

Books

THE FIRST WOMEN LAWYERS: A COMPARATIVE STUDY OF GENDER, LAW AND THE LEGAL PROFESSIONS by Mary Jane Mossman, Hart, Oxford & Portland, 2006, 329pp pbk, ISBN 184113 590 9

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It is a notable characteristic of several thousand years of Western civilisation that the public sphere has been a masculinist domain, while the private sphere qua family has been feminised. The sentinels of the key institutions of the state, including the legislature and the legal profession have expended significant effort in maintaining this line of demarcation, which by the late 19th century had come to acquire virtually the status of divine authority.¹ Mary Jane Mossman's book deals with the struggles by women to challenge the separate spheres doctrine in respect of the entry of women into the legal profession. On almost every occasion that a woman had the temerity to seek admission, she received a metaphorical whack on the head, even though rejection was invariably dressed up in the niceties of legal reasoning. The paradigmatic examples are the infamous 'Persons cases', in which judges determined that women were not persons for the purpose of legal practice (or other public sphere activity), despite the use of the gender-neutral 'persons' in the relevant legislation.² Such cases occurred in many jurisdictions. Paradoxically, it was often the universities and admitting authorities most committed to institutional reform that were most resistant to the admission of women (p 39).

Mossman's study is not confined to one jurisdiction but represents a rich comparative study that meticulously documents the often poignant stories of would-be women lawyers in many parts of the globe. There is a particular focus on the United States, Canada, Britain, New Zealand, India and Western Europe (Italy, Belgium and France), although reference to experiences of women in British colonies, including Australia and South Africa, as well as in other European jurisdictions, is also made. A prodigious amount of archival research in multiple sites has been conducted to bring the early trailblazers to life. In the absence of Mossman's scholarship, these women's achievements would otherwise

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1 Indeed, in *Bradwell v Illinois* 83 US 130 (1873), Bradley J did not need to resort to precedent or any of the other familiar techniques of adjudication when he could (infamously) rely on divine authority: 'The constitution of the family organization, which is founded in the divine ordinance as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood'.

2 An Australian example is *In re Edith Haynes* (1904) 6 WAR 209.

have been 'entombed in silence' by the historical record. The liberal narrative of progress prefers either to expunge from the record or glide over acts of sustained illiberality.

Mossman links the individual struggles by women to be admitted to legal practice to the wider picture in each jurisdiction which forms a crucial backdrop to the particular site of struggle. While punctilious about these jurisdictional and individual differences, Mossman presents a primarily Anglicised account of the position of women in India, but this somewhat skewed perspective may have been inevitable because the archival sources were English and the prevailing law was English. India was the jewel in the crown of the *British* Empire and Cornelia Sorabji, the first woman to plead in a British court, was Oxford-educated and admired and identified with all things English.

The First Women Lawyers endeavours to break out of the straitjacket of Anglocentrism through the inclusion of a chapter on European developments. Indeed, it is unusual to include civil law experiences, as well as common law, even in comparative legal studies, although globalisation and multiculturalism challenge the mindset. While comparative work poses epistemological barriers, they have not deterred Mossman.

The individualised biographies contain a wealth of detail and bring the text to life with letters and comments from contemporaries. The litigation, on which women frequently embarked to challenge the refusal to be admitted, provides a useful record, but some women disappeared into the shadows if they chose to marry and/or emigrate. The choice between 'either a professional career or marriage' (p 109) was stark and continued to be the case for professional women in law until relatively recently.³ In any case, for those who persisted, being 'let in' guaranteed neither visibility nor economic viability. The work that women do has never been regarded as compensable in the same way as men's work. A number of the early women lawyers had to supplement their income in various ways outside law. For example, Ethel Benjamin, who had the distinction of being the first woman to be admitted to legal practice in New Zealand in 1897 without any evidence of the typical struggle, subsequently left her sole practice to manage a restaurant (p 185). Soon afterwards, she comported with another stereotype by marrying and abandoning her legal career, whereupon she departed for Britain and faded from view altogether.

Universally, the gatekeepers were opposed to the admission of women as legal practitioners, although Mossman does not seek to explain why this was so, other than to repeat the [il]logic of the judgments, such as recourse to the intention of the legislature. Mossman analyses in detail the cases involving admission challenges, including the fandango that took place between the legislature, the university and the courts. It may be that the resistance towards women is explicable only in terms of psychoanalysis and power. That is, there was a fear that the feminine, with its affective and corporeal connotations, would corrode the rationality of law. More pragmatically, however, economics may have had something to do with it too. An

3 Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (1996).

influx of women would not only feminise the practice of law, but the assumed-to-be cheaper legal labour of women would necessarily undercut the men and detract from the exclusivity of the profession.

The move away from articles to a university legal education helped women without legal families (p 76), although it was the admission of women to university arts and medical faculties that ultimately made it difficult to exclude them from the study of law. Armed with a law degree, the women then faced opposition from the profession, which left it to the respective legislatures to counteract the restrictive judicial interpretations of the courts. In the years of waiting, some women with legal qualifications assumed subordinate legal roles akin to those of paralegals, such as Elizabeth Orme in England, or they gave up on the law altogether.

Rejection caused some women to pursue the cause of women's rights more assiduously. Then, as now, there was an ongoing disagreement about the role of men in the emancipist project. That is, is it better to exclude men altogether, since they are perceived to be responsible for the problem or, for that reason, should they be involved in its resolution, in which case there is a fear that they will endeavour to assume control? The latter scenario applied to the Belgian/French jurist, Louis Frank. Although an ardent advocate for women's legal rights, he eventually alienated those women who felt that equality could be effectively achieved only 'without the support of men' (p 259).

Mossman clearly reveals the symbiotic relationship between the general emancipist project concerning women in the public sphere and the admission of women to legal practice. One should hasten to add, however, that the issue of gender (let alone feminism) in law was ambiguous and, then as now, some women, such as Cornelia Sorabji, were of the view that gender was irrelevant to the practice of law. They assiduously sought to distance themselves from the feminine, believing that a degendered, depersonalised self would best comport with the ideal of 'the lawyer' they wished to project.

Mossman concludes with the image of biography as kaleidoscope, suggesting that as soon as one sees a pattern beginning to crystallise, it immediately transforms itself. It does seem to me, however, that the resistance by masculinist legal institutions in the late 19th century was a constant (New Zealand being the exception that makes the rule). Otherwise, we find differences between women arising from country of origin, race, class, religion and age, as well as political perspective, as we might expect.

The variegation helps to answer, if not resolve, an initial conundrum posed by the author: 'to what extent did *women* become lawyers without challenging the *gender* premises of the laws and the legal professions?' Despite their struggles, Mossman shows that the very presence of these women did challenge gender orthodoxy, despite attempts at depersonalisation and often fleeting experience of practice. These early women lawyers blazed trails not only for many more women but for diverse Others in the late 20th century, a struggle that persists today in authoritative sites, such as partnerships in corporate law firms, the judiciary and the professoriate.

I commend this enormously valuable book to you.

