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The Gender Pay Gap and High-Achieving Women in the Legal Profession

Milan Markovic and Gabriele Plickert

Although women have made significant strides in the legal profession, female attorneys continue to earn far less than male attorneys. Relying on survey data from a large sample of full-time attorneys in Texas, we find a gender pay gap of thirty-five thousand dollars at the median that cannot be explained by differences in human capital or occupational segregation. We also provide evidence that the legal market especially disadvantages women who excel in law school. Whereas high academic achievement boosts male lawyers' incomes substantially, it does not have the same effect on female lawyers' incomes. High-achieving female lawyers earn less than high-achieving male lawyers across practice settings and earn less than their lower-achieving male counterparts in private practice. We conclude that discrimination in the legal profession operates partly by devaluing female attorneys' human capital, such that sterling academic credentials and other traits that are valued in men are far less valued in women.

INTRODUCTION

For much of American history, women could not practice law (Rhode 2013, 130). As jurisdictions removed legal prohibitions and cultural norms shifted, an influx of women began to enter the legal profession in the 1970s and transformed legal practice (Epstein 1993, 291). Women now constitute over half of all law students and 37 percent of practicing lawyers (Merritt and McEntee 2019).¹ Once confined to a few “feminized fields . . . at the bottom of the professional hierarchy” (Menkel-Meadow 1986), women practice in every legal market sector and hold some of the most powerful positions in the profession (Kay and Gorman 2008).

Despite this progress, true equality has proven elusive. Empirical research documents a metaphorical glass ceiling that inhibits female lawyers' careers (Kay and Hagan 1995; Reichman and Sterling 2004). Female lawyers are held to higher standards than their male counterparts, are continually called upon to prove their professional commitment, and disproportionately depart law firms without ascending to prestigious and lucrative partner positions (Kanter 1977; Hull and Nelson 2000; Wald 2009). Overt forms of discrimination are also common. A quarter of female attorneys report

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1. Bureau of Labors Statistics 2021.

that colleagues have treated them unfairly because of their gender (Collins, Dumas, and Moyer 2017), and 57 percent have been sexually harassed.²

Perhaps no issue has commanded as much attention as the legal profession's gender pay gap.³ The gender pay gap is not unique to law but appears to be of greater magnitude in law than in other professional fields such as engineering and business (Noonan, Corcoran, and Courant 2005; Dinovitzer, Reichman, and Sterling 2009). Although some scholars have speculated that the gender pay gap would dissipate once women were fully integrated into the legal profession (Donovan 1990; Chiu and Leicht 1999; Wald 2009), most studies point to its persistence (Noonan, Corcoran, and Courant 2005; Dinovitzer, Reichman, and Sterling 2009).

Scholars have offered several theories to explain the legal profession's gender pay gap. One traditional account focuses on female lawyers' purported tendencies to invest less in their human capital (Dinovitzer, Reichman, and Sterling 2009; Hagan 1990; Robson and Wallace 2001). Another focuses on labor market segmentation or segregation - female lawyers' sorting into less remunerative fields such as public interest or government work.⁴ Scholars have also explored the role of child-rearing and other familial factors (Hagan and Kay 1995; Noonan, Corcoran, and Courant 2005). Modern accounts concentrate on discriminatory organizational structures that favor men and devalue women (Kay and Gorman 2008; Dinovitzer, Reichman, and Sterling 2009; Sterling and Reichman 2016).

Relying on survey data from over nine thousand full-time Texas attorneys, we provide evidence of a large gender pay gap of thirty-five thousand dollars at the median and sixty-four thousand dollars at the mean. We also show that neither differences in human capital nor labor market segregation explain the earnings gap. Despite women's progress in the legal profession, male lawyers earn far more than similarly situated female lawyers across legal practice settings and roles. This research is also the first of its kind to examine whether the legal market especially disadvantages the most qualified female lawyers. Although scholars have consistently shown that academic performance is highly correlated with income (Sander and Bambauer 2012), we find that female lawyers with the strongest performance in law school do not see the gains of male lawyers with similar records and, in fact, earn no more than male lawyers with the weakest academic records. In private practice, high-achieving female lawyers earn substantially less than both their high-achieving and lower-achieving male counterparts. Discriminatory pay structures are so entrenched that superior qualifications do not ensure pay parity. Thus, women face a double bind in the legal profession: poor academic performance will disqualify them from the most lucrative positions, whereas the legal market will not fully reward superior performance. These findings have significant implications for women's advancement in the legal profession and gender equity more generally.

In the first section of this article, we discuss human capital theory and labor market segregation and their applications to the legal profession's gender pay gap. We also theorize that the gender gap partly may be caused by the legal market's devaluation of

2. International Bar Association 2019.

3. For a summary of empirical research on the topic, see Kay and Gorman 2008.

4. Sociologists claim that occupational segregation results from the interaction between labor markets and gender socialization (England et al. 1988).

female lawyers' academic performance, a particularly important marker for success in the legal profession. In the second section, we describe the parameters of our study and our data collection methods. In the third section, we use Blinder-Oaxaca decomposition to demonstrate that differences in human capital assets and occupational segregation explain only a small percentage of the legal profession's gender pay gap (Blinder 1973; Oaxaca 1973). In addition, we compare the earnings of high-achieving female lawyers to those of other groups using ordinary least squares (OLS) regression. We find that high-achieving female lawyers earn less than high-achieving male lawyers and no more than lower-achieving male lawyers. In private practice, they earn far less than both groups, and the pay gap is especially pronounced among law firm equity partners. In the fourth section, we analyze the implications of these results and situate them in the larger glass ceiling literature. The article concludes by noting relevant limitations and possible avenues for future research.

BACKGROUND

Human Capital and the Legal Profession's Gender Pay Gap

Economists have long stressed that education, job training, and other such expenditures should be considered as investments in human capital (Schultz 1961; Becker 1964). Scholars working in the human capital tradition view disparities in earnings as a function of differential human capital investments (Becker 1985; Goldin and Polachek 1987). With respect to the gender pay gap, male workers purportedly command higher wages than female workers because they invest more in their careers and therefore accumulate more experience and expertise that is rewarded in the market (Manning and Swaffield 2008).

Human capital theorists do not exclude the possibility of gender discrimination but maintain that, even in the absence of discrimination, women will tend to invest less in their human capital. In particular, it is more efficient and productive for married households to agree to a division of labor whereby one spouse (generally, the female) specializes in the home and the other (generally, the male) specializes in the workforce (Becker 1985). As Gary Becker (1985, 41) writes,

men and women have intrinsically different comparative advantages not only in the production of children, but also in their contribution to childcare and possibly to other activities. . . . Such intrinsic differences in productivity would determine the direction of the sexual division of labor by tasks and hence sexual differences in the accumulation of specific human capital that reinforce the intrinsic differences.

When women do work outside the home, they purportedly gravitate to less demanding job settings that are more compatible with childrearing and other familial responsibilities (Polachek 1979; Dau-Schmidt and Mukhopadhyaya 1999).

A substantial literature has criticized human capital theory's understanding of the gender pay gap (England et al. 1988; Anker 1997). Whereas human capital theorists

often portray women's employment in less remunerative fields as being driven by preferences for less demanding careers and an efficient division of labor, sociologists have emphasized that discrimination and socialization are interconnected and shape individual preferences (England et al. 1988; Kay and Gorman 2008). Women's ostensible decisions to invest less in their careers and gravitate to less demanding work settings are not made in a vacuum (Corcoran and Courant 1985). Nevertheless, most scholars agree that differences in human capital, along with occupational segregation, account for a significant portion of the gender pay gap (Robson and Wallace 2001; England 2005; Kay and Gorman 2008).

Law is a prestige-conscious profession that features "credentialed homogeneity"⁵ and therefore serves as an ideal locus to study, *inter alia*, gender stratification and income inequality. Although methodologies differ, most studies report that male lawyers earn substantially more than female lawyers (Kay and Gorman 2008). Scholars continue to evaluate the extent to which these disparities are the result of differences in human capital and female lawyers' overrepresentation in lower-paying legal market sectors (Dixon and Seron 1995; Kay and Hagan 1995; Dinovitzer, Reichman, and Sterling 2009). For example, one longitudinal study of American law school graduates found that female private practitioners earn approximately six thousand dollars less than their similarly situated male counterparts two years into their careers (Dinovitzer, Reichman, and Sterling 2009). Controlling for human capital, work profiles, and other factors, the study determined that male gender is associated with a 5 percent earnings premium. Since Ronit Dinovitzer, Nancy Reichman, and Joyce Sterling analyzed the gender pay gap at a time when lawyers were early in their careers and largely resembled one another, it likely underestimated the pay gap's magnitude.⁶

Other studies report a larger gender pay gap amongst lawyers. Using data from graduates of the University of Michigan Law School, Mary Noonan, Mary Corcoran, and Paul Courant (2005) determined that male and female lawyers begin at roughly equivalent salaries but that the female lawyers earn nearly 40 percent less fifteen years later. The male lawyers enjoyed an earnings premium of over 12 percent after controlling for the lawyers' human capital assets and occupational practice settings.

A few studies have also suggested that male and female lawyers do not obtain the same returns on their human capital assets. John Hagan and Fiona Kay's study of Toronto attorneys shows that male private practitioners earn far more from an elite education and experience than female private practitioners do and that much of the gender pay gap is attributable to female lawyers' lower returns on their capital assets (Hagan 1990; Hagan

5. Lawyers are characterized by credentialed homogeneity because they have the same basic educations and qualifications and are part of a nominally unified profession (Hagan 1990).

6. Ghazala Azmat and Rosa Ferrer (2017) purport to show—using the same dataset as Ronit Dinovitzer, Nancy Reichman, and Joyce Sterling—that the gender gap among law firm associates can be reduced to differences in hours billed and business origination, which they view as reliable measures of performance. There are reasons to question this analysis. First, their results are based on a small sample of early career lawyers (684 men and 441 women), when attorneys are largely dependent on partners for work and business generation is generally not expected (see Wilkins and Gulati 1998; Galanter and Henderson 2007). Second, assuming attorneys' self-reported numbers are reliable and do not reflect gendered differences in tracking and reporting hours and origination (see Dinovitzer, Reichman, and Sterling 2009), what Azmat and Ferrer (2017) describe as male attorneys' superior work ethic may be viewed as evidence that male associates are afforded more opportunities to work with law firm "rainmakers."

and Kay 1995). In a similar vein, Victoria Wass and Robert McNabb (2006) concluded that female solicitors' incomes in the United Kingdom would increase by 15 percent if the legal market rewarded their endowments equally to those of male solicitors.

Academic performance is an important indicator of human capital and informs employers' decisions about hiring and compensation across economic sectors (Miller 1998; Piopiunik et al. 2020). In the labor market, grades serve as a signal of cognitive ability as well as other difficult-to-discern traits such as work ethic and perseverance (Arkes 1999; Piopiunik et al. 2020). Even employers that are nominally skeptical of the value of academic grades regard them as a necessary screening and sorting mechanism (Rivera 2011). Grades are especially important in the legal profession. According to several studies, law school grades constitute the strongest predictors of attorneys' incomes (Sander and Bambauer 2012).⁷ The effects of grades over time may be stronger than they are immediately following law school (Noonan, Corcoran, and Courant 2005; Sander and Bambauer 2012) and are independent of their role in facilitating access to high-paying positions in corporate law firms (Heinz et al. 2005, 173; Sander and Bambauer 2012, 920). Indeed, grades function as "a double-edged sword: poor grades are as harmful to one's career as good grades are helpful" (Sander and Bambauer 2012, 920). Yet no empirical research heretofore has specifically explored the possibility that American lawyers obtain different economic rewards from law school performance based on gender and that the legal market may depress female lawyers' earnings by undervaluing their academic achievements.⁸

Gender, Academic Achievement, and Employment

Although social science research has shown that employers use academic performance as a signal of prospective employees' abilities and that strong academic performance correlates with higher earnings (Wise 1975; Jones and Jackson 1990; M. French et al. 2015), comparatively little research examines whether gender confounds this correlation. Several mechanisms could cause employers to devalue superior academic performance in women and pay them less than men. First, gender is one of the primary systems of self-other categorization and evokes conscious or unconscious assumptions and stereotypes (Ridgeway 1997, 220; Quadlin 2018, 334). When women succeed in male-dominated fields, they become "honorary men" while simultaneously being punished for failing to conform to traditional feminine stereotypes (Sommerlad 2003). The familiar competence-likability tradeoff suggests that women who present as highly competent via their academic achievement will be regarded as aloof and lacking in warmth (Fiske et al. 2002; Sommerlad 2003; Cuddy, Fiske, and Glick 2008; Quadlin 2018). As Madeline Heilman and colleagues (2004, 416) write, "[w]hen acknowledged as successful [women] no longer are saddled with the image of being

7. See also John Heinz and colleagues (2005, 172), who find a premium among lawyers of 36 percent for graduating in the top 10 percent or serving on a law review.

8. The authors have found that such research has been conducted on doctors' incomes. See generally Andrea Evers and Monika Sieverding (2014, 101), who suggest that "[f]or women, however, gaining good grades did not seem to be sufficient for a successful career; the final grade at medical school made no difference at all to women's later income."

incompetent, but they may also pay a price. The price is social rejection, taking the form of both dislike and personal derogation, and it appears to have definite consequences for evaluation and recommendations about reward allocation.”

Second, as a result of homophily, employers in male-dominated industries may shift hiring and performance criteria in a way that disfavors women and other under-represented groups.⁹ For example, employers will shift their hiring preferences from highly educated candidates to “street smart” ones if this shift advantages men (Uhlmann and Cohen 2005; Phelan, Moss-Racusin, and Rudman 2008). These processes are implicit and can occur even among individuals who regard themselves as being committed to gender equality (Kang and Banaji 2006).

Academic performance is especially important in law (Wilkins and Gulati 1998). However, the legal profession undermines high-achieving female lawyers in a variety of ways. For example, American law schools feature prototypically male pedagogy (Menkel-Meadow 1987; Guinier 1997; Schlee 2001). Feminist scholars have castigated law schools’ adversarialism and reliance on the Socratic method, in particular.¹⁰ Many women thrive in law school (Schlee 2001), but, akin to the law firm’s “iron maiden,” their success comes at a cost.¹¹ Female law students report working harder than male peers and have less time to devote to social activities and self-care.¹² High-achieving female law students may calculate that their sacrifices will pay off in the long run, but this idea presupposes that employers will reward hard work and acumen over other factors such as their abilities to assimilate into the firm’s “clubbable atmosphere” (McGlynn 2003, 170).

That legal work is difficult to evaluate may contribute to the devaluation of high-achieving female lawyers. Lawyers perform a mix of ministerial and analytical tasks, and firms and clients cannot closely supervise their work because of high monitoring costs.¹³ As a result, law firms base promotion and compensation decisions not on work quality but on crude proxies such as a lawyer’s billable hours (Wilkins and Gulati 1998; Sterling and Reichman 2016). Moreover, the abilities that firms reward early in lawyers’ careers are not the ones that they reward at the partnership stage (Wilkins and Gulati 1998). High-achieving female lawyers may reasonably believe that the qualities that have served them well throughout their careers, such as hard work and obeying their superiors, will continue to benefit them throughout their careers, but as David Wilkins and Mitu Gulati (1998, 1677) have explained, law firms are not meritocratic “tournaments” but more akin to figure-skating competitions because subjective, and occasionally idiosyncratic, factors influence firms’ assessments of individual lawyers as they rise through the ranks (Galanter and Palay 1994). In particular, female lawyers are at a disadvantage with respect to the important business development metric: “[B]ecause so few associates actually bring

9. Lauren Rivera (2012) describes, homophily—the tendency of individuals to gravitate to individuals similar to one’s self—as a function of cultural similarity and not necessarily racial and gender animus.

10. Catharine MacKinnon (1987, 205) has noted: “What law school does for you is this: it tells you that to become a lawyer means to forget your feelings, forget your community, most of all, if you are a woman, forget your experience.”

11. Women inducted into the iron maiden role are stereotyped as tougher than they are (hence, the name) and trapped in a more militant stance than they might otherwise take (Kanter 1977, 984).

12. See Law School Survey of Student Engagement 2019, 10.

13. Legal services are often referred to as credence goods because their quality is judged in relation to the individuals or firms providing the services (Ribstein 2004).

in any new business to their firms, partners make promotion decisions based on their expectations that an associate will bring in business. These expectations are largely based on subjective criteria that are very susceptible to being influenced by stereotypes about the roles and desires of women” (Epstein et al. 1995, 365). Law firms could regard superior academic performance as an asset for developing business when found in a male attorney but, when found in a female attorney, they regard it as evidence that she is “too intellectual” to forge relationships with clients (Gorman 2006; Rivera 2012).

Natasha Quadlin’s (2018) research on entry-level hiring illustrates the degree to which perceptions of academic achievement are gendered. In a recent study, she found that high-achieving female candidates are half as likely to receive callback interviews as their high-achieving male counterparts. They are also less likely to receive interviews than lower-achieving female candidates. When commenting on high-achieving female candidates, employers focused overwhelmingly on likability and deployed terms such as “arrogant” and “lacking in warmth,” even though their assessments were based solely on resumes. Employers did not describe high-achieving male candidates or other female candidates in these terms (Quadlin 2018, 348).

Lastly, the process of setting compensation itself may also have gendered aspects that impact the earnings of high-achieving female lawyers in particular. High-achieving female lawyers could be more reluctant than male colleagues to tout their accomplishments and initiate discussions regarding pay increases and bonuses (Babcock and Laschever 2003; Dinovitzer, Reichman, and Sterling 2009). Female solo practitioners may be apt to avoid clashes with their clients over unpaid fees (Davis 2008). In other words, pay disparities could be a function of high-achieving female lawyers’ tendency to seek “invisibility.”¹⁴ The preference for invisibility is entirely logical as a conflict- and discrimination-avoidance strategy but could undermine the most qualified lawyers’ abilities to leverage and publicize their value.

Although law firms and clients undoubtedly seek out smart and capable lawyers, this may not necessarily translate to higher earnings for women who exceed the base level of competence—graduation from law school and successful admission into the legal profession. Differential rewards for similar academic performance would also lead to a gender pay gap even in the absence of other appreciable differences between male and female lawyers.

METHOD

The Data

To assess if gender affects lawyers’ earnings, and if high-achieving women are devalued in the legal market, we relied on survey data from members of the State Bar of Texas (State Bar), which is the second-largest active-member bar association

14. Swethaa Ballakrishnen, Priya Fielding-Singh, and Devon Magliozzi (2019, 32–33) and Rosabeth Kanter (1977, 974) suggest that women in male-dominated organizations prefer “social invisibility” and do not “make their achievements publicly known or to get credit for their own contributions to problem solving or other organizational tasks.”

in the United States.¹⁵ Texas's legal market is characterized by a wide variety of private law firms as well as large governmental and corporate sectors.¹⁶ A lawyer must maintain membership in the State Bar to practice law in Texas.¹⁷

In coordination with the State Bar's Department of Research, the researchers surveyed State Bar members in March 2016 regarding their 2015 earnings from legal practice, including their bonuses. In addition to questions related to income and bonuses, the survey solicited demographic information and certain measures of human capital: years of practice experience, undergraduate and law school class rank, and undergraduate majors. Lawyers also provided information about their occupational practice settings (that is, whether they worked in private practice, government, public interest, in-house, or in a non-law-related capacity). Private practitioners received additional practice-setting questions relating to the size of their law firms, their roles within the firms, and their legal practice areas.

The authors were unable to solicit information regarding the law schools that lawyers attended as part of the income survey.¹⁸ However, 75 percent of Texas lawyers attend Texas law schools.¹⁹ To ensure that differences in law school prestige would be unlikely to affect the results, the authors compared enrollments by gender of the four highest-ranking Texas law schools (Baylor, Houston, Southern Methodist, and University of Texas) against the enrollments of the five lowest-ranking Texas law schools (St. Mary's, South Texas, Texas Southern, Texas Tech, and Texas Wesleyan) using American Bar Association data from 2009 to 2013.²⁰ The former were among the top sixty American law schools, and the latter were outside the top one hundred during the same time period, according to the influential *US News and World Report* rankings.²¹ T-tests indicated no differences in enrollments based on gender between the higher-ranking and lower-ranking schools for any individual year or in the aggregate.²²

15. See State Bar of Texas, *Frequently Asked Questions*, <https://www.texasbar.com/Content/NavigationMenu/AboutUs/AboutUsFAQs/default.htm>.

16. See State Bar of Texas, *State Bar of Texas Membership: Attorney Statistical Profile (2015–2016)*, https://www.texasbar.com/AM/Template.cfm?Section=Demographic_and_Economic_Trends&Template=/CM/ContentDisplay.cfm&ContentID=32670.

17. Tax Government Code § 81.051.

18. Studies differ on whether male lawyers attend more prestigious law schools than female lawyers. See, for example, Deborah Merritt and Kyle McEntee (2019), who find that male law students attend more prestigious law schools than female law students based on 2016 and 2018 law school enrollment data; Dinovitzer, Reichman, and Sterling (2009) find that, among law students who graduated in 2000, male graduates were more likely to have attended law schools in the top forty than female law students. But see Kathleen Hull and Robert Nelson (2000, 259), who find no gender differences in law school prestige among Chicago lawyers, and Karen Robson and Jean Wallace (2001, 86), who find no gender differences in law school prestige among Canadian lawyers. For a discussion of the effects of law school prestige on earnings, see generally Sander and Bambauer 2012, 920 (“[I]aw school elitiness . . . is mostly a one-edged sword: coming from a very elite law school is undoubtedly helpful, other things being equal, but diminishing levels of elitiness have smaller and smaller effects”).

19. See State Bar of Texas, *State Bar of Texas Membership*.

20. For enrollment data, see American Bar Association, *Statistics Archive: 2009–2013 Full-Time/Part-Time Total First Year Enrollment by Gender and Ethnicity*, https://www.americanbar.org/groups/legal_education/resources/statistics/statistics-archives/.

21. For a discussion and analysis of the *US News* rankings' impact on legal education, see Morriss and Henderson 2008, 792–93.

22. Analyses available by request.

In total, 11,793 Texas lawyers ultimately completed the income survey over a one-month period.²³ Survey respondents' backgrounds resemble those of State Bar members, except that women and less experienced attorneys are slightly overrepresented in the survey results. Of the respondents, 41 percent were female and 44 percent had been practicing for ten years or less. The State Bar is 35 percent female, and 30 percent of its members have been practicing for ten years or less.²⁴ To conduct our analysis, we focus on the 9,060 attorneys who practice full-time.²⁵ Analyzing pay differences only among full-time attorneys takes into account that female lawyers are more likely than male lawyers to fully or partially drop out of the workforce to care for family.²⁶ Removing respondents with unknown undergraduate and/or law school class rank and other missing information leads to a final analytical sample of 7,617 respondents.

Measures

We consider the effects of numerous variables on lawyers' differential earnings, including differences in lawyers' undergraduate educations and practice areas that have not received significant attention in previous studies. The following specific measures are used to disaggregate the gender gap in earnings and to compare the earnings of high-achieving female lawyers to those of other attorneys.

Dependent Variable

Income refers to attorneys' gross income from legal practice in 2015 (including any bonuses).

Demographic Background Controls

Gender is coded "1" for women and "0" for men. Race is coded "1" for minorities and whites and "0" for non-Hispanic white. Region is a binary variable, coded "1" for "metropolitan area" and coded "0" for "non-metropolitan area." We rely upon the US government's Federal Office of Management and Budget's classification system for metropolitan and non-metropolitan areas.

23. The survey was disseminated to approximately 94,150 active State Bar members for a response rate of nearly 13 percent, consistent with other large-scale surveys of lawyers. See, for example, Lawrence Krieger and Kennon Sheldon's (2015) reporting response rate of 12.7 percent. To rule out the possibility of non-response bias, we used late responders as a proxy for non-responders and compared them to early responders (Armstrong and Overton 1977). We found no significant demographic or income differences between the two groups, suggesting that our sample is representative of the active State Bar membership.

24. See State Bar of Texas, *State Bar of Texas Membership*.

25. In total, 89 percent of male lawyers in the total sample work full-time compared to 82 percent of female lawyers. This difference is significant ($p < 0.05$).

26. For example, a longitudinal study of graduates of Michigan law graduates reveals that 27 percent of female attorneys worked part-time to care for children compared to only 0.5 percent of men (Wood, Corcoran, and Courant 1993). That a significant percentage of women partly or fully leave the legal profession to care for children means that female lawyers in general must strive to prove their commitment to practice (Wass and McNabb 2006, 293–94).

Human Capital Controls

Practice experience is reported by years of law practice experience, up to and including the year 2015. The choices were (1) two years or less; (2) three to six years; (3) seven to ten years; (4) eleven to fifteen years; (5) sixteen to twenty years; (6) twenty-one to twenty-five years; and (7) over twenty-five years of law practice experience. An undergraduate major is composed of four undergraduate major categories: (1) social sciences; (2) humanities; (3) business (including economics); and (4) science, technology, engineering, and mathematics (STEM), referring to the range of science majors and engineering (for example, math, physics, biology, engineering, and so on). Social science is the comparison major group in our statistical analyses.

Undergraduate class rank was assessed using the following question: “which of the following best describes your class rank upon graduation from college?” Possible responses were: (1) tenth percentile; (2) twenty-fifth percentile; (3) fiftieth percentile; (4) seventy-fifth percentile; and (5) do not know. Undergraduate class rank is an independent measure of human capital but can also serve as a crude proxy for law school prestige because law schools admit students based largely on their undergraduate performance and law school admission test scores (Wongsurawat 2009). It is a “poorly kept secret” that law school admission offices focus on these criteria to the exclusion of others (Garfield 2013, 44).²⁷ The seventy-fifth percentile is the reference category in our statistical analyses.

Law school class rank was measured with the following question: “which of the following best describes your class rank upon graduation from law school?” Possible response choices were: (1) tenth percentile; (2) twenty-fifth percentile; (3) fiftieth percentile; (4) seventy-fifth percentile; and (5) do not know. The seventy-fifth percentile is the reference category. In the third section, we combine the first two categories to represent “high achievement” and the third and fourth categories to create a “lower achievement” category. The “do not know” responses are excluded from the analyses.

Occupational Setting Controls

Under occupation, respondents were asked: “for 2015, what was your primary occupation?” Respondents could specify: (1) for-profit corporate/in-house counsel; (2) government; (3) non-profit/public interest; (4) non-law-related; and (5) private law practice. The respondents could only select one setting. Non-law related is the reference group for our statistical analyses.

Occupational Setting Controls for Private Practitioners

Firm size was measured with the question: “for 2015, how many attorneys, including yourself, worked in your firm?” The survey instrument instructed respondents

27. The *US News and World Report* rankings assign 12.5 percent of the ranking to median law school admission test (LSAT) score and 10 percent to median grade point average (GPA). While LSAT is more heavily weighted, there is greater variance in undergraduate GPAs so the optimal ranking-boosting strategy would be for a law school to maximize median GPA (Garfield 2013; Merritt and McEntee 2019).

to consider all locations of their firms. Firm size is a continuous measure ranging from > 1 to 1,890. Role includes six dummy codes: (1) associate; (2) equity partner; (3) non-equity partner; (4) counsel; (5) other (for example, contract attorney); and (6) solo practitioner. To estimate the effects of role on income, we used associates as the reference group. Practice area refers to five dummy codes: (1) family law; (2) business; (3) personal litigation; (4) commercial litigation; and (5) criminal law. Although respondents could list more than one practice area, we focused on their primary areas.

Analytical Approach

The Blinder-Oaxaca decomposition is a widely used method of measuring differentials in earnings between two groups (Blinder 1973; Oaxaca 1973). Under this method, the gap in mean earnings is broken down into components. One component estimates the effects of the independent variables on the earnings differential, whereas the other estimates the portion of the differential that is unexplained by these variables and is suggestive of discrimination (Thaxton 2018). In our study, we assessed the effects of demographic characteristics, human capital assets, and occupation on the differential earnings of male and female lawyers as well as those of the subsample of male and female private practitioners.²⁸ We hypothesized that the gender pay gap could not be fully explained by differences in demographics, capital assets, or practice settings (including attorneys' private practice roles).

Our second hypothesis was that the legal market devalues superior academic performance in female lawyers. To test this proposition, we used OLS regression to compare the earnings of high-achieving female lawyers to high-achieving male lawyers, lower-achieving male lawyers, and lower-achieving female lawyers across practice settings and private practice roles. OLS regression analysis permitted us to quantify the premium associated with superior academic performance for different groups of male and female lawyers while controlling for other determinants of income (Zagorsky and Lupica 2008).

RESULTS

Gender and Earnings

In Table 1, we provide the descriptive statistics for our analytical sample of 7,617 full-time Texas lawyers divided by gender. As Table 1 indicates, male lawyers earn significantly more than female lawyers. In 2015, male lawyers earned thirty-five thousand dollars more at the median and sixty-four thousand dollars more at the mean than their female counterparts. Previous studies have found similar disparities (Noonan, Corcoran, and Courant 2005, 858; Robson and Wallace 2001, 87).

28. Dinovitzer, Reichman, and Sterling (2009) note that the unexplained difference measures the effects of checking off male versus female and that this component is often used as a proxy for discrimination.

TABLE 1.
Descriptive statistics of study variables (with t-tests)

Variables	Women full-time employed (N = 2,910)		Men full-time employed (N = 4,707)		Mean difference
	Mean	SD	Mean	SD	
Dependent variables					
Personal gross income (logged)	11.479	0.695	11.800	0.827	0.321***
Personal gross income (median)	\$95,000	109.128	\$130,000	229.322	35,000***
Personal gross income (mean)	\$120,254	109.128	\$184,322	229.322	64,068***
Demographic characteristics					
Female	0.408	0.492	0.592	0.491	0.184***
Minority	0.228	0.420	0.125	0.331	-0.103***
Metropolitan area	0.842	0.364	0.781	0.413	-0.061***
Human capital controls					
Years of experience	3.620	1.998	4.498	2.200	0.878***
Undergraduate major					
STEM	0.083	0.276	0.114	0.318	0.031***
Humanities	0.344	0.475	0.294	0.455	-0.055***
Business	0.198	0.398	0.313	0.463	0.115***
Social Sciences	0.458	0.498	0.392	0.488	-0.066***
Undergraduate performance					
10th and 25th percentile	0.853	0.353	0.777	0.416	-0.076***
50th percentile	0.127	0.332	0.180	0.384	0.053***
75th percentile	0.020	0.140	0.043	0.202	0.023***
Law school performance					
10th and 25th percentile	0.550	0.497	0.530	0.499	-0.002
50th percentile	0.351	0.477	0.367	0.482	0.016
75th percentile	0.098	0.296	0.098	0.298	0.001
Occupational setting controls					
In-house counsel	0.127	0.333	0.113	0.316	-0.014*
Non-profit/public interest	0.033	0.178	0.013	0.111	-0.020***
Government	0.230	0.421	0.143	0.349	-0.087***
Private Practice	0.544	0.498	0.695	0.460	0.151***
Non-law related field	0.039	0.194	0.029	0.150	-0.009*
Private practitioner controls					
<i>Firm size</i>	23.839	39.002	22.059	38.533	-1.780
Role					
Solo	0.257	0.437	0.318	0.446	0.060***
Associate	0.413	0.492	0.246	0.431	-0.160***
Non-equity partner	0.060	0.238	0.061	0.240	0.002
Equity partner	0.080	0.270	0.170	0.376	0.090**
Of counsel	0.031	0.180	0.038	0.192	0.007
Other	0.091	0.287	0.048	0.214	-0.043***
Practice area					
Criminal	0.032	0.238	0.067	0.250	0.035***
Family	0.103	0.304	0.059	0.237	-0.044***
Business	0.022	0.147	0.051	0.221	0.029***

TABLE 1. *Continued*

Variables	Women full-time employed (N = 2,910)		Men full-time employed (N = 4,707)		Mean difference
	Mean	SD	Mean	SD	
Litigation/Personal	0.048	0.213	0.081	0.272	0.033***
Litigation/Commercial	0.038	0.190	0.075	0.263	0.037***

Notes: † $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$.

Our descriptive results also point to other important differences between the sample's male and female lawyers. Female lawyers are underrepresented in private practice and overrepresented in government, public interest, and in-house positions in comparison to male lawyers (Hull and Nelson 2000, 241; Noonan, Corcoran, and Courant 2005, 857). Among private practitioners, female lawyers are more commonly found in associate positions and less commonly in solo practice. Male lawyers are much more often in law firm equity partner positions: 17 percent of male private practitioners are equity partners compared to only 8 percent of female private practitioners (Kay and Hagan 1998; Hull and Nelson 2000). In addition, female attorneys more frequently practice in "feminized" fields of law such as family law than in "masculine" ones such as business and commercial litigation (Bolton and Muzio 2007). We detect no differences in the firm size of the male and female lawyers in the sample.²⁹

The lawyers also differ in terms of their human capital assets. The male lawyers in the sample are significantly more experienced than the female lawyers are. They also more frequently majored in STEM and business, arguably more rigorous majors that command greater awards in the labor market.³⁰ However, the female lawyers were more likely to have excelled academically as undergraduates. Although some studies report significant gender differences in law school performance, the class ranks of the male and female lawyers in our sample are similar.³¹

To test whether the gender pay gap can be attributed wholly to differences in human capital and occupational segregation, we apply a series of regression decompositions in Table 2. We first regress the effects of our independent variables on income. The standardized coefficients represent the effects of female gender compared to male gender on income, with negative coefficients reflecting a gender gap. Next, we use decompositions to assess the percentage of the gender pay gap that is explained by differences between the male and female lawyers in our sample. In Model 1, we examine the initial gender gap in income with no other controls. We then add demographic background factors (Model 2),

29. Previous studies have found that firm size is one of the main determinants of private practitioners' incomes. See, for example, Dau-Schmidt and Mukhopadhyaya 1999; Dinovitzer, Reichman, and Sterling 2009.

30. "It is well documented that the returns to obtaining a college degree vary significantly across fields of study, with business and science majors earning a significant wage premium relative to all other fields" (Kinsler and Pavan 2015, 996).

31. Some older studies indicate that men outperform women in law school, but newer studies find that women slightly outperform men (Clydesdale 2004; Kay and Gorman 2008; Dinovitzer, Reichman, and Sterling 2009).

TABLE 2.

Regression decomposition coefficients and percentage of the gender income gap explained with alternate models, including selected controls

Model number	Model description	Income gap (b_{female})	Percentage of gap explained
1	Female	-0.191***	—
2	Female and demographic	-0.176***	1.9
3	Female, demographic, and human capital	-0.111***	13.2
4	Female, demographic, human capital, and occupation	-0.089***	16.8

Note: Demographic background controls are race and region. Human capital controls are years of practice experience, undergraduate major, undergraduate class rank, and law school class rank. Occupational controls include five categories: (1) for-profit corporate/in-house counsel; (2) government; (3) non-profit public interest; (4) private practice; and the reference category of (5) non-law related.

human capital assets (Model 3), and, finally, occupational setting to the model (Model 4) to estimate their effects on the gender earnings gap.

Table 2 demonstrates that there is initially a 19 percent earning gap between the male and female lawyers in the sample. This gap diminishes somewhat as we add controls for demographic backgrounds, human capital, and occupation. Nevertheless, even after controlling for these factors, the female lawyers in our Texas sample earn 9 percent less than the male lawyers. Thus, differences in demographic background, human capital assets, and occupational settings fail to explain the gender pay gap, and 83 percent of the gap is unexplained after all of these variables are included in our model.

The majority of attorneys in our Texas sample are private practitioners. Previous studies have found that the gender gap may be especially large in private practice (Dixon and Seron 1995; Kay and Hagan 1995). The income differences that have been observed in this setting could be a product of female lawyers' underrepresentation in high-paying equity partner positions (see Table 1) and female lawyers' selection into "feminized" fields as well as discrimination (Bolton and Muzio 2007). To better understand the gender gap in private practice, we disaggregate the gender pay gap among the sample's private practitioners, once again using Blinder-Oaxaca decomposition (Antecol, Cobb-Clark, and Helland 2014). The decompositions in Table 3 control for demographic factors, human capital assets, legal practice area, firm size, and law firm role.

As Table 3 shows, there is a gender earnings gap of 18 percent among private practitioners. Some of this gap is attributable to differences in human capital assets and the female lawyers' overrepresentation in less lucrative law firm roles and practice areas. Nevertheless, an earnings gap of 8 percent remains after controlling for the aforementioned factors, and 79 percent of the earnings gap is unexplained, signifying that omitted variables, including possible discrimination, are driving the gap. These results signify that the legal profession's gender pay gap cannot be reduced to the relatively minor differences in capital assets or occupational segregation. The underrepresentation of female private practitioners in equity partner positions and in the most lucrative legal practice areas also plays a minor role. Since the gender pay gap is not predominately

TABLE 3.
Regression decomposition coefficients and percentage of the gender income gap explained with alternate models, including selected controls for private practitioners

Model number	Model description	Income gap (b_{female})	Percentage of gap explained
1	Female	-0.182***	—
2	Female and demographic	-0.162***	2.3
3	Female, demographic, and human capital	-0.103***	14.7
4	Female, demographic, human capital, and firm size	-0.097***	15.9
5	Female, demographic, human capital, firm size, and role	-0.088***	18.3
6	Female, demographic, human capital, firm size, role, and practice area	-0.076***	20.7

Note: Demographic background controls are race and region. Human capital controls are years of practice experience, undergraduate major, undergraduate class rank, and law school class rank. The Firm size control is measured continuously. The role control equates to equity partner, non-equity partner, of counsel, solo practitioner, and associate as the reference category. The practice area controls include family law, business, personal litigation, commercial litigation, and criminal law as the reference category.

caused by differences between male and female lawyers, we theorize that differential valuing of like assets and achievements may be a major factor. In the next section, we explore the legal market's gendered treatment of high academic achievement.

The Earning of High-Achieving Women

As noted, empirical researchers have consistently found that academic performance is a key measure of human capital and predicts earnings across educational contexts (Wise 1975; Jones and Jackson 1990; M. French et al. 2015). With respect to attorneys specifically, superior performance in law school not only opens up pathways to lucrative positions in corporate law firms but also has a strong independent effect on income regardless of the practice setting. Law school grades are by far the most important predictor of career success if success is defined in pecuniary terms (Sander and Bambauer 2012). We used OLS regression to determine the effects of law school class rank and other variables on the incomes of the Texas lawyers in our sample (see Table 4).

Our analysis in Table 4 shows the impact of various human capital assets on earnings. As expected, law school performance has the largest effect: graduating at the top of one's class (tenth and twenty-fifth percentile) increases earnings by 25 percent in Model 1 and 22 percent in Model 2. Undergraduate class rank and STEM or business majors also have an independent effect on earnings in both models.³² Unsurprisingly in light of

32. Because our dataset does not include information on law school attended, we cannot exclude the possibility that undergraduate GPA only affects earnings indirectly via its effect on law school admission. See also Sander and Bambauer 2012 (finding that undergraduate GPA is not correlated with earnings after controlling for tier of law school).

TABLE 4.
Predictors of earnings (full-time attorneys)

	Model 1		Model 2	
	Beta	t	Beta	t
Women attorneys ^a	-0.182***	-09.10	-0.148***	-7.18
Minority ^b	-0.092***	-3.43	-0.075**	-2.75
Years of experience	-0.130***	29.12	0.128***	28.27
Metropolitan area	-0.125***	5.24	0.084***	3.45
Undergraduate major^c				
STEM	0.162***	4.71	0.133***	3.82
Humanities	0.027	1.14	0.027	1.13
Business	0.131***	5.40	0.096***	3.89
Undergraduate class rank^d				
10th and 25th percentile	0.155***	3.01	0.162**	3.06
50th percentile	0.118*	2.15	0.120*	2.13
Law school class rank^d				
10th and 25th percentile	0.251***	7.45	0.222***	6.50
50th percentile	0.057*	1.64	.043	1.23
Occupation^e				
In-house counsel	—	—	0.723***	8.65
Non-profit/public interest	—	—	0.317**	3.01
Government	—	—	0.136†	1.66
Private practice	—	—	0.457***	5.73
Constant		10.798***		10.436***
R ²		0.201		0.239

Notes: † $p < 0.10$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$. Standardized regression coefficients are shown in the table, with t-statistics.

^aCompared to males.

^bCompared to non-Hispanic whites.

^cCompared to the "Social Sciences" category.

^dCompared to the 75th percentile class rank.

^eCompared to the "non-law" category.

the statistical analyses in the previous section, female gender is negatively correlated with income. Minority race also has a small negative effect.

To determine if, consistent with our theory, the legal market devalues the academic performance of high-achieving female lawyers especially, we next divided our sample into four groups based on law school class rank and gender: high-achieving women, high-achieving men, lower-achieving women, and lower-achieving men. We used OLS regression to compare the earnings of the latter three groups of lawyers to those of high-achieving female lawyers while controlling for demographic background, human capital assets, and segregation into different legal market sectors. Table 5 Model 1 regresses income for the entire sample while controlling for demographic and human capital differences. Table 5 Model 2 adds lawyers' occupational practice settings. If our theory about the devaluation of high-achieving female lawyers'

TABLE 5.
Predicting income by gender and achievement (full-time attorneys)

	Model 1		Model 2	
	Beta	t	Beta	t
Minority ^a	-0.043***	-3.57	-0.035**	-2.92
High-achieving men	.128***	8.28	0.110***	6.99
Lower-achieving men	-.010	-0.69	-.018	-1.19
Lower-achieving women	-.072***	-5.08	-.060***	-4.19
Years of experience	0.351***	29.14	0.344***	28.31
Metropolitan area	0.061***	5.23	0.042***	3.53
Undergraduate major^b				
STEM	0.059***	4.76	0.049***	3.94
Humanities	0.016	1.22	0.016	1.26
Business	0.072***	5.48	0.054***	4.08
Undergraduate class rank^c				
10th and 25th percentile	0.081***	3.20	0.079**	3.18
50th percentile	0.059**	2.31	0.054*	2.23
Occupation^d				
In-house counsel	—	—	0.208***	8.41
Non-profit/public interest	—	—	-0.007	-0.41
Government	—	—	-0.030	-1.09
Private practice	—	—	0.148***	4.47
Constant		10.837***		10.680***
R ²		0.202		0.239

Notes: * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$. Standardized regression coefficients are shown in the table, with t-statistics.

^aCompared to non-Hispanic whites.

^bCompared to the “social sciences” category.

^cCompared to the 75th percentile class rank.

^dCompared to the “non-law” category.

academic performance is correct, then this group of attorneys should earn less than high-achieving male lawyers and potentially other groups as well.

Our results largely support our theory. As shown in Table 5 Model 1, high-achieving male lawyers earn 13 percent more than high-achieving female lawyers do. High-achieving female lawyers earn the same as lower-achieving male lawyers, and only 7 percent more than lower-achieving female lawyers. These results hold even after controlling for occupational setting in Table 5 Model 2. High-achieving male lawyers outearn high-achieving female lawyers by 11 percent, suggesting that differential job settings cannot explain the earnings disparities between these groups.³³ Under this model, high-achieving female lawyers also do not outearn lower-achieving male lawyers and enjoy only a modest earnings premium of 6 percent over lower-achieving female lawyers.

33. Kenneth Dau-Schmidt and Kaushik Mukhopadhyaya (1999) found strong negative effects on income for attorneys who worked in public interest, government, and education.

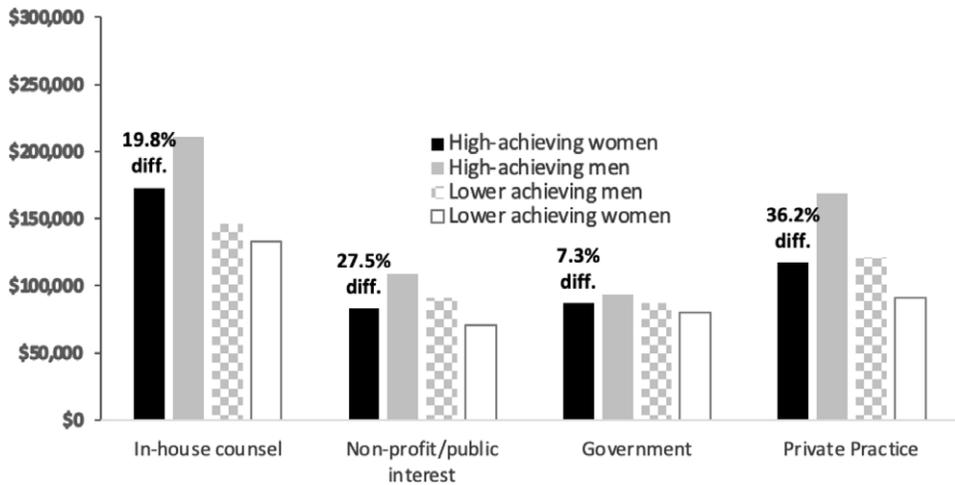


FIGURE 1.
Comparison of high-achieving female lawyers' incomes by occupation.

Figure 1 illustrates the gender earnings gap by occupational practice setting and academic achievement. We can see that female lawyers with the highest academic performance earn less than their similarly situated male colleagues in every occupational setting. The earnings gap between high-achieving male and female lawyers is largest in private practice (36 percent), followed by non-profit/public interest (28 percent). The smallest gender gap in earnings is observed among high-achieving male and female lawyers in government (7 percent), likely due to standardized salary structures (Dixon and Seron 1995).

To analyze the earnings of high-achieving female lawyers in private practice further, we conducted additional regression analyses on private practitioners' incomes. In Table 6, we divide the private practitioners into four groups based on class rank and gender. In our analyses, we controlled for demographic background, human capital differences as well as private practitioners' firm size, legal practice area, and law firm role. This allowed us to separate the effects of academic performance and gender from other possible causes of earning disparities such as the underrepresentation of female lawyers in equity partner positions and overrepresentation in less lucrative legal practice fields (see Table 1).

As we predicted, female private practitioners receive little benefit from superior law school performance. They earn less than high-achieving male private practitioners and no more than lower-achieving male private practitioners under all models. After all controls are added in Table 6, female lawyers earn 10 percent less than high-achieving male lawyers and only 4 percent more than lower-achieving female lawyers. Thus, the inclusion of firm size, practice area, and role in our models moderated the differences in earnings slightly. Finally, as set out in Figure 2, the magnitude of the gender pay gap depends in part on a private practitioner's law firm roles. High-achieving female lawyers earn as much as their high-achieving male colleagues in non-equity partner positions. However, in equity partner positions, they earn 51 percent less than high-achieving

TABLE 6.
Predicting income by gender and achievement among full-time private practitioners

	Model 1		Model 2		Model 3		Model 4	
	Beta	t	Beta	t	Beta	t	Beta	t
Minority ^a	-0.057***	-3.76	-0.041**	-2.81	-0.036**	-2.51	-0.037**	-2.60
High achieving men	0.128***	6.13	0.122***	6.17	0.109***	5.54	0.098***	4.96
Lower achieving men	-0.019	-0.95	0.006	0.34	0.002	0.13	-0.008	-0.47
Lower achieving women	-0.069***	-3.75	-0.044**	-2.52	-0.043**	-2.49	-0.041**	-2.44
Years of experience	.324***	20.85	.424***	27.22	.400***	22.52	.400***	22.59
Metropolitan Area	0.042**	2.77	0.008	0.59	0.018	1.26	0.018	1.31
Undergraduate major^b								
STEM	0.041*	2.59	0.034*	1.84	0.034*	2.26	0.036*	2.40
Humanities	0.011	0.67	0.006	0.38	0.004	0.25	0.003	0.20
Business	0.047**	2.75	0.040*	2.44	0.038*	2.41	0.039*	2.48
Undergraduate class rank^c								
10th and 25th percentile	.102**	3.11	0.063*	2.02	0.068*	2.20	0.068*	2.20
50th percentile	0.075*	2.31	0.056	1.80	0.064*	2.08	0.065*	2.14
Private practice Characteristics								
Firm size	-	-	0.315***	20.75	0.300***	12.68	0.298***	12.60
Role^d								
Solo	-	-	-	-	0.008	0.35	0.024	0.95
Non-equity partner	-	-	-	-	0.053***	3.49	0.050***	3.31
Equity partner	-	-	-	-	0.104***	6.10	0.104***	6.09
Of counsel	-	-	-	-	-0.060***	-4.03	-0.062***	-4.20
Other	-	-	-	-	-0.058***	-3.85	-0.061***	-4.06
Practice area^e								
Family	-	-	-	-	-	-	-0.035*	-2.39
Business	-	-	-	-	-	-	0.006	0.39
Litigation/Personal	-	-	-	-	-	-	0.051***	3.49
Litigation/Commercial	-	-	-	-	-	-	0.042**	2.88
Constant	10.920***		10.052***		10.079***		10.700***	
R ²	0.178		0.265		0.288		0.293	

Notes: * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$. Standardized regression coefficients are shown in the table, with t-statistics.

- ^aCompared to non-Hispanic whites.
- ^bCompared to the “social sciences” category.
- ^cCompared to the 75th percentile class rank.
- ^dCompared to the associate.
- ^eCompared to criminal law.

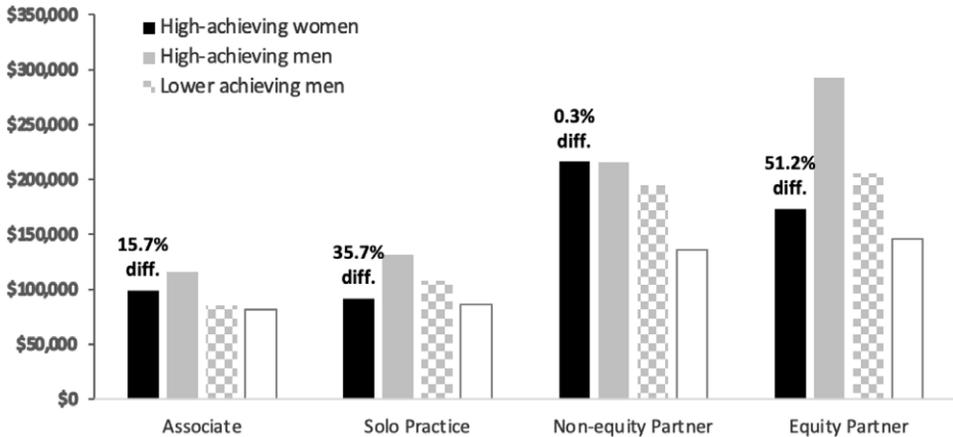


FIGURE 2.

Comparison of high-achieving female private practitioners' incomes by role.

Notes: * Income differentials estimated from Model 4 in Table 5.

male counterparts and 17 percent less than lower-achieving male counterparts. The same trend is observed in solo practice although differences are not as stark: high-achieving female solos earn 36 percent less than high-achieving male solos and 16 percent less than lower-achieving male solos.

In sum, consistent with our theory, high-achieving female lawyers do not reap the same benefits from their academic performance as male lawyers do. They earn less than male lawyers with the same law school performance across practice settings, with income differences most pronounced in private practice. When they practice as equity partners or solo practitioners, they earn significantly less than both high-achieving and lower-achieving male lawyers. For female lawyers, equaling or exceeding the qualifications of male colleagues is simply not enough to achieve pay parity.

IMPLICATIONS

A robust literature has sought to identify the causes of the legal profession's gender pay gap. Relying on a large cross-sectional sample of full-time lawyers, we have confirmed the existence of a gender gap of approximately thirty-five thousand dollars at the median and sixty-four thousand dollars at the mean that cannot be attributed solely to differences in human capital investments or female lawyers' overrepresentation in less remunerative legal market sectors or roles.

Contrary to the suppositions of some human capital theorists, female lawyers largely resemble their male counterparts in human capital assets (Becker 1964; Goldin and Polachek 1987). We have considered lawyers' practice experience and law school performance as well as oft-neglected factors such as undergraduate education. The female lawyers in our sample are somewhat less experienced than their male counterparts and are less likely to have majored in STEM or business, but they match their counterparts in law school performance and surpass them in undergraduate

performance.³⁴ Differences in demographic backgrounds and human capital assets explain only 13 percent of the gender earnings gap. After adding controls for occupational sector, 83 percent of the earning difference remains unexplained.

In examining the legal profession's gender pay gap, past scholarship has concentrated on the shunting of female lawyers into less lucrative legal market sectors and a glass ceiling that blocks women from ascending to lucrative private practice positions (Epstein et al. 1995; Noonan, Corcoran, and Courant 2005; Wald 2009). Consistent with this literature, the female lawyers in our sample are less commonly found in private practice and in law firm equity partner positions. However, female private practitioners still earn 8 percent less than male lawyers after controlling for firm size, practice area, and partnership status. Female private practitioners undoubtedly face pitfalls in the competition for partner positions (Kay, Alarie, and Adjei 2016), but even ones who ascend to these positions can expect to earn substantially less than similarly situated male colleagues.

Law has historically been male dominated. In this article, we have theorized that female lawyers' academic success could facilitate access to lucrative positions but also engender concerns about sociability (Schleef 2001; Heilman et al. 2004). Moreover, since performance and compensation assessments in law are nebulous and prone to subjectivity, we posited that legal employers and clients could consciously or unconsciously shift compensation criteria to disadvantage high-achieving women or that these women may fear publicizing their value (Wilkins and Gulati 1998; Williams and Richardson 2010; Regan and Rohrer 2012). Our findings largely accord with these theories.

We demonstrate, through a series of OLS regression analyses, that high-achieving female lawyers are devalued in the legal market. High-achieving female lawyers earn 11 percent less than their similarly situated male lawyers and the same as lower-achieving male lawyers. Disparities are especially pronounced in private practice where high-achieving female lawyers earn 36 percent less than their high-achieving male counterparts. But inequities persist across occupational settings, with high-achieving male lawyers outearning their high-achieving female colleagues in public interest and in-house positions by 28 percent and 20 percent respectively. Academically accomplished female lawyers fare best in government where they earn only 7 percent less than similarly situated male lawyers. Government lawyers are paid according to fixed pay schedules based on seniority, rendering compensation decisions less subjective and biased (Dixon and Seron 1995; Hall 2012).

Our findings raise the counterintuitive possibility that excessive focus on academic performance may harm female lawyers from an income maximization perspective.³⁵ Academic performance is the single greatest concern of law students (Krieger and Sheldon 2015). While superior academic performance facilitates access to desirable positions in corporate law firms, the benefits are not equal between the genders.

34. Dinovitzer, Reichman, and Sterling (2009) find that 75 percent of the gender pay gap remains unexplained, whereas John Hagan and Fiona Kay (1995) find that 61 percent is unaccounted for.

35. Milan Markovic and Gabriele Plickert (2018) discuss tradeoffs between higher incomes and more satisfying workplace settings.

Firms (and clients) claim to seek the “best and brightest” attorneys, but their actual compensation practices do not accord with this rhetoric (S. French 1999).

Since the legal market does not fully reward female lawyers for academic achievement, aspiring lawyers should arguably direct some of their energies to other worthwhile endeavors. Networking is a prime example. Under the current system, female law students may be well served to focus on forging relationships with classmates and lawyers upon which they can later capitalize rather than concentrating solely on academics.³⁶ Fiona Kay’s (2018) recent study highlights the importance of networks for minority groups especially. However, female law students have more familial responsibilities than their male peers, leaving little time for both studying and networking (Law School Survey of Student Engagement 2019). The tradeoff is not nearly as acute for male law students because they generally have more free time to devote to activities outside of law school, and any career investments they choose to make will likely boost their earnings *vis-à-vis* other groups.

One explanation for why women may not benefit from superior academic performance to the same degree that men do is because legal employers emphasize “cultural fit” over academic achievement and other objective factors once candidates demonstrate a baseline of competence. Employers will even dismiss their work as “not rocket science” to avoid hiring or rewarding high-achieving candidates who lack the right fit (Rivera 2012). The decision to favor fit could even appear economically rational if firms regard fit as a proxy for qualities such as the ability to generate business from clients.³⁷ Kay and Hagan’s (1995) finding that the effect of bringing in clients is strongly significant for women’s partnership prospects but not for men’s is a manifestation of the tendency to take for granted that male lawyers naturally have “what it takes,” whereas female lawyers must go over and beyond to demonstrate it (Gorman 2006).

Legal practice settings differ in their cultures as well as the representation of women in positions of authority. Yet sizeable earning disparities exist among attorneys in private practice, in-house positions, as well as in the public interest sector. While the precise mechanisms by which women are disadvantaged in these settings probably differ, female lawyers will rarely “fit” into any of these settings as well as male lawyers do because they do not conform to long-standing expectations of how lawyers look and behave.³⁸ In most legal practice settings, the archetypal attorney is still very much a white male (Anleu 1992; Wald 2009). Women lawyers are often conscious of this reality:

36. The benefits to lawyers extend beyond the buttressing of social capital. As Harris Kim (2009, 81) writes, “[i]n this fiercely competitive professional environment [of law] with highly demanding consumers and ever-shifting clientele, having access to the right kinds of contacts who can provide valuable legal advice is absolutely crucial for survival, let alone success.”

37. Corporate clients, in particular, often seek lawyers with whom they identify because they expect them to serve as conduits: “If a corporation’s attorney were to offer independent advice to her client and try to ‘lean’ on the client to accept it . . . the result would be obvious and swift: the business would seek another attorney” (Mather 2003, 1081).

38. Kay and Hagan (1995, 741) note that “[f]irms may act to reproduce a practice culture . . . that requires women lawyers to model themselves on an exaggerated image of those who traditionally have been considered “suitable candidates for partnership.”

There is a little bit paternalistic attitude towards women. You can either be relegated to the role of being sort of a submissive, little worker bee or, if you're more assertive . . . I feel that sometimes I scare the guys a bit. You can be in a meeting and . . . they're comfortable swearing and dropping the F-bomb here and there and so am I quite frankly, but because . . . there are ladies present, sometimes they'll hold themselves back. (Garth and Sterling 2018, 149)

Female lawyers can match their male counterparts in human capital and even adopt “male” speech patterns and hobbies and still find that they do not have the right “fit.”³⁹

Even the attainment of highly sought-after and powerful equity partner positions hardly ensures pay parity. To the contrary, high-achieving female equity partners earn 51 percent less than similarly situated male equity partners and 17 percent less than lower-achieving male equity partners. We also see large disparities among solo practitioners. Income differences are smaller among associates and non-equity partners, and higher-achieving female lawyers outearn lower-achieving male attorneys in these roles. Pay disparities may be less pronounced among high-achieving male and female non-equity partners and associates because their compensation is largely set *ex ante*. With respect to equity partners and solo practitioners conversely, compensation depends on subjective *ex post* assessments by fellow partners and clients.⁴⁰ Firms and clients can dismiss or underplay good outcomes obtained by high-achieving female lawyers to justify paying them less than male lawyers with the same outcomes (Williams and Richardson 2010). Accomplished female attorneys may also be less apt to protest when they are not paid according to their worth because of the fear of backlash and discrimination (Kanter 1977).

In addition, legal acumen—as measured by law school performance—could conceivably be less important for equity partners and solo practitioners. In these roles, lawyers' incomes are based largely on their ability to develop business and sell their firms' services (Williams and Richardson 2010). Formally or informally, most law firms are “eat what you kill.”⁴¹ Legal acumen could be more tied to associate and non-equity partner compensation because firms ultimately need lawyers in these roles to produce high-quality work for firm rainmakers (Wilkins and Gulati 1998; Reichman and Sterling 2004).

Nevertheless, male private practitioners receive a substantial earnings premium from high law school class rank across roles, including in equity partner and solo practitioner positions. The fact that high-achieving female lawyers do not receive comparable income boosts from superior academic performance suggests that its connotations are more mixed for this group. Quadlin (2018) similarly found that high academic achievement does not benefit female candidates in the entry-level employment market

39. “[W]omen associates are required to embody standards that are an exaggerated form of a partnership ideal” (Kay and Hagan 1998, 741).

40. “Decisions made on the basis of subjective criteria are especially vulnerable to the influence of stereotypes and bias. The stereotypes that emerge boost men but operate as a drag on women in male-dominated workplaces” (Williams and Richardson 2010, 648).

41. Commentators tend to associate “eat what you kill” with large corporate law firms. However, the pressure to continually bring in business is often greater in small firms (Regan 2004). Leslie Levin (2004, 323) and Carroll Seron (1996) also report on the financial insecurity among small-firm lawyers.

and attributed this phenomenon to the competence-likability tradeoff. However, unlike Quadlin, we do not find that higher class rank is associated with lower returns for women. Indeed, high-achieving female lawyers earn more than lower-achieving ones across occupational practice settings and private practice roles. The legal market ascribes some value to female lawyers' academic achievement, just not enough to boost their earnings over less-accomplished men.

A growing literature has documented that the legal profession's gender pay gap is less of a product of differences between male and female lawyers and more of a product of differential returns on human and social capital (Hagan 1990; Kay and Hagan 1995; Wass and McNabb 2006; Ryan and Dawe 2021). Our conclusion that superior law school performance rewards male lawyers far more than female lawyers is in line with Fiona Kay and Jean Wallace's (2009, 445) conclusion with respect to mentoring:

Although female lawyers are just as likely to seek out and secure mentors, the relationship does not yield the same benefits accrued to male lawyers. The social position of women within the legal profession does not afford them the strategic capacity to mobilize their social capital . . . to secure coveted career outcomes, particularly in the form of earnings and career advancement.

Equalizing differences in human capital and social capital is insufficient to remedy the gender wage gap if men can more effectively leverage any capital that they possess.

Comparing our findings to those of earlier studies, it appears that employers may place less emphasis on female lawyers' academic performance than they have in the past (Dixon and Seron 1995). Future research should examine whether the progress that female lawyers have made in matching male lawyers in terms of education and other capital assets has caused employers and clients to implicitly downplay these assets in hiring and compensation decisions. In the absence of formal barriers, are clients and firms increasingly deploying fit and other intangible criteria to the detriment of high-achieving female lawyers? The steep gender earning differentials among solo practitioners and law firm equity partners especially imply that they are.

Structural changes have exacerbated these tendencies. For the last twenty years, private law firms have moved away from so-called lockstep compensation schemes, whereby a lawyer's pay generally increases by a fixed increment for every year of service, toward "merit-based" pay (Donn, Cahill, and Mihal 2015; Weiss 2020). The purported rationale for this shift in compensation schemes is that merit-based pay allows firms to retain their most talented and productive attorneys. Yet these schemes inevitably disadvantage high-achieving female lawyers because firms' evaluations of merit are gendered and often ignore that male successes depend on the unrecognized and unrewarded efforts of women and minorities (González 2014; Donn, Cahill, and Mihal 2015).

To begin to remedy the legal profession's gender pay gap, leaders of the organized bar must highlight the inequitable effects of purportedly merit-based compensation schemes and exhort firms to adopt lockstep schemes for partners, associates, and other employees. Standardized salary structures are still used by governmental employers as well some private law firms in setting associates' and non-equity partners' base salaries, and these settings unsurprisingly feature smaller pay disparities (Dixon and Seron 1995).

Firms must also be more transparent about their compensation decisions. Although efforts to require reporting of gender pay gaps have floundered in the United States, the United Kingdom has had some success with a voluntary reporting regime (Lee 2021). Firms that are committed to pay equity may calculate that the disclosure of (non-)pay gaps will advantage them in attorney recruitment and business development. Corporate clients have been exerting pressure on law firms to hire and promote diverse attorneys and could presumably insist that their firms report on gender pay gaps as well.⁴² Recent lawsuits have also highlighted troubling gender pay disparities at some law firms, undermining law firms' public images.⁴³ While law firms and other legal employers should pay women equally even in the absence of a business case for doing so, if corporations are disinclined to retain firms that have troubling records on diversity and pay equity,⁴⁴ law firms may start to assess fit differently and reward the human and social capital of female attorneys on equal terms with that of male attorneys.

Some legal profession scholars have also maintained that the presence of a critical mass of female lawyers, particularly in positions of power, will transform hiring and compensation practices (Hagan and Kay 1995; Gorman 2005; González 2014). There is some evidence that having more female decision-makers in firms increases the likelihood that women will be hired and promoted in law firms.⁴⁵ The gender pay gap could conceivably decrease in size, and female lawyers' capital assets could cease to be devalued as more and more female lawyers ascend to managerial positions. Female subordinates might also be more willing to initiate discussions regarding compensation decisions with female managers (Donn, Cahill, and Mihal 2015).

However, optimism on the preceding fronts must be tempered. First and foremost, the legal profession's gender pay gap exists across practice settings. While high-achieving women fare best in the public sector, the private sector's adoption of public sector pay models will not eliminate the gender pay gap entirely. For example, income disparities could arise even where male and female attorneys are paid the same salaries through allegedly merit-based bonus structures (Dinovitzer, Reichman, and Sterling 2009).

Corporate clients' professed commitment to diversity is also not new: General Motors and other prominent companies have urged their outside law firms to staff diverse attorneys on their matters since the 1980s (Wilkins 2003). But corporate clients, by and large, have not changed their legal spending to respond to firms' records on diversity (Braithwaite 2010). Corporate clients' nominal commitment to diversity may not extend to law firms' compensation decisions, and firms have little incentive to report on compensation differentials where the black box natures of their governance

42. David Wilkins (2003, 1558) argues that “[c]orporate America does appear to have embraced arguments about the importance of diversity that have significant implications for the business of large law firms.”

43. Mulvaney 2019; Thomas 2020. In one particularly high-profile case, the head of the labor and employment group of Proskauer Rose LLP sued her colleagues for fifty million dollars. See Mandell and Rosenthal 2018.

44. For a critique of the business case for greater gender diversity, see McGlynn 2003, 166–71.

45. Elizabeth Gorman (2005) shows that law firms with female hiring partners tend to hire more female entry-level candidates and that increasing the proportion of a firm's partnership that is male decreases the likelihood that a female lawyer will be promoted to partner (Gorman 2006). But Rivera and Owens (2021) observe that women in hiring positions are less likely to assign both the highest or lowest scores to female applicants.

structures shelter their practices from scrutiny and market pressure (Pearce, Wald, and Ballakrishnen 2015). Legal disputes surrounding pay disparities are often settled confidentially and without fundamentally altering the structures that gave rise to the disparities in the first place.⁴⁶

Lastly, women in positions of power can also internalize cultures that are hostile to hiring and rewarding women (Rivera 2012), meaning that the presence of female evaluators will not necessarily inure to the benefit of all women. Lauren Rivera and Jayanti Owen's (2021) recent study of one professional firm suggests that the most skilled female candidates are in fact disadvantaged by the presence of female evaluators. Female lawyers who have ascended to the legal profession's highest rungs likely had to assimilate into a "man's world" and may expect that the female lawyers who follow them do the same (Mossman 2003). They may be exhausted from their own battles with discrimination, with little energy to advocate for younger colleagues, some of whom may be racially diverse as well (González 2014). The existence of high-profile successes also makes it easier for male lawyers to regard gender as a non-issue (Mossman 2003).

The gender pay gap is not a function of the differences between male and female attorneys. Rather, assessments of female lawyers' qualifications and accomplishments are processed through the prism of gender. The legal profession can begin to address gender pay gaps by adopting alternative and more transparent compensation schemes and by promoting individuals who are prepared to disrupt long-standing pay inequities.

LIMITATIONS

This study's sample consists of Texas attorneys who practice law full-time. Since the sample is not representative of lawyers nationwide, our results cannot necessarily be extrapolated to other jurisdictions. Gender may have less impact on earnings outside of Texas, and female lawyers could obtain greater rewards from their law school performance in other states. Texas has a sophisticated legal market, but it is possible that other states have made more progress in equalizing earnings between male and female attorneys.

We also do not specifically consider the impact of law school prestige as part of this study. Because the female lawyers in our sample academically outperformed the male lawyers at the undergraduate level and do not appear to have attended lower-ranked Texas law schools than their male counterparts, it is unlikely that the omission of this variable affected our results. Nevertheless, it is conceivable that full access to respondents' educational information would reveal differences in law school prestige that could impact the size of the observed income differentials.

Lastly, our survey instrument focused predominately on human capital assets and occupational practice settings and did not address familial factors that may impact earnings (Becker 1985; Robson and Wallace 2001). This concern is mitigated somewhat because we do not consider lawyers who practice part-time to care for children, for example. Previous studies have found that neither familial factors nor hours worked

46. As Nancy Levit (2011, 71) has observed, "[t]here is also good anecdotal evidence that potential lawsuits against firms are resolved nonpublicly through negotiated settlements. We're lawyers—we invented confidentiality agreement."

explain the gender pay gap (Noonan, Corcoran, and Courant 2005; Reichman and Sterling 2013). Yet, even assuming that the female lawyers in our sample do not work as many hours as their male counterparts because of family responsibilities, these differences do not explain why high-achieving female lawyers receive only modest boosts in income over lower-achieving female peers. Differences in hours worked should also be reflected in income differentials across law firm roles, but high-achieving female lawyers earn the same as similarly situated male counterparts in non-equity partner positions and more than lower-achieving male counterparts in associate positions. Only in equity partner positions do they earn far less than both groups.

CONCLUSION

Scholars have long sought to identify the sources of the legal profession's gender pay gap. This study has determined that female lawyers' differential human capital investments and alleged self-selection into less lucrative and demanding occupational practice settings cannot account for the gender pay gap. We also show that superior law school performance is far more important for male lawyers than female lawyers. Despite the legal profession's well-known credentialism, high-achieving female lawyers do not outearn their lower-achieving male counterparts.

Ultimately, female lawyers are unlikely to achieve pay parity by matching the human capital assets of male lawyers because gender confounds the legal market's response to these assets. Superior law school performance may mark a woman not only as competent but also as antisocial. Depending on the gender of the lawyer being assessed, law can be, and cannot be, "rocket science." Law firms and clients can also downplay the relevance of certain traits when they are found in female lawyers, especially if the latter are less likely to challenge compensation decisions and tout their successes for fear of backlash.

Women have made unquestionable progress in the legal profession and can be found in positions of power across occupational practice settings (Kanter 1977). However, men continue to predominate and will have affinities for lawyers who resemble them. The legal profession cannot eliminate the gender pay gap merely by equalizing opportunities that male lawyers are better positioned to leverage. Rather, legal employers need to shift away from individualized, black box compensation schemes that are susceptible to bias and do not fully reward female lawyers for their career investments. Women's continuing advancement inside and outside of the profession may help to facilitate this needed disruption.

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