

THE FIRST WOMEN LAWYERS: “PIECEMEAL PROGRESS AND CIRCUMSCRIBED SUCCESS”[©]

MARY JANE MOSSMAN*

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Modern readers [of biography] ... know that women’s lives are complex and that region, period, personality, and circumstance crucially influence what a subject is able to make of herself. ... And modern women lawyers know that the biographies of women who chose to locate their professional lives in the law are likely to be stories of *piecemeal progress and circumscribed success*.¹

Carol Sanger, an American legal academic, made this assertion in her 1994 review of a book about Myra Bradwell.² Although Bradwell was not the first American woman to launch an application for admission to a state bar in the United States, her case ended up in the U.S. Supreme Court as *Bradwell v. Illinois* in 1873.³ The case is important for U.S. constitutional history because it became entangled with the *Slaughter-House Cases*⁴ and the scope of the privileges and immunities clause of the U.S. Constitution. For women lawyers, however, *Bradwell* is important because the U.S. Supreme Court upheld an interpretation of state legislation which denied women’s eligibility to practise law, in spite of the equality guarantee (the 14th amendment) of

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* Professor, Osgoode Hall Law School, York University.

¹ Carol Sanger, “Curriculum Vitae (Feminae): Biography and Early American Women Lawyers” (1994) 46 Stan. L. Rev. 1245 at 1257 [emphasis added].

² Jane M. Friedman, *America’s First Woman Lawyer: The Biography of Myra Bradwell* (Buffalo, NY: Prometheus Books, 1993).

³ *Bradwell v. Illinois*, [1873] 83 U.S. (16 Wall.) 130 [*Bradwell*].

⁴ *Slaughter-House Cases*, [1873] 83 U.S. (16 Wall.) 36.

the U.S. Constitution. Significantly, the U.S. Supreme Court's decision in *Bradwell* was repeatedly cited by courts in Canada and in other jurisdictions in the world in the last decades of the nineteenth century, regularly confirming that women were not eligible to become lawyers.

My interest in Sanger's assertion goes beyond Myra Bradwell's case. As Sanger suggested, we "modern women lawyers" need to take account of the context in which women first challenged the legal profession's male exclusivity in order to understand how and why their stories involved only "piecemeal progress and circumscribed success." In reflecting on Sanger's comment, I explore the context in which women gained admission to the bar at the end of the nineteenth century, discuss the stories of some of the first women lawyers in different parts of the world, and reflect on their challenges and choices as members of the legal professions.⁵

I. THE CONTEXT FOR THE FIRST WOMEN LAWYERS

Women first began to enter the legal professions in the late nineteenth century, at a time when two reform movements were significant. One was the movement for women's equality, or the "woman question"; clearly women's claims for admission to the bar were consistent with other efforts to expand traditional ideas about women's roles.⁶ At the same time, however, there was a second reform movement: the emergence of modern professions and of ideas about "professionalism" in law—that is, women were beginning to seek entry to the legal professions at a time when legal work, legal education, and ideas about professionalism were also being transformed.⁷ Yet there has been all too little analysis of the conjunction between new ideas about women's equality and new ideas about professionalism in law, and the

⁵ This article is based on the Walter L. Gordon Lecture at Osgoode Hall Law School, 15 November 2006, and Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Portland, OR: Hart, 2006).

⁶ See e.g. Barbara J. Harris, *Beyond Her Sphere: Women and the Professions in American History* (Westport, CT: Greenwood Press, 1978); Christine Bolt, *The Women's Movements in the United States and Britain from the 1790s to the 1920s* (Amherst: University of Massachusetts Press, 1993); and Linda Kealey, ed., *A Not Unreasonable Claim: Women and Reform in Canada, 1880s-1920s* (Toronto: Women's Educational Press, 1979).

⁷ See e.g. Michael Burrage & Rolf Torstendahl, eds., *Professions in Theory and History: Rethinking the Study of the Professions* (London: Sage, 1990); W. Wesley Pue & David Sugarman, eds., *Lawyers and Vampires: Cultural Histories of Legal Professions* (Portland, OR: Hart, 2003).

ways in which the first women lawyers engaged with both of them. Thus, while the literature about nineteenth-century women's movements for equality is extensive, there is much less analysis of women as professionals, particularly in law. And while there are a number of significant scholarly studies of professionalization projects in law, they have seldom assessed the impact of women's entry to the professions.⁸ In this way, the stories of the first women lawyers reveal the convergence of these two nineteenth-century reform projects: the women's equality project and the legal professionalism project.

In relation to women's equality, a number of legal reforms were achieved in the late nineteenth century, including reforms of married women's property rights and, in some jurisdictions, of women's right to vote. However, for women seeking access to the legal professions, a more important factor was women's increasing access to higher education in many jurisdictions, including Canada.⁹ For example, a woman graduated from Mount Allison University in New Brunswick in 1875 with the first Bachelor of Science degree awarded to a woman in the British Empire,¹⁰ and in the 1880s, several Canadian universities began to admit women to programs in faculties of arts. By the 1880s, women had also gained access to medical schools in several provinces in Canada, although Emily Stowe became Canada's first woman doctor in 1867 only after graduating from a medical college in the United States.¹¹

In most jurisdictions, however, women did not begin to enter the legal professions until several decades after they first became doctors. As Barbara Harris argued in the American context, women who aspired to the medical profession could explain that they were simply extending women's nurturing and healing roles, or, at least, that they were protecting female modesty by treating women patients. Neither of these arguments was available to aspiring women lawyers: while women doctors were merely extending women's roles in the private sphere,

⁸ Joan Jacobs Brumberg & Nancy Tomes, "Women in the Professions: A Research Agenda for American Historians" (1982) 10 *Rev. Am. Hist.* 275.

⁹ Jane Errington, "Pioneers and Suffragists" in Sandra Burt, Lorraine Code & Lindsay Dorney, eds., *Changing Patterns: Women in Canada* (Toronto: McClelland and Stewart, 1988) 51.

¹⁰ *Report of the Royal Commission on the Status of Women in Canada* by Florence Bird *et al.* (Ottawa: Information Canada, 1970) at 164.

¹¹ Veronica Strong-Boag, "Canada's Women Doctors: Feminism Constrained" in Kealey, ed., *supra* note 6, 109 at 112-14.

women's claims to become lawyers intruded on "the public domain explicitly reserved to men."¹² In this way, women who aspired to become lawyers were necessarily pushing the women's equality agenda to its fullest potential.

In addition, these new ideas about women's equality were occurring alongside changing ideas about the nature of professions, including law, in many jurisdictions in the late nineteenth century. Scholars have debated why the modern professions emerged in the nineteenth century, arguing, for example, that it was because of the rise of capitalism, the need to achieve market control, or the changing role of the state. There is nonetheless general agreement about the *results* of professionalization projects in law from that period: reforms in legal education, the establishment of new professional organizations, and an expanded scope for legal work.¹³ For example, both Dalhousie and McGill established university faculties of law in the 1880s; the Canadian Bar Association held its first meeting in 1896; and new inventions in telecommunications and transportation, especially the construction of railways, created new and lucrative opportunities for legal work.¹⁴ In this context, however, it is possible that the establishment of law schools (whether professional or university-based) may have been *the* important factor in encouraging women to seek access to the bar in Canada (and in a number of other jurisdictions). In Ontario, for example, Osgoode Hall established its first permanent education program in 1889, and Clara Brett Martin applied to become a law student just two years later in 1891.¹⁵ Moreover, as women increasingly entered university law programs, they became more determined to seek admission to the bar as well.

¹²Harris, *supra* note 6 at 110-12.

¹³Richard L. Abel, "Comparative Sociology of the Legal Professions" in Richard L. Abel & Philip S.C. Lewis, eds., *Lawyers in Society: Comparative Theories*, vol. 3 (Berkeley: University of California Press, 1989) 80; Terence C. Halliday & Lucien Karpik, eds., *Lawyers and the Rise of Western Political Liberalism: Europe and North America from the Eighteenth to Twentieth Centuries* (New York: Oxford University Press, 1997); and Magali Sarfatti Larson, *The Rise of Professionalism: A Sociological Analysis* (Berkeley: University of California Press, 1977).

¹⁴See Mossman, *supra* note 5 at 73-77.

¹⁵See Theresa Roth, "Clara Brett Martin—Canada's Pioneer Woman Lawyer" (1984) 18 L. Soc'y Gaz. 323; Constance B. Backhouse, "'To Open the Way for Others of my Sex': Clara Brett Martin's Career as Canada's First Women Lawyer" (1985) 1 C.J.W.L. 1 [Backhouse, "Clara Brett Martin's Career"]; and Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: The Osgoode Society, 1991).

Yet, in spite of new ideas about legal professionalism, the bar nonetheless remained a “gentleman’s profession” at the end of the nineteenth century.¹⁶ Although two Canadian historians have argued that by the end of the nineteenth century admission to the bar was increasingly based on merit and competitive examinations (rather than on class), it was still imbued with “images about a particular form of masculine identity, [and] about the gendered distribution of knowledge and authority ... which the entry of women on equal terms necessarily challenged.”¹⁷ For individual women lawyers, therefore, admission to the gentleman’s profession of law necessitated a complex negotiation of gender and professional identity. As Virginia Drachman pointedly explained, for example, there was the dilemma of “the hat”:

Here was the burden for the nineteenth-century woman lawyer. As a proper lady of her day, social etiquette required that she wear a hat in public. But as a lawyer, professional etiquette demanded that she remove her hat when she entered the courtroom. As a result, the question of the hat once again confronted women lawyers with the enduring challenge of reconciling their traditional role as *women* with their new professional identity as *lawyers*.¹⁸

Thus, new ideas about women’s equality and new ideas about legal professionalism—ideas that were, of course, both contested and fluid—converged in the experiences of the first women lawyers at the end of the nineteenth century. To a great extent, their stories reveal the range of opportunities, choices, and strategies available to women who were aspiring to non-traditional women’s roles and seeking admission to the gentleman’s profession of law.¹⁹ Moreover, this context may provide some insights about why their stories reflect only “piecemeal progress and circumscribed success.”

II. INTRODUCING THE FIRST WOMEN LAWYERS

The first women lawyers appeared in the United States a few years after the Civil War. They included Arabella Mansfield, who

¹⁶ R.D. Gidney & W.P.J. Millar, *Professional Gentlemen: The Professions in Nineteenth-Century Ontario* (Toronto: University of Toronto Press, 1994).

¹⁷ *Ibid.* at 331-32.

¹⁸ Virginia G. Drachman, *Sisters in Law: Women Lawyers in Modern American History* (Cambridge, MA: Harvard University Press, 1998) at 95 [Drachman, *Sisters in Law*] [emphasis added].

¹⁹ See Penina Migdal Glazer & Miriam Slater, *Unequal Colleagues: The Entrance of Women into the Professions, 1890-1940* (New Brunswick, NJ: Rutgers University Press, 1987).

became the first woman formally admitted to a state bar when she gained admission in Iowa in 1869, and Ada Kepley, the first American woman to obtain a university law degree in 1870.²⁰ In contrast to these early successes, however, Myra Bradwell's application for admission to the bar in Illinois was denied, and her subsequent appeal to the U.S. Supreme Court was also dismissed.²¹ A few years later, however, the Illinois legislature enacted amending legislation to permit women's admission to the bar, and a number of other American states enacted similar amendments.²² Thus, by the late 1880s there was a sufficient number of American women lawyers to establish the Equity Club, a correspondence club that provided information and support to women lawyers all over the United States for a few brief years.²³ By the end of the nineteenth century, there were three hundred women lawyers in the United States; as the *Illustrated London News* reported in 1897, "the lady lawyer [in the United States] meets us here, there, and everywhere."²⁴

Interestingly, in spite of geographical proximity and other connections to the United States, only one woman, Clara Brett Martin, gained admission to the bar in Canada before the end of the nineteenth century; she was admitted to the bar in Ontario in 1897.²⁵ In the early twentieth century, however, three other cases were litigated in Canada, and it is interesting how often Canadian courts cited *Bradwell* to deny women's claims to become lawyers. For example, Mabel Penery French presented her claim for admission to the bar in New Brunswick in 1906, and then in British Columbia in 1911-1912. Although both courts concluded that women were not eligible to become lawyers, amending

²⁰ See D. Kelly Weisberg, "Barred from the Bar: Women and Legal Education in the United States 1870-1890" (1977) 28 J. Legal Educ. 485; Karen Berger Morello, *The Invisible Bar: The Woman Lawyer in America 1638 to the Present* (New York: Random House, 1986); and Drachman, *Sisters in Law*, *supra* note 18.

²¹ *Bradwell*, *supra* note 3.

²² See Gwen Hoerr McNamee, ed., *Bar None: 125 Years of Women Lawyers in Illinois* (Chicago: Chicago Bar Association Alliance of Women, 1998); Drachman, *Sisters in Law*, *supra* note 18 at 251.

²³ Virginia G. Drachman, *Women Lawyers and the Origins of Professional Identity in America: The Letters of the Equity Club, 1887-1890* (Ann Arbor: University of Michigan Press, 1993) [Drachman, *Women Lawyers*].

²⁴ "Portias of Today," *The Illustrated London News*, 13 November 1897.

²⁵ See *supra* note 15.

legislation was eventually enacted in both provinces, enabling French to gain admission to the bar.²⁶ All the same, the tradition of law as a gentleman's profession was clearly evident in the minutes of the call to the bar ceremony, which recorded "the Call and Admission of twenty gentlemen, including Mabel Penery French."²⁷

In addition to French's two cases, there was a third litigated claim in Canada, when Annie Macdonald Langstaff, the first woman to graduate in law at McGill, sought the right to take the bar exams in Quebec; her application was denied, both at the first level and then on appeal in 1916. Indeed, women in Quebec remained excluded from the bar until 1941, and Langstaff was never admitted as an *avocat* in her lifetime.²⁸ As a single parent, however, she needed to work, and she is remembered as using a firm hand in her work as the senior administrator at what is now Davies Ward Phillips & Vineberg in Montreal; indeed, Langstaff developed quite a reputation for carefully examining expense claims submitted by lawyers for their client lunches—apparently she always "struck the martinis."²⁹ Langstaff died in 1978, but in September 2006 the Quebec Bar conducted a special ceremony at which she was admitted, posthumously, to the legal profession.³⁰ In addition to these litigated claims in three Canadian provinces, women gained access to provincial legal professions in Canada as a result of legislative action. In this context, explanations for variations in women's experiences in gaining admission to the bar in different parts of Canada require an examination of the impact of provincial politics, differences in the legal and social culture in

²⁶ Lois K. Yorke, "Mabel Penery French (1881-1955): A Life Re-Created" (1993) 42 U.N.B.L.J. 3 at 17, 41.

²⁷ Alfred Watts, *History of the Legal Profession in British Columbia, 1869-1984* (Vancouver: Law Society of British Columbia, 1984) at 134.

²⁸ Margaret Gillett, *We Walked Very Warily: A History of Women at McGill* (Montreal: Eden Press Women's Publications, 1981); Gilles Gallichan, *Les Québécoises et le Barreau: L'Histoire d'une Difficile Conquête, 1914-1941* (Sillery, QC: Septentrion, 1999).

²⁹ Mossman, *supra* note 5 at 109.

³⁰ "Annie MacDonald Langstaff (1887-1975): Enfin avocate!" *Journal du Barreau du Québec* 38:10 (October 2006) 1; Kathryn Leger, "Woman's struggle recognized: Quebec's first female lawyer was barred from practicing by legal barriers" *The [Montreal] Gazette* (15 September 2006) B3.

different parts of the country, and variations in women's personalities and aspirations.³¹

Significantly, beyond North America, women were beginning to seek admission to the bar in other jurisdictions at the end of the nineteenth century, and there is evidence that ideas about women's equality and about legal professionalism were reflected in the experiences of women in Britain as well as in two British colonies, New Zealand and India. In Britain, for example, Eliza Orme established an independent law office in London in the mid-1870s, successfully engaging in conveyancing, patents, and estates work for several decades.³² Thus, although other women in Britain were initiating litigation about their exclusion from the legal professions in these decades, Orme "practised law" without ever seeking admission as a barrister or solicitor by engaging in legal work "at the boundaries" of the legal professions, boundaries which were both contested and fluid in the last decades of the nineteenth century. As her published writing reveals, Orme was an educated woman with a commitment to objectivity, justice, and equality. An active supporter of Gladstone's Liberal Party, Orme was appointed to the Royal Commission on Labour and then to the Departmental Committee on Prison Conditions in the 1890s.³³ Indeed, a George Bernard Shaw biographer argues that Orme was the model for Vivie, the cigar-smoking actuary in Shaw's play *Mrs. Warren's Profession*,³⁴ and Shaw's stage directions for Vivie's office bear a quite remarkable resemblance to a description of Orme's office in Chancery Lane in 1888.³⁵ It seems that Orme retired from legal practice early in the twentieth century (in her late 50s), almost two decades before women in Britain became eligible to become lawyers; sadly, when she died in 1937 at the age of eighty-eight, her obscurity was so complete that no one was available to write her obituary.³⁶

³¹ Mossman, *supra* note 5 at 86-88.

³² Leslie Howsam, "Sound-Minded Women: Eliza Orme and the Study and Practice of Law in Late-Victorian England" (1989) 15:1 *Atlantis* 44.

³³ See Mossman, *supra* note 5 at 137ff.

³⁴ Michael Holroyd, *Bernard Shaw: 1856-1898, The Search for Love*, vol. 1 (New York: Random House, 1988) at 295.

³⁵ Jessie E. Wright, "Letter to the Equity Club," 23 April 1888, in Drachman, *Women Lawyers*, *supra* note 23, 141 at 143-44.

³⁶ Howsam, *supra* note 32 at 52.

In New Zealand, the enactment of women's suffrage in 1893 may have spurred the New Zealand Parliament, recognizing the political force of its new female constituency, to enact a statute to permit women to enter the legal profession in 1896; significantly, the statute permitting women to gain admission to the bar was enacted *before* there was a woman candidate. In this context, after Ethel Benjamin graduated from the LL.B. programme in Dunedin, she was admitted to the bar in 1897 without much controversy.³⁷ At the time of her admission, Benjamin was just twenty-two years old, and a member of Dunedin's small Jewish community. She combined an advocate's passion with excellent entrepreneurial skills, and became well-known for her advocacy on behalf of women clients in family matters, particularly those involving issues of domestic violence. At the same time, however, she tenaciously represented a group of publicans who were opposed to the temperance movement, placing her in direct opposition to the Women's Christian Temperance Union, and she openly criticized the women's equality movement in New Zealand.³⁸ Yet if she was unwelcome in the women's equality movement, Benjamin's reception by the legal profession was also fraught. In spite of the relative ease with which she gained admission to the bar, Benjamin's correspondence reveals that she experienced difficulty in obtaining referrals from others in the legal profession, and she was pointedly excluded from a celebratory bar dinner in 1898 at which thirty-five male barristers sat through "five toasts (with four responses), five songs, one pianoforte solo, oysters, fish, entree, poultry or meat, dessert and fruit (plus champagne, sherry, claret, a fifty-year old port, and liqueurs)."³⁹ Perhaps it was this lack of acceptance within the professional legal culture that prompted Benjamin's decision, about ten years after her admission to the bar, to leave New Zealand with her husband and join her family in the United Kingdom. Significantly, women were not yet entitled to practise law in

³⁷ Carol Brown, *Ethel Benjamin—New Zealand's First Woman Lawyer* (B.A. Thesis, University of Otago, 1985) at 26 [unpublished]. See also Louis Frank, *La Femme-Avocat: Exposé Historique et Critique de la Question* (Paris: V. Giard & E. Brière, 1898); and Gill Gatfield, *Without Prejudice: Women in the Law* (Wellington, NZ: Brooker's, 1996).

³⁸ See Mossman, *supra* note 5 at 176ff.

³⁹ Michael J. Cullen, *Lawfully Occupied: The Centennial History of the Otago District Law Society* (Dunedin, NZ: Otago District Law Society, 1979) at 68.

Britain, and even after amending legislation was enacted after the First World War, it appears that Benjamin never sought admission to the legal professions there; she died outside of London in 1943, without ever having returned to New Zealand.⁴⁰ In Benjamin's case, the convergence of new ideas about women's equality and about legal professionalism did not promote her legal career, in spite of the ease with which she obtained admission to the bar.

This pattern of initial acceptance and later exclusion also occurred in a different context in India, when a judge exercised discretion to permit Cornelia Sorabji to represent an accused person in a murder case in a British court in Poona in 1896, and she obtained an acquittal.⁴¹ A Parsi Christian from western India, Sorabji was the first woman to complete the examinations for the B.C.L. degree at Oxford in 1892, and her appearance for the defence in the 1896 murder case was reported all over the common law world. Although the *Canada Law Journal* acknowledged her success as the first woman to appear as a lawyer in the British Empire, it also expressed grave concerns about women invading "the hallowed precincts" of the courts.⁴² However, since women were not yet entitled to degrees at Oxford or to admission to the bar, Sorabji's appearance in this murder case in 1896 occurred three decades before she received her B.C.L. degree and before she was formally admitted as a barrister after World War I. All the same, Sorabji's relationships to gender and to legal professionalism, and also to British India, were complicated. Working for nearly two decades in the early twentieth century in an imperial post as Lady Assistant to the Court of Wards, a position which required her to supervise women and children who were "wards" in northern India, Sorabji was well-known for her independent views; in particular, she publicly criticized Gandhi in the 1930s, firmly opposing his strategies for achieving Indian independence.⁴³ When Sorabji died in 1954 in London, Vera Brittain concluded that although Sorabji's life had coincided with "two great and successful struggles for freedom"

⁴⁰ Brown, *supra* note 37 at 99.

⁴¹ "A Pioneer in Law" *Englishwoman's Review* (15 October 1896) 217 at 217-18. See also Suparna Gooptu, *Cornelia Sorabji: India's Pioneer Woman Lawyer* (New Delhi: Oxford University Press, 2006).

⁴² "Women Barristers" (1896) 32 Can. L.J. 784 at 784.

⁴³ Mossman, *supra* note 5 at 192ff.

(equality for women and national liberation for India), her views on both issues were eventually sidelined.⁴⁴

In addition to all of these common law jurisdictions, women were also seeking admission to the bar in a number of civil law jurisdictions in Europe in the late nineteenth century. Significantly, the arguments presented in these European cases were not substantially different from those in the common law world, a conclusion which underlines the widespread acceptance of ideas about “professional gentlemen” in law at the turn of the last century. At the same time, women’s equality movements were active in a number of countries in Europe, and as women gained access to higher education, they began to study law and seek admission to the bar.⁴⁵ In the early 1880s, for example, litigation was commenced by Lydia Poët in Italy; although she was unsuccessful in gaining admission to the bar, she worked for several decades in her brother’s law office in Torino. As Poët explained in her correspondence, she “practised law” but did not sign letters or appear in court.⁴⁶ A few years after Poët’s litigation in Italy, Marie Popelin applied for admission to the bar in Belgium; her claim was also rejected.⁴⁷ Nonetheless, Popelin used her legal training quite successfully as a leader in the women’s movement, representing Belgium at the meeting of the International Council of Women in Toronto in 1909.⁴⁸ Then, in the late 1890s, Jeanne Chauvin sought admission to the bar in Paris; although her claim was also rejected by the court, the French National Assembly enacted amending legislation in 1900, enabling Chauvin and other French women to gain admission to the bar nearly two decades before women in Britain were entitled to become lawyers. Nonetheless, it seems that Chauvin may have experienced difficulty in obtaining sufficient work as an *avocat*, as she supported herself and her widowed mother by working primarily as a

⁴⁴ Vera Brittain, *The Women at Oxford: A Fragment of History* (London: George G. Harrap & Co., 1960) at 84-85.

⁴⁵ Mossman, *supra* note 5 at 239-46.

⁴⁶ James C. Albisetti, “Portia Ante Portas: Women and the Legal Profession in Europe, ca. 1870-1925” (2000) 33 J. Soc. Hist. 825; Louis Frank, *De L’Exercice de la Profession d’Avocat en Italie. Exposé Sommaire des Règles* (Brussels: J.B. Moens & Fils, 1887).

⁴⁷ Louis Frank, *La Femme-Avocat: Exposé Historique et Critique de la Question* (Brussels: Ferdinand Larcier, 1888).

⁴⁸ International Council of Women, *Report of the International Congress of Women* (Toronto: G. Parker, 1910).

high school teacher in Paris, practising law only on a part-time basis. She died in 1926, and her exact circumstances still remain unclear.⁴⁹ As another woman lawyer suggested on the twenty-fifth anniversary of Chauvin's admission to the bar, "Who will ever know the difficulties Jeanne Chauvin had to endure?"⁵⁰

As this comment reveals, while some women never succeeded in gaining admission to the bar, even those who did often experienced problems in obtaining legal work or in being fully accepted as members of the legal professions. In the United States, for example, women were excluded from most of the elite law schools (Columbia did not admit women until 1925 and Harvard did not do so until 1950), and thus also excluded from the elite law firms that were being established by Cravath and others at the end of the nineteenth century.⁵¹ In Britain, women were not eligible for degrees at Oxford until after the First World War, and at Cambridge until even later.⁵² Women were not eligible for membership in the American Bar Association until 1918, and even when they were permitted to take part in professional organizations, their presence was not always welcome within the traditional male legal culture; Ethel Benjamin was by no means the only woman lawyer who was excluded from bar dinners.⁵³

In this context, however, the first women lawyers appear to have increasingly distanced themselves from women's equality movements. As Nancy Cott argues, one result of legal professionalism was an emerging professional ideology that encouraged women lawyers to seek "dispassionate professionalism," with its objectivity, empiricism, and rationality, and to see "a community of interest between themselves and professional men and a gulf between

⁴⁹ Frank, *supra* note 37.

⁵⁰ Maria Vérone, "Le 25e anniversaire des avocates: Souvenir du Palais" *L'oeuvre* (2 November 1925), cited in Anne Boigeol, "French Women Lawyers (*Avocates*) and the 'Women's Cause' in the First Half of the Twentieth Century" (2003) 10 *I.J.L.P.* 193 at 196.

⁵¹ Robert Bocking Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: University of North Carolina Press, 1983) at 9; Jerold S. Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976) at 23-24.

⁵² Mossman, *supra* note 5 at 127; Brittain, *supra* note 44 at 155-57; Rita McWilliams-Tullberg, "Women and Degrees at Cambridge University, 1862-1897" in Martha Vicinus, ed., *A Widening Sphere: Changing Roles of Victorian Women* (Bloomington: Indiana University Press, 1977) 117 at 120.

⁵³ Stevens, *supra* note 51 at 84; Mossman, *supra* note 5 at 63, 108-09, 172-73, 241-44.

themselves and nonprofessional women.”⁵⁴ Thus, for women in the legal professions their gender became irrelevant: they were simply lawyers. Yet, paradoxically, the culture of the legal professions, based on the tradition of a “gentleman’s profession,” remained stubbornly and exclusively male. As a result, conflicts between ideas about gender and about legal professionalism at the end of the nineteenth century defined the context in which the experiences of many of the first women lawyers clearly resembled merely “piecemeal progress and circumscribed success.”

III. REFLECTIONS ON THE FIRST WOMEN LAWYERS

In reflecting on the first women lawyers and the intersection of gender and legal professionalism in their lives, current debates about writing women’s biography provide some useful insights. For example, in her recent biography of the British suffragette leader Emmeline Pankhurst, June Purvis argues that the metaphor of *biography as microscope*, where the more information you collect, the closer you are to “the truth” about a subject, is not helpful. Instead, Purvis recommends conceptualizing women’s lives in terms of a *kaleidoscope*, where each time you look you see something rather different, composed of the same elements but in a new configuration.⁵⁵ In my view, this kaleidoscope approach provides important insights about the first women lawyers.

First, it is clear that all of these women were able to seek admission to the legal professions because of women’s increasing access to higher education, including legal education, at the end of the nineteenth century. There is considerable evidence that all of them grew up in families that supported women’s access to education, and some of them were even regarded as qualified to present their own applications for admission to the bar. From the perspective of women’s higher education, all of these women were extraordinarily accomplished. Moreover, many of them were strongly supported by male members of the legal professions; that is, although there were certainly male judges

⁵⁴ Nancy F. Cott, *The Grounding of Modern Feminism* (New Haven, CT: Yale University Press, 1987) at 237.

⁵⁵ June Purvis, *Emmeline Pankhurst: A Biography* (New York: Routledge, 2002) at 7 [emphasis added].

and lawyers, as well as editors of publications such as the *Canada Law Journal*, who *opposed* women's claims, women in several jurisdictions were *supported* by male colleagues. For example, aspiring women lawyers were supported by Louis Frank in Europe, Oliver Mowat and Sam Jacobs in Canada, John Stuart Mill, Leonard Courtney and Benjamin Jowett in Britain, and George Russell in New Zealand.⁵⁶ As Louis Frank's writings revealed, there was a lively debate about women's equality and about legal professionalism at the end of the nineteenth century, a debate that was much more nuanced than simply a story of female struggles and male resistance.⁵⁷

Yet if we turn the kaleidoscope and examine the first women lawyers from a different perspective, their accomplishments as legal practitioners appear somewhat less successful. Only a few of the first women lawyers were able to sustain successful legal practices during their lifetimes. By contrast, Chauvin worked as a teacher while practising law only part time, Sorabji was able to work only in a governmental position until she was finally able to gain formal admission to the bar nearly three decades after her B.C.L. exams, and both Benjamin in New Zealand and French in Canada did not practise for long, both of them eventually giving up their practices to move to Britain. Others, like Orme and Langstaff, were engaged in legal practice and law firm administration, but without ever being formally admitted to the bar. Similarly, these patterns were evident in the experiences of women lawyers in the United States, where Virginia Drachman argued that the accomplishments of the first women lawyers were "modest, not monumental."⁵⁸

Second, the kaleidoscope metaphor is useful in looking at these women's lives from the perspective of contemporary feminism, a century after they were attempting to gain admission to the bar. In fact, few of them provided substantial leadership in women's equality movements in the late nineteenth and early twentieth centuries. For example, Constance Backhouse lamented the limited participation of Clara Brett Martin in women's reform movements in Canada,⁵⁹ and although Orme

⁵⁶ Mossman, *supra* note 5 at 279-82.

⁵⁷ Franca Iacovetta & Mariana Valverde, eds., *Gender Conflicts: New Essays in Women's History* (Toronto: University of Toronto Press, 1992) at xvii.

⁵⁸ Drachman, *Sisters in Law*, *supra* note 18 at 8.

⁵⁹ Backhouse, "Clara Brett Martin's Career," *supra* note 15 at 37.

was an active proponent of women's suffrage initially, she resigned from her leadership role in the Women's Liberal Federation when it voted to put suffrage on its agenda *before* Gladstone's Liberal Party had adopted women's suffrage as a Liberal Party platform; as a result, Orme was effectively sidelined from the suffrage movement thereafter.⁶⁰ Similarly, Sorabji was personally and politically conservative; as she described herself, she was "a Tory of the Tories" who only reluctantly yielded to "the rush of Time,"⁶¹ a stance which eventually positioned her in opposition to the Indian independence movement later in the twentieth century. And although some women who were not successful in gaining admission to the bar, including Bradwell in the United States and Popelin in Belgium, were active in suffrage organizations,⁶² other women lawyers remained relatively uninvolved; indeed, Benjamin quarrelled publicly with the women's movement in New Zealand.⁶³ As Mary Greene, an American woman lawyer, explained to Louis Frank in 1895, she was relatively unacquainted with suffragists, whose goals were entirely anathema to her own:

My views on the subject differ in so many ways from those of the leaders that I cannot work with them. I do not believe that the ballot will cure all ills, nor do I believe that women are powerless without the ballot. I prefer to teach women how to use the power and the rights they already possess ... in order that they may know how to ask intelligently for changes in the laws.⁶⁴

As Greene's views indicate, connections between the first women lawyers and the equality movement, especially its goal of suffrage, were often tenuous. However, as a number of feminist historians in different jurisdictions have noted, by the turn of the twentieth century, women's equality movements were dominated by middle class married women who scarcely understood the interests of women who sought professional and financial independence, and who

⁶⁰ Howsam, *supra* note 32 at 52; Peter Gordon and David Doughan, *Dictionary of British Women's Organisations, 1825-1960* (Portland, OR: Woburn Press, 2001) at 173.

⁶¹ Letter from Cornelia Sorabji to Mrs. A. Darling (17 October 1897) British Library, Oriental and India Office Collection (Sorabji Papers F165/20) [transcribed by author].

⁶² Mossman, *supra* note 5 at 13-14.

⁶³ *Ibid.* at 173-74.

⁶⁴ Letter from Mary Greene to Louis Frank (May 1895) Bibliothèque Royale, Brussels (Papiers Frank # 7791-6) [transcribed by author].

were so often unmarried.⁶⁵ As a result, many of the first women lawyers became disconnected from women's equality movements and connected to ideals of legal professionalism, even though they were not included as full members within law's professional culture.

Yet, turning the kaleidoscope again and viewing these women from another perspective, it is clear that they were all the first to try to forge careers in the gentleman's profession of law *on their own terms*.⁶⁶ Like other late nineteenth century women who chose to work rather than to marry, these first women in law may have relished the challenges presented by entry to the legal professions and the opportunities for independent action and self-sufficient lives. Thus, in confronting competing ideas about "women's equality" and about "legal professionalism" at the end of the nineteenth century, they relied on the rhetoric of equality to open up opportunities for women to become lawyers, even though this rhetoric substantially failed to challenge the more fundamental aspects of professional culture in the practice of law. In this context, it may be significant that women lawyers in the late nineteenth century were often portrayed in the media of the time as "Portias," a reference to Shakespeare's famous character in *The Merchant of Venice*. Yet it is clear that Portia was able to provide her effective advocacy in the play's trial scene *only* because she was disguised as a man.⁶⁷ In this way, as Michael Grossberg argues, the first women entered the legal professions *without challenging* their gender premises.⁶⁸

Finally, in assessing how these first women lawyers challenged ideas about gender and about legal professionalism, we need to take

⁶⁵ Sylvia B. Bashevkin, "Independence Versus Partisanship: Dilemmas in the Political History of Women in English Canada" in Veronica Strong-Boag & Anita Clair Fellman, eds., *Rethinking Canada: The Promise of Women's History* (Toronto: Copp Clark Pitman, 1986) 246 at 249.

⁶⁶ Gerda Lerner, *The Majority Finds Its Past: Placing Women in History* (New York: Oxford University Press, 1979) at 148-49.

⁶⁷ See *supra* note 24. See also Christine Alice Corcos, "Portia and Her Partners in Popular Culture: A Bibliography" (1988) 22 *Legal Stud. F.* 269; Carrie Menkel-Meadow, "Portia in a Different Voice: Speculations on a Woman's Lawyering Process" (1985) 1 *Berkeley Women's L.J.* 39; and Carrie Menkel-Meadow, "Portia *Redux*: Another Look at Gender, Feminism, and Legal Ethics" in Stephen Parker & Charles Sampford, eds., *Legal Ethics and Legal Practice: Contemporary Issues* (New York: Oxford University Press, 1995) 25.

⁶⁸ Michael Grossberg, "Institutionalizing Masculinity: The Law as a Masculine Profession" in Mark C. Carnes & Clyde Griffen, eds., *Meanings for Manhood: Constructions of Masculinity in Victorian America* (Chicago: University of Chicago Press, 1990) 133 at 148.

account of their lives in terms of this kaleidoscope metaphor to remember how often they were isolated as “lone voyagers,”⁶⁹ being the *only* woman lawyer in their jurisdiction, sometimes for many years. In such a context, it is possible to understand how they were attracted to the ideals of professionalism even as these ideals masked a hidden inequality, and perhaps to explain why their progress was piecemeal and their success circumscribed. At the same time, it is clear that at least *some* of the time, *some* of these first women lawyers challenged, or at least destabilized, traditional ideas about women’s roles and about the gentleman’s profession of law. In this way, the history of the first women lawyers is an essential part of both the history of women’s equality and the history of the legal professions.

⁶⁹ Geraldine Jongich Clifford, ed., *Lone Voyagers: Academic Women in Coeducational Universities, 1870-1937* (New York: Feminist Press, 1989).