

DEVELOPMENTS

*Book Review - Re-visioning International Legal History: Analyzing Women's Place in the Profession at the Turn of the Century, in Mary Jane Mossman's *The First Women Lawyers* (2006)*

By Sara Gottlieb*

[Book Review: Mary Jane Mossman, *The First Women Lawyers*, Hart Publishing, Portland 2006, ISBN 1-84113-590-9, pp. 329, \$45.00]

The turn of the (20th) Century marked the beginning of women's participation in the legal profession in many parts of the world. Mossman's *The First Women Lawyers: a Comparative Study of Gender, Law and the Legal Professions* examines the social context of the era, as well as the courage and perseverance of the individual women, using a comparative approach to portray women's entry into law and to explore the varying extents to which these first women lawyers attained their professional goals.

Mossman approaches her subject with particular attention to historical ideas about gender and legal professionalism. While previous research has been published on both the subject of the women's entry into the legal profession as well as the evolution of notions of legal professionalism, Mossman's work offers a new perspective on these matters by analyzing their intersection.¹ Her approach as she notes is, "kaleidoscopic", utilizing the women's biographical information not in an attempt to gain "the truth" of each life, but "as a way of taking account of the complex interrelationships between different historical contexts and women's response to difference circumstances."² Her methodology includes use of academic theses, dissertations, news reports of the day, archival letters and diaries and the papers of Louis Frank, a Belgian barrister who corresponded with women lawyers and those attempting to gain entry into the profession around the world at the turn

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¹ 11. MARY JANE MOSSMAN, *THE FIRST WOMEN LAWYERS: A COMPARATIVE STUDY OF GENDER, LAW AND THE LEGAL PROFESSIONS* (2006).

² *Id.*, 277.

of the century.³ Furthermore, she synthesizes previous studies on women's entry into law that have tended to focus more narrowly on a single jurisdiction, incorporating findings from numerous jurisdictions into one work, and drawing conclusions from their similarities and differences. She focuses mainly on the entry of women lawyers in the common law countries of the United States, Canada, Britain, New Zealand, Australia and India. In each chapter Mossman examines how the legal arguments or strategies these women devised to overcome barriers to professional work interacted with socially constructed notions of gender and legal professionalism in a given jurisdiction to provide early opportunities for women to engage in legal work.

Some of the influences on women's entry into the legal profession at this specific time period included new theories regarding women's access to higher education, paid work, and the suffragette movement which highlighted women as citizens of their respective nations entitled to participate in the public sphere. However, Mossman identifies differences in women's entry in the legal profession as distinct from women's entry into other employment. Women doctors, for example, had earlier success in gaining entry to male professions in their ability to claim their work as a natural extension of women's "nurturing" role in the home. Women lawyers' work, however, could not be construed as anything other than employment and engagement in the public domain.⁴ Thus, women were required to utilize the public institutions of the courtroom as a primary means of gaining entry into the profession. Many of these women's paths to practicing involved multiple claims and litigation, and were seemingly decided by judges on the basis of legislative and legalistic interpretation.⁵

Hence, much of the history of women's entry into law was characterized by unsuccessful court challenges, particularly in the United States, and a few decades later, Canada.⁶ Such public discourse could be used as a legitimization of women's exclusion or, more rarely, their inclusion in the legal profession depending on a particular judge's decision.

Litigation, however, was only one path women took to enter the legal profession. Mossman's work highlights factors outside the courtroom that allowed women to engage in legal work, in the absence of litigation challenges, albeit at the boundaries

³ *Id.*, 241.

⁴ *Id.*, 14.

⁵ *Id.*, 278.

⁶ *Id.*, 67

of the legal profession. For example, Mossman's analysis of the career of Elizabeth Orme in England examines the context in which Orme was able to engage in legal practice neither with a legal degree nor entry into the bar or the solicitor's profession for more than a decade.⁷ Orme was an unmarried woman with a need for financial independence, and England in this time period provided a favorable environment for achieving that goal. This favorable environment included social factors such as the growing social acceptance of women's claims for equality with men apparent in the extension of access to university education. Economic factors included England's reforms relating to the legal profession, impacted by the growth of commercial activity, including increased competition from banks, patent and house agents whose business was to provide advice to clients traditionally reserved to solicitors. As Mossman notes, in this legal, social, and economic context it was possible for Orme to engage in legal work "at the boundaries" of legal practice, including patent work and wills.⁸ Orme's narrative can be seen as an example of Mossman's approach to connecting progressive notions on gender and the legal profession at the turn of the century with one individual woman's story of ambition and drive.

Mossman's work also finds important exceptions to the pervasive opposition to the admission of women lawyers. For example, bar associations in the US, Canada, Italy and Belgium all either recommended extending admission to women or reported close division in their position on the matter.⁹ Additionally, in New Zealand, statutory amendments were enacted to allow women to become lawyers without any litigation and even before there was a qualified, law-school educated female applicant.¹⁰ Hence, Mossman's history reveals varying responses by bar associations and legislatures across jurisdictions which affected the timing and relative acceptance of women's entry into the law.

Some of the most interesting insights of Mossman's work involve her identification of those historical aspects of women's entry into the law that shaped and continue to impact the way the profession is conducted today. One such example is her examination of the identity differentiation many of the first women lawyers felt compelled to display. A simple but poignant example is her research which uncovered "the question of the hat".¹¹ While social etiquette of this period required

⁷ *Id.*, 124

⁸ *Id.*, 134

⁹ *Id.*, 279

¹⁰ *Id.*, 279

¹¹ *Id.*, 6

a woman to wear a hat in public, professional protocol required that she remove her hat when entering the courts. Thus while women's entry into traditionally male sectors of work is often taken as *prima facie* evidence of progress in a recognition of women's equality with men, the first women lawyers adopted masculine comportment in their legal work, rather than attempting to bring a new female dimension to the profession. As Mossman states, women didn't develop a "counter-hegemony", but instead were compelled to "hide their gender",¹² becoming lawyers without challenging the gender premise of law and the profession.¹³

This *modus operandi* for women lawyers can be seen to have retained its strength, as legal commentators and women themselves continue to note the pervasiveness of traditional male forms of lawyering in private practice. The historical analysis consequently provides an explanation for the studies and statistics Mossman cites which consistently show a "glass-ceiling" across various jurisdictions for women, despite women's equivalent entry into law school and the profession.¹⁴ As one researcher noted, "neither an increase in the number of women nor the passing of time can provide an automatic remedy"¹⁵ for the embedded norms and professional culture excluding women from equal status with men in the profession. Hence, one of the greatest contributions of Mossman's new work is its analysis of historical developments which have shaped how lawyering is conceived of today, both in terms of women's role and professionalism itself.

The question that may remain for some after reading this work is why these particular women's stories were chosen to represent the path and plight of the first women lawyers. Mossman indirectly answers this in her introduction, acknowledging her study does not attempt to undertake a comprehensive history of first women lawyers, and was largely shaped by the availability of the personal records of such women.¹⁶ However, the detailed nature of her work results in her critical insights on the impact of divergent Colonial politics on women's efforts perhaps being weakened by a lack of additional illustrations to show patterns which may have operated.

¹² *Id.*, 284

¹³ *Id.*, 7

¹⁴ *Id.*, 4

¹⁵ *Id.*, 5

¹⁶ *Id.*, 18

For example, the story of Cornelia Sorabji, the first woman to provide representation for an accused in a British court (in Poona, India),¹⁷ illuminates the institutional challenges facing women at this time period. The very uniqueness of her situation, however, somewhat restricts any general conclusions which can be drawn from her achievements. However, given the necessary constraints of a topic as broad as the history of women lawyers in relation to developing concepts around legal professionalism, the understandably limited number of examples could instead be viewed as a starting-point, or spring board for further interested researchers. Mossman's in-depth archival research on these women, as well as her analysis of their historical circumstances provides future works with the insights necessary to delve more broadly into a history of women's entry into the legal profession to reveal similar patterns in women's early legal work.

Thus, Mossman's work not only primary research as a resource for further exploration of jurisdictional patterns of women's entry into law, but also illuminates those social conditions which gave rise to women's initial ability to engage in legal work. Arguably most important, however, is Mossman's analysis of "the First Women Lawyers" to show the very current impact of the law's history on the practice of law, and specifically women lawyer's experience of it today.

¹⁷ *Id.*, 216.