also useful to reflect briefly on a, possibly *the*, mechanism by which patriarchal society adversely affects the business and the environment. The connection between male domination and environmental destruction manifests in the patriarchal mindset that carelessly consumes natural resources and develop “vacant” land<sup>88</sup> and then carelessly dispose of wastes into the ecosystem. This is a way for men to show off the status that wealth affords them.<sup>89</sup> As Thorstein Veblen observed 115 years ago, “the leisure class” engages in conspicuous consumption, buying things and striving for what is advertised as elegant and sophisticated, in order to show off: “[b]ooty serves as prima facie evidence of successful aggression.”<sup>90</sup> Men are often admired for their aggressiveness, especially those who are attorneys.<sup>91</sup>

Brian Czech specifically connects such conspicuous consumption to human male mating rituals.<sup>92</sup> He observes that elk display their antlers, peacocks their tail feathers, and sunfish their gills to show off their animal version of wealth; the impressive body parts demonstrate vigor and dominance.<sup>93</sup> Humans, similarly, use displays of wealth and the reckless consumption it requires in order to find a mate. Flashy cars, big expensive houses, and \$10,000 watches are “chick magnets” and the man who wins (Czech call this class of

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<sup>88</sup> See *supra* part II C (regarding local development and the environmental crisis).

<sup>89</sup> See, e.g. BRIAN CZECH, SHOVELING FUEL FOR A RUNAWAY TRAIN: ERRANT ECONOMISTS, SHAMEFUL SPENDERS, AND A PLAN TO STOP THEM ALL, Chapter 7, “Relations with the Liquidating Class,” pp. 123 ff (2000).

<sup>90</sup> THORSTEIN VEBLEN, THE THEORY OF THE LEISURE CLASS: AN ECONOMIC STUDY OF INSTITUTIONS 17 (1899); see also Abraham Maslow, *Hierarchy of Needs* at <http://www.businessballs.com/maslow.htm>. John D. Rockefeller’s primary purpose in life was not to make money; he wanted to accomplish things: “Some say that because a man is successful and accumulates wealth, all he is after is to get wealth. How blind!” HERMAN E. KROOSS & CHARLES GILBERT, AMERICAN BUSINESS HISTORY 211 (1972).

<sup>91</sup> See, e.g., Preston Haliburton, American Association of Aggressive Attorneys, *Who Wants an Aggressive Attorney? All People Want an Aggressive Attorney. Yes, All!*, <http://www.aggressiveattorneys.org/> (last visited Mar. 19, 2013) (“No client wants a weasel to represent them; all of the people whom I know want an aggressive advocate or defender to represent them. *All people want an aggressive attorney when it comes time to secure an attorney.* All. We want a Bulldog or a Doberman, not a Poodle. We want an attorney who is willing to fight for us.”) (emphasis in original).

<sup>92</sup> CZECH, *supra* note 88, at 126-27 (2000).

<sup>93</sup> *Id.*

man “liquidators”<sup>94</sup>) gets a “trophy wife.” “Animals like elk, peacocks, and humans display their wealth in order to attract partners for the sake of reproduction. . . . In most species, including humans, males do most of the displaying and courting, while females do most of the selecting and accepting.”<sup>95</sup> Czech suggests that women should disdain men who make conspicuous displays of wealth, who are “liquidators” (and that men too “should likewise spurn women of the liquidating class”).<sup>96</sup>

If the wealth-accumulation brought happiness, it might be justifiable, but it does not. The broadly recognized study of “subjective well-being” (“SWB”) reveals that after people reach a level of income about equal to lower-middle-class U.S. standards, the addition of more absolute wealth does not make them happier.<sup>97</sup> There is one very important exception; the addition of wealth does make people happier insofar as they *compare* themselves to others.<sup>98</sup>

The matter has ethical importance. Trophy-collecting, or showing off one’s wealth, is a selfish, competitive, consumptive activity that necessarily implies a winner (the trophy-hunter) and a loser (the one who didn’t get the trophy). It is an arrogant view of others that builds upon a moral hierarchy, where the rules say it is okay for the winners to predominate over the losers. It does not result in societal happiness or even personal happiness, except maybe briefly, as one continues to need more trophies to validate one’s prowess. It plays out in capitalistic corporatism: “Inside the corporation, stockholder sovereignty is manifest in the notion that rising income for stockholders is good, while rising income for employees is bad.”<sup>99</sup> It plays out in the law, as male lawyers “talk about their work . . . commonly liken[ing] it to a game[,] . . .

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<sup>94</sup> *Id.* at 119.

<sup>95</sup> *Id.* at 131-32.

<sup>96</sup> *Id.* at 132-33.

<sup>97</sup> See, e.g., Daniel M. Warner, *The Use of Subjective Well-Being in Local Land Use and Economic Policy*, 23/2 J. LAND USE & ENVTL. L. 263, 296-99 (2008); RICHARD LAYARD, HAPPINESS: LESSONS FROM A NEW SCIENCE 3 (2005) (“There is a paradox at the heart of our lives. Most people want more income and strive for it. Yet as Western societies have got richer, their people have become no happier.”); see also SPETH, *supra* note 3, at 129-146.

<sup>98</sup> Warner, *supra* note 96.

<sup>99</sup> MARJORIE KELLY, THE DIVINE RIGHT OF CAPITAL: DETHRONING THE CORPORATE ARISTOCRACY 85 (2001).

with rules, winners, and losers.”<sup>100</sup> The ethical theory justifying trophy-collecting is based on an *ethic of justice* (“justice perspective,” perhaps better called an *ethic of rights*<sup>101</sup>), which assesses moral conduct in terms of the rights and duties of the relevant parties.

Warren explains as follows:

From a justice perspective, a moral agent is viewed as a rational, detached, disinterested, impartial, independent being; morality is viewed as a matter of relevant rights, rules, or principles; and moral conflict resolution is adjudicated by appeal to the most basic, right, rule, or principle. The ethical framework is essentially hierarchical or pyramidal, where the “authority” of a right, rule, or principle is given from the top of a hierarchy. . . . As a model of conflict resolution, it is primarily adversarial, based on a win-lose, zero sum model of conflict.<sup>102</sup>

The justice theory imagines humans as abstract, isolated individuals subject to absolute and universal rights and rules.<sup>103</sup> It assumes conflict resolution is always about “adjudicating competing interests, rights, or rules of independent moral agents in hierarchical, adversarial, winner-loser way...”<sup>104</sup> It fails to appreciate the extent to which values of *care* can enter into decision-

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<sup>100</sup> JACK & JACK, *supra* note 54, at 130.

<sup>101</sup> Perhaps better called an *ethic of rights* because this ethical system is more concerned with the rights of one party versus another than with more broadly realized societal justice; rights are argued out in adversarial litigation:

In addition to its strengths, though, an adversary system also has intrinsic weaknesses: advocates seeking to hide information damaging to their clients, a discovery process that may not always lead to all of the truth sought, and strict rules of court procedure include some examples. It is virtually impossible to find the truth or reach justice under such circumstances. Attorneys will often ruthlessly pursue success instead of the truth; it is the nature of the adversarial process to prompt and even facilitate such behavior.”

Jennifer A. Freyer, *Women Litigators in Search of a Care-oriented Judicial System*, 4 J. GENDER & L. 199, 200 (1995).

<sup>102</sup> WARREN, *supra* note 65, at 105.

<sup>103</sup> *Id.* at 106-07.

<sup>104</sup> *Id.* at 107.

making; it represents morality as unambiguous and simple.<sup>105</sup> Finally, it tends to entrench the status quo by concealing the more complex nature of reality.<sup>106</sup> This is abstraction: approaching an issue in the abstract, without regard to its broader context. “[L]egal thinkers leave their personal perspectives behind and use reason alone to analyze issues. Objective thinking must be perspectiveless.”<sup>107</sup>

Whether it is because women are born so (cultural ecofeminism), or because society has constructed the gender so (social ecofeminism), feminists, and specifically, ecofeminists, could bring to the worldview an ethical system embodying a *care* perspective. Warren again:

In contrast, the care perspective assesses moral conduct in terms of such values as care, friendship, and appropriate trust, which are not themselves reducible to a consideration of rights or rules. Selves are conceived as relational, embedded, partial, attached, interdependent, and historically situated. Morality is a matter of values, virtues, and vices, which are not unpacked in terms of hierarchically ordered . . . principles of justice.<sup>108</sup>

Or, expressed again slightly differently:

The "morality of care" differs from the "morality of rights" in that it is not concerned with rights and duties, but relationships between people. Paying deference to these relationships by attempting to comprehend all of the concomitant concerns, the "morality of care" recognizes a duty to minimize harm.<sup>109</sup>

#### IV. AFTER THE ECONOMIC CRASH—THE “GREAT DISRUPTION”

##### A. *The Inevitability of the “Crash.”*

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> HARRINGTON, *supra* note 5, at 57.

<sup>108</sup> WARREN, *supra* note 65, at 106.

<sup>109</sup> Freyer, *supra* note 100, at 211.

Of all the types of cognitive dissonance<sup>110</sup> our society may harbor, really none is stranger than this: on the one hand it is obvious that the economy cannot grow—quantitatively and economically—forever. Not everyone beats the drums for growth, certainly, but most of the important politicians, economists, news commentators and businesspeople who frame the issues in the daily news insist that “[i]t’s time that lawmakers put ideology aside and focus on a common agenda that will stimulate economic growth. By doing so, we can preserve America as a land of hope and opportunity.”<sup>111</sup> Why, “in the face of its obvious unsustainability, do we persist in levels of consumption beyond what is necessary or even healthy?”<sup>112</sup> Answering that question is beyond the scope of this Article; the matter has been analyzed by Kenneth Boulding, John Kenneth Galbraith, Herman Daly, and other distinguished economists who have written on the inevitability of a steady-state economy.<sup>113</sup>

Of course growth will stop. Then will be a period of transition. Thomas Berry, the late Catholic priest, essayist, and environmentalist referred to this transition as “The Great Work”: “The Great Work now . . . is to carry out the transition from a period of human devastation of the Earth to a period when humans would be present to the planet in a mutually beneficial manner.”<sup>114</sup>

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<sup>110</sup> See note 54, *supra*, for a definition of cognitive dissonance.

<sup>111</sup> Tom Donohue (president and CEO of the United States Chamber of Commerce) *Economic Growth Must Drive the Agenda*, FREE ENTERPRISE (Jan. 10, 2011), <http://www.freeenterprise.com/article/economic-growth-must-drive-the-agenda>. President Barack Obama, Economic Report of the President, 2013, p. 3: “Our top priority must be to do everything we can to grow our economy and create good, middle-class jobs. That has to be our North Star. That has to drive every decision we make in Washington.” Available at [http://www.whitehouse.gov/sites/default/files/docs/erp2013/full\\_2013\\_economic\\_report\\_of\\_the\\_president.pdf](http://www.whitehouse.gov/sites/default/files/docs/erp2013/full_2013_economic_report_of_the_president.pdf).

<sup>112</sup> RICHARD F. WOLLARD, FATAL CONSUMPTION: RETHINKING SUSTAINABLE DEVELOPMENT, 3 (2000).

<sup>113</sup> See CENTER FOR ADVANCEMENT OF THE STEADY STATE ECONOMY, <http://steadystate.org/discover/definition/>.

<sup>114</sup> THOMAS BERRY, *supra* note 11, at 3 (1999). Joanna Macy celebrates the coming “Great Turning” (JOANNA MACY, COMING BACK TO LIFE: PRACTICES TO RECONNECT OUR LIVES, OUR WORLD 17 (1998)). David Korten calls it “The Post-Corporate World (David Korten, *The Post-Corporate World: Life After Capitalism* (1999)). Paul Gilding foretells the inevitable “Great Disruption” (GILDING, *supra* note 2, at 87 (2011), followed by a “Great Awakening” (Id. at 103). James Gustave Speth labels it “The Great Collision” (Speth, *supra* note 3, at xx), while Bill McKibben writes of the coming “Deep Economy” (BILL MCKIBBEN, DEEP ECONOMY: THE WEALTH OF COMMUNITIES AND THE DURABLE FUTURE (2007), and Richard

After the failure of this unsustainable economic system, history will roll on as surely as it rolled from hunting and gathering to subsistence agriculture, to Greek slavery, to feudalism, to mercantilism, to early capitalism, to modern corporate capitalism. If the world political order degenerates into howling mobs and atomic-bomb throwing, we won't need to ask this question, but if humans pick up the pieces after the crash: What personal characteristics will humans need to prosper in the new age? Though certainly many characteristics could be listed, and categories overlap, we may postulate two. They will be familiar to the reader.

### ***B. What Will the New Society Require?***

The new society will require two things: (1) more female lawyers (and more male lawyers with some female values), and (2) a dose of ecofeminism.

#### *1. Society Will Require more Women Lawyers and Male Lawyers with Values more like those Advocated by Women.*

Thomas Berry wrote:

[The present crisis requires] a reorientation of all the professions, especially the legal profession, which is still preoccupied with ... the limitless freedom to acquire property and exploit the land. The number of lawyers hired by single corporations to defend themselves against any limitation of their perceived rights to exploit the natural world is evidence of the strange principles of jurisprudence that allow the devastation of the planet to proceed.<sup>115</sup>

We will certainly still have lawyers after the crash (unless, again, things degenerate horribly). But to expect a sensible system to emerge and endure where most lawyers in influential practice are males is nonsense: that's

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Heinberg of "a desirable 'new normal' that fits the constraints imposed by depleting natural resources" (RICHARD HEINBERG, *THE END OF GROWTH: ADAPTING TO OUR NEW ECONOMIC REALITY* 21 (2011)). Steven Stoll writes about the period between 1600 and 2050 as "the Era of Expansion," and, borrowing from John Stuart Mill, predicts the coming of "a stationary state" and an end to the "Great Delusion" (Steven Stoll, *THE GREAT DELUSION: A MAD INVENTOR, DEATH IN THE TROPICS, AND THE UTOPIAN ORIGINS OF ECONOMIC GROWTH*, 163 (2008)).

<sup>115</sup> THOMAS BERRY, *supra* note 11, at 113.



what we have now, and, after all, half the population—the female half—has something to offer. The proof that the female half does have something to offer is to reflect upon the sorry state of affairs now where, for 6000 years, their sensibilities have been mostly disregarded. Any organizational structure that disregards the sensibilities of half its constituents is unjust and ultimately unsustainable, which is what ours is now. So it will change.

There will be more women lawyers. This means changes in the teaching methods and structures of law school to encourage women, instead of discouraging them. It means getting over the conception “of women as emotional by nature, as less able than men to control their emotions”<sup>116</sup> and therefore unsuited to be law students and lawyers. It means ditching the Socratic method. Most importantly, it means that lawyers *should* be emotional, if “emotional” means responding empathetically to others’ circumstances, and instead of taking advantage of them to win, trying to help them.<sup>117</sup> And, to improve women’s work-life balance, Mona Harrington proposes:

[W]e need to accept a general society-wide responsibility for the equality of men and women and for the healthy upbringing of children . . . . If work patterns are perpetuating inequality between men and women, then they have to be changed. . . . How? Maybe, for parents of young children, seriously reduced work hours—with *no professional liability attached*. . . . More flex time—with no penalty.<sup>118</sup>

Gilding reaches the same conclusion:

[We should] actively encourage the workforce to choose to work less and spend less, by providing more flexible working hours, including more part-time work. This starts to slow the economy without increasing unemployment as a result. It also generates a cultural understanding and gives examples of a people living happily in new ways—less work, less debt, less stuff, more fun, more community, and more security.<sup>119</sup>

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<sup>116</sup> HARRINGTON, *supra* note 5, at 53.

<sup>117</sup> Thirty-five years ago, the author, in discussing a case with his then-law partner, said, “Well, in all fairness to the other side . . .” The partner cut him off: “We aren’t interested in fairness here. We’re interested in winning.”

<sup>118</sup> HARRINGTON, *supra* note 5, at 267.

<sup>119</sup> GILDING, *supra* note 2 at 197.

Law-firm work patterns must change to allow women to become equity partners in firms and get their hands on levers of power. Male lawyers who might be inclined to resist this change will capitulate because “fac[ing] a global, civilization-threatening risk” requires society to “respond dramatically and with extraordinary speed and focus.”<sup>120</sup> At that point we will recognize that business, government and society *require* the characteristics stereotypically associated with feminism. With more women lawyers will come empowerment:

[W]hen there are more women in legislatures, city councils and school boards, they speak more and voice the needs of the poor, the vulnerable, children and families—and men listen. At a time of soaring inequality, electing vastly more women might be the best hope for addressing the needs of the 99 percent.<sup>121</sup>

Then it will be okay to have children and families; it will be all right for a lawyer to take time off to tend to a sick friend or neighbor, and the “troubling levels of gender and ethnic harassment” that female lawyers report in their work will end.<sup>122</sup> Indeed, this change is already underway: Paula Littlewood, the executive director of the Washington State Bar Association, reports that already “new lawyers are demanding a work-life balance and using technology to make this balance more of a reality”<sup>123</sup> And this change will make people happier. Billing 2000 hours a year does not make anybody happy. Here is what makes people happy: “our family relationships, our financial situation, our work, our community and friends, our health, our personal freedom and our personal values. Except for health and income, they are all concerned with the quality of our relationships.”<sup>124</sup>

Jurisprudentially, our current lack of caring for nature is partly a consequence of our interpretation of the U.S. Constitution. As Berry puts it:

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<sup>120</sup> *Id.* at 106.

<sup>121</sup> Tali Mendelberg & Christopher F. Karpowitz, *More Women, but Not Nearly Enough*, N.Y. TIMES, Nov. 9, 2012, A31, available at <http://campaignstops.blogs.nytimes.com/2012/11/08/more-women-but-not-nearly-enough/>.

<sup>122</sup> Sarah Leyrer, et al., *A New View of Embracing Diversity in Washington* (reporting on the problems of women and non-white lawyers in Washington State), WASH. ST. BAR NEWS, June 2011, at p. 16.

<sup>123</sup> Paula Littlewood, *Let's Seize the Moment*, N.W. LAW. Jan. 2013, at p. 11.

<sup>124</sup> Layard, *supra* note 95, at 62-63.

[The Constitution] guarantees to humans participatory governance, individual freedoms, and rights to own and dispose of property—all with no legal protection for the natural world. The jurisprudence supporting such a constitution is profoundly deficient . . . Only a jurisprudence based on concern for an integral Earth community is capable of sustaining a viable planet.”<sup>125</sup>

So, society’s jurisprudence and the ideal characteristics of a lawyer must change based on feminist values. The corporate lawyer as we have known him will be passé. Indeed,

The industrial establishment is the extreme expression of a patriarchal tradition with its all-pervasive sense of dominance, whether of rulers over people, of men over women, of humans over nature . . . The rights of the natural world of living beings is [today] at the mercy of the modern industrial corporation as the ultimate expression of patriarchal dominance over the entire planetary process.”<sup>126</sup>

After the disruption, business lawyers will have some different tasks. They will work to get government *out* of providing “environmentally perverse subsidies” and *in* to implementing “polluter pays” principles<sup>127</sup> so that the price of modern society reflects its true cost. Lawyers should work for tax changes to increase resource productivity and to tax destructive behavior instead of constructive behavior, e.g., tax pollution instead of employment. Additionally, lawyers should promote greater societal equality, not work to undermine efforts at moving toward a more egalitarian system. Egalitarianism, here, means not just greater equality for men and women, but a reversal of the more recent trends toward disparity in income.<sup>128</sup> The “Occupy Wall Street” movement that garnered attention in the summer of 2011 brought the inequality issue to the fore.<sup>129</sup> And at that time too there was much discussion about

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<sup>125</sup> THOMAS BERRY, *supra* note 11, at 75.

<sup>126</sup> *Id.* at 63.

<sup>127</sup> SPETH, *supra* note 3, at 100. To the same effect, *see also* HAWKEN, *supra* note 10, at Chapter 10, “Restoring the Guardian.”

<sup>128</sup> *See infra* Appendixes 3a and 3b (accompanying notes 227 and 228) for graph and table of data on the income disparity issue.

<sup>129</sup> Douglas Rushkoff, *Think Occupy Wall Street Is a Phase? You Don’t Get It*, CNN, <http://www.cnn.com/2011/10/05/opinion/rushkoff-occupy-wall-street/index.html>.

resisting “Obamacare.”<sup>130</sup> Denying people access to affordable healthcare is an anti-egalitarian, pro-masculinist, domineering undertaking; any temporary successes in forestalling affordable healthcare for the public will only hasten the post-crash movement for reform.<sup>131</sup> If over-all wealth cannot increase, and all boats cannot be lifted in the hopes that the poorest will float up with the richest, then “the only way to lift the bottom is to drop the top.”<sup>132</sup> The new meaning of justice should be much more feminist: it would “consist in carrying out [the] complex of creative relationships” in which “each individual is supported by every other being in the Earth community. In turn, each being contributes to the well-being of every other being in the community.”<sup>133</sup> This is not communism; it is a vibrant community

In this post-crash society lawyers, especially, should be less concerned with six- and seven-figure incomes than they are now. John Maynard Keynes looked forward to our realization that:

[T]he economic problem is not . . . the permanent problem of the human race. . . . When the accumulation of wealth is no longer of high social importance, there will be great changes in the code of morals. . . . The love of money as a possession—as distinguished from the love of money as a means to the enjoyments and realities of life—will be recognized for what it is, a somewhat disgusting morbidity, one of those semi-criminal, semi-pathological propensities which one hands over with a shudder to the specialists in mental disease.<sup>134</sup>

Really, the change toward a more women-oriented workplace is already underway. Certainly, society is a long way from the mid-nineteenth century, when the *London Times* worried that giving property rights to mar-

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<sup>130</sup> Grace Marie Turner, *A Resistance Movement Rises Against Obamacare*, Forbes.com, Dec. 10, 2012, available at <http://www.forbes.com/sites/gracemarieturner/2012/12/10/a-resistance-movement-rises-against-obamacare/>.

<sup>131</sup> Karl Marx was in favor of free trade because he foresaw, correctly, that it would exacerbate the disparities between rich and poor and “hasten the social revolution. It is in this revolutionary sense alone, gentlemen, that I vote in favor of free trade.” Karl Marx, *On the Question of Free Trade*, an address before the Democratic Association of Brussels, Jan. 9, 1848, [http://www.cooperativeindividualism.org/marx\\_freetrade.html](http://www.cooperativeindividualism.org/marx_freetrade.html).

<sup>132</sup> GILDING, *supra* note 2, at 218, 220.

<sup>133</sup> THOMAS BERRY, *supra* note 11, at 62-63.

<sup>134</sup> JOHN MAYNARD KEYNES, *Economic Possibilities for Our Grandchildren*, in *ESSAYS IN PERSUASION* 366 (1933, 1963).

ried women “would destroy marriage as society knew it, which consisted of ‘authority on the one side and subordination on the other . . . What is to prevent her from going where she likes, and doing what she pleases?’”<sup>135</sup> Men in the U.S. are becoming more nurturing. They are doing more housework. They are taking more responsibility for child rearing. These trends will surely make them more caring and sensitive because it is “broadening the definition of masculinity to include new skills and pleasures. Hunting but also cooking. Golf but also child care.”<sup>136</sup> When men begin to realize the time and energy it takes to raise children, they will appreciate flexible work hours, on-site child-care, and the need for emergency absences. There will necessarily follow a reduced emphasis on money making: “Time with kids, the coaching, the homework help. . . . The message: The ability to generate income is not the only measure of value.”<sup>137</sup>

Part of what is necessary, then, is to disabuse ourselves of our still-current gender stereotypes. An aspect of that project is underway in the movement for same-sex marriage.<sup>138</sup> After the “crash” gender stereotypes will change, and there will be more women lawyers in positions of influence.

## 2. Society Will Require a Significant Dose of Ecofeminism

Karen J. Warren states ecofeminism’s case succinctly when she writes that there are important interconnections between the masculinist, unjustified domination of women and of nature, and that understanding these connections is important to understanding their solutions.<sup>139</sup> The solution must involve an

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<sup>135</sup> Liza Mundy, *Women, Money and Power*, TIME MAG., Mar. 26, 2012, at 28, 30-31.

<sup>136</sup> *Id.* at 32.

<sup>137</sup> *Id.* “Americans . . . define the American dream not in terms of mansions and luxury cars but as something more basic—a home, a college degree, financial security and enough left over for a few extras like dining out. . . . In interviews, . . . about two dozen men played down the economic considerations, saying the stigma associated with such jobs [traditionally associated with women] had faded, and that the jobs were appealing not just because they offered stable employment, but because they were more satisfying.” Shaila Dewan & Robert Gebeloff, *More Men Enter Fields Dominated by Women*, N.Y. TIMES, May 21, 2012, p. A1, A3.

<sup>138</sup> See Peter Baker, *Same-Sex Marriage Support Shows Pace of Social Change Accelerating*, N.Y. TIMES, May 11, 2012, A20. Motivations for men entering into traditionally women-held jobs include “financial concerns, quality-of-life issues and a gradual erosion of gender stereotypes” Dewan & Gebeloff, *supra* note 134.

<sup>139</sup> WARREN, *supra* note 65, at 43.

understanding that it is okay to be gentler, more caring, and less domineering. We need to tread more carefully with each other and with the earth.

As part of that more careful treading, there has to be more *sharing*, less trophy hunting, and less concern with being at the top of the food chain. In her influential book on cultural anthropology Riane Eisler argues that masculine domination became the norm about 6000 years ago.<sup>140</sup> It came about during an “evolutionary crossroad in our prehistory when human society was violently transformed ... from a partnership society to a dominator society.”<sup>141</sup> This rule of masculine domination, extraction, mindless pollution, and wasteful production and consumption<sup>142</sup> cannot continue.

Overpopulation, an important component of the environmental crisis, underlies the rest.<sup>143</sup> Some scholars assert that the most important aspect of the environmental crisis is global climate change.<sup>144</sup> However, even if there were no greenhouse gases, unchecked population growth would be ruinous, and surely increasing population is a factor in increasing greenhouse gases.<sup>145</sup> Unless this population issue is addressed, no significant progress can be made on the environmental crisis: the more humans continue reproducing, the more we continue manufacturing and consuming things, the more mouths there are to feed<sup>146</sup>, the more thirst to slake<sup>147</sup>, and the more waste is discharged. That seems evident. In a masculinist world, though, it is not evident to everyone.

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<sup>140</sup> EISLER *supra* note 7, at 59.

<sup>141</sup> *Id.*

<sup>142</sup> “[T]he stability of production depends on a large volume of military expenditures, quite a few of them thoughtfully designed to destroy all life.” GALBRIATH, *supra* note 37, at 257.

<sup>143</sup> See, e.g., Mary Ellen Harte & Anne Ehrlich, Op-Ed., *The World’s Biggest Problem? Too Many People*, L.A. TIMES, July 21, 2011, at

<http://articles.latimes.com/2011/jul/21/opinion/la-oe-harte-population-20110721>; see also LESTER R. BROWN, *ECO-ECONOMY: BUILDING AN ECONOMY FOR THE EARTH*, Chapter 10, at [http://www.earth-policy.org/books/eco/eech10\\_ss2](http://www.earth-policy.org/books/eco/eech10_ss2).

<sup>144</sup> SPETH, *supra* note 3, at 20-21.

<sup>145</sup> IPAT is a formula for measuring environmental problems. It holds that environmental degradation (the “I” is for “impact”) is the product of Population times Affluence times Technology. “Which is to say, the damage we do to the earth can be figured as the number of people there are, multiplied by the amount of stuff each person uses, multiplied by the amount of pollution or waste involved in making and using each piece of stuff.” Donella Meadows, *Who Causes Environmental Problems*, DONNELLA MEADOWS ARCHIVE, SUSTAINABILITY INST., [http://www.sustainer.org/dhm\\_archive/index.php?display\\_article=vn575ipated](http://www.sustainer.org/dhm_archive/index.php?display_article=vn575ipated).

<sup>146</sup> Meanwhile, croplands are diminishing. INTERNATIONAL SERVICE FOR THE ACQUISITION OF AGRO-BIOTECH APPLICATIONS, *GM Crops and the Environment*,

Overpopulation is certainly an ecofeminist issue: many women are effectively being forced to do something with their bodies that they do not want to do—have children.<sup>148</sup> If women are treated as “male-controlled technologies of reproduction”<sup>149</sup>—hierarchical domination, again—what policies would tend to prevail? Certainly included would be the denial of access to abortion (and at its most extreme, even in cases of rape or incest<sup>150</sup>), denial of access to contraception (social conservatives in the United States frame the issue as giving employers<sup>151</sup> and pharmacists<sup>152</sup> “freedom of religion”) and, where possible, “attempts to manipulate women back into compulsory motherhood and the so-called women’s sphere.”<sup>153</sup> It would be expected that male-dominated religions and world-views would promote natalism,<sup>154</sup> deny overpopulation is a problem at all and attempt to deny girls’ educational op-

<http://www.isaaa.org/resources/publications/pocket/4/default.asp> (last visited Mar. 13, 2013) (arguing for more intense use of farmland using biotechnology because current methods, combined with diminishing cropland, are inadequate).

<sup>147</sup> Clean drinking water is also diminishing. Janet Neuman, *Chop Wood, Carry Water: Cutting to the Heart of the World’s Water Woes*, 23 J LAND USE & ENVTL L. 201, 204 (2008). (“The lack of clean drinking water and adequate sanitation contributes to more than 250 million cases of waterborne and water-related diseases every year, causing some 14,000 deaths every day, about 4,000 of which are children under the age of five.”)

<sup>148</sup> At least 40% of US pregnancies were unwanted. Sharon James, *Unplanned Pregnancies in States Reach 4 in 10*, USA TODAY, May 19, 2011, at <http://yourlife.usatoday.com/parenting-family/pregnancy/story/2011/05/40-of-pregnancies-across-USA-unplanned-study-finds/47316772/1>.

<sup>149</sup> EISLER, *supra* note 7, at 175.

<sup>150</sup> See, e.g., Justin Quinn, *The Abortion Debate in Conservative Politics*, ABOUT.COM US CONSERVATIVE POLITICS, <http://usconservatives.about.com/od/abortionthefamily/i/AbortionPolitic.htm>.

<sup>151</sup> See, e.g., Robert Pear, *Senate Rejects Step Targeting Coverage of Contraception*, N. Y. TIMES, Mar. 1, 2012, available at <http://www.nytimes.com/2012/03/02/us/politics/senate-kills-gop-bill-opposing-contraception-policy.html?pagewanted=all>.

<sup>152</sup> See, e.g., Cheryl Wetzstein, *Washington State Can’t Force Pharmacies to Sell Emergency Contraception Pill*, WASH. TIMES, Feb. 22, 2012, at <http://www.washingtontimes.com/news/2012/feb/22/state-cant-force-pharmacies-to-sell-plan-b/>.

<sup>153</sup> Greta Gaard, *Toward a Queer Ecofeminism*, in NEW PERSPECTIVES ON ENVIRONMENTAL JUSTICE, Rachel Stein, ed, 21, 27 (2004).

<sup>154</sup> Republican presidential candidate (and devote Catholic) Rick Santorum disapproves of contraception as “a license to do things in a sexual realm that is counter to how things are supposed to be” (Timothy Egan, *Theocracy and Its Discontents*, N. Y. TIMES OPINIONATOR (on-line commentary, Feb. 23, 2012, at <http://opinionator.blogs.nytimes.com/2012/02/23/theocracy-and-its-discontents/>).

portunities.<sup>155</sup> Of course there is scant if any evidence that females in the U.S. are denied an education. (Or is there? Review the discussion above about young women's experience in law school.)

Part of what should become valuable after the crash are the values advocated by ecofeminists: cooperation, nurturing, supportiveness, nonviolence, integrality, and sensuality (that is, a greater appreciation of what is apprehended by the senses, including nature), balancing out competitiveness, individuality, assertiveness, and intellectuality

These ecofeminist values should translate into practical societal changes such as enhancing the cohesion of communities by the promotion of cooperatives, removing the blockages to widespread consumption of locally-produced organic foods, a larger place for an appreciation of the arts, the development of stronger communities by more farmers markets, community

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<sup>155</sup> See, e.g., commentary by the Right to Education Project:

Cultural and social beliefs, attitudes and practices prevent girls from benefiting from educational opportunities to the same extent as boys. There is often a powerful economic and social rationale for investing in the education of sons rather than daughters, as daughters are perceived to less valuable once educated, and less likely to abide by the will of the father, brother or husband. In most countries, both the public and private sectors continue to be dominated by men, leading parents to ask themselves: why bother educating our girls if they will never make it anyway?

<http://www.right-to-education.org/node/192>.

The US State Department's website contains this condemnation of the Taliban in Afghanistan from 2001:

The assault on the status of women began immediately after the Taliban took power in Kabul. The Taliban closed the women's university and forced nearly all women to quit their jobs, closing down an important source of talent and expertise for the country. It restricted access to medical care for women, brutally enforced a restrictive dress code, and limited the ability of women to move about the city. . . . The Taliban ended, for all practical purposes, education for girls. Since 1998, girls over the age of eight have been prohibited from attending school. Home schooling, while some-times tolerated, was more often repressed.

<http://2001-2009.state.gov/g/drl/rls/6185.htm>.



vegetable plots,<sup>156</sup> an new, different mechanisms of ownership and capital structures for businesses.<sup>157</sup> The present system in the U.S. is undemocratic. As Riane Eisler points out, this system rewards “dominators” with, in the last 35 years;

[A] reconcentration of wealth and economic power at the top, attempts to return us to a “father-headship” family, and increasing use of violence in foreign relations. This regression has brought a retreat from earlier economic safety-net policies, and a return to rules, policies, and practices that advantage powerful in-groups with little or no concern for disempowered out-groups.<sup>158</sup>

There will be a much more holistic health system that focuses on promoting health, not treating disease. In short, the post-crash society will be more “humane, cultured, and sustainable.”<sup>159</sup>

To explore the validity of the assertion that men and women lawyers have different values, the author and his colleague Prof. Edwin Love<sup>160</sup> conducted an on-line survey of Whatcom County lawyers in February and March of 2011. Of the 270 licensed attorneys the survey was sent to, 108 responded. Thirty-one respondents were women (28%), and 77 men (72%), percentages close to the national division of population between men and women law-

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<sup>156</sup> GILDING, *supra* note 2, 242-45, 248. Other changes may include art fairs, the further spread of community supported agriculture (CSA), fewer working hours, street parties, and serious campaign finance reform.

<sup>157</sup> “There is an emerging corporate model designed to permit a company to pursue a social mission in addition to maximizing shareholder value. The ‘benefit corporation’ model has three main elements: (1) the corporation must establish a general public benefit, aimed at yielding material positive societal impacts; (2) corporate directors must consider the corporation’s public benefit when making decisions; and (3) each year, the corporation must report on its social and environmental performance, as assessed by a third party standard.” Part of an analysis of Washington State House Bill 2239, “establishing social purpose corporations,” at <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bill%20Reports/House/2239%20HBA%20JUDI%2012.pdf>.

<sup>158</sup> RIANE EISLER, *THE REAL WEALTH OF NATIONS*, 101 (2007).

<sup>159</sup> JOHN MICHAEL GREER, *THE ECOTECHNIC FUTURE: ENVISIONING A POST-PEAK WORLD* 76 (2009).

<sup>160</sup> Marketing Department at Western Washington University.

yers.<sup>161</sup> The response rate was 40%.<sup>162</sup> Among the items of interest are these: (1) as expected, there are more females in the younger cohort groups—about 45% of the lawyers age 25-35 are female; there are no females in the 65-plus age group. (2) Female lawyers are, compared to male lawyers, more in favor of such income- and social-equalizing projects as increased public transit, more bicycle lanes, same-sex marriage, a more progressive tax system and access to affordable health care. (3) Female lawyers affirmed more than male lawyers that “nature has value in itself regardless of any value humans place on it.” Men responded significantly more favorably to the idea that “humans should master nature rather than attempt to co-exist with it,” and they were significantly more confident that “technology can address our environmental concerns.” (4) Female lawyers in the sample are clearly more likely to practice in the areas of environmental, Native American, juvenile, and marital and family law than were men. Men were more likely to practice civil litigation, personal injury, probate, and real estate law. The findings are at least consistent with the themes explored in this paper. Results appear in Appendix 4, *infra*.

## V. SUMMARY AND CONCLUSION

It is undisputed by all but the most obdurate deniers that the environmental crisis is real, that we cannot go on this way. It has been apparent to many people for a long time: infinite quantitative growth on a finite planet is impossible. During the early days of the environmental movement, and for some years thereafter, two trends seemed to have the potential to correct our ruinous misdirection: the increase in women lawyers and ecofeminism. Neither of those flowered into a means toward finding a sustainable path.

It is getting very late now, quite possibly too late to avoid a “Great Disruption.” The present system is not sustainable, and there will be a tough patch ahead. And then, unless the disruption is truly violent and nihilistic, society will be refashioned. When it is, the foundations laid down in the last 40

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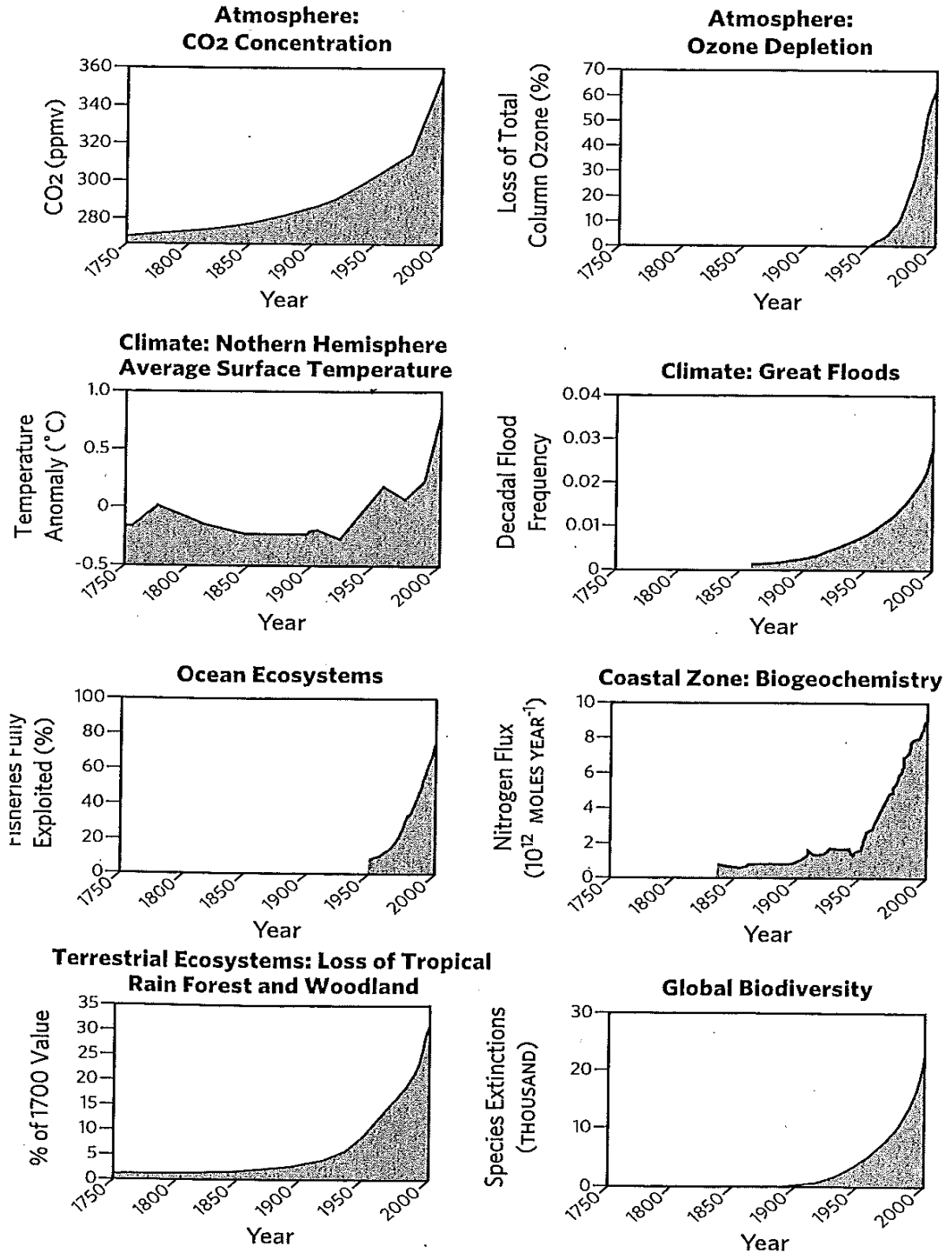
<sup>161</sup> AMERICAN BAR ASSOCIATION, COMMISSION ON WOMEN IN THE PROFESSION, *A Current Glance at Women in the Law*, Feb. 2013, p. 2, available at [http://www.americanbar.org/content/dam/aba/marketing/women/current\\_glance\\_statistics\\_feb\\_2013.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_feb_2013.authcheckdam.pdf).

<sup>162</sup> This is well above the median response for such surveys, see [http://www.supersurvey.com/papers/supersurvey\\_white\\_paper\\_response\\_rates.pdf](http://www.supersurvey.com/papers/supersurvey_white_paper_response_rates.pdf).

years--the attitudes of women lawyers and ecofeminism--will be built upon, and the potential for a new, more sustainable future will be laid out.

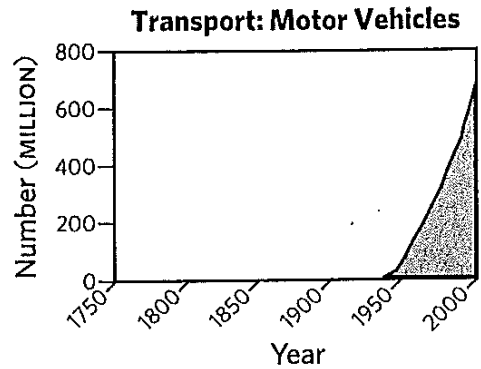
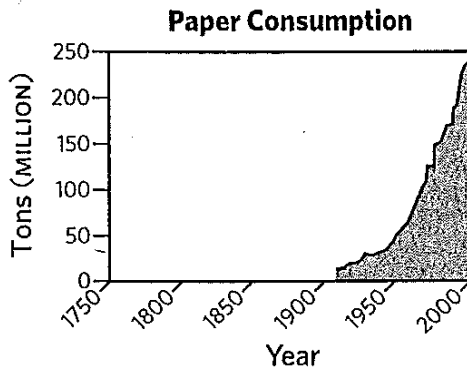
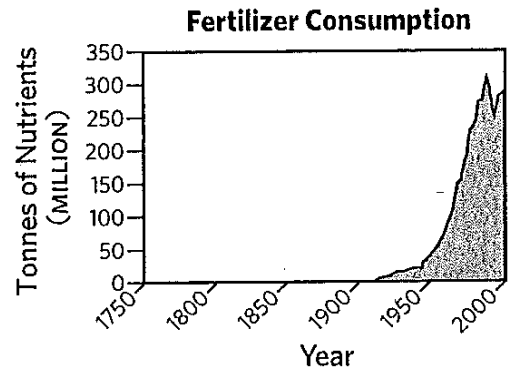
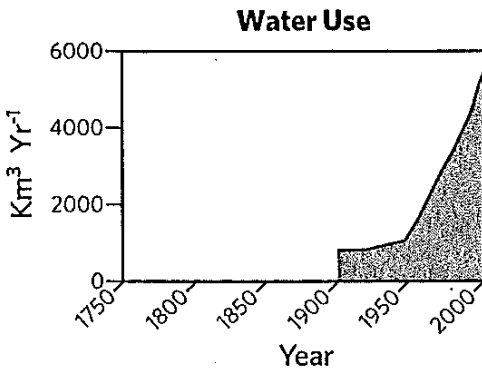
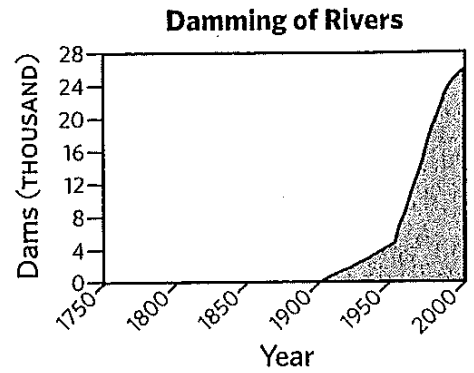
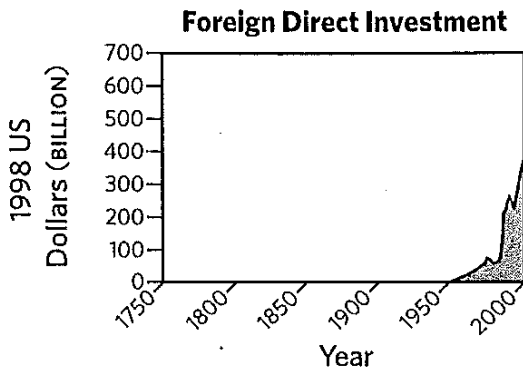
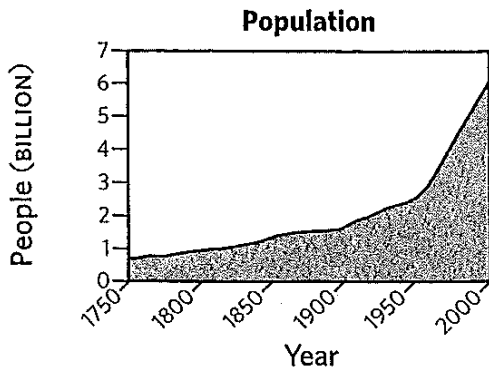


Appendix 1: The “Hockey Sticks”<sup>163</sup>



SOURCE: W. Steffen et al., *Global Change and the Earth System* (2005)

<sup>163</sup> SPETH, *supra* note 3, at xx and xxi.



Appendix 2: Current business practices that contribute to the ecocrisis; Characteristics of law practice that women tend to find offensive; and Characteristics that women lawyers tend to, or would like to, bring to the practice

Current business attitudes that contribute to the ecocrisis.	Characteristics of law practice that women tend to find offensive.	Characteristics that women lawyers tend to, or would like to, bring to the practice
<p style="text-align: center;">Hierarchical structure</p> <p>“[T]he idea of dominating nature has its primary source in the domination of human by human and the structuring of the natural world into a hierarchical Chain of Being ...”<sup>164</sup> which puts humans at the top and gives them power to set the rules.</p> <p>“The industrial establishment is the extreme expression of a patriarchal tradition with its all-pervasive sense of dominance, whether of rules over people, of men over women, of humans over nature. . . . The rights of the natural world of living beings is still at the mercy of the modern industrial corporation as the ultimate expression of patriarchal</p>	<p style="text-align: center;">Hierarchical structure</p> <p>Many women react against the law’s—and the law firm’s--hierarchical structure; “[s]tarting with less social power than their male peers, they tend to dislike engaging in hostile contests with [authority].”<sup>166</sup></p>	<p style="text-align: center;">Hierarchical structure</p> <p>“[C]ollegiality, not hierarchy [characterizes the atmosphere an all-women law firm] . . . . Collaboration and equality are important principles for relations among the partners . . . .” and also with clients and the court.”<sup>167</sup> Women do not “throw [their] weight around.</p>

<sup>164</sup> Murray Bookchin, *What is Social Ecology?*, in *EARTHCARE: AN ANTHOLOGY IN ENVIRONMENTAL ETHICS*, 291 (David Clowney & Patricia Mosto, eds. 2009).

dominance over the entire planetary process.” <sup>165</sup>		
<p>Competitiveness, adversarial nature</p> <p>Ray Kroc, a founder of McDonald’s “told a reporter in 1972, dismissing any high-minded analysis of the fast-food [industry] ... ‘This is rat eat rat, dog eat dog. I’ll kill ‘em and I’m going to kill ‘em before they kill me. You’re talking about the American way of survival of the fittest.’”<sup>168</sup></p>	<p>Competitiveness, adversarial nature</p> <p>“For many women who enter big law firms and find that they dislike the prevailing ambiance, the overriding issue is the ethic of competition that shapes much of their experience. They find that they do not like the institutional structure that places lawyers chronically in antagonistic relations to each other.”<sup>169</sup></p> <p>“They teach you this in law school, if nothing else, to get caught up in the idea of winning, and that it be seen as a sport rather than what’s the best resolution, not only for these parties, but the broader societal resolution.”<sup>170</sup></p>	<p>Competitiveness, adversarial nature</p> <p>“To strengthen social responsibility within the economic system generally and the legal system specifically, the tough/soft line needs to be erased and the mechanism of competition carefully reconstructed.”<sup>171</sup></p> <p>“A growing body of research demonstrates that women identify early warning signals that often go unnoticed by men. At negotiations, they bring up a broader range of issues, giving talks greater legitimacy [for those who] must</p>

<sup>166</sup> HARRINGTON, *supra* note 5, at 56.

<sup>167</sup> *Id.* at 185 (discussing the atmosphere at an all-women law firm).

<sup>165</sup> THOMAS BERRY, *supra* note 11, at 63.

<sup>168</sup> ERIC SCHLOSSER, *FAST FOOD NATION: THE DARK SIDE OF THE ALL-AMERICAN MEAL*, 37 (2001). “A recent profile in a business magazine of a prototypical ‘successful executive’ described his *modus operandi* as taking no prisoners, having the hands-on quality of Attila the Hun, and . . . not suffering fools gladly but shooting them on sight,” PAUL HAWKEN, *THE ECOLOGY OF COMMERCE* 124 (1993).

<sup>169</sup> HARRINGTON, *supra* note 5, at 128.

<sup>170</sup> JACK & JACK, *supra* note 54, at 59.

<sup>171</sup> HARRINGTON, *supra* note 5, at 150.



		<p>later accept the outcome. And they help men save face, lowering the temperature of confrontation.”<sup>172</sup></p>
<p style="text-align: center;">Toughness</p> <p>“Insofar as business consists of bargaining and dealing with other people, toughness is essential, and its opposite is not so much weakness as incompetence.”<sup>173</sup></p>	<p style="text-align: center;">Toughness</p> <p>“The problem for women, the problem not solved by their increased number, is that long tradition connects legal analysis with intellectual traits generally ascribed to men: hardness, toughness, sharpness. And women are under perpetual suspicion of intellectual and temperamental softness.”<sup>174</sup></p>	<p style="text-align: center;">Toughness</p> <p>“In stepping out of the big firms they have stepped out of the valuing of work above all else, the constant chase after money, the worship of competition at the expense of cooperation, the pit-bull approach to litigation. . . . In short, they have rejected the whole pattern of materialistic and individualistic values that have come to dominate the profession.”<sup>175</sup></p>

<sup>172</sup> Swanee Hunt, *Make Peace, Not War: Women Hold the Key*, CHRISTIAN SCI. MONITOR, Dec. 26, 2011, p. 33.

<sup>173</sup> Robert C. Solomon, *Corporate Roles, Personal Virtues: An Aristotelean Approach to Business Ethics*, 2 BUS. ETHICS Q. 317, 336 (1992).

<sup>174</sup> HARRINGTON, *supra* note 5, at 47.

<sup>175</sup> *Id.* at 188.

<p>Ideology of self-interest</p> <p>“It is in the short-term interest of [businesses] to use cheap child labor and not to pay for the safe disposal of toxic waste, even though these actions injure people and society. . . . Moreover, an [excessive] focus on self-interest can breed a self-righteousness in pursuing narrow goals that result in indifference to consequences.”<sup>176</sup></p> <p>“In the United States, as in other western countries, we have for long [sic] had a respected secular priesthood [i.e., economists] whose function it has been to rise above questions of religious ethics, kindness and compassion and show how those might have to be sacrificed on the altar of the larger good. That larger good, invariably, was more efficient production.”<sup>177</sup></p>	<p>Ideology of self-interest</p> <p>The legal “culture [tends to] validate[] tough, aggressive, adversarial practices untempered by a sense of responsibility for the consequences. And something is seriously wrong with a profession that requires its practitioners to think and act as if they were unrelated to other human beings.”<sup>178</sup></p> <p>“An openly caring attorney may be seen as unprofessional and perhaps incompetent.”<sup>179</sup></p> <p>“We’re not about fairness here; we’re about winning.”<sup>180</sup></p>	<p>Ideology of self-interest</p> <p>“[F]emale attorneys . . . are much more likely than men to use care thinking in their personal morality . . . . Women were much more likely to examine consequences and express concerns of personal responsibility even where dictates of role were clear.”<sup>181</sup></p> <p>“Relationships [are important], as opposed to isolated transactions between strangers. The key word is <i>community</i>.”<sup>182</sup></p>
<p>Rights of others &amp; rules applied to them.</p> <p>“The other-than-human modes of being are seen as having no rights. They have reality and value only through their use by</p>	<p>Rights of others &amp; rules applied to them.</p> <p>The justice ethical theory and the law view each person as a “rational, detached, disinterested, impartial, independent being; morality is . . . a matter</p>	<p>Rights of others &amp; rules applied to them.</p> <p>“Carol Gilligan’s <i>In a Different Voice</i> first set out the now familiar argument that men tend to solve</p>

<sup>176</sup> GERALD F. CAVANAGH, AMERICAN BUSINESS VALUES: A GLOBAL PERSPECTIVE 27 (2006).

<sup>177</sup> GALBRAITH, *supra* note 38, at 215 (1958).

<sup>178</sup> HARRINGTON, *supra* note 5, at 149.

<sup>179</sup> JACK & JACK, *supra* note 54, at 149.

<sup>180</sup> Comment by a lawyer and mentor of the author (in about 1981).

<sup>181</sup> JACK & JACK, *supra* note 54, at 105.

<sup>182</sup> HARRINGTON, *supra* note 5, at 192 (emphasis in original).

<p>the human. In this context the other-than-human becomes totally vulnerable to exploitation by the human, an attitude that is shared by all four of the fundamental establishments that control the human realm: governments, corporations, universities, and religions . . . .”<sup>183</sup></p>	<p>of relevant rights, rules, or principles; and moral conflict resolution is adjudicated by appeal to the most basic right, rule, or principle. . . . [T]he ‘authority’ of a right, rule, or principle is given from the top of a hierarchy. . . . As a model of conflict resolution, it is primarily adversarial, based on a win-lose, zero sum model of conflict.<sup>184</sup></p>	<p>moral dilemmas by applying rules or principles, and women by seeking to retain and reinforce relationships among the parties involved.”<sup>185</sup></p> <p>“Women . . . often describe themselves in terms of relationship with others. Isolation threatens both the self and the network of relationships. If identity and social value reside in the interconnectedness of life, ways must be found to keep the fabric of relationships intact.”<sup>186</sup></p>
<p>The importance of home</p> <p>“Our present ‘leaders’—the people of wealth and power—do not know what it means to take a place seriously: to think it worthy, for its own sake, of love and study and careful work. They cannot take any place seriously because they must be ready at any moment, by the terms of power and wealth in the modern world, to destroy any place.”<sup>187</sup></p>	<p>The importance of home</p> <p>“[F]emale law partners . . . leav[e] in droves during the years when they want to start families. This is an especially prevalent issue in law as few other professions feel ‘time pressure’ as acutely as lawyers. Billable hours and daily timesheets are a constant reminder that the business of law is all about time.”<sup>188</sup></p> <p>One woman said she was told that women should not be attorneys because</p>	<p>The importance of home</p> <p>“[S]he found it difficult to function in a competitive world <i>and</i> be at home, where she wanted to create a calm, supportive, non-stressful atmosphere. . . . [A] peaceful home life was wholly at odds with ‘the behavior and personality traits you have to encourage in the work world, and</p>

<sup>183</sup> Thomas Berry, *supra* note 11, at 4.

<sup>184</sup> WARREN, *supra* note 64, at 106.

<sup>185</sup> HARRINGTON, *supra* note 5, at 189-90.

<sup>186</sup> JACK & JACK, *supra* note 54, at 8.

<sup>187</sup> WENDELL BERRY, *Out of Your Car, Off Your Horse*, in *SEX, ECONOMY, FREEDOM & COMMUNITY* 19, 22 (1992).

<sup>188</sup> Merideth Lepore, *Could Flexible Hours Be the Secret to Retaining Female Lawyers?*, GRINDSTONE (Oct. 19, 2011) <http://the grindstone.com/career-management/could-flexible-hours-be-the-secret-to-retaining-female-lawyers-142/>.

	<p>they always put their family first.<sup>189</sup></p>	<p>in litigation especially.’ In that world, she declared, ‘Everything is adversarial. You have to deal with conflicts in the substance of your work <i>and</i> in the politics of the firm. You have to compete with your colleagues, argue with your clients, and even become adversarial with your associates.’<sup>190</sup></p>
<p style="text-align: center;">Money-making</p> <p>Money-making is important for a businessman because, “[t]he possession of wealth confers honor; it is an invidious distinction.<sup>191</sup> [I]n the last analysis, it argues success and superior force.”<sup>192</sup></p> <p>Too many business people are “more concerned with share price, growth, and their own power and wealth than with truth, honesty, and trustworthiness.”<sup>193</sup></p>	<p style="text-align: center;">Money-making</p> <p>“Let’s face it, from the creation of what we know as the corporate law firm in the late 19th century, making money has been its <i>raison d’etre</i>--making money for big-business clients and for their lawyers.”<sup>194</sup></p>	<p style="text-align: center;">Money-making</p> <p>At an all-female law firm, “we don’t value ourselves in terms of money. That’s a critical factor. We don’t measure our self-worth in terms of money.”<sup>195</sup></p>

<sup>189</sup> Debra Cassens Weiss, ‘*Maternal Wall*,’ *Sex Bias Block Advancement for Women Lawyers, Utah Study Finds*, A.B.A. J. (Nov. 2, 2010).

[http://www.abajournal.com/news/article/maternal\\_wall\\_sex\\_bias\\_block\\_advancement\\_for\\_women\\_lawyers\\_utah\\_study\\_finds](http://www.abajournal.com/news/article/maternal_wall_sex_bias_block_advancement_for_women_lawyers_utah_study_finds); see also Richard H. Sander, *The Radical Paradox of the Corporate Law Firm*, 84 N.C. L. REV. 1755, 1822 (2006) (“Firms are losing talent through inflexibility, and [are failing] to accommodate women seeking families.”).

<sup>190</sup> HARRINGTON, *supra* note 5, at 144 (emphasis in original).

<sup>191</sup> VEBLER, *supra* note 88, at 26.

<sup>192</sup> *Id.* at,181.

<sup>193</sup> CAVANAGH, *supra* note 175, at 10.

<sup>194</sup> Russell Pearce, *How Law Firms Can Do Good While Doing Well*, 33 FORDHAM URB. L.J. 211, 213 (2005).

<sup>195</sup> HARRINGTON, *supra* note 5, at 185.

<p>An understanding of the importance of <i>wholeness</i>—integrity.</p> <p>“[M]en in Western society have isolated women in the home and in a narrow band of service activities, and have appropriated for themselves both the reality and value of the adult human outside the home . . . .”<sup>196</sup></p>	<p>An understanding of the importance of <i>wholeness</i>—integrity.</p> <p>Male lawyers’ “excessive detachment from the issues results in only a partial understanding of them.”<sup>197</sup></p>	<p>An understanding of the importance of <i>wholeness</i>—integrity.</p> <p>“Only a jurisprudence based on concern for an integral Earth community is capable of sustaining a viable planet.”<sup>198</sup></p>

<sup>196</sup> THOMAS BERRY, *supra* note 11, at 180.

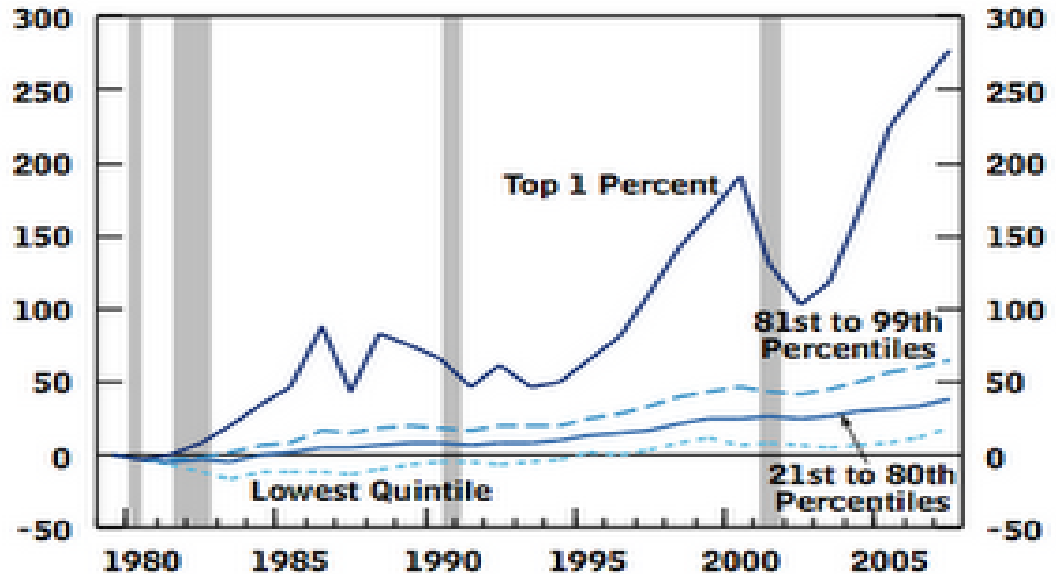
<sup>197</sup> HARRINGTON, *supra* note 5, at 178.

<sup>198</sup> THOMAS BERRY, *supra* note 11, at 74.

Appendix 3a<sup>199</sup>

## Cumulative Growth in Average After-Tax Income, by Income Group

(Percentage change in income since 1979, adjusted for inflation)



Source: Congressional Budget Office.

<sup>199</sup> *Missoula News image Archives*, BIG SKY PRESS (Feb. 2, 2012),

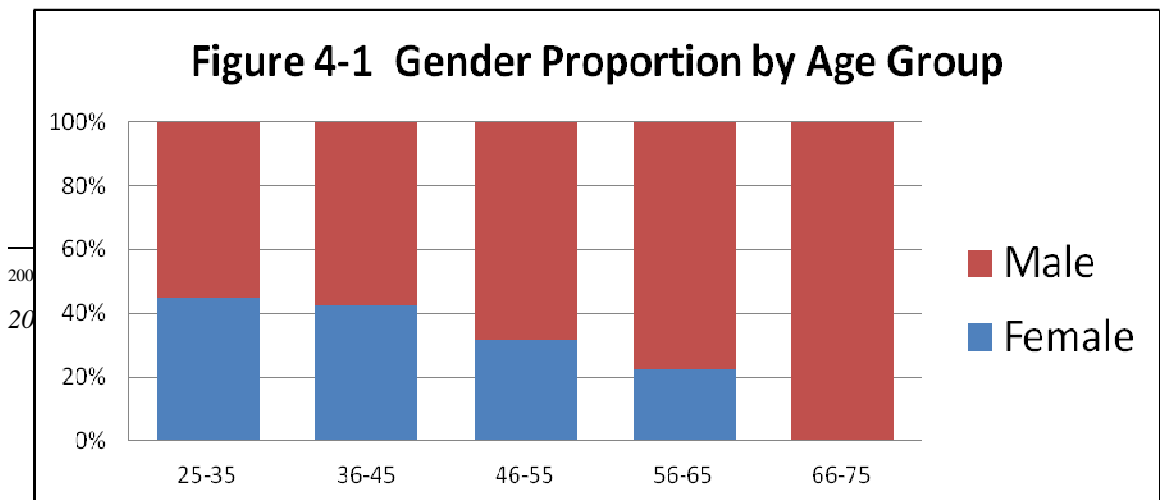
<http://missoulanews.bigskypress.com/gyrobase/ImageArchives?feature=Stories&oid=153385>

Appendix 3b, Data corresponding to graph above.<sup>200</sup>

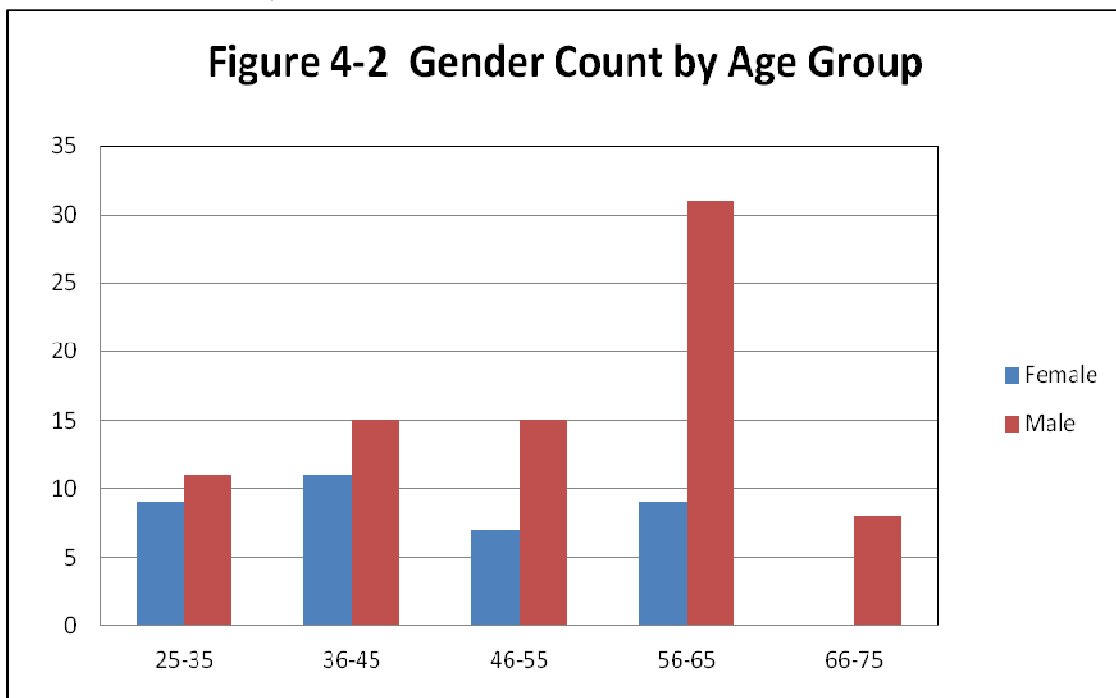
**Summary Figure 1. Growth in Real After-Tax Income from 1979 to 2007**  
(Percent)

Lowest Quintile	18.3
Second Quintile	27.5
Middle Quintile	35.2
Fourth Quintile	43.3
81st-99th Percentiles	65.0
Top 1 Percent	277.5

**Appendix 4: Survey of Attributes and Attitudes of Male and Female Lawyers in Whatcom County, Washington,**



**March, 2011 (31 female and 77 male).<sup>201</sup>**

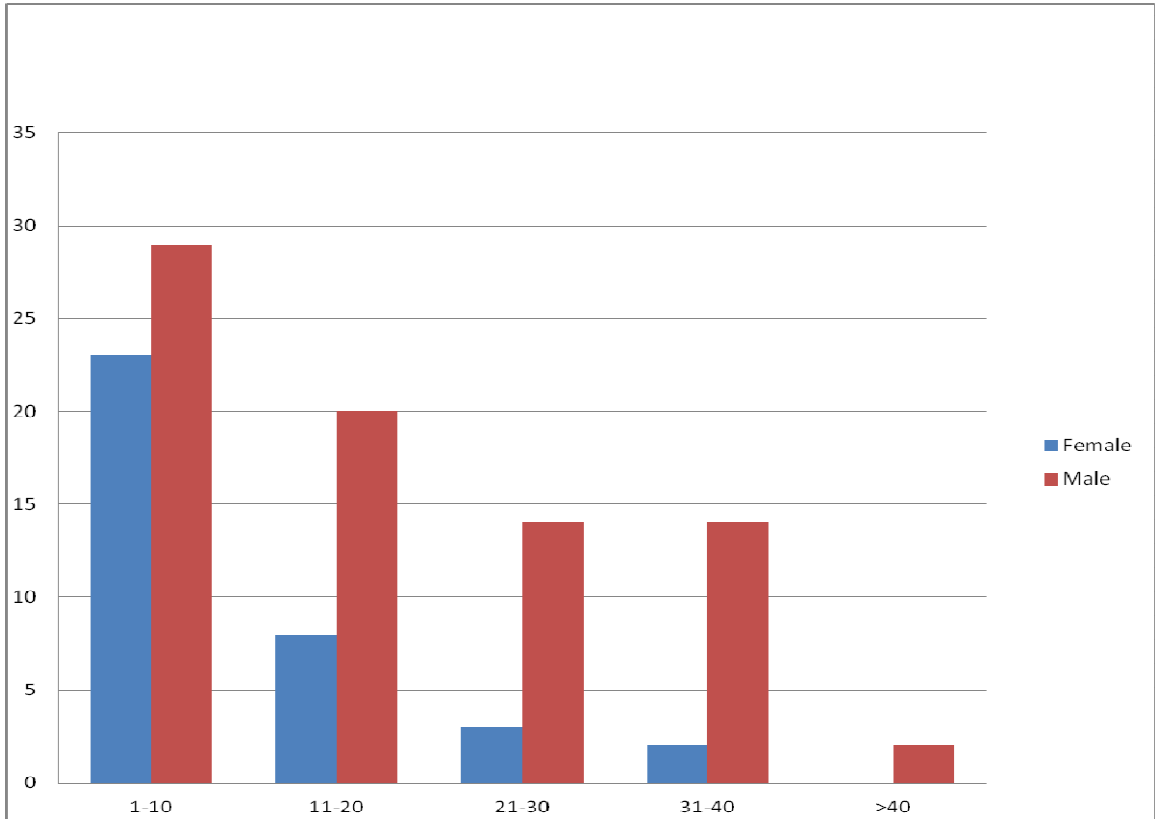


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<sup>201</sup> Interestingly, 31% of the Whatcom County respondents were female, and 69% male, almost exactly the percentage of women lawyers in the US: women are 31.9% of all lawyers, *see, e.g., Women in the Law in the U.S., CATALYST* (Oct. 17, 2012) <http://www.catalyst.org/knowledge/women-law-us>. Thanks again to Prof. Edwin Love of Western Washington University. Prof. Love assures the author that he examined the data thoroughly and that the difference between male and female respondents' answers are gender related, not age related.

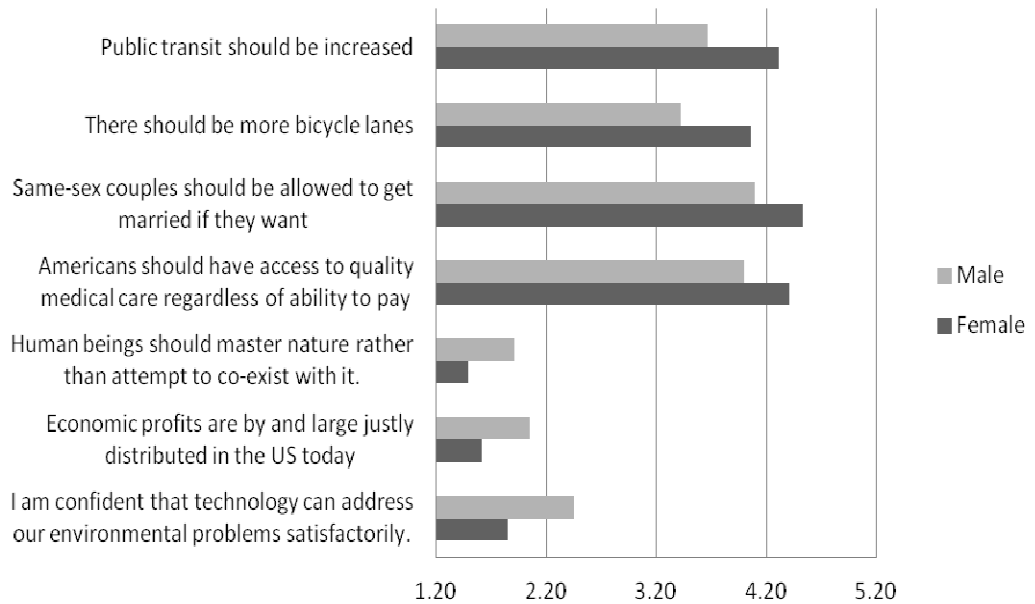


**Figure 4-3 Years of Practice by Gender**



- Public transit should be increased
- There should be more bicycle lanes
- Same-sex couples should be allowed to get married if they want
- Americans should have access to quality medical care regardless of ability to pay.
- Human beings should master nature rather than attempt to co-exist with it.
- Economic profits are by and large justly distributed in the US today
- I am confident that technology can address our environmental problems satisfactorily.

**Figure 4-4(a) Issue Attitude by Gender**



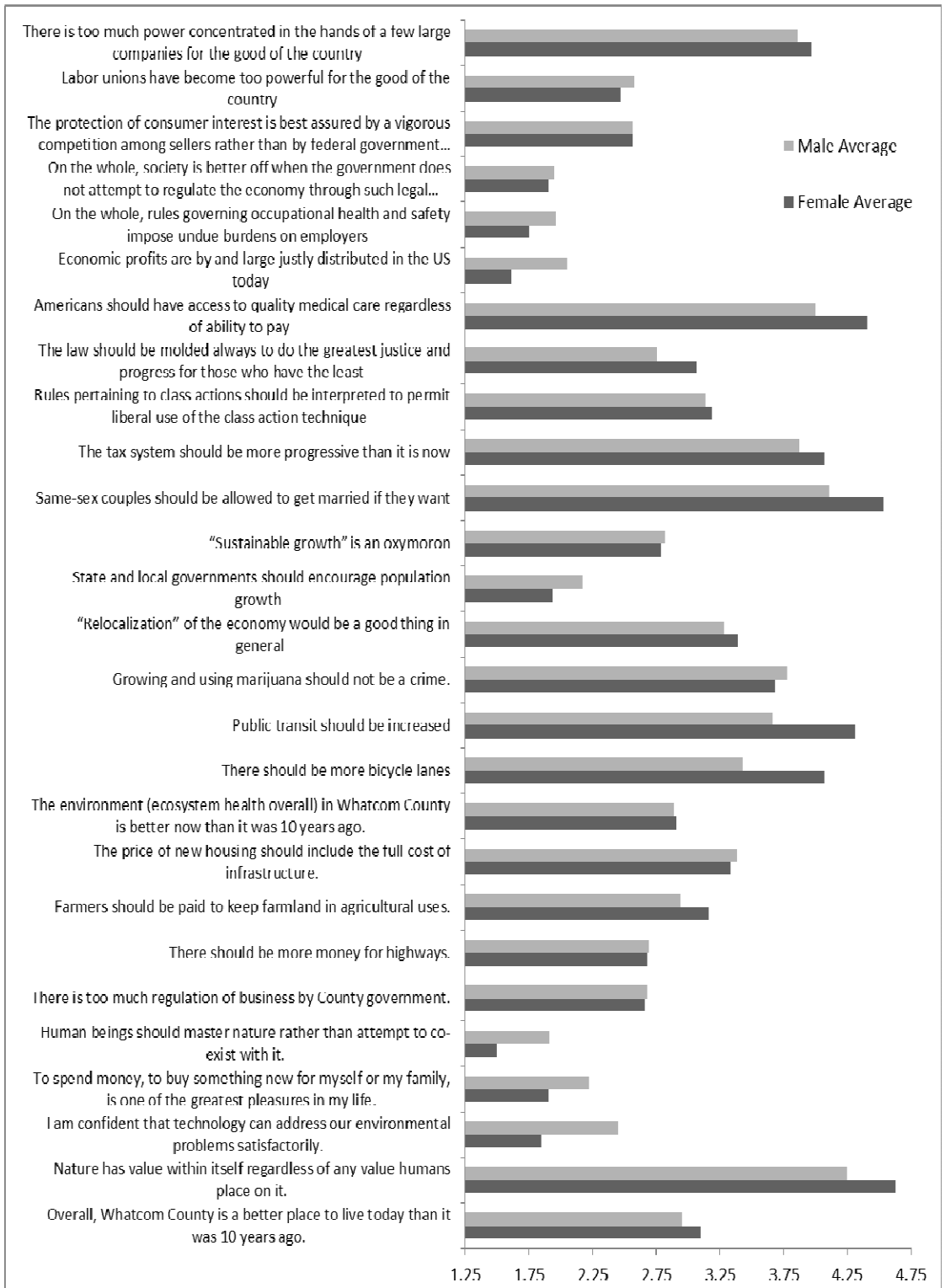


Figure 4-5 Area of Practice by Gender

