

BOOK REVIEW

Feminist Lawyers

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SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY. By Virginia Drachman.[†] Cambridge: Harvard University Press. 1998. 334 pp. \$ 35.00.

It is hard to understand, in this day and age, the horror and disgust evoked by these few brave, stubborn women.¹

Short and intense, the history of women lawyers makes a good story, and an instructive one for those of us who today would change the profession from within. It is, more than most histories, a composite, yet the accounts converge around the modern movement's central insight—the personal is indeed political for women lawyers.

Sisters in Law: Women Lawyers in Modern American History (“*Sisters*”) is the latest in the brief historiography of women at the Bar.² It

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1. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 639 (2d ed. 1985).

2. See p. 275 n.11. Noting the “sparse and highly selective historiography of women lawyers in modern American history,” Drachman provides a list of first woman lawyer biographies: EDWARD O. BERKMAN, *THE LADY AND THE LAW: THE REMARKABLE LIFE OF FANNY HOLTZMANN* (1976) (describing the career of the first woman entertainment lawyer); DOROTHY M. BROWN, *MABEL WALKER WILLEBRANDT: A STUDY OF POWER, LOYALTY, AND LAW* (1984) (writing about Willebrandt, Assistant Attorney General of the United States from 1921 to 1929); RONALD CHESTER, *UNEQUAL ACCESS: WOMEN LAWYERS IN A CHANGING AMERICA* (1985) (studying women's access to the legal profession in the 1920s and 1930s in Boston, Washington, D.C., and Chicago); VIRGINIA G. DRACHMAN, *WOMEN LAWYERS AND THE ORIGINS OF PROFESSIONAL IDENTITY IN AMERICA: THE LETTERS OF THE EQUITY CLUB, 1887 TO 1890* (1993) [hereinafter DRACHMAN, *WOMEN LAWYERS*] (reprinting the letters and papers of a late 19th century correspondence club for woman lawyers and law students); CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* (2d ed. 1993) (providing a historical perspective as part of a broader analysis of women's experiences in the legal profession over the last four decades); JANE M. FRIEDMAN, *AMERICA'S*

opens, rightly, with Myra Bradwell, whose failed efforts framed all that followed.³ When the Illinois courts denied her application to be an attorney in 1870,⁴ she took her case, *Bradwell v. Illinois*, to the United States Supreme Court, arguing that the brand new Fourteenth Amendment guaranteed every

FIRST WOMAN LAWYER: THE BIOGRAPHY OF MYRA BRADWELL (1993); THE LEGAL PROFESSION: MAJOR HISTORICAL INTERPRETATIONS (Kermit L. Hall ed., 1987) (containing essays about women lawyers in colonial times, the experiences of Mary Philbrook and Myra Bradwell in seeking admission to state bars, and women and legal education in the late nineteenth century); KAREN BERGER MORELLO, THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA: 1638 TO THE PRESENT (1986) (discussing barriers to women in law schools, courtrooms, and law firms); ELIZABETH PERRY, BELLE MOSKOWITZ: FEMININE POLITICS AND THE EXERCISE OF POWER IN THE AGE OF ALFRED E. SMITH (1992); JEANETTE E. TUVE, FIRST LADY OF THE LAW: FLORENCE ELLINWOOD ALLEN (1984) (chronicling the life of Allen, the first woman selected as a state supreme court judge, the first woman appointed to the federal bench, and the first woman to be a candidate for the U.S. Supreme Court); Virginia G. Drachman, *Entering the Male Domain: Women Lawyers in the Courtroom in Modern American History*, 77 MASS. L. REV. 44 (1992) (describing the "debate over women lawyers' place in the courtroom"); Virginia G. Drachman, *The New Woman Lawyer and the Challenge of Sexual Equality in Early Twentieth-Century America*, 28 IND. L. REV. 227 (1995) (discussing how, with official barriers to entry into the legal profession largely removed, women lawyers in the 1910s and 1920s optimistically sought an expanded realm of practice areas and sexual equality in their lives, only to have their hopes disappointed); Virginia G. Drachman, *Women Lawyers and the Quest for Professional Identity in Late Nineteenth-Century America*, 88 MICH. L. REV. 2414 (1990) (using the history and letters of the Equity Club to highlight women lawyers' challenge of reconciling their roles as women with their professional roles in the 1890s); Douglas Lamar Jones, *Lelia J. Robinson's Case and the Entry of Women into the Legal Profession in Massachusetts*, in THE HISTORY OF THE LAW IN MASSACHUSETTS: THE SUPREME JUDICIAL COURT, 1692-1992, at 241 (Russell K. Osgood ed., 1992) (providing a detailed look at the litigation strategies and judicial reasoning in Lelia Robinson's failed petition to practice law in Massachusetts, and noting that the decision "represented a transition from the natural law arguments against women's rights to practice law . . . to arguments based on the common law tradition against women lawyers as well as an overt linkage of suffrage to the right of women to practice law").

For additional sources, see generally DAWN BRADLEY BERRY, THE 50 MOST INFLUENTIAL WOMEN IN AMERICAN LAW (1996) (providing brief biographies of major historical and contemporary woman lawyers); ANN FAGAN GINGER, CAROL WEISS KING: HUMAN RIGHTS LAWYER, 1895-1952 (1993); NOTABLE AMERICAN WOMEN (Edward T. James, Janet Wilson James & Paul S. Boyer eds., 1971) (providing detailed, scholarly biographical entries for 20 women lawyers); WOMEN IN LAW: A BIO-BIBLIOGRAPHICAL SOURCEBOOK (Rebecca Mae Salokar & Mary L. Volcansek eds., 1996) (collecting brief accounts of the lives and careers of present and historical woman lawyers); Catherine B. Cleary, *Lavinia Goodell, First Woman Lawyer in Wisconsin*, 74 WIS. MAG. HIST. 243 (1991) (telling Goodell's story, including her struggle to gain admission to the bar); Carol Sanger, *Curriculum Vitae (Feminae): Biography and Early American Women Lawyers*, 46 STAN. L. REV. 1245 (1994) (reviewing a biography of Myra Bradwell and discussing the growing interest in biographies of early woman lawyers); Karen L. Tokarz, *A Tribute to the Nation's First Women Law Students*, 68 WASH. U. L.Q. 89 (1990) (profiling Phoebe Couzens and Lemma Barkeloo).

3. See p. 6. For general biographical information about Myra Bradwell, see also BERRY, *supra* note 2, at 25-31; EPSTEIN, *supra* note 2, at 45-50; Jeanine Becker, *Myra Bradwell* (visited Mar. 2, 1998) <<http://www-leland.stanford.edu/group/WLHP/papers/BradwellTimeline.pdf>> (timeline of Myra Bradwell's life). Other starting points for the story are: 1640, when Margaret Brent was a magistrate and trial lawyer in Maryland; 1848, when at the birth of the women's movement in Seneca Falls, New York, access to the professions was established as a goal; and 1869, when Belle Mansfield became a lawyer in Iowa. See MORELLO, *supra* note 2, at 4-14.

4. See *In re Bradwell*, 55 Ill. 535 (1869).

citizen's privilege to pursue a profession or calling.⁵ But the Court rejected the idea of a federal right, which meant that women had to battle state-by-state (and territory-by-territory) to be lawyers. Because of *Bradwell*, there are hundreds, maybe thousands, of vivid particular stories, with their displays of nerve and courage, personality and character, idealism and eccentricity.

That it would be a fight for so many of the "first women" lawyers was not immediately apparent. An optimistic reading of the opinion in *Bradwell* was that women wanting to be lawyers need only follow in the steps of local men. Statutes governing admission seldom required anything in the way of education or formal training.⁶ In most places, a man could join the bar by briefly apprenticing himself and then undergoing an oral examination by the court in which he sought to practice.⁷

No woman had it so easy in the 1870s. The saddest tales are of those who studied well, passed the examination and were then refused admission because they were not men. Aside from Bradwell who went on, through her publication of *The Chicago Legal News*, to make a great name for herself, the women rejected at the courthouse door largely disappear from legal history. The major figures are those who were admitted to their home court of general jurisdiction, and then refused either at the next level, or in another locality where a man would have found reciprocity.

Courts writing to refuse admission often started by discussing the disabilities of marriage.⁸ In many states, married women could neither make, nor be held to, contracts and generally could not do business on their own. Moreover, as Justice Bradley famously said in his concurrence in *Bradwell*, "the harmony" of "the family institution" was threatened by "the idea of a woman adopting a distinct and independent career."⁹

5. See *Bradwell v. State of Illinois*, 83 U.S. (16 Wall) 130 (1872); pp. 16-18, 22-24 (describing Bradwell's sojourn through the Illinois Supreme Court and United States Supreme Court); see also BARBARA ALLEN BABCOCK, ANN E. FREEDMAN, SUSAN DELLER ROSS, WENDY WEBSTER WILLIAMS, RHONDA COPELON, DEBORAH L. RHODE & NADINE TAUB, *SEX DISCRIMINATION AND THE LAW: HISTORY, PRACTICE AND THEORY* 54-55, 58-61 (2d ed. 1996) (placing the Bradwell case into a legal and historical context as an interpretation of the privileges and immunities clause). See generally Robert M. Spector, *Woman Against the Law: Myra Bradwell's Struggle for Admission to the Illinois Bar*, 68 J. ILL. ST. HIST. SOC'Y 228 (1975) (detailing Myra Bradwell's struggle, all the way up to the U.S. Supreme Court, to practice law in Illinois).

6. Many statutes governing admission to the bar required good character, most applied only to men, and some only to white men. See, e.g., Act Concerning Attorneys and Counsellors at Law, ch. 4, § 1, 1851 Cal. Stat. 48, amended 1859, 1861, 1869-70, and superseded by CAL. CODE CIV. PRO. § 275 (1873) (permitting "[a]ny white male citizen . . . of good moral character" to apply to the bar). Reciprocity of admission was common among the courts within a state, including the federal courts.

7. See FRIEDMAN, *supra* note 1, at 652.

8. See pp. 16-17.

9. *Bradwell*, 83 U.S. (16 Wall.) at 141. (Bradley, J., concurring). Bradley's concurrence became the main legal obstacle for women seeking to be lawyers because of its language about the appropriate woman's sphere. The opinion of the Court was short and did little more than cite the

Such arguments did not apply to Lavinia Goodell of Janesville, Wisconsin, an unmarried woman. Easily admitted to the bar at the trial court level, she successfully practiced for a year before applying to the Wisconsin Supreme Court in order to argue one of her cases there.¹⁰ Though a male state's attorney appeared to support her application "with . . . eloquence, vigor, and sound logic,"¹¹ it was denied in a long opinion that made Justice Bradley in *Bradwell* sound progressive. On the rights of unmarried women, Justice Ryan, writing for the Wisconsin Supreme Court, observed: "[I]t is public policy to provide for the sex, not for its superfluous members; and not to tempt women . . . by opening to them duties . . . unfit for female character."¹²

Belva Lockwood's experience is another example of hard times for women in the 1870s.¹³ She joined the District of Columbia Bar without incident, but when she sought to bring an important case in the Court of Claims, she was refused admission because women's "legal position is . . . interwoven with the very fabric of society," and the court doubted "whether even the legislative power [had] authority to overturn" such "immemorial usages."¹⁴ Next she went to the United States Supreme Court, thinking she would become a member of that Bar and then bring an original action against the Court of Claims, but her petition was denied without opinion. (Given the negative language that courts used in turning women away, this may have been merciful.)

But Lavinia Goodell and Belva Lockwood were only temporarily impeded by adverse judicial decisions. They successfully turned to the legislature and, in Lockwood's case, to the United States Congress. Having

Slaughter-House Cases, 83 U.S. 36 (16 Wall.) (1873), decided in the same term, in which the main work of dismantling the privileges and immunities clause of the Fourteenth Amendment was done. See BABCOCK ET AL., *supra* note 5, at 54-58.

10. See pp. 12-13, 15-16, 85. For general biographical information about Lavinia Goodell, see also Barbara Allen Babcock, *Clara Shortridge Foltz: "First Woman"*, 30 ARIZ. L. REV. 673, 703-04 (1988), reprinted with a new introduction in 28 VAL. U. L. REV. 1231, 1268-69 (1994) [hereinafter Babcock, *First Woman*]; MORELLO, *supra* note 2, at 22-27; Teresa M. Derichsweiler, *The Life of Lavinia Goodell: Wisconsin's First Woman Lawyer* (visited Mar. 16, 1998) <<http://www-leland.stanford.edu/group/WLHP/papers/lavinia.html>>.

11. WISCONSIN STATE J., Dec. 14, 1875, reprinted in WOMAN'S J., Jan. 1, 1876, at 8.

12. *In re Goodell*, 39 Wis. 232, 245 (1875).

13. See pp. 26-27, 43-44. For general biographical information about Belva Lockwood, see BERRY *supra* note 2, at 19-24; MORELLO, *supra* note 2, at 31-36; Babcock, *First Woman*, *supra* note 10, at 704-05; Frances A. Cook, *Belva Ann Lockwood: For Peace, Justice, and President* (last modified May 13, 1997) <<http://www-leland.stanford.edu/group/WLHP/papers/lockwood.htm>>.

14. *In re Belva A. Lockwood* (United States Court of Claims, May 11, 1874), reprinted in 1 CENT. L.J. 254, 256 (1874).

opened the federal courts to women, Lockwood promptly took advantage of "her bill"¹⁵ to become the first woman at the Supreme Court Bar.

In California in 1877-1878, when Clara Foltz of San Jose decided to be a lawyer,¹⁶ she knew of Bradwell, Goodell, and Lockwood, and she knew, too, about Nettie Tator down the road in Santa Cruz, who had been refused admission after passing the examination.¹⁷ Informed by their experiences, she and her friend Laura Gordon,¹⁸ who also wanted to be a lawyer, went first to the legislature and lobbied through a woman lawyers bill. Like Lockwood at the Supreme Court Bar, Foltz immediately reaped her own labor's reward and became California's first woman lawyer.¹⁹

These women of the musical names—Myra, Lavinia, Belva, Clara, and Laura—were, with a few others, the first to make law their profession. Though geographically separated, their efforts were joined because they built on each other's cases and strategies. When Clara Foltz decided to go directly to the legislature, she was influenced by Goodell's and Lockwood's experiences. Similarly, Lockwood cited the passage of the women lawyer's bill in California (and the bills following Bradwell's and Goodell's cases as well) when lobbying Congress in the late 1870s.²⁰

15. See An Act to Relieve Certain Legal Disabilities of Women, ch. 81, 20 Stat. 292 (1879) (incorporated in the U.S. Judicial Code § 255 *ante* § 1232 and superseded thereby).

16. See pp. 50-52. In the course of researching a biography of Foltz, I have written of her entry to the Bar in the following articles: Barbara Allen Babcock, *Clara Shortridge Foltz: Constitution-Maker*, 66 IND. L.J. 849 (1991) [hereinafter Babcock, *Constitution-Maker*]; Babcock, *First Woman*, *supra* note 10; Barbara Allen Babcock, *Reconstructing the Person: The Case of Clara Shortridge Foltz*, in REVEALING LIVES 131 (Susan Groag Bell & Marilyn Yalom eds., 1990). For other profiles of Foltz and her legal career, see, for example, BERRY, *supra* note 2, at 33-38; MORELLO, *supra* note 2, at 57-65; Virginia Elwood-Akers, *Clara Shortridge Foltz, California's First Woman Lawyer*, PAC. HISTORIAN, Fall 1984, at 23; Mortimer D. Schwartz, Susan L. Brandt & Patience Milrod, *Clara Shortridge Foltz: Pioneer in the Law*, 27 HASTINGS L.J. 545 (1976); Nicholas C. Polos, *San Diego's "Portia of the Pacific": California's First Woman Lawyer*, J. SAN DIEGO HIST., Summer 1980, at 185.

17. See SANTA CRUZ SENTINEL, Mar. 30, 1872, at A3 (reporting that a "Miss" Nellie C. Tator applied for admission to the Santa Cruz County Bar on Saturday, Mar. 23, 1872); THE INLAND MONTHLY, Jan. 1873, at 64 (declaring that "Mrs." Tator was refused admission to the Santa Cruz Bar).

18. For general biographical information about Laura de Force Gordon, see BERRY, *supra* note 2, at 39-41, and MORELLO, *supra* note 2, at 58-65; Renée Frances Hawkins, *Laura De Force Gordon: Fragments of a Feminist Pioneer* (visited Mar. 19, 1998) <<http://www-leland.stanford.edu/group/WLHP/papers/gordon.html>>.

19. See Babcock, *First Woman*, *supra* note 10, at 697 (discussing Foltz's oral bar examination and her unanimous certification).

20. The main proponent of the bill allowing women lawyers to practice in the federal courts was the Senator from California, Aaron Sargent, whose wife, Ellen Clark Sargent, was an early suffrage leader. See 3 HISTORY OF WOMAN SUFFRAGE 108-11 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joselyn Gage eds., Rochester, Charles Mann 1886). Senator Sargent pointed to the passage of the Woman Lawyer's Bill in California when urging Lockwood's measure. See *id.* at 109. The Illinois statute allowing women to practice was passed through the efforts of Ada Ke-

Often the support of women lawyers for each other went far beyond providing precedent. My personal favorite is the story of Mary Leonard, who moved to Washington Territory when it gave women suffrage in 1883, in order to read law in hospitable conditions.²¹ Admitted to practice after a creditable examination, she returned to her Oregon home and sought reciprocity for her Washington credentials.

The federal judge, Matthew Deady, admitted Leonard to his court,²² citing Belva Lockwood's legislation and litigation. But the Oregon Supreme Court balked, holding that only the legislature could remedy the "generally understood" disqualification of women to practice law.²³ Then another woman lawyer appeared on the scene. Clara Foltz of California was passing through Salem, Oregon on a lecture tour (her repertoire included a speech about women lawyers).

As Foltz told the tale, immediately upon learning of Leonard's rejection, she "seated herself at her desk and drew up the following bill: Hereafter women shall be admitted to practice law as attorneys, in the courts of this state, upon the same terms and conditions as men. 'There,' she said, 'I think that will cover our case.'"²⁴ Then Foltz went to the floor of the legislature and lobbied the bill through, winning accolades from the local press.²⁵

The women lawyers knew about each other through suffrage organs like the *Women's Journal*, as well as from Bradwell's *Chicago Legal News*, and from the flurry of press attention that followed when each joined the Bar. In the seventies and eighties, stories about individual women lawyers generally included mention of the "others." Clara Foltz's hometown newspaper noted, for instance, that she was the fifth woman lawyer in the United States.²⁶ Although this is technically inaccurate, Foltz was probably one of only a few dozen women when she joined the profession in 1878. Even now, there is no complete consistent chronology of women's entry to the Bar. *Sisters* lays a

pley, who sought the legislation when Myra Bradwell failed in the courts. Kepley was also the first woman to graduate from law school in the United States. See p. 46.

21. For general biographical information about Mary Leonard, see BERRY, *supra* note 2, at 59-61; MORELLO, *supra* note 2, at 27-31; Karen Abrams, *Mary Gysin Leonard: Timeline* (visited Mar. 2, 1998) <<http://www-leland.stanford.edu/group/WLHP/papers/LeonardTimeline.pdf>>.

22. See 2 PHARISEES AMONG PHILISTINES: THE DIARY OF JUDGE MATTHEW P. DEADY, 1871-1892, at 465 (Malcolm Clark, Jr. ed., 1975).

23. See *In re Leonard*, 12 Or. 93 (1885).

24. *The Part Played by Mrs. Foltz in the Oregon Legislature*, SAN JOSE DAILY MERCURY, Mar. 29, 1891, at 8.

25. DAILY STATESMAN (Salem), Nov. 11, 1885 (Foltz to lecture on Nov. 12, 13, 14); *Lady Lawyers Hereafter to be Free and Unfettered, Bill Passed, Mrs. Foltz Invited to a Seat Within the Bar*, DAILY STATESMAN (Salem), Nov. 17, 1885; SALEM VIDETTE, Nov. 19, 1885, reprinted in SAN JOSE DAILY MERCURY, Nov. 27, 1885 at p. 3.

26. "The women lawyers of the United States are Mrs. Lockwood of Washington; Mrs. Myra Bradwell, editor of the *Chicago Legal News*, Miss Phoebe Couzens of Missouri; Mrs. Forster of Iowa, and Mrs. Foltz, of San Francisco." SAN JOSE MERCURY, Feb. 23, 1879, at 2.

foundation for such a project by compiling early census reports. These data show just five female lawyers in the entire United States in 1870; by 1880, there were seventy-five, compared to 64,000 men lawyers.²⁷

There was a huge percentage increase in women lawyers every decade until 1910, but the numbers were never great enough to assuage the isolation and oddness that each individually felt. In the mid-1880s, a group of Michigan women law students and graduates founded The Equity Club, with the motto "All the allies of each."²⁸ Among other activities, the club promoted an annual nationwide exchange of letters among women lawyers for the purpose of support and encouragement.²⁹

Laura Gordon of California responded gratefully to the invitation to join: "Every woman in the Legal profession must feel that want of Professional companionship, . . . that close sympathy born of mutuality of interests, which women alone can extend to a woman."³⁰ The Equity Club lasted four years, producing sixty letters from thirty-two women lawyers across the country. One member described its good effects in this way: "[W]hat can be so refreshing to an aspiring soul . . . as to be simply *understood*?"³¹

Networks like the Equity Club, together with the cases women lawyers brought and the legislation for which they lobbied, all advanced what Professor Drachman entitles "the women lawyers movement," separate from and "on a much smaller scale" than the suffrage movement.³² This construction, I suggest in the next few pages, is mistaken because women's aspirations for joining the legal profession were fused from the beginning with the larger struggle for suffrage and other rights. Failure to mark this clearly is to underestimate the feminism of these first women.

We know the original goals of the nineteenth-century women's movement because they were neatly stated at a meeting in Seneca Falls, New York in 1848.³³ Access to the professions was on the list, along with marital prop-

27. See p. 253 tbl.2.

28. See DRACHMAN, WOMEN LAWYERS, *supra* note 2, at 11.

29. See pp. 61-71. Professor Drachman has written about the Equity Club and printed the extant letters of its members. See generally DRACHMAN, WOMEN LAWYERS, *supra* note 2.

30. DRACHMAN, WOMEN LAWYERS, *supra* note 2, at 50 (quoting letter from Laura de F. Gordon to the Equity Club (Apr. 26, 1887)).

31. *Id.* at 62-63 (emphasis in the original) (quoting letter from Martha K. Pearce to the Equity Club (Apr. 9, 1887)). Pearce was the corresponding secretary of the Equity Club when she wrote these words. See *id.* at 13, 256.

32. P. 3. More fully, Drachman writes, "the women lawyers movement, which, like the woman suffrage movement, though on a much smaller scale, grappled with the question of women's power as defined by the law and the place of women in a male-constructed legal system." *Id.*

33. The women's rights movement quite literally began in 1848 at Seneca Falls, New York. At the call of Elizabeth Cady Stanton and Lucretia Mott, about 300 people met and passed a Declaration of Sentiments, based on the Declaration of Independence, as well as twelve resolutions. See 1 HISTORY OF WOMAN SUFFRAGE, *supra* note 20, at 67-73 (describing the Seneca Falls Convention

erty rights, and the right to choose (in consultation with her conscience and her God) a "sphere of action."³⁴ Women made almost instant progress on the professional front in fields where their presence was explicable. "Female doctors could claim that their careers were natural extensions of women's nurturant, healing role in the home and that they protected female modesty by ministering to members of their own sex."³⁵ Female teachers could build on the accepted view that mothers were moral instructors of the young.³⁶

But there was no way to sugarcoat law practice by connecting it to the ideal world of purity and tender feeling that nineteenth-century women supposedly inhabited.³⁷ Like voting, practicing law involved an unambiguous passage into the public sphere. That is why the cause of women lawyers was totally joined with the larger woman's movement, why all women lawyers wanted suffrage, and why many actively campaigned for it.

Opponents saw the unity of the causes very clearly and warned that allowing women to practice law would lead to suffrage and vice versa, adding as a last blow, that voting and lawyering would inevitably result in jury service.³⁸ Moreover, they used the same arguments interchangeably for at-

and reproducing the text of the Declaration and resolutions). As to women in the professions, the Declaration of Sentiments includes passages such as this:

[Man] has monopolized nearly all the profitable employments and from those [woman] is permitted to follow, she receives but a scanty remuneration. He closes against her all the avenues to wealth and distinction which he considers most honorable to himself. As a teacher of theology, medicine, or law, she is not known.

Id. at 71.

34. *See id.* at 70-71.

35. BARBARA J. HARRIS, *BEYOND HER SPHERE: WOMEN AND THE PROFESSIONS IN AMERICAN HISTORY* 110 (1978).

36. *See* p. 73; HARRIS, *supra* note 35, at 60.

37. *See* pp. 73-74. Some of the early women lawyers urged that they could best serve women clients, or that certain kinds of legal work were especially suited to women. Though arguments like these succeeded in medicine, and even the ministry, they did not serve to break the legal profession's barriers. *See id.* at 74-78.

38. I discuss the history of jury service by women in Barbara Allen Babcock, *A Place in the Palladium: Women's Rights and Jury Service*, 61 U. CIN. L. REV. 1139, 1160-74 (1993). *See also* J.E.B. v. Alabama, 511 U.S. 127, 131-34 (1994) (noting that women had been excluded from jury service and other facets of civil life in order to protect their delicate nature from ugliness and depravity); ELEANOR FLEXNER, *CENTURY OF STRUGGLE: THE WOMAN'S RIGHTS MOVEMENT IN THE UNITED STATES* 161 (1972) (finding that jury duty was "one of the most basic demands voiced by the women"); DEBORAH L. RHODE, *JUSTICE AND GENDER* 48-50 (1989) (citing the "persistent" and "unsuccessful" feminist challenges to gain jury service for women); Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE L. J. 1131, 1187-89 (1991) (analyzing jury service as political participation); Joanna L. Grossman, *Women's Jury Service: Right of Citizenship or Privilege of Difference?* 46 STAN. L. REV. 1115 (1994) (discussing *Batson*, which clearly established women's right to serve on juries; and noting that the Court had historically denied any connection between women's jury service and citizenship, and had emphasized gender differences); Grace H. Harte, *Women Jurors on the American Scene*, 25 WOMEN LAW. J. 9, 9-10 (1939) (discussing the valiant fight of women to "lift the searing brand or stigma of inferiority resting on their sex so long as the jury box in any state is sacrosanct to men only"); Carole L. Hinchcliff, *American Women Jurors: A Selected Bibliography*, 20 GA. L. REV. 299 (1986) (listing the legal, scholarly, and popular materi-

tacking all three goals. Most dire was the charge that being a lawyer or a voter would change women drastically—"unsexing" them. A public woman would have neither use nor time for her higher calling in the private sphere. The emotional appeal of this argument appears in these lines from *PUCK*, a magazine popular in the 1870s.

Shame unto womanhood! The common scold
Stands railing foul-mouthed in the public street;
And in the mart and 'fore the justice seat
Her shallow tale of fancied wrongs is told.
No woman these such as our hearts enfold,
Mothers and wives are cast not in this mold.³⁹

Time spent "'fore the justice seat," would unsex women not only by removing them from their proper sphere but also by degrading their finer natures. As the opinion in Lavinia Goodell's case had it, woman was not fit for "all the nastiness of the world which finds its way into courts of justice; all the unclean issues . . . sodomy, incest, rape, seduction, fornication, adultery. . . libel and slander of sex, impotence, divorce;" and many more "among the nameless catalogue of indecencies." For good measure, the judge wrote that "reverence for all womanhood would suffer in the public spectacle of women so . . . engaged."⁴⁰

Woman defiled was a rhetorical charge directed equally at her roles as voter, juror, and lawyer. Another standard argument was that women would skew the process.⁴¹ As voters and jurors, they would favor the best-looking

als addressing the struggle of women for the right to serve as jurors); Note, *Beyond Batson: Eliminating Gender-Based Peremptory Challenges*, 105 HARV. L. REV. 1920, 1924-27 (1992) (discussing women's historical exclusion from jury service). In 1946, the Supreme Court ruled that the "systematic and intentional" exclusion of women from jury service violated the federal statute. See *Ballard v. United States*, 329 U.S. 187, 193-94 (1946).

39. *Sonnet*, *PUCK*, Jan. 1878, at 8-9, reprinted in Babcock, *Constitution-Maker*, *supra* note 16, at 907.

40. *Matter of Goodell*, 39 Wis. 232, 245-46 (1875). The whole long opinion was read aloud in court when Clara Foltz and Laura Gordon sued to gain admission to law school. See Babcock, *First Woman*, *supra* note 10, at 710-11.

41. See Babcock, *First Woman*, *supra* note 10, at 689 & n.80 (quoting SACRAMENTO UNION, Jan. 11, 1878, at 2) ("Impressionable male jurors" would "return a verdict of acquittal without leaving the box," and "the law and the facts would be simply ignored."). For another example of the attitudes of the time toward women as jurors, see *Women as Jurors*, 93 CENT. L.J. 57, 57 (1921), concluding that one of the dangers of enfranchising women was imposing on them the additional "duties of citizenship hard for them to perform . . . none [of which] are more difficult for women than that of determining the issues in a case at law." The article continued by noting:

There are many serious and embarrassing situations caused by a woman's presence on a jury and these embarrassments sometimes affect the woman herself and sometimes the case which she is called upon to decide. . . . [T]hey are sometimes very embarrassing to lawyers on both sides of a case who do not know the psychology of a woman's mind and are not sure which way she is going to jump.

Id. at 57. Ironically, however, this same article, after cataloguing the reasons for excluding women from juries, went on to conclude that because "a woman's intuition will reach a just conclusion where frequently a man, who is unable or refuses to use his reason, will stumble into error," the

man, or be swayed by sympathy rather than principle. As lawyers, their seductive wiles would cause juries to acquit the guilty and reward the undeserving. The only solution, ironically proposed, would be to place women (immune from each other's charms) on juries.

The opponents saw a unified band of feminists—they called them “the strong-minded”—working on many fronts to transform the place of women in American society. And the women lawyers had the same vision. All of them believed in the emblematic cause of woman suffrage, and many were among its leaders. Even those who were not active suffragists were feminists in the fundamental sense, placing women at the center of their thought and activities.

Lelia Robinson is a good example of this latter group.⁴² Though as yet historical research has not caught her speaking, marching, or petitioning for suffrage, it is her feminist activities that make her life memorable and important.⁴³ After graduating with honors as the first woman at Boston University Law School, and suing to join the Massachusetts Bar,⁴⁴ she struggled for several years as a solo practitioner. Upon learning that Washington Territory had enfranchised women, she headed for Seattle in order to practice in a

effect of “women in the jury box cannot, on the whole, but prove wholesome and beneficial.” *Id.* at 58.

Whether as lawyers or as jurors, it was argued, women would not be able to sustain the mental labor and intensity of the work and would constantly fall ill, thus causing mistrials and other inefficiencies in the system. Wyoming, initially as a territory and then as a state, was the first to grant women suffrage in 1869, and to have women serving on juries. See Grace Raymond Hebard, *The First Woman Jury*, 7 J. AM. HIST. 1293, 1293 (1913) (noting that the “Act to Grant to the Women of Wyoming Territory the Right of Suffrage, and to Hold Office” marked the first time that a government derived its powers from “the consent of the governed” and not just from “a designated portion of those governed”). Much was made of the experience in Wyoming during the California constitutional debates of 1879, with opponents referring often to a mistrial caused when a woman juror fell ill two weeks into the trial. See 2 DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF CALIFORNIA 1015 (1879).

42. See pp. 27-30, 51-54, 64, 69-70, 80-82, 88-91, 95-97, 98-117. For general biographical information about Lelia Robinson, see also DRACHMAN, WOMEN LAWYERS, *supra* note 2, at 257-61; MORELLO, *supra* note 2, at 68-69; Mary A. Greene, *Mrs. Lelia Robinson Sawtelle—First Woman Lawyer of Massachusetts*, 7 WOMAN LAW. J. 51 (1918); Sarah Killingsworth, *Lelia Robinson* (visited Apr. 25, 1998) <<http://www-leland.stanford.edu/group/WLHP/papers/robinson.html>>; Mary Nicol, *Lelia Robinson Timeline* (visited Mar. 2, 1998) <<http://www-leland.stanford.edu/group/WLHP/papers/RobinsonTimeline.html>>.

43. As this Review went to press, Mary Nicol completed a paper that reveals Lelia Robinson as a supporter and speaker for suffrage in Washington Territory. The paper will soon be available at <<http://www-leland.stanford.edu/group/WLHP/papers.html>>.

44. See *Lelia J. Robinson's Case*, 131 Mass. 376 (1881). In denying Robinson's application to practice before the Supreme Judicial Court of Massachusetts, the court reasoned that permitting women to practice law would be implicitly granting them the right to vote, because suffrage was inextricably linked to women's common-law rights to practice law. See *id.* at 380-82; see also Douglas Lamar Jones, *Lelia J. Robinson's Case and the Entry of Women Into the Legal Profession in Massachusetts*, in *THE HISTORY OF THE LAW IN MASSACHUSETTS: THE SUPREME JUDICIAL COURT, 1692-1992*, at 241-74 (Russell K. Osgood ed., 1992).

more hospitable atmosphere, like Mary Leonard before her. After several lively years as a trial lawyer, she returned East, where she joined the Equity Club herself, formed a Portia club for aspiring women lawyers, trained women in her office, and wrote an important article about women lawyers. Robinson also wrote several books explaining the law to lay people, including one entitled, *The Law of Husband and Wife*.⁴⁵

From my own work, I have become convinced that a close examination of individual lives will reveal, as it does with Lelia Robinson, a self-conscious feminist in virtually every early woman lawyer. But this is neither the technique nor the narrative line of *Sisters*; instead it presents an overview of a separate and self-interested struggle of women to be lawyers, and finds their success "modest, not monumental."⁴⁶

This assessment is debatable in its own terms, as *Sisters* acknowledges. After all, this little band of women prevailed over the "most engendered of all the male-dominated professions."⁴⁷ Within thirty years of Myra Bradwell's case, the majority of America's Bars and law schools included women. *Sisters* finds their accomplishment "modest," partly because "most women lawyers never came close to achieving the professional prestige, autonomy, or financial security of women like Florence Allen and Mabel Walker Willebrandt [both twentieth century figures], who reached the top of the professional hierarchy."⁴⁸ Of course, the vast majority of *men* lawyers never came close to the professional elites—male or female—either.⁴⁹

If, however, the women lawyers are viewed as part of a larger movement, their ordinary and unremarkable practices take on significant luster. They gained strength and purpose from the knowledge that they were working for a cause greater than themselves. At the same time that feminism ennobled their efforts, being female subjected them to discrimination.

In the early days, discriminatory treatment was open and unapologetic. When Clara Foltz sought to study with the most prestigious lawyer in town, he said that her project "would invite nothing but ridicule if not contempt."⁵⁰ When she lobbied for a woman lawyer's bill, an assemblyman accused her of

45. LELIA JOSEPHINE ROBINSON, *THE LAW OF HUSBAND AND WIFE* (1889); see also LELIA JOSEPHINE ROBINSON, *LAW MADE EASY: A BOOK FOR THE PEOPLE* (1886).

46. P. 8.

47. P. 8.

48. P. 215.

49. Drachman acknowledges as much. See p. 207. Even today, most lawyers of both sexes practice in a regional, largely unremarkable fashion. In many legal fields, a measure of success is the invisibility to outsiders of the lawyer's hand.

50. Babcock, *First Woman*, *supra* note 10, at 685 (quoting letter from Francis Spencer to Clara Foltz (1873), reprinted in Clara Shortridge Foltz, *The Struggles and Triumphs of A Woman Lawyer*, NEW AM. WOMAN, June 1916, at 5, 5). *Struggles and Triumphs of a Woman Lawyer* was the title of Foltz's monthly autobiographical column in her magazine, *The New American Woman*, published in Los Angeles from 1916 to 1918.

being a free lover, like the "Woodhulls and the Claflins."⁵¹ On the day she was admitted, a fellow lawyer cheerfully predicted that she would fail because women could not maintain confidences.⁵² At one of her first trials, the prosecutor argued to the jury that her sex rendered her incapable of reason.⁵³

Scratch the life surface of most early women lawyers and you will find experiences like these. You will also find that their feminism enabled them to surmount insults which would have shaken the nonideological. But *Sisters* focuses less on the advantages of feminism than on the burdens of being female, finding a persistent "conflict between gender and professional identity."⁵⁴

The conflict was rooted in what Martha Pearce, an early Michigan lawyer, called "the burden of double consciousness," caused by simultaneously thinking of oneself as a woman and as a lawyer.⁵⁵ One of the best chapters in the book, "Sweeter Manners, Purer Laws," deals with this conflict, especially as reflected through the Equity Club letters. The excellent choice and juxtaposition of quotations gives life to the old debate about how women should *be* in the great world.⁵⁶

While one side said a woman lawyer should act like a man lawyer, the other said that women should be better, or at least different, in their practices.

51. *Id.* at 693. Victoria Woodhull, the most colorful feminist of all time, and her sister, Tennessee Claflin, preached and practiced free love. They were the first women brokers on Wall Street. Victoria was the first woman to speak to a committee of Congress, and in 1870, she became the first woman to run for President of the United States. See generally MARY GABRIEL, NOTORIOUS VICTORIA: THE LIFE OF VICTORIA WOODHULL, UNCENSORED (1998); BARBARA GOLDSMITH, OTHER POWERS, THE AGE OF SUFFRAGE, SPIRITUALISM, AND THE SCANDALOUS VICTORIA WOODHULL (1998); JOHANNA JOHNSTON, MRS. SATAN: THE INCREDIBLE SAGA OF VICTORIA C. WOODHULL (1967); LOIS BEACHY UNDERHILL, THE WOMAN WHO RAN FOR PRESIDENT: THE MANY LIVES OF VICTORIA WOODHULL (1995).

52. See Clara Shortridge Foltz, *Struggles and Triumphs of a Woman Lawyer*, NEW AM. WOMAN, Oct. 1916, at 11, 11.

53. See Clara Shortridge Foltz, *Struggles and Triumphs of a Woman Lawyer*, NEW AM. WOMAN, Jan. 1918, at 9, 15. So common were the attacks that Foltz devised a stock response: "I ask no special privileges and expect no favors, but I think it only fair that those who have had better opportunities than I . . . should meet me on even ground, upon the merits of law and fact without this everlasting and incessant reference to sex . . ." *Id.* at 15; see also Barbara Allen Babcock, *Western Women Lawyers*, 45 STAN. L. REV. 2179, 2183-86 (1993).

54. P. 65.

55. See p. 65 (noting that the "burden of double consciousness" was pervasive throughout a woman lawyer's professional life and suggesting that it might be her greatest challenge); see also Mari J. Matsuda, *When The First Quail Calls: Multiple Consciousness As Jurisprudential Method*, Talk at the Yale Law School Conference on Women of Color and the Law (Apr. 16, 1988), in 14 WOMEN'S RTS. L. REP. 297 (1988) (discussing the bifurcated consciousness of many women and law students of color as they shift between analyses based on standard legal discourse and the consciousness informed by their life experiences).

56. See pp. 64-65. The chapter's title comes from a quote by Ada Kepley, the first woman admitted to the Illinois bar and the first woman in the United States to obtain a law degree. See p. 77; see also DRACHMAN, WOMEN LAWYERS, *supra* note 2; at 236 (describing Kepley's role in enacting the Illinois statute allowing women to practice law); note 20 *supra*.

The liminal discussion was over naming themselves. Lelia Robinson wrote to the Equity Club in 1888: "*Do not take sex* into the practice. Don't be 'lady lawyers.' Simply be *lawyers* and recognize no distinction . . . between yourselves and the other members of the bar."⁵⁷ But Clara Foltz embraced the title: "They called me the 'lady lawyer' a pretty soubriquet which [enabled] me . . . to maintain a dainty manner as I browbeat [sic] my way through the marshes of ignorance and prejudice which beset me on every hand."⁵⁸

Whatever they were called, did women have some special mission or purpose as lawyers? Sarah Kilgore Wertman (Michigan's first woman lawyer) thought women would release "the purifying graces" on the law—sweeping away materialism, incivility, arrogance, and unethical behavior from its foundations.⁵⁹ Florence Cronise (the first woman lawyer in Ohio), on the other hand, disclaimed any purpose other than to "honestly, earnestly, and decently earn my living, doing it in the way I may seem most fitted for."⁶⁰ (In passing, I note that Cronise's position was the more tactically astute because women seeking access did not want either to criticize or to augur great changes.)

The disagreement among these "first" women shows up sharply in their exchanges about reform and charity work. Bluntly, Emma Gillett of Illinois declared: "Charity clients should be shunned . . . They have no more right to a lawyer's services for nothing than a washerwoman's."⁶¹ Other early women lawyers served the impoverished, with special concern for poor women. "My modest law office had become a sort of labor bureau . . .," wrote Clara Foltz, "for the poor and sick and despairing, the ex-convict, the drunkard, and our weak little sisters of the so-called underworld."⁶²

On such professionalism issues—whether women should reform law practice, whether they should devote themselves to charity and social causes—there was division among the lawyers. As individuals, they were also divided by the stresses of "double consciousness." The failure to resolve "the conflict between gender and professional identity," and the failure of many women to reach the top of their profession, are two reasons for gauging the success of women lawyers as "modest."⁶³

57. P. 64.

58. See Foltz, *supra* note 53, at 11.

59. See p. 64 (quoting Sara Killgore Wertman).

60. See DRACHMAN, *WOMEN LAWYERS*, *supra* note 2, at 158 (quoting letter from Florence Cronise to the Equity Club (1889)).

61. P. 81.

62. Clara Shortridge Foltz, *Struggles and Triumphs of a Woman Lawyer*, *NEW AM. WOMAN*, May 1918, at 9, 9.

63. A typical passage in the book reads as follows: "Although admission to the bars and to law schools represented institutional victories of great magnitude in nineteenth-century America,

The disagreements among the women lawyers tend to mask their near-universal feminism. But these disagreements did not extend to the larger feminist issues, and particularly not to suffrage. In fact, most women lawyers believed that the vote would almost instantly change their professional status. In 1920, the year of the federal amendment, a survey of 190 women lawyers revealed that only 12 percent thought suffrage inconsequential to their professional efforts. "Some among this optimistic majority focused on the intangible benefits of suffrage; they viewed the vote as empowering women lawyers and as therefore enhancing their status and respect Others . . . tied suffrage to their desire to run for public office or to win appointments to positions in the courts" ⁶⁴

All such hopes were quickly dashed as political equality, so closely tied by the women lawyers to jury service and women's professional advancement, had little impact on either. ⁶⁵ From these disappointments was born the first real divergence between feminism and professionalism. Professor Nancy Cott, in *The Grounding of Modern Feminism*, explains that once suffrage was achieved, women professionals put aside the special concern for women that defines feminism, and focused instead on the "neutral and meritocratic ideology" of the professions to mark their progress. ⁶⁶

Not that women, especially women lawyers, had any real choice in the matter; they were so few, and once assimilated to the ethos of individual merit, so removed from each other. As Professor Cott observes: "Without the meritocratic pretensions of the professions women had no warrant for advancement or power within them at all." ⁶⁷ Thus women took up "[t]he professional credo, that individual merit would be judged according to ob-

arguably the greater task for women lawyers was to overcome the burden of double consciousness." P. 65.

64. P. 183. The 1920 census showed a total of 1,738 total women lawyers. See p. 253 tbl.2.

65. There was less enthusiasm in the West for the effects of suffrage. This may have been because women there had had the vote for some years and they saw that it did not impact on women's professional advancement after all. See p. 260 tbls.15, 16 (25% of western women responded that the Suffrage Amendment was not important to women lawyers compared to 6% of women in the East, 5% in the Midwest, and 21% in the South; 32% of women in the West responded that suffrage helped women gain access to work, as opposed to 57% of women in the East, 49% in the Midwest, and 23% in the South). The southern women saw change come so slowly that they were not optimistic. Women lawyers also found that in too many places jury service, so closely linked to suffrage in the long campaigns, did not follow automatically from achieving the vote.

66. See NANCY COTT, *THE GROUNDING OF MODERN FEMINISM* 233-34 (1987). Professor Cott conceptualizes that the struggle for the vote masked the conflict between feminism and professionalism, but that sex-neutral professionalism, with its "potent" promise "to judge practitioners on individual merit as persons (not as men or women) in the dispassionate search for truth and usefulness," always held an appeal. See *id.* at 237.

67. *Id.* at 235.

jective and verifiable standards,” and clung to it “even when they saw it travestied in practice.”⁶⁸

Sisters ends with the gloomy postfeminist period: “Girl Lawyer Has Small Chance for Success,” is the last chapter’s title—taken from a woman attorney’s assessment of career prospects in 1912.⁶⁹ “By the mid-twentieth century,” it concludes, “women lawyers were far from reaching their goal of equality. Instead, the task of balancing gender and professional identity was still a challenge and remains a legacy for women lawyers today.”⁷⁰ As the next millennium opens, women are preparing to claim the pioneers’ legacy, but not by continuing the balancing act. Instead, the new lawyers are gearing to change the profession so that it truly accommodates women.

This goal, unimaginable in the 1930s when *Sisters* ends, is credible today because of the astonishing increase in the numbers of women lawyers.⁷¹ Just a few decades ago, less than four percent of the nation’s law students were women; now the percentage is well over forty.⁷² The law professoriate has opened its extremely exclusive ranks,⁷³ and women judges preside in courts at every level.⁷⁴

68. *Id.* at 234.

69. P. 215.

70. P. 249.

71. The number of women lawyers increased from 3% in 1960 to 23% in 1995. See ABA COMM’N ON WOMEN IN THE PROFESSION, WOMEN IN THE LAW: A LOOK AT THE NUMBERS 8 (1995) [hereinafter ABA, WOMEN IN THE LAW].

72. See ABA COMM’N ON WOMEN IN THE PROFESSION, UNFINISHED BUSINESS: OVERCOMING THE SISYPHUS FACTOR 7 (1995) [hereinafter ABA, UNFINISHED BUSINESS]; see also EPSTEIN, *supra* note 2, at 49-59 (describing the ever increasing number of women law students). See generally LANI GUINIER, MICHELLE FINE & JANE BALIN, BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE (1997) (discussing the ways in which gender affects women’s experiences at law school).

73. See ABA, WOMEN IN THE LAW, *supra* note 71, at 39-40. In 1994, 28% of law school professionals were women. Over 50% of the assistant deans, assistant professors, and instructors at law schools were women. Seventeen percent of full professors, 8% of deans, and 27% of associate and assistant deans who held appointments as professors were women. See *id.* at 39; ABA, UNFINISHED BUSINESS, *supra* note 72, at 8; EPSTEIN, *supra* note 2, at 219-236 (describing the conflicting interests in legal academia to include more women in its ranks and the forces undermining any substantial increase); Herma Hill Kay, The Future of Women Law Professors, 77 IOWA L. REV. 5 (1991) (providing a biographical essay on the first women law professors); Deborah L. Rhode, *Myths of Meritocracy*, 65 FORDHAM L. REV. 585, 587 (1996) (noting that despite the gains of women in the legal profession, there are large gender disparities in positions of greatest power and economic reward). See generally ASSOCIATION OF AM. LAW SCH. SPECIAL COMM’N ON MEETING THE CHALLENGES OF DIVERSITY IN AN ACADEMIC DEMOCRACY, PERSPECTIVES ON DIVERSITY (1995); Deborah J. Merritt & Barbara F. Reskin, *The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299 (1992) (comparing the rates at which women of color obtain tenure-track positions at law schools with that of men of color).

74. See ABA, WOMEN IN THE LAW, *supra* note 71, at 29-32. The ABA reports that the proportion of women judges more than doubled between 1980 and 1991, to reach 9% of all judges. Women comprise 22% of the Supreme Court Justices, 13% of U.S. Court of Appeals judges, 12%

At the moment that women are forming a critical mass within it, the profession, prompted partly by public dissatisfaction, is engaged in agonized self-criticism about its purposes. Books and articles, bar speeches and graduation valedictories abound on the subjects of failing faith and lost lawyers.⁷⁵ Greed and inhumanity in the forms of needless aggression and soulless lack of concern about societal consequences is the indictment from the outside.⁷⁶ Internally, the complaint is that a learned profession has become a bottom-line business, and that everyone from the freshest associate to the graying partner works too hard, leaving no time for family and communal life, pleasure or pro bono publico.⁷⁷

The convergence of these two phenomena—the swelling numbers of women and the troubled profession—gives direction to a renewed women's legal movement. In the course of gaining their place within the profession, women could return it to the public spirited, public interested, reconciliatory and redemptive work that once was its aspiration. Our purpose is, in Virginia Woolf's words, "not to burn the house down but to make the windows

of U.S. District Court judges, and 17% of U.S. Court of Claims. *See id.* at 29. The representation of women among state judges increased from 4% to 9%. *See id.* at 31; *see also* ABA, UNFINISHED BUSINESS, *supra* note 72, at 14-17 (reporting that in 1995, women were 12% of all federal judges and 31% of President Clinton's appointees—compared to 19% of appointees during the Bush Administration and 8% of appointees under President Reagan). Although the number of women judges has increased dramatically, women of color account for less than three percent of lawyers and judges. *See* Rhode, *supra* note 73, at 587-88 & n.15 (citing ABA, WOMEN IN THE LAW, *supra* note 71, at 17); *see also* EPSTEIN, *supra* note 2, at 237-246 (discussing women in the judiciary).

75. *See* MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY 5-8 (1994) (claiming that lawyers are losing the habits and discipline that serve democratic governance); Arlin M. Adams, The Legal Profession: A Critical Evaluation, Remarks at the Tresolini Lecture at Lehigh University (Nov. 10, 1988), in 93 DICK. L. REV. 643, 646-48 (1989) (discussing the replacement of legal professionalism with commercialism); Norman Bowie, *The Law: From a Profession to a Business*, 41 VAND. L. REV. 741, 759 (1988) (chronicling the shift from law as a profession to law as a business, and urging society to "seek to make business a profession rather than to make law a business"); Chief Justice Warren E. Burger, *The Decline of Professionalism*, 63 FORDHAM L. REV. 949, 949-50 (1995) (noting that the decline of legal professionalism has taken on epidemic proportions). *See generally* ABA COMM'N ON PROFESSIONALISM, IN THE SPIRIT OF PUBLIC SERVICE: A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (1986) (accounting the danger of commercialism in the legal profession); JONATHAN HARR, A CIVIL ACTION (1995) (chronicling an environmental lawsuit between families stricken by leukemia and corporations, and populated by greedy lawyers and indifferent juries); ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993) (describing the "ideal of the lawyer-statesman," as well as the legal institutions which threaten it); SOL M. LINOWITZ & MARTIN MAYER, THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY (1994) (discussing the inherent conflict between lawyers' status as independent professionals and their role as advocates).

76. *See* Lincoln Caplan, *The Lawyers' Race to the Bottom*, N.Y. TIMES, Aug. 6, 1993, at A29 (arguing that popular culture is correct in its condemnation of lawyers, and asserting that "the practice of law has become hollow at its core").

77. *See, e.g.*, EPSTEIN, *supra* note 2, at 206-12 (describing the time commitment required by Wall Street firms).

blaze.”⁷⁸ This time around, however, the movement has a history to draw upon—a history to inspire and to instruct.

One lesson from this history is that male allies are essential to the project of redeeming the profession by making a better place for women.⁷⁹ Actually, men have helped women lawyers from the beginning, although the stories of rudeness and rejection are more memorable. *Sisters* amply illustrates men’s roles, starting with Myra Bradwell, encouraged and aided at every turn by her husband, James.⁸⁰ Indeed, the early women lawyers who succeeded without substantial male aid were as rare as antifeminists. Careful biographical work often reveals male allies in the lives of even those women who appear free-standing. Clara Foltz, for instance, relied on her lawyer siblings, Samuel and Charles, as well as on a number of figurative brothers at the bar over her long career.⁸¹

Another overarching theme of women’s legal history is the necessity of feminism. For the movement to progress beyond self-interested promotion and even beyond a quest for formal equality, it must place women at the center of thought and action. Feminism can transform the professional lives of most lawyers by making the resolution of “this conflict between gender and professional identity”⁸² a group, rather than an individual, effort. No less sweeping an ideology will suffice because of the conservative nature of the legal profession.

Feminist women and men working together to reconstruct the legal profession: Is it possible, and what, more specifically, would it mean? The answer is that the movement is already underway. It has started, like the first and second women’s movements did, with education, interchange, and revelation occurring at meetings on many levels and in writings of great variety.⁸³ From this exchange will come the ideas and the energy for the next phase of the movement.

78. Carrie Menkel-Meadow, in *Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change*, 14 L. & SOC. INQUIRY 289 (1989), first alerted me to Woolf’s words, so apt for the renewed women’s movement:

[Y]ou can join the professions and yet remain uncontaminated by them; you can rid them of their possessiveness, their jealousy, their pugnacity, their greed. You can use them to have a mind of your own and a will of your own. And you can use that mind and will to abolish the inhumanity, the beastliness, the horror, the folly of war. Take this guinea then and use it, not to burn the house down, but to make its windows blaze.

Id. at 290 (quoting VIRGINIA WOOLF, *THREE GUINEAS* 83 (1938)).

79. See The Honorable Ruth Bader Ginsburg, Remarks on Women’s Progress in the Legal Profession in the United States, in 33 *TULSA L.J.* 13, 19 (1997) (noting that “sisters-in-law need the aid of their brothers-in-law”).

80. See, e.g., p. 16.

81. This conclusion is based on my biographical research of Foltz’s life. The aid she received from men, especially her brothers, is one of my themes.

82. P. 65.

83. See notes 84-88 *infra* and accompanying text.

Meanwhile, gender bias task forces in more than 35 states and 7 circuits have explored the progress of women in the practice, relying on statistical studies and personal narratives.⁸⁴ Conferences devoted to women in the profession are once again taking place across the country.⁸⁵ A curricular revolution has already occurred in the law schools; most courses now treat women's issues where before there was only silence.⁸⁶ Women have also

84. See, e.g., REPORT OF THE SPECIAL COMMITTEE ON GENDER TO THE D.C. CIRCUIT TASK FORCE ON GENDER, RACE, AND ETHNIC BIAS (1995), reprinted in 84 GEO. L.J. 1657 (1996); FINAL REPORT AND RECOMMENDATIONS OF THE EIGHTH CIRCUIT GENDER FAIRNESS TASK FORCE (1997), reprinted in 31 CREIGHTON L. REV. 9 (1997); REPORT OF THE MISSOURI TASK FORCE ON GENDER AND JUSTICE (1993), reprinted in 58 MO. L. REV. 485 (1993); REPORT OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURTS (1986), reprinted in 15 FORDHAM URB. L.J. 15 (1986-87); THE EFFECTS OF GENDER IN THE FEDERAL COURTS: THE FINAL REPORT OF THE NINTH CIRCUIT GENDER BIAS TASK FORCE, (1993), reprinted in 67 S. CAL. L. REV. 745 (1994); Judith Resnik, *Asking About Gender in Courts*, 21 SIGNS 952 (1996) (providing an extended bibliography of task force reports that examine judicial bias based on gender, race, and ethnicity). These task force reports have evoked considerable commentary. See generally Ann J. Gellis, *Great Expectations: Women in the Legal Profession, A Commentary on State Studies*, 66 IND. L.J. 941 (1991) (summarizing and reprinting the contents of the Indiana State Bar Association's *Report of the Commission on Women in the Profession* (1990)); Deborah R. Hensler, *Studying Gender Bias in the Courts: Stories and Statistics*, 45 STAN. L. REV. 2187 (1993) (discussing the methodology and findings of the Ninth Circuit Task Force on Gender Bias); Judith Resnik, *Ambivalence: The Resiliency of Legal Culture in the United States*, 45 STAN. L. REV. 1525 (1993) (commenting on why awareness of gender in scholarship and court task forces has not radically changed the law school classroom or the courts); Judith Resnik, *Gender Bias: From Classes to Courts*, 45 STAN. L. REV. 2195 (1993) (noting that gender issues pervade the functioning of the federal courts); Judith Resnik, "Naturally" Without Gender: *Women, Jurisdiction, and the Federal Courts*, 66 N.Y.U. L. REV. 1682 (1991) (examining the role of gender and gender discrimination in federal courts, and noting that while state court task forces have examined gender bias, federal courts have been reluctant to undertake such an examination); Lynn Hecht Schafran, *Gender and Justice: Florida and the Nation*, 42 FLA. L. REV. 181 (1990) (discussing the findings of the Florida Supreme Court Gender Bias Study Commission and arguing that gender bias in the court room will only be alleviated through an examination of gender bias in legal education); Jeannette F. Swent, *Gender Bias at the Heart of Justice: An Empirical Study of State Task Forces*, 6 S. CAL. REV. L. & WOMEN'S STUD. 1 (1996) (noting that at least thirty-five jurisdictions have reported findings of gender bias).

85. Some conference proceedings have been published as symposia in law reviews. See Symposium, *Civic and Legal Education, Panel One: Legal Education, Feminist Values, and Gender Bias*, 45 STAN. L. REV. 1525 (1993); Symposium, *Gender, Empiricism, and the Federal Courts*, 83 GEO. L.J. 461 (1994). Other conferences include: Challenging Boundaries: National Conference of the Yale Journal of Law and Feminism (Nov. 8, 1996) (Yale Law School) (including panels on transracial adoption, poverty, labor, and international issues relating to law and feminism); Sexual Harassment Conference (Feb. 27-Mar. 1, 1998) (Yale Law School) (exploring the impact of sexual harassment law as an innovation in the theory and practice of sexual equality and marking the twentieth anniversary of the publication of Catherine MacKinnon's *Sexual Harassment of Working Women*); Women in Legal Education: Gentlemen No More: An Invitational Summit of Women in the Law (Nov. 20-22, 1997) (Mills College) (discussing ways in which women's law school experiences can be broadened to match most of their male peers); Women in the Legal Profession (Apr. 5, 1997) (Stanford Law School) (covering topics such as strategies for success in the workplace, nontraditional legal jobs, and the socialization of men and women at work). Finally, see Patricia A. Cain, *The Future of Feminist Legal Theory*, 11 WIS. WOMEN'S L.J. 367 (1997), for a discussion of the history and importance of "women and the law" conferences.

86. See Elizabeth M. Schneider, Lucinda Finley, Carin Class & Joan Bertin, "Feminist Jurisprudence"—The 1990 Myra Bradwell Day Panel, in 1 COLUM. J. GENDER & L. 5, 6, 10-11 (1991)

created a flourishing academic discipline encompassing such subjects as sex discrimination law, feminist legal theory, and women's legal history.⁸⁷

(noting the growing interest in exploring gender issues throughout the law school curriculum). See, e.g., Leslie Bender, *Teaching Torts As If Gender Matters: Intentional Torts*, 2 VA. J. SOC. POL'Y & L. 115, 116 (1994) (advocating the incorporation of a feminist analysis into the teaching of tort law in order to expose its inherent biases); Martha Chamallas, *Importing Feminist Theories to Change Tort Law*, 11 WIS. WOMEN'S L.J. 389, 389-90 (1997) (connecting issues of torts and feminism); Amy C. Christian, *The Joint Return Rate Structure: Identifying and Addressing the Gendered Nature of the Tax Law*, 13 J.L. & POL. 241, 245 (1997) (arguing that, while joint return tax rates appear neutral, they have "a substantially biased effect against women in their application"); Mary Irene Coombs, *Crime in the Stacks, or A Tale of a Text: A Feminist Response to a Criminal Law Textbook*, 38 J. LEGAL EDUC. 117, 121 (1988) (presenting a feminist critique of a criminal law textbook and arguing that the scrutiny applied to other texts should be applied to legal textbooks as well); Mary Jo Eyster, *Integrating Non-Sexist/Racist Perspectives Into Traditional Course and Clinical Settings*, 14 S. ILL. U. L.J. 471, 471 (1990) (arguing that such integration aids in the education of competent, effective, fair lawyers); Lucinda M. Finley, *A Break in the Silence: Including Women's Issues in a Torts Course*, 1 YALE J.L. & FEMINISM 41, 41-44 (1989) (outlining the benefits of including women's issues in torts classes and providing a beginning framework for that inclusion); Mary Joe Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U. L. REV. 1065, 1065 (1985) (presenting a feminist analysis of a widely used contracts casebook, and arguing that "gendered aspects of a casebook affect readers' understanding of the law and of themselves"); Judith T. Younger, *Community Property, Women and the Law School Curriculum*, 48 N.Y.U. L. REV. 211, 212-14 (1973) (arguing that the American community property system treats married women as unequal, and that this unequal treatment, which is rarely examined in casebooks, should be discussed in law school classrooms).

87. See Leslie Bender, *Feminist (Re)Torts: Thoughts on the Liability Crisis, Mass Torts, Power, and Responsibilities*, 1990 DUKE L.J. 848, 850 (recommending a reexamination of the common law tort system "through feminist legal method and with feminist goals and value choices") (footnotes omitted); Cain, *supra* note 85, at 369-70 (noting the rise of feminist scholarship, the introduction of specialized law courses known as "feminist jurisprudence" or "feminist legal theory," and the publication of feminist jurisprudence casebooks); Nora V. Demleitner, *A Response to Mathias Reimann: More, More, More But Real Comparative Law*, 11 TUL. EUR. & CIV. L.F. 73, 82 (1996) (reporting that many law schools now "offer courses in feminist jurisprudence and feminist legal theory"); Frances Olsen, *Constitutional Law: Feminist Critiques of the Public/Private Distinction*, 10 CONST. COMMENT. 319, 325 (1993) (arguing that "injustice cannot be justified by means of the public/private distinction"); Deborah L. Rhode, *Gender and Jurisprudence: An Agenda for Research*, 56 U. CIN. L. REV. 521, 523 (1988) (suggesting avenues for research and empirical deconstruction in employment and family policy); Stephen J. Schulhofer, *The Feminist Challenge in Criminal Law*, 143 U. PA. L. REV. 2151, 2153-54 (1995) (arguing that feminist critics of criminal law who seek to have the concerns of female victims and defendants addressed should move away from "high theory" and towards "real solutions" and a "feminism of particulars"). See generally FEMINIST LEGAL LITERATURE: A SELECTIVE ANNOTATED BIBLIOGRAPHY (F.C. Decoste, K.M. Munro & Lillian MacPherson eds., 1991) (presenting a bibliography of multidisciplinary feminist literature relating to law).

Teachers wishing to include a feminist perspective now have many texts to choose from. See generally BABCOCK, ET AL., *supra* note 5; MARY BECKER, CYNTHIA GRANT BOWMAN & MORRISON TORREY, *CASES AND MATERIALS ON FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* (1994); HERMA HILL KAY & MARTHA S. WEST, *TEXTS, CASES, AND MATERIALS ON SEX-BASED DISCRIMINATION* (4th ed. 1996); RHODE, *supra* note 38 (proposing an alternative approach to examining gender discrimination); Mary E. Becker, *The Politics of Women's Wrongs and the Bill of Rights: A Bicentennial Perspective*, 59 U. CHI. L. REV. 453 (1992) (writing that the Bill of Rights was intended to protect the interests of men of property, and that it still operates to support the status quo against reform and limit the participation of ordinary people, especially women, in politics and government). For a discussion of feminist legal methods and scholarship, see gener-

In the first movement, women, particularly those seeking access to the profoundly male legal profession, had to invent themselves as public actors. But this time we have potential models, and their recovery is one of the major projects of the present movement's initial phase. Individual biographies and collective studies of women, many organized by region to reflect the local campaigns to join the profession, help resurrect these models. Some of these biographies are already between hard covers and in cyberspace, and many more are forthcoming.⁸⁸

Sisters also has a biographical aspect; "I have sought at every to turn to tell a story," says Professor Drachman in the introduction.⁸⁹ Her "analytic tale"⁹⁰ covers women all over the country, and draws on individual archives as well as secondary materials ranging from popular magazines to law cases. Throughout the book, but especially in a chapter entitled "*I Think I Haven't Neglected my Husband*,"⁹¹ are accounts of women lawyers who combined domestic duties, childbearing and raising, and active public life. We can learn a lot from the first women who tried "to have it all." *Sisters* is an important contribution to the renewed women's movement.

ally Katherine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990) (identifying and critically examining techniques such as "asking the woman question," feminist practical reasoning, and consciousness-raising); Ann C. Dailey, *Feminism's Return to Liberalism*, 102 YALE L.J. 1265 (1993) (reviewing FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER (Katherine T. Bartlett & Rosanne Kennedy eds., 1991), and noting the emerging political theme of empathetic liberalism in recent feminist legal scholarship); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (rejecting "gender centralism" on the grounds that it silences some women, notably black women, and that it is not adequately subversive of the dominant legal paradigms); Martha Minow, *The Supreme Court, 1986 Term—Foreword: Justice Engendered*, 101 HARV. L. REV. 10 (1987) (encouraging the judiciary to deal with "difference" by searching for unnoticed perspectives and unacknowledged assumptions about difference"); Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699 (1990) (noting the commonalities between pragmatism and feminism, including a "commitment to finding knowledge in the particulars of experience"); Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WIS. WOMEN'S L.J. 81 (1987) (discussing how law and liberal feminism fail to address women's experiences and injuries); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988) (claiming that the dominant assumption in legal discourse, that humans are first and foremost separate individuals, ignores women's "connected" reality).

88. See note 2 *supra*. See generally BARBARA ANN ATWOOD, *A COURTROOM OF HER OWN: THE LIFE AND WORK OF JUDGE MARY ANNE RICHEY* (1998) (recounting the life and career of a pathbreaking Arizona judge to reveal the complexity of Richey's gender and judicial identities—which defy cultural feminists' assumptions that women bring a particularly feminine perspective to the law); CALLED FROM WITHIN: EARLY WOMEN LAWYERS OF HAWAII (Mari Matsuda ed., 1992); Sylvia A. Law, *Crystal Eastman: NYU Law Graduate*, 66 N.Y.U. L. REV. 1963 (1991); Caroline Goddard & Gwen Hoerr McNamee, *Eight Women Legal Pioneers*, CHI. BAR ASS'N REC., Jan. 1998, at 20. Jill Norgren, Professor of History at CUNY is researching a book about Belva Lockwood. See also Sanger, *supra* note 2.

89. P. 7.

90. P. 7.

91. Pp. 98-117.