



Markus Hartung & Emma Zierckeⁱ

**Bucerius Center on the Legal Profession
Director**



**Bucerius Center on the Legal Profession
Non-Practicing Solicitor, Research Assistant**

Fix the Woman or Fix the Law Firm? *Why Law Firms Need to Stop Focusing on Gender Equality*

Sheryl Sandberg's "Lean In" campaign revitalized the debate between opposing perspectives on gender diversity: those who believe that women should change to get ahead in the workplace, and those who believe that the workplace should change to accommodate women. Which perspective is right? Many law firms are investing in gender diversity programs. But are these programs actually improving diversity?

How to Get to "Diversity"

Everyone seems convinced that diversity is a good thing. For the vast majority of law firms, "improving gender diversity" means increasing the number of women in the partnership. Some firms even go as far as to set a target: usually somewhere between 15 percent and 30 percent women in the partnership by, say, 2020. To meet this goal, firms offer women's leadership training, establish women's networks, offer coaching and mentoring, and help women find "sponsors" to assist them in their quest for partnership. Others review, improve, and publicize their maternity and flexible working policies in the

event that women return to work after having children. Some firms even offer “unconscious bias training” in an attempt to mitigate the so-called “bull’s stable culture” and thus help avoid those awkward moments when a senior partner asks a female associate to serve the tea.

So if law firms are so proactive in meeting this diversity goal, why are so many women still leaving the profession? Since 2013, the glass ceiling has been re-classified as the leaky pipeline (see McKinsey’s [Women Matter](#)). This is born out in the legal profession as although almost half of law firm associates are women, only 10-20 percent of the partnership are women. What is going wrong?

Fix the Woman?

In 2013 Sheryl Sandberg famously advised women to “lean in” or “sit at the table” in order to get ahead in the workplace. This nugget of advice met with mixed reactions. Some believed it was nothing new, books such as *“Nice Girls Don’t Get the Corner Office – 101 unconscious mistakes that women make that sabotage their careers,”* which have been around for years. Indeed, many talented, excellent, female lawyers have been successful partners long before *“Lean In”* acquired a social media hashtag. Others welcomed the attention that the campaign brought to women’s struggle to break the glass ceiling. After all, women need all the help they can get to survive in a man’s world, right?

Law firms too offer strategies to help women lean in: leadership training, assertiveness training, coaching, networking building. The reaction to such strategies is also mixed. Some women are grateful for the special treatment, but some women never saw gender diversity as an issue until they were selected for some “women’s only” training. What does it mean? Are they expected to change their ways in order to make partnership? Why were they singled out?

The underlying message conveyed by diversity strategies that focus on helping women climb the career ladder is clear: Women are not good enough. If you want to make partner, you will need to change your behavior, raise your profile, learn to blow your own trumpet, and be more assertive. These negative undertones can be hard to shake off, even if such strategies actually benefit or are warmly received by some women.

The “fix the woman” approach may help a few women “up-skill” sufficiently to fight in a man’s world, but the focus on assimilation and on helping the minority to change in order to become more like the majority strikes at the heart of people’s personal values. As a result, those who don’t want to change will leave. Worse still, by focusing on “fixing the woman,” diversity becomes a woman’s issue. The problem with making it a woman’s issue is that men tune it out – the “I’m a man, what has gender diversity got to do with me?” response. Many men only see gender diversity as relevant when it becomes a numbers’ game. And in order to “achieve” diversity, that is exactly what law firms are focusing on...

The Trouble with Equality

Many law firms measure diversity by reference to gender equality: What is the ratio of men to women in the partnership? Oh, one more than last year, so yes, we must be making progress. But what happens if that one woman you have promoted to partnership in order to meet your target suddenly leaves?

The focus on numbers distracts from the fundamental changes that are needed to achieve diversity and does not actually measure “diversity” itself. Diversity used to mean differences based on age, gender, race – visible differences. Now people are realizing that diversity includes all kinds of invisible differences: your culture, class, upbringing, religious beliefs, hobbies, and more. How can we measure that?

Why also are law firms content to strive for 20 percent or 30 percent female representation at partnership level rather than 50 percent? Thirty percent is often cited as the critical mass needed to bring about change, but what sort of changes exactly are we expecting to make, when these women have been taught how to “fit in” to the partnership in the first place?

Attempting to achieve diversity by making things equal is counterproductive. It promotes sameness rather than diversity and can inadvertently lead to unfair outcomes. Women may have equal access to long-hour jobs, but without complementary changes to social norms around sharing household responsibilities, this has resulted in the “double burden” phenomenon, which leads some women to opt out of work altogether.

The key problem with an equality approach to diversity is that it promotes initiatives that are directed at changing the individual rather than addressing structural or operational inequalities. Taken in a broader context, this can lead to long-term organizational problems if only prospective partners who “fit in” to the partnership mold make it to partner, and a uniform leadership team emerges. A focus on equality leads to homogeneity, not diversity, and leaves the dominant culture untouched, and this is what is leading women (and men) to opt out. As a contributor to the *Huffington Post* once [wrote](#), “Lean in until you fall over, ladies – you still won’t find gender balance.” Even those who lean in still find themselves face to face with the glass ceiling. So is the answer to fix the workplace?

Fix the Law Firm?

The stereotypical law firm culture is considered to be a “male-dominant culture”: a bull’s stable culture with long lunches in smoky men’s clubs, doing business at motor racing or football matches, copious amounts of fist-banging on tables and back slapping. This kind of “male” culture is often cited as the root of all barriers to diversity. So what can be done to change it? Unconscious bias training, banning gender-biased client events, rebuking “sexist” behavior. But does that really help? Changing law firm culture sounds like a tall order, and some will argue that law firm culture cannot and should not be changed. It is built around a highly successful business model where loyalty (meaning long hours) and rainmaking are rewarded, and these are, unfortunately, areas in which women are considered less able to compete than men. The problem with dominant groups, however, is that they are rarely challenged to think

about their dominance, and thus a complete overhaul of law firm culture in order to accommodate women is not high on the business agenda.

Moving the Focus Away from Gender Equality

The shortcomings of the “fix the woman” approach may give weight to the opposing view that the workplace needs to change in order to accommodate women, but change anchored in banal stereotypes of law firm culture will not win a business case. Instead, law firms need to focus on the underlying operational and structural systems that hamper diversity.

Take, for example, flexible working. We assume that women leave law firms because they cannot (or will not) balance work and family. Traditional diversity strategies dictate that firms should offer flexible working to women to encourage them to stay on, especially after having children. Many law firms have a “loyalty” culture, which is founded on the belief that the longer and harder you work for your firm, the more you will be rewarded. The standard reward and appraisal system confirms this. Long hours are equated with respect and become part of a lawyer’s estimation of his or her own self-worth. This underlying belief is reinforced by war stories about the number of all-nighters worked and partners bragging about missing family events to clinch the deal for their client.

Is it any wonder, then, that women (and men) don’t want to take up flexible working offers, as it could harm their careers? The hardliners will argue that long hours and success go hand in hand, but couldn’t this circle be broken if lawyers were predominantly assessed on their effectiveness and output (i.e., client satisfaction), and wouldn’t this actually have a positive impact on the appraisal and reward system? Encouraging investment in non-billable (but highly valuable) activities like innovation, mentoring, and team management, and incentivizing lawyers to work more efficiently, would lead to overall better results as well as making flexible working more acceptable.

The *Harvard Business Review* recently reported (whilst lamenting that most companies’ diversity initiatives were stuck in the 1960s – which, by the way, is where the “fix the woman” approach originates) that the most effective diversity solutions weren’t even designed with diversity in mind. So isn’t it time that law firms stopped focusing on gender equality and started focusing on those operational and structural systems that hamper diversity?

¹ **Markus Hartung** is a lawyer and mediator. He is director of the Bucerius Center on the Legal Profession (CLP) at Bucerius Law School, Hamburg. He has a broad experience in managing law firms: In 1999, he was elected as managing partner of Oppenhoff & Rädler, the predecessor firm of Linklaters in Germany. During his tenure he oversaw the merger with Linklaters, and served as the managing partner of Linklaters in Germany and as a member of the Global Executive Committee of Linklaters from 2001-2008. At the CLP he focuses on legal market research and is responsible for the conception of educational and continuing education programs (management and leadership) for legal professionals.

His special expertise lies in market development and trends, management and strategic leadership, and corporate governance of law firms, combined with the regulatory requirements of various legal markets. Since 2007 he has been member of the Committee on Professional Regulation of the German Bar Association and has chaired this committee since January 2011. As a lawyer he focuses on conflict management, regulatory issues, and professional indemnity matters. In addition, he advises law firms in strategy and management questions and coaches partners in management functions.

He is a regular conference-speaker on leadership, management topics, and professional ethics and has written numerous articles and book chapters on these topics. He is co-editor and author of Wegerich/Hartung: *Der Rechtsmarkt in Deutschland* (The Legal Market in Germany), which came to the market in early 2014 and has developed into a standard reference for the German

legal market. Recently he dealt with the future of international law firms in a widely acknowledged book, *Leaders in Legal Business* (Ed. Stephen McGarry).

Emma Ziercke is a research assistant for the Bucerius Center on the Legal Profession and a non-practicing solicitor. Between 2002 and 2009, Emma worked as a corporate solicitor (managing associate) for Linklaters in London, mainly in the fields of private international M&A and public takeovers by scheme of arrangement.

Emma studied English Law, French Law, and French Language at the University of East Anglia in Norwich and at the University of Lyon, Jean Moulin III, in France. In 2014 she completed an Executive MBA with distinction and received an award for best overall performance from Nottingham University Business School.

During her MBA studies she focused on law firm management and won an award for her dissertation on gender diversity in law firms. Following her MBA studies Emma worked as an independent adviser in the field of gender diversity. Her work as a research assistant at Bucerius Center on the Legal Profession focuses on law firm management, gender diversity, and organizational behavior.