

BOOK REVIEW

THE FIRST WOMEN LAWYERS

BY MARY JANE MOSSMAN

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In 2006 there was an equal number of men and women in the first year class at the Faculty of Law at the University of Victoria. This was notable as women had outnumbered men for the previous few years. Aside from superficial interest, I have never paid much attention to the gender composition of any of my classes or programs. In deciding to go to law school, I worried about my academic performance and whether I would make a good lawyer. Gender never entered the picture. This does not mean gender is no longer a basis of inequality in society in general or the legal profession in particular or that I am unaffected by sex-specific attitudes and behaviours. Gender remains a live issue; however, growing up in the late twentieth century, there was nothing remarkable to me about women in university, just as there was nothing unusual about having a female doctor or professor. It turns out I am wrong: there is much to be remarked on.

The story of the entry of women into the legal professions is told in Mary Jane Mossman's book, *The First Women Lawyers*.¹ Her book compares women's experiences in North American, Europe, India and Australasia from the later half of the nineteenth through the early twentieth century. In chronicling women's emergence as legal professionals the book also charts the evolution of law as a profession, the increasing access for women to higher education, and the movement of women out of the private sphere and into the public.

The First Women Lawyers is divided into eight chapters. An introduction and conclusion serve as bookends for the six substantive chapters; each of these six chapters concentrates on the entry of women into the legal professions in a different geographical location. The first two chapters focus on North America and detail the admittance of women to the bar in the United States and Canada. The next chapter describes women in the law in the United Kingdom and the following two chapters deal with countries within the British Empire: New Zealand and India. The focus of the penultimate chapter is women's entry into the legal professions on the European continent.

The author, Mary Jane Mossman, is a Professor of Law at Osgoode Hall Law School of York University. *The First Women Lawyers* is the work of a scholar and not surprisingly the book is thorough and well-researched. The author draws heavily on secondary sources as well as origi-

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1 Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, the Law, and the Legal Professions* (Portland, OR: Hart Publishing, 2006). The term "legal professions" reflects Mossman's adoption of "a wide ranging definition of the term 'lawyer' to encompass not only those women who gained formal admission to the legal professions, but also others who were engaged in legal work without achieving the status of formal admission", at 9.

nal documents. This means the text is heavily footnoted, which may be a little overwhelming to some readers, myself included. After the first chapter I became more selective in my attention to footnotes, pausing to only to read those that provided more than attribution. Also a little overwhelming are quotes in French with no translation provided. The footnotes and French, though daunting, are no deterrent to understanding and enjoying the book. Despite being dense with information, *The First Women Lawyers* is easy to read.

The First Women Lawyers is well-written, interesting and engaging. It is filled with anecdotes I want to share, the kind of tidbits you and a friend can shake your heads over, marveling, "Can you believe that?" For example, there is something incongruous about Queen Victoria being beside herself with fury over the "mad, wicked, folly" of Women's Rights.² But *The First Women Lawyers* is not simply a compendium of historical anecdotes. It tells the stories of the first women in the legal professions: the story of women's entry into public life, into areas that were once the sole domain of men, such as politics, paid employment, and business. That I can dismiss Queen Victoria's views as ironic and ridiculous reveals the dramatic change in the status of women in the last 100 years.

The latter half of the nineteenth century saw the emergence of women from the traditional, private sphere of the home into the public arenas of paid work and politics. Changes in social and economic realities for women led to calls for access to education, admittance to professions, and recognition of civil rights. It is in this context that women sought to become lawyers. In documenting the struggles of the first women lawyers, Mossman's book provides the reader with a sense of the development of the legal profession, the interplay between the suffrage movement and women's attempts to gain entry to educational institutions and professional organizations, and the social and economic conditions of women at the turn of the century.

In the chapters on the American and Canadian experiences, Mossman provides the reader with a great deal of information in a way that is fairly easy to follow and not overwhelming. These chapters are, roughly speaking, organized chronologically and read like surveys of the movement of women into the law in these two locales. These chapters are quite distinct from the three that follow. Unlike their predecessors, the chapters on the United Kingdom, New Zealand, and India centre on individual women and their attempts to work as legal professionals. In following the careers of these women in their social, economic, and political contexts, common experiences are identified and issues particular to an individual or region are highlighted.

The chapter on women in the law in Europe is particularly interesting. Unlike the chapters on the United Kingdom, New Zealand, and India, it is not focused on a single woman; however, a single individual dominates the chapter. That individual is Louis Frank: a Belgian barrister, a staunch supporter of women's rights, and a man. Frank devoted much of his career to lobbying for women's admittance to the bar. He published extensively on the subject and in 1892, along with Marie Popelin,³ established the "first feminist organization in Belgium".⁴ Frank's presence is felt throughout the book: he corresponded with many, if not most, of the women involved in the legal professions throughout the world in the later half of the nineteenth century as research for his comprehensive treatise on women in the legal professions.⁵

I was curious about the noticeable difference between the chapters on the United States,

2 C. Holcombe, *Victorian Ladies at Work: Middle-class Working Women in England and Wales 1800-1914* (Hamden, CT: Archon Books, 1973) at 9, citing M. Cole, *Women of To-day* (London: Thomas and Nelson, 1946) at 150-51, cited in Mossman, *supra* note 1 at 148.

3 In 1889, Popelin was unsuccessful in her application to take the oath to become an *avocate* in Belgium. Frank himself appeared before the Court of Appeals on her behalf. Mossman, *supra* note 1 at 252.

4 F. De Bueger-Van Lierde, "A L'Origine du Mouvement Feministe en Belgique: 'L'Affaire Popelin'". (1972) 50 *Revue Belge de Philologie et d'Histoire* 1128 at 1137, cited in Mossman, *supra* note 1 at 257.

5 *La Femme-Avocat*, published in 1898.

Canada, and Europe and those on the U.K., New Zealand, and India. It was not clear whether the difference in strategy was due to differences in the availability of particular types of information⁶ or was a choice on the part of the author to vary how to present the story of early female lawyers. Another aspect of the study that was not explicitly discussed that I was curious about was the lack of “romantic attachments” of the women. I noted that most of the central characters remained unmarried and childless and the few that did marry ended up leaving the profession.

In examining the entry of women into the legal professions, *The First Women Lawyers* describes the prevailing state of the legal profession at the turn of the nineteenth century in various locations. In common law jurisdictions, beginning in the late 1800s, there was a greater emphasis on university education in the training of legal professionals.⁷ This reflected a shift away from the apprenticeship model in which, as an early nineteenth century Saint John law student noted,

law students needed only pay an entrance fee, take a desk in a barrister's office, and be registered in the 'Student's Book;' and then, so long as the student could read and write, and had 'walked in and out of an office door for four or five years,' he would be enrolled 'as a Lawyer.'⁸

Though a law degree was not required for admission to the bar in the late nineteenth and early twentieth centuries, an increasing number of lawyers in Canada obtained their LL.B. before going on to practice. The relationship between university education and legal practice became problematic as women were admitted to law schools, finished their degrees, and were then statutorily excluded from membership to the bar on the basis of their gender.

Across the various jurisdictions studied, law was viewed as a “gentleman's profession”—the designation already precluding the presence of women, despite the use of the ostensibly gender-neutral language of “persons” in most of the regulations governing admittance to the bar. The response of a New Brunswick court in 1905 to the application by Mabel Penery French is typical of the response of courts in various jurisdictions. The New Brunswick court, in considering the provincial *Interpretation Act*, which defined “person” as anyone who in “the context is capable of applying”, determined that since women had never been lawyers the legislature must never have intended that women be included as “persons” for the purpose of the bar statute.

Often judges that relied on statutory interpretation to deny women's applications to practice law made it clear that their decision did not reflect their personal views on the matter; rather, they were merely deferring to the legislature: if women wanted to be lawyers, it was a matter best addressed by elected officials. Other courts relied less on interpretation of statute and more on what they considered to be the moral reasons to keep men and women in their separate and distinct roles. As Justice Saint-Pierre stated in his refusal to admit Annie MacDonald Langstaff to the bar in Québec,

I would put within the range of possibilities though by no means a commendable one, the admission of a women to the profession of solicitor or that of *avoué*, but I hold that to admit a woman and more particularly a married women as a *barrister*, that is to say, a *person who pleads cases at the bar before judges or juries in open court and in the presence of the pub-*

6 For example, the first woman lawyer in India, Cornelia Sorabji, had written an autobiography.

7 The author notes that in civil law jurisdictions, there was already a prominent role for university education in professional development.

8 D. G. Bell, *Legal Education in New Brunswick: A History* (Fredricton: University of New Brunswick, 1992) at 19, cited in Mossman, *supra* note 1 at 75.

lic, would be nothing short of a direct infringement upon public order and a manifest violation of the law of good morals and public decency.⁹

These decisions reveal not only views about what sort of person should practice law, but also prevalent beliefs about the proper role of women and the fears around allowing women to operate outside that role.

Though many men (and women) adhered to gender norms that defined women as the delicate sex, not all male lawyers in the late nineteenth and early twentieth century were opposed to women practicing law. Throughout *The First Women Lawyers* are examples of male practitioners who supported women's efforts to enter to profession. Louis Frank, who championed women's rights, including the right to practice law, is just one example. Indeed, the support of male lawyers, and perhaps more importantly male legislators, was instrumental in bringing about the necessary changes to legislation which made it possible for women to become lawyers.

Mossman's comparative strategy of examining a particular phenomenon over a prescribed time frame in six different locales highlights similarities in the process of women's entry into the legal professions. At the same time, the author draws attention to differences in women's experiences as a function of their personal circumstances and cultural context. For example, in New Zealand, when Ethel Benjamin, that country's first woman lawyer, applied for admission to the bar women had already gained the vote and legislation had already been enacted to allow women to become lawyers. This is in contrast to the other jurisdictions where women had to apply to the courts (mostly unsuccessfully) to claim eligibility to practice as lawyers. Despite the relative ease with which Miss Benjamin attained the status of lawyer she, like many of her colleagues in other locations, had difficulty establishing and maintaining her practice.

In telling the story of the first women lawyers the focus is necessarily on gender; however, gender is not the only factor that served as a barrier to entrance to the legal professions. For a number of women, their religion added another obstacle. As an early Canadian lawyer reported,

Oh yes, you never walked inside a non-Jewish place, you just didn't. It was as if there was a big sign outside. I couldn't get a job when I graduated, I went into practice on my own because I couldn't get a job anywhere. I was Jewish and I was a woman.¹⁰

In some cases, religious affiliation assisted women. In the case of Cornelia Sorabji, the first female lawyer in India, that she was a Christian provided her with an opportunity to connect with British administrators in India and distinguished her as a "civilised Indian woman."¹¹ For many women, factors such as race, religion and age played a large role, sometimes positive, sometimes negative, in their struggle to achieve their career aspirations.

One of the themes highlighted in the book that I found most compelling was identity. How did these women lawyers position themselves in relation to their gender and their profession? The late nineteenth century was a time of significant change in the status of women. Though some of the first women lawyers were heavily involved in women's rights movements, others were not. Indeed some, such as Cornelia Sorabji, even showed distaste for such "women's

9 *Langstaff v Bar of Québec* (1915) 47 Rappports Judiciaires de Québec 131 (CS) at 139, cited in Mossman, *supra* note 1 at 95 [emphasis in original].

10 C. Morgan, "An Embarrassingly and Severely Masculine Atmosphere: Women, Gender and the Legal Profession at Osgoode Hall, 1920s-1960s" (1996) 11 Canadian Journal of Women and the Law 19 at 33, cited in Mossman, *supra* note 1 at 111.

11 Mossman, *supra* note 1 at 201.

rights women".¹² Regardless of their views on women's rights, the perceived objective, merit-based standards of professional ideology may have led some women to identify themselves as professionals first and women second.¹³ Such an ideology encouraged female lawyers to see a "community of interest between themselves and professional men and a gulf between themselves and non-professional women".¹⁴

What animates the book are the first women lawyers. It is their stories that engage the reader. For this reason, I found the chapters that followed individual women more coherent and absorbing. These chapters contain "asides" or details peripheral to "law", and provide a more complete sense of not only the person herself, but also the time and place in which she acted. For example, Eliza Orme, the focus of the chapter on the United Kingdom, was appointed a Lady Assistant Commissioner and in this capacity prepared reports for a Royal Commission on Labour. In detailing Orme's work with the Commission, Mossman gives the reader a glimpse of the overall economic and working conditions of women in Britain at the end of the nineteenth century.

The First Women Lawyers has particular relevance for law students. Not only does it address the development of the profession and the role of the judiciary and legislature in social change, but it reveals the ways in which gender can be a basis for exclusion. The ubiquity of women lawyers belies the fact that the inclusion of women is a relatively recent development in the profession, achieved through the efforts of numerous women and men. Reading *The First Women Lawyers*, I better appreciated the struggles of those who went before me and felt a sense of honour and pride in their courage and accomplishments. The book also brought forward issues of identity. I found myself reflecting on my evolving sense of what it means to be a lawyer (both ideal and real) and, in particular, a female lawyer, and the extent to which I fit with these conceptions.

The First Women Lawyers is a comparative and historical study of gender, law, and the legal professions. Not only does it track the development of law as a profession from the mid-nineteenth through the early twentieth century but, more importantly, it calls attention to the fact that had I been sitting in the first year class of a Canadian law school 100 years ago I would have been able to count the number of female peers on one hand. Reading *The First Women Lawyers*, I experienced the evolution of law and the legal professions and realized the need to view this evolution in the context of existing social, political and economic conditions. There is much to remark on when considering that in the space of a hundred years the opening salutation for an incoming law school class has gone from "Lady and Gentlemen" to "Welcome students".

12 A. Burton, *At the Heart of the Empire: Indian and the Colonial Encounter in Late Victorian Britain* (Berkeley: University of California Press, 1998) at 114, cited in Mossman, *supra* note 1 at 237.

13 N.F. Cott, *The Grounding of Modern Feminism* (New Haven & London: Yale University Press, 1987) at 237, cited in Mossman, *supra* note 1 at 53.

14 Cott, *ibid.* at 233-4.