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# Precedents, Patterns and Puzzles: Feminist Reflections on the First Women Lawyers

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**Abstract:** This paper initially examines the historical precedents established by some of the first women who entered the “gentleman’s profession” of law in different jurisdictions, as well as the biographical patterns that shaped some women’s ambitions to enter the legal professions. The paper then uses feminist methods and theories to interpret “puzzles that remain unsolved” about early women lawyers, focusing especially on two issues. One puzzle is the repeated claims on the part of many of these early women lawyers that they were “lawyers”, and not “women lawyers”, even as they experienced exclusionary practices and discrimination on the part of male lawyers and judges—a puzzle that suggests how professional culture required women lawyers to conform to existing patterns in order to succeed. A second puzzle relates to the public voices of early women lawyers, which tended to suppress disappointments, difficulties and discriminatory practices. In this context, feminist theories suggest a need to be attentive to the “silences” in women’s stories, including the stories of the lives of early women lawyers. Moreover, these insights may have continuing relevance for contemporary women lawyers because it is at least arguable that, while there have been *changes* in women’s experiences, there has been very little *transformation* in their work status in relation to men.

**Keywords:** women lawyers; history; biography; legal professionalism; feminism

## 1. Feminist Insights about Early Women Lawyers: Methods and Theories

[F]eminist objectives emphasize *understanding* rather than *controlling* the material or information generated and conceptualize the interpretive task as one of *opening* rather than *closure*...[T]he problematic for feminists resides...in the fundamental concepts underlying the *framing* of questions...([1], pp. 170–71).

Susan Geiger’s comments occurred in her critical assessment of the use of oral history as a method of exploring women’s lives and experiences. As she argued, too often “questions expose the researcher’s preconceived notion of the...*centrality/power* of her own place in the world” ([1], p. 171), an approach that may compromise the interpretive task. Geiger’s comments about feminist research methods have particular resonance for my efforts to study the experiences of early women lawyers, and to interpret the significance of their legal precedents and life patterns in the context of their individual stories.<sup>1</sup> Indeed, her comments suggest how a careful assessment of available evidence is necessary

<sup>1</sup> Others have focused on a related, but quite different question in a yearning to discover role models in the lives of early women lawyers. For example, Barbara Babcock’s assertion that stories of nineteenth-century women lawyers revealed “a self-conscious feminist in virtually every early woman lawyer” risks interpreting their lives from a modern perspective, and not only because the word “feminism” may not have entered the English language until almost the turn of the twentieth century: see ([2], p. 119). More recently, two assessments of Justice Bertha Wilson, the first woman to be appointed to the Supreme Court of Canada, used current definitions of feminism to include her as a feminist judge, even though Wilson never so identified herself: see ([3], p. 211; [4], p. 33).

to fully *understand* the specific challenges and historical constraints faced by early women lawyers, recognizing that their opportunities for professional legal work occurred in contexts very different from those experienced by women lawyers in more recent decades. However, while their stories often reveal important relationships between broader social structures and women's agency, they also suggest a need to attend to nuances in women's differing approaches to *their own* understanding of their lives. As will be evident in the stories of women lawyers in this paper:

Some women's narratives can be read as counter-narratives, because they reveal that the narrators do not think, feel, or act as they are 'supposed to...' [Other narratives] unfold within the framework of an apparent acceptance of social norms and expectations but nevertheless describe strategies and activities that challenge those same norms...Still others may allow us new insights into the lives of women who apparently thrive within the established norms and parameters or even assertively contribute to the maintenance of prevailing systems of gender domination...([5], p. 7).

In the context of such variable accounts of women lawyers' individual experiences, it seems critical to engage in the interpretive task with an "openness" to understanding their lives, and without contemporary assumptions about appropriate responses to their individual challenges. Thus, I want to engage with some insights of modern feminist research methods and theories to explore the lives of women who first began to enter the legal professions, and to interpret their varying responses to the concrete opportunities and barriers they encountered.

As Geiger suggested, feminist research (among other goals) revises both our questions and the interpretation of responses. In addition, however, she argued that such research should aim to contribute knowledge for "understanding women's lives and the gendered elements of the broader social world", and especially to "accept women's own interpretations of their identities, their experiences, and social worlds..." ([1], p. 170). In my view, her suggestions focus attention on the need to understand the lives of early women lawyers by engaging with perspectives in both history and biography: the historical context of the "broader social world" in which women began to seek admission to the bar, while also taking account of how life experiences shaped women lawyers' biographical "identities" within their "social worlds." As Joanne Conaghan asserted, feminist theory necessitates an approach that is "attentive to the 'entanglement' of humanly-constructed meanings and material reality" ([6], p. 4; [7], pp. 31–47), an approach that engages both history and biography in assessing the lives of early women lawyers, and their significance for us.<sup>2</sup>

In my earlier study of the first women lawyers [8], I engaged with these ideas by examining two issues for early women lawyers. One focused on the legal *precedents* that permitted women to become members of legal professions in a number of different common law jurisdictions (the United States, Canada, Britain, New Zealand, and India) and in some civil law countries in Europe (Italy, Belgium and France). In doing so, I was interested in how broader *historical contexts* influenced the timing and arguments in legislatures and courts with respect to women's eligibility for admission to the bar in different times and places. Second, I examined some of the factors in these women's lives that prompted them to seek admission to the bar in an effort to identify the *biographical patterns* that created opportunities or barriers for these women. Although I was conscious throughout this earlier study that feminist insights were embedded in their stories of "piecemeal progress and circumscribed success" ([9], p. 1257), this paper now explores more directly how feminist approaches may illuminate the interpretive task of understanding a third issue: the *puzzles* in the lives of early women lawyers.

The first section of this paper briefly reviews some aspects of the historical contexts in which individual women first achieved admission to the bar in different jurisdictions, situating their legal

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<sup>2</sup> Conaghan argued that "What becomes clear...is the need to resist conceptualizations of feminist legal engagement as *either* material or discursive, modern or postmodern, reform-based or theoretical. These are simply two sides of an intellectually contrived debate" ([6], p. 47).

precedents in broader social, political, economic and family contexts. This section also identifies some of the biographical patterns that may explain why it was *these women and not others* who first challenged male exclusivity in the legal professions. In the second section, the paper turns to two puzzles: how the historical context shaped their understanding of professional roles as women in law; and how they interpreted their experiences of success and failure as members of the legal professions. In doing so, the paper engages with Berenice Fisher's challenge that feminist stories must provide a "radical social analysis that shows the objective constraints under which individual women...achieved what they have achieved, as well as how [they were] able to cope with, test, or challenge those constraints" ([10], p. 111).

## 2. Precedents and Patterns: Gender in History and Biography

### 2.1. Early Women Lawyers: Gender and History

History is a retelling of the human experience. To give meaning to that experience, we focus the beams of memory and research on certain events, people, and places, leaving others in the shadows. From time to time, *influenced in part by what seems to be important in our own lives, we move the beams to illuminate unfairly obscured aspects of the human past* ([11], p. 1, emphasis added).

This quotation from the Introduction to a collection of articles about Canadian women's history, published in the 1980s, captures the focus at that time on bringing women's history out of obscurity. As the editors of the collection noted, recovering the history of women would require more than a narrow disciplinary focus and more and different sources of information, and that it might also necessitate new readings of traditional historical sources and data, questioning assumptions (both explicit and implied) about women and their roles: "When fresh questions are asked of familiar data, they will sometimes elicit new answers" ([11], p. 4). As my study of the first women lawyers revealed, some of them had clearly been "hidden from history", but it also probed historical contexts and biographical patterns to identify the reasons why women succeeded in some jurisdictions and not others. For example, although precise explanations are often elusive, it is clear that the historical context of the late-nineteenth century offered new opportunities for some women: for example, access to higher education, rights to property, and entitlement to earnings from paid work [12–16]. Thus, women began to enter the legal professions in some US states as early as 1869–1870 ([8], pp. 26–27), and in Canada and New Zealand in the 1890s<sup>3</sup>—even though the latter jurisdictions were still British colonies—but it was not until 1919 that the *Sex Disqualification (Removal) Act* permitted women in Britain to become barristers and solicitors ([8], pp. 117–18). At the same time, there were important nuances in the timing of women's admission to the bar *within* individual countries. For example, even though some women were admitted to the bar in US states quite early, several major universities (including Columbia, Harvard and Yale) did not admit women to their law programs until well into the twentieth century.<sup>4</sup> Moreover, as James Albisetti concluded, after a comprehensive assessment of legal arguments in cases about women's access to the legal professions in Britain and Europe, "no single factor, or simple combination of factors, comes close to explaining the timing of the opening of the legal profession[s] to women" ([17], p. 847).<sup>5</sup>

Nonetheless, there are some broader historical factors that arguably created opportunities for women to enter the legal professions. For example, some American historians point to the impact of the

<sup>3</sup> Clara Brett Martin was admitted to the bar in Ontario in February 1897, and Ethel Benjamin was admitted to the bar in New Zealand just a few months later ([8], pp. 82–83, 168–69).

<sup>4</sup> Indeed, the last American university to admit women to law programs, Washington and Lee University, did not do so until 1972—more than one hundred years after women first gained admission to state bars ([8], p. 39).

<sup>5</sup> Albisetti also noted that (after World War I), it was striking to observe "the relative simultaneity of the process in countries with widely differing economic, social, political, religious, and professional traditions" [17].

Civil War as a factor in opening the professions, including law, to American women. Thus, although access to higher education and to the professions had been adopted as goals in the Declaration of Sentiments as early as 1848 at the meeting at Seneca Falls [18], Israel Kugler suggested that it was the Civil War in the 1860s that effectively galvanized women's equality efforts; as he noted, American women "looked forward to the postwar Reconstruction as the dawn of a new era of equal rights for all Americans—blacks and whites, women and men" ([19], p. 25). Thus, when the state examining committee reviewed Arabella Mansfield's application for admission to the bar in Iowa in 1869, the committee recommended her admission "not only by the language of the law itself, but by *the demands and necessities of the present time and occasion*" ([20,21], emphasis added).<sup>6</sup> Similarly, legislative enactments in the years shortly after World War I, which opened the legal professions to women in Britain and in some European jurisdictions, may have succeeded as a result of the contributions of women to the war effort.<sup>7</sup> In this context, James Albisetti suggested that the bar's longstanding opposition to women's admission to the legal professions in Britain may have been tempered as well by reassuring evidence from the US and a few European countries that "opening the bar to women would not produce a flood of female attorneys" ([17], p. 847).

In relation to war, moreover, a related factor that may have encouraged women to become lawyers was their need to find employment to support themselves and their children. In the context of the US Civil War, for example, Nancy Cott argued that the high rates of mortality on both sides meant that "the assumption that every woman would become a wife became questionable, even untenable" ([24], pp. 78–79).<sup>8</sup> In Britain, Eliza Orme had argued more generally in the 1890s that it was necessary to break down conventional barriers, allowing "each individual to do what natural talent prompts rather than what social status demands" ([25], p. 619), and the need for women to become financially self-supporting certainly increased after the carnage of World War I. Similarly, Annie Macdonald Langstaff, who was applying for admission to the Québec Bar in the midst of World War I, explained women's need for financial independence succinctly:

It is all very well to say that women's sole sphere should be the home, but it shows most lamentable blindness to the economic conditions which one would think were potent. The plain fact...is that many women have to earn their living outside the home, if they are to have homes at all...([26], p. 306).<sup>9</sup>

As Virginia Drachman concluded, women in the US often became widows even in the absence of war, so that it was "the hard realities of life, not the romantic notions of ideal womanhood, [which] determined the direction of their professional careers" ([27], pp. 99–100).<sup>10</sup>

In addition to women's interest in employment to obtain financial self-sufficiency (particularly if marriage was not a realistic or desired option), however, the movements for women's equality in the late nineteenth and early twentieth centuries—and particularly the demand for women's suffrage—also promoted interest in careers in law for women. Although relationships between suffrage activism and women's access to the professions were often complicated (and sometimes fraught with major

<sup>6</sup> The committee's report was submitted to the Iowa court, where Justice Springer accepted the recommendation; amending legislation the following year eliminated both gender and race requirements for admission to the bar in Iowa ([20], p. 222; [21], pp. 162–63).

<sup>7</sup> However, as late as 1917, the bar in England remained resolutely opposed to the admission of women. At the bar's general meeting that year, a motion to admit women was rejected, with members expressing the view that "The fact that women nurse and sew and wait at canteens is no indication of their capacity for the legal profession" ([22], pp. 157–58; [23], p. 277).

<sup>8</sup> According to Cott, the Civil War killed more Americans than any other war in which the US has been involved [24].

<sup>9</sup> Annie Macdonald Langstaff, Speech to the Insurance Underwriters' Dinner, 1916, quoted in [26]. Macdonald Langstaff was a single mother with one child, but in spite of ongoing efforts to gain admission to the bar in Québec, she remained the office manager of a Montreal law firm and never succeeded in practising law herself. She was admitted to the bar of Québec posthumously in 2006.

<sup>10</sup> Drachman also identified a letter from Belva Lockwood (a widow) in which Lockwood asserted that she took "every case, no matter how difficult, occurring in civil, criminal, equitable and probate law", a comment that suggests a need to earn a living ([28], p. 58).

disagreements and misunderstandings), it seems that suffrage campaigns may well have promoted women's access to the legal professions in some jurisdictions. For example, New Zealand enacted women's suffrage legislation in 1893, and with women then able to vote, the New Zealand Parliament enacted legislation permitting women to become lawyers in 1896—before a single woman had sought access to its legal profession. Thus, when Ethel Benjamin graduated with a law degree at the University of Otago in 1897, she was called to the bar of New Zealand without difficulty ([8], pp. 165–69). This relationship between suffrage and the entry of women to legal professions was also experienced in three of Canada's western provinces, all of which enacted provincial suffrage legislation between 1915 and 1917, legislation that coincided quite closely with the enactment of provincial statutes permitting women to become lawyers in Manitoba in 1912 and in Saskatchewan in 1913; and the admission of the first woman to the bar in Alberta in 1917 without any statutory reform at all ([8], p. 88).

However, such relationships between suffrage legislation and the admission of women to legal professions were not a consistent historical pattern. For example, although there was cooperation and support between early women lawyers in the US and women who were championing the suffrage cause, their paths later diverged significantly, especially after aspiring women lawyers began to use arguments to gain admission to the bar that tended to undermine the suffrage goal ([8], pp. 50–52). This divergence was clearly evident at the time of the World's Columbian Exposition in Chicago in 1893, when most women lawyers in the United States participated in a separate conference of their own and apparently eschewed the other sessions organized by women ([29], p. 9).<sup>11</sup> However, there were women lawyers in most jurisdictions (including unofficial lawyers like Eliza Orme—and women with law degrees like Helena Normanton and Christabel Pankhurst in England) who provided some support to suffrage causes, efforts that eventually resulted in some success in the *Representation of the People Act* in 1918 and the *Sex Disqualification (Removal) Act, 1919* ([30], p. 44; [31–33]).

Finally, another historical factor of significance to women's access to the legal profession was the opening of higher education programs, including law programs, to women. For example, Eliza Orme was one of the first women to begin to attend lectures at the University of London ([8], pp. 126–29). While decisions to permit women to attend university law programs in civil law countries clearly encouraged Lydia Poët in Italy, Marie Popelin in Belgium, and Jeanne Chauvin in France to seek legal careers ([8], pp. 249–50, 252, 262–63), the establishment of university law programs in common law jurisdictions also seemed to create new opportunities for women to pursue the possibility of legal careers.<sup>12</sup> However, completion of a university law degree did not always result in a successful claim for entry to the legal professions. Thus, both Poët and Popelin were unsuccessful in their efforts to gain admission to the bar; and although Cornelia Sorabji, a Parsi Christian woman from Pune in India, succeeded in attending law lectures and passing the BCL exams at Oxford in 1892, she was not entitled to receive her degree until after Oxford opened its degrees to women in 1922 ([8], pp. 194–95). Significantly, although there has been a good deal of attention in North America to the history of legal education reforms at the end of the nineteenth century, including the establishment of formal programs of lectures for law students to replace or augment articling regimes, the fact that the opening of these law programs to women also seemed to accelerate women's entry to the legal professions may require further attention.<sup>13</sup>

## 2.2. Early Women Lawyers: Gender and Biography

What is acceptable, what is possible, and what is imagined and attempted often differ. Women may be seen as eccentric rather than exceptional, and the world she is perceived to

<sup>11</sup> American women obtained suffrage only after World War I.

<sup>12</sup> For example, Clara Brett Martin's application for admission to the legal profession in Ontario occurred just a few years after Osgoode Hall established its first permanent lectures on law in 1889.

<sup>13</sup> For example, Wesley Pue and David Sugarman suggested a need to examine carefully the gender issues in the legal profession ([34], pp. 15–16).

live in may be markedly different, especially in earlier times. Feminism here reveals not only issues about gender and culture *but an area of men's and women's lives that is still treated in culturally determined ways* ([35], pp. 132, 149, emphasis added).

Paula Backscheider's comments reveal the impact of a gendered culture on women's aspirations and achievements, as well as how they might be perceived in their social worlds. However, many early women lawyers clearly envisaged an important connection between progressive reforms in the late-nineteenth century and their own ambitions to take advantage of new opportunities for work and financial independence. In this context, there are some similarities among early women lawyers that suggest why it was these women, rather than others, who initially pursued entry to the legal professions. That is, in addition to the historical contexts, individual life patterns were also significant for early women lawyers' achievements and the creation of their identities as women in the legal professions.

One significant biographical pattern seems to have been their families' status. For example, Eliza Orme's family was well-connected to British intellectual society with a comfortable home in Regents Park ([8], pp. 122–23), while Ethel Benjamin's father had attained financial security during the gold rush in New Zealand ([8], pp. 160–61; [36]). The first two women to become attorneys in the US, Arabella Babb Mansfield and Ada Kepley, were both related to lawyers, and Myra Bradwell was married to a judge (although this connection did not prevent the US Supreme Court from rejecting her claim to admission to the Illinois bar in 1873) ([8], pp. 26–27, 42–48; [37,38]). Moreover, the family background of both Martin and French in Canada suggested some financial security, although French's biographer argued that her main goal in gaining admission to the bar was access to wealthier "high society" ([39], p. 1; [40], p. 3). While Cornelia Sorabji's Parsi family in Pune appears to have been modestly well-off, it was probably their status as Christians in India that created status and opportunities for Sorabji, both at Oxford and in British elite society more generally [41,42]. Similarly, although Jeanne Chauvin's mother was widowed, her brother was a member of the French Chamber of Deputies, which likely created some useful connections for Chauvin in her efforts to obtain legislation granting women access to the bar in Paris ([43], p. 193; [44]); and Poët's brother was a member of the bar in Italy, permitting her to engage in assisting the legal practice in his office without formal practice qualifications [45].

However, there were some notable exceptions to this relatively consistent status among early women lawyers. As American studies have demonstrated, some of the early women lawyers there seem to have experienced precarious financial circumstances at different points in their careers. For example, both Belva Lockwood and Clara Shortridge Foltz, two members of the first generation of American women lawyers, had married and become parents, but they later became sole breadwinners in their households [46,47]. Similarly, as Judith Bourne explained, Helena Normanton in England also experienced some financial insecurity—as well as the death of both her parents during her childhood ([31], at Chapters 1 and 2). In Canada, Annie Macdonald Langstaff, who had apparently been deserted by her husband, attended McGill University's law program as a single parent, and then engaged in several years of unsuccessful litigation relating to her admission to the bar of Québec between 1914 and 1916; she eventually worked in a law firm, doing some legal work and administration, and finally achieved a posthumous admission to the bar in 2006 [26,48].<sup>14</sup>

However, while this status may have been significant in providing the means to study law, it is possible that a more important factor was that the families of these first women lawyers strongly favored education for women, and some may have provided financial support to enable their daughters to pursue this goal. Undoubtedly, the possibility that some women might not be able to marry may have fostered this family support for women's education, but it is also possible that some of the first

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<sup>14</sup> The posthumous admission to the bar occurred on the 65th anniversary of women gaining admission to the bar of Québec in 1941, and ninety-two years after Macdonald Langstaff had obtained her BCL degree from McGill University.

women lawyers had personal aspirations to pursue financial independence rather than marriage. As Eliza Orme (who may, like so many Victorian feminists, have chosen the independence of a career rather than marriage) commented in the 1880s:

To count upon a girl being provided for by marriage, and to teach her nothing but the duties of a married woman, is about as foolish as it would be to count upon a boy becoming heir to a fortune and to teach him nothing but the duties of a landed gentleman ([49], p. 158).

Significantly, behind a family's support for women's education may have been a mother's interest in ensuring her daughter's financial well-being. In addition, it is likely that it was fathers who often financed women's legal education. Thus, in identifying the factors that assisted individual women to pursue successful claims to enter the legal professions, the support of male persons, including fathers, was probably critical.<sup>15</sup>

Finally, the overall patterns for these first women lawyers reveal some uniformity in terms of their race (generally white) and religion (mainly Christian). However, there is some notable diversity too. In New Zealand, Ethel Benjamin was a member of Otago's small Jewish community, becoming the first Jewish woman lawyer in the Commonwealth; and it appears that Poët was among a similarly small community of Protestants in Italy ([8], at Chapters 4 and 6). Sorabji was an Indian Parsi, although she too was Christian, a factor that likely promoted so much British support for her Oxford education [50]. In addition, some early women lawyers married and then did not practice law, while others practiced law and did not marry—and it is possible that some of the latter may have formed significant, perhaps intimate, relationships with other women.<sup>16</sup> However, if there are similar biographical patterns among these early women lawyers, their experiences often differed in important respects, and their individual strategies were sometimes revised as their circumstances and opportunities changed over time. In this way, while both historical contexts and biographical patterns provide insights about the circumstances for early women lawyers, their stories also reveal puzzles in their lives as lawyers.

### 3. Puzzles in the Lives of Early Women Lawyers

In choosing a [biographical] subject, the relationship need not be those most commonly assigned—identification or affinity or sympathy. It can be a deep understanding of the pressures the time brought to bear on the subject. *It can be deep engagement with the 'puzzles' that remain unsolved about the life...*The great questions of biography are the essential questions about human experience in the world...They are the stuff of humankind's puzzling out its relationship to the world, how individual desire and ambition are confounded or aided by social, historical forces and other human beings... ([35], p. 59, emphasis added).

As Paula Backscheider asserted, writing about experiences (including the experiences of early women lawyers) means exploring “puzzles” about how an individual's ambitions intersected with historical contexts to illuminate the “essential questions about human experience in the world”. Thus, although data about historical contexts and life patterns for early women lawyers reveal how they encountered, and sometimes succeeded in overcoming, major challenges as they entered the legal professions and engaged in legal work, puzzles remain. Two of these puzzles are addressed here: one is the discord between women lawyers' *public* assertions of full professional integration in the face of their unequal treatment as members of the legal professions; and the second is the general absence

<sup>15</sup> For example, John Stuart Mill in Britain, Louis Frank in Europe, and Sam Jacobs in Québec, as well as many less well-known male lawyers and judges, provided critical support for women's equality and their eligibility for admission to the bar ([8], pp. 280–81).

<sup>16</sup> There is a brief reference to Orme's “Boston marriage” with Reina Emily Lawrence, who was also her partner in the law office in Chancery Lane and the executrix and residuary beneficiary of her will (dated 1885) when Orme died in 1937: see ([51], p. 226; [8], pp. 131, 153).

of records of their *private* responses to experiences of success or failure, and their interpretation of these experiences. Significantly, these two puzzles, about public comments and private sorrows, may be connected.

### 3.1. Early Women Lawyers: Gender, History and Legal Professionalism

Individuals respond in different ways to differing historical situations, and a study of any particular life can help both to illuminate these situations as well as aid our understanding of the person being studied ([52], p. 6).

When women in different jurisdictions first began to claim eligibility for admission to the bar, their claims challenged not just individual men who were members of the legal professions, but more significantly, the traditional ideology of law as a “gentleman’s profession.” As the Canadian historians, Gidney and Millar, reported, maleness was historically an essential requirement of a profession; indeed, an occupation could not be called a profession “if it was filled with women” ([53], p. 239). In such a context, women who were the first to challenge their exclusion from the bar necessarily confronted the need to accommodate their (female) gender with traditional conceptions of (male) professionalism in law.

Historical evidence about the first women lawyers suggests that they fully embraced an identity as members of the legal profession, all but ignoring their female gender. For example, in her letter to other American women lawyers in 1887, Lelia Robinson stated emphatically “*Do not take sex* into the practice. Don’t be ‘lady lawyers’. Simply be *lawyers*, and recognize no distinction—no existence of any distinction between yourselves and the other members of the bar” ([54], p. 66, emphasis in original). Such assertions clearly confirmed women’s reliance on their professional qualification as entitling them to be recognized as fully equal members of the legal profession. Moreover, in their letters in the 1890s to the Belgian barrister, Louis Frank, American women lawyers confirmed this sense of full acceptance as members of the bar—in spite of having faced numerous gender challenges. For example, Clara Shortridge Foltz, who was one of two women who had initially launched a lawsuit against Hastings College of Law in order to obtain entry to its law program, wrote to Frank that “Between myself and the members of the bar the most friendly relations have always been maintained...and I have received quite as much of a welcome at the bar and been shown quite as much courtesy by its members, as any other member of the profession” [55]. Similarly, Belva Lockwood, who had also started a lawsuit to compel the granting of her law degree after completing the program at National University—and then litigated again to gain admission to the US Supreme Court—asserted that “women advocates have been kindly and favorably received...by the male members of the bar, and well received by the Court in which they have practices” [56].

However, in spite of such glowing reports, there is also considerable evidence of exclusionary practices on the part of bar associations, especially in relation to social occasions, in a number of jurisdictions. Although there were more than three hundred women lawyers in the United States by 1900, for example, women lawyers were excluded from membership in the American Bar Association until 1918, and they were frequently excluded from local bar associations too ([57], pp. 22–23; [58]). In England, women were not generally welcomed at Circuit and Sessions Messes until the second half of the twentieth century ([59], p. 400). Even Rose Heilbron, one of the first two women appointed King’s Counsel in 1949, was excluded from the Bar Mess in the northern circuit until the late 1960s; indeed, it was only after Heilbron was appointed Leader of the Northern Circuit that women barristers were finally able to attend the Grand Court, the “big night” for the Circuit ([60], pp. 240–41; [61], p. 451). In New Zealand, Ethel Benjamin was firmly excluded from a dinner for members of the Otago Bar Association in 1898, a special occasion to celebrate the fiftieth anniversary of the founding of the Otago settlement—indeed, women lawyers in New Zealand continued to be excluded from bar dinners in Otago until the 1960s ([62], pp. 67–69; [63], pp. 71–73)! Similarly, the first woman elected to the Council of the Canadian Bar Association was politely but firmly “excused” from its dinner meeting because it was being held in an all-male club [64]. Significantly, as Anne Witz argued in relation to the medical

profession's resistance to women doctors, formal processes of admission may suggest equality, while professional structures and organizational arrangements sustain male power and privilege within the profession ([65], p. 102).<sup>17</sup> Thus, in the context of comments by the first women lawyers about their welcome as members of the legal profession, these examples of exclusionary policies present a puzzle. If women lawyers believed that they were "equal" members of the legal profession, were they blind to the reality of their social exclusion by members of the bar in most jurisdictions?

In my view, Nancy Cott's explanation for women lawyers' enthusiasm for identities as equal members of their legal professions sheds useful light on this puzzle. Cott's assessment focused on the significant professionalization reforms at the turn of the twentieth century, reforms that increasingly reflected a "professional ethos", one based on an ideology of neutrality and meritocracy, in which politics, advocacy and reform were irreconcilable with the definition of a profession ([67], pp. 232–34).<sup>18</sup> Significantly, this professional ethos promised freedom from sex-defined constraints, leading many of the first women lawyers to embrace these ideals of professionalism, while ignoring or downplaying exclusionary gender tactics, and even outright discrimination. That is, they defined themselves as "lawyers" rather than "women lawyers" ([73], p. 476). Of course, since their eligibility for admission to the bar depended entirely on (male) legislators and judges, and their success in practice often depended on the collegiality of other (male) members of the bar, it is apparent that both formal law and the *habitus* of legal practice tended to encourage them to accept the status quo [74].

Cott's analysis is also important in attempting to confront the puzzle that so many women lawyers failed to provide significant support to the women's movements, especially suffrage. Cott argued that professional ideology encouraged women lawyers to see "a community of interest between themselves and professional men and a gulf between themselves and nonprofessional women" ([67], p. 237). In this context, Ethel Benjamin's critique of the methods of the National Council of Women in New Zealand resulted in a permanent rupture between her and women members of the Council ([8], pp. 173–74), while Belva Lockwood refused to describe herself as a "New Woman" in the United States ([8], p. 54). By contrast, Eliza Orme (who never joined the legal professions) was actively involved in promoting suffrage, speaking publicly on numerous occasions, but even she eventually separated herself from the Women's Liberal Federation when a majority of its members voted to make suffrage a specific goal of the organization (contrary to the official policy of the Liberal Party) ([8], pp. 138–42). However, in spite of her separation from the suffrage goals of the Federation, Orme's "radical" reputation resulted in Cornelia Sorabji carefully explaining to her conservative upper class supporters that she had no intention of becoming "a Miss Orme" ([8], p. 152). Moreover, as a Canadian woman lawyer frankly explained in her response to a survey about women lawyers in the 1960s:

You may discover that some replies indicate an apparent lack of discrimination; in many cases I have found that women are unwilling to admit discrimination, either because they are trying to conceal the fact from themselves or because they must play the role of 'Uncle Tom' and that *their chances of promotion depend absolutely upon their conformity to and acceptance of the existing patterns* ([75], p. 46, emphasis added).

In the context of these views, it may be highly significant that two other women who were unsuccessful in their claims to gain admission to the bar, Myra Bradwell in the United States and Marie Popelin in Belgium, remained actively involved in and supportive of suffrage and other claims about women's equality. That is, because they had been excluded from joining the legal professions, they were not constrained from offering time and energy to "political" causes for women's rights ([8],

<sup>17</sup> The admission of women to university law programs, while denying them admission to the bar, clearly created a cadre of legally-trained women in Britain and some European countries, who could work in law offices as employees of male lawyers [66].

<sup>18</sup> As Cott argued, "the professional credo, that individual merit would be judged according to objective and verifiable standards, made a promise so potent to women professionals that they upheld the ideal even when they saw it travestied in practice." There are numerous studies of the rise of professionalism: see [68–72].

p. 283; [76]; [77], p. 1128). In this way, women lawyers publicly espoused their full acceptance as members of the legal professions by denying the significance of their (female) gender.

### 3.2. *Early Women Lawyers: Gender, Biography and “Silences”*

We all want stories...[We want to know about] alternatives, missed chances, roads not taken, accidents and hesitations, the whole ‘swarm of possibilities’ that hums around our every experience...Biographies are full of verifiable facts, but they are also full of things that aren’t there: absences, gaps, missing evidence, knowledge or information that has been passed from person to person, losing credibility or shifting shape along the way... ([78], pp. 1, 5).

Hermione Lee’s comment about the attraction of “stories” introduced her reflections on biographical writing, which she described as “a messy, often contradictory, mixture of approaches...[and] resistant to theory”; she also agreed that a biography should avoid making a life “read too smoothly”, and instead “reveal a real person in all his or her peculiarity, accidentalness, and actuality” ([78], pp. 1–4). Lee’s comments seem particularly apt for “telling the stories” of the first women lawyers since information about their experiences is often partial, full of “absences, gaps, [and] missing evidence,” and the stories of their lives suggest more “peculiarity” than “smoothness”.

Lee’s views also reflect more nuanced approaches to modern biographies, which no longer focus only on men whose lives reflect what Jill Ker Conway described as the hero’s quest plot: “the story of the epic hero in classical antiquity...[whose] achievement comes about through his own agency, and [whose] successful rite of passage leaves him master of his fortunes” ([79], p. 7).<sup>19</sup> Although women’s life stories were earlier focused on a traditional “romantic plot”, Ker Conway argued that by the mid-nineteenth century, women’s access to education and the professions “provided a new social territory”. Nonetheless, because women’s societal power still remained muted, Ker Conway argued that women often veiled their ambitions and their successes:

Like the frontiers-women silent about their physical strength and courage, pioneer women professionals were silent about their ambitions and recounted their lives as though their successes just happened to them, rather like the soprano’s chance meeting with the tenor in the first act of an opera. So the woman professional, *actually a new and potentially revolutionary social type*, told her story as a philanthropic romance...*What are we to make of such silences* ([79], pp. 15–16, emphasis added)?

Ker Conway’s question about the “silences” in women’s life stories is important, as “piecing together the life of a woman who left no diary, letters or personal collections is somewhat challenging” ([33], p. 7). In such a context, attentiveness to “silences” in public texts may be critical: as Judith Woolf suggested, “Silence can simply be omission, but it can also be a powerful unspoken presence in the text” ([80], p. 212).<sup>20</sup> Particularly in assessing the words of women lawyers, many of whom published articles and books, engaged in regular public speaking and conferences, and provided commentary for the press, we need to reflect on what is “unspoken”. For example, was there an unspoken silence in the views expressed at a press conference by Laura Legge, the first woman to be elected Treasurer of the Law Society in Ontario in 1983, in which she proudly proclaimed that women had been equal for all of her life and that her election fully demonstrated this reality [83]? Significantly, Legge’s comment is remarkably similar to Rose Heilbron’s assertion two years later in 1985, on becoming the first woman Treasurer at Gray’s Inn, when she stated that “[t]he legal world does not discriminate by sex or race and this [her appointment as Treasurer] is possibly an example of it working rather well” ([84], p. 32). In interpreting these comments by two quite successful women

<sup>19</sup> According to Ker Conway, the tragedies of the twentieth century resulted in replacing “the confident European imperialist narrative” with the “postmodern refusal to recognize a central point of view from which the world is to be seen” ([79], p. 11).

<sup>20</sup> The idea of silence is explored in detail in [81]. See also [82].

lawyers in the 1980s, is there an unspoken silence that is connected to the survey response in the 1960s about the success of women lawyers being dependent on their demonstration of “conformity to and acceptance of existing patterns” ([75], p. 46)? Similarly, were there “silences” in women lawyers’ highly optimistic reports to Louis Frank, knowing that their letters were intended to support the claim of Jeanne Chauvin for admission to the Paris bar? We may need to take care in interpreting even a stray comment in the press by Winifred Wilton, one of two women who became the first women lawyers in Manitoba in 1915: the press had reported that Wilton encountered shocked responses from Londoners when she was employed as a lawyer with the Canadian Expeditionary Force in Britain during World War I. What is the meaning of Wilton’s assertion in the context of (unnamed) challenges, when she asserted: “I am trying to discover why people think that a woman lawyer must be a freak of some sort” [85]?

“Silences” may also take the form of omissions or revisions in existing texts. Thus, although Cornelia Sorabji left behind nine books, numerous articles and speeches, and many diaries, letters and press reports, there are still gaps and puzzles about some aspects of her life. In his recent biography, Cornelia’s nephew, Richard Sorabji, acknowledged that:

[Cornelia Sorabji] wrote her own excellent biography, *India Calling*. But because of its sensitivity, she suppressed half of the details. Her three-year exile starting in 1901 from India to England to scotch a love affair is concealed, and to preserve the concealment, her encounters at that time with such leading cultural figures as GF Watts, Bernard Shaw and the serpentine Mrs Patrick Campbell are deliberately mis-dated ([42], p. xi).<sup>21</sup>

As Richard Sorabji also noted, some details of her legal work were appropriately mis-reported to preserve the privacy and ensure the safety of her clients, although he is somewhat more critical of her omissions and revisions in relation to details of her family and her relationships with them ([42], pp. xii–xiii). Nonetheless, the extensive archival collection of Sorabji’s papers is important because her letters to friends sometimes appear to convey her private thoughts, offering insights that are relatively unique about the experiences of early women lawyers. For example, Sorabji’s anguish is fully evident, even visceral, in her letter to Lord and Lady Hobhouse in 1899, just after she had received word that the High Court judges in Allahabad had voted (narrowly) not to permit her to plead cases in their court. Sorabji was especially distressed because, in addition to passing the law exams at Oxford in 1892, she had been promised by the High Court that she would be permitted to plead if she passed the *vakil* examinations. After spending two years of study to succeed in these examinations, she was devastated when the Court failed to grant her application:

Of the personal side of the question I *daren’t* speak. You will understand what it means to me...And the fact that we all thought the matter fought & done with makes it the harder: Every day since the HC sent me what I thought its ultimatum in ‘97, I’ve felt ‘Tis one day nearer’, & the cruel dashing of it all at first felt too dreadful to realize...Ah! ‘tis hard of fate. I have paid the penalty to the utmost farthing & shirked nothing...If all fails, I must give up the legal idea, & seek other work, *but at present I feel as that would break my heart...* ([86], emphasis added).

Since records of women lawyers’ responses to failure, or to success, are seldom available, it may be especially important to take note of “silences” in their public comments. As Carolyn Heilbrun argued, we need “reinvent the lives [of women lawyers], discovering...the processes and decisions, the choices and unique pain, that [lie] beyond...life stories” ([87], p. 31).

<sup>21</sup> Cornelia Sorabji had a close relationship with the Allahabad High Court Judge, Hugh Blair, as confirmed in Richard Sorabji’s biography of his aunt. As Richard Sorabji explained, this (unconsummated) affair resulted in her family’s decision to banish Cornelia to England in 1901 ([42], pp. 90–92). However, Cornelia Sorabji’s personal account of her time in England was vague about the timing of her visit to England: see *India Calling: The Memories of Cornelia Sorabji*. London: Nisbet & Co., Ltd., 1934.

In this context, there are some examples of more critical public comments by women lawyers in their later years. For example, when Eliza Orme was interviewed by a visiting American woman lawyer in 1888 at the height of her success, she suggested that “things look more hopeful now than ever” in relation to the admission of women to the legal professions in Britain ([88], pp. 143–44).<sup>22</sup> By 1903, however, when she was asked to comment on the rejection of Bertha Cave’s application to join Gray’s Inn as a student, Orme explained her longstanding reasons for establishing her law office without becoming a member of the bar or the solicitors’ profession, but then commented, a little wistfully, “Perhaps I should have been more persistent” ([89]; [90], p. 620; [91], p. 49). Similarly, Margaret Hyndman, a very prominent Canadian woman lawyer, steadfastly refused to call herself a woman lawyer, asserting in 1949 that “Only the fact that I am a lawyer matters. That I am a woman is of no consequence. I make a point of not knowing how many women lawyers there are in Canada” ([92], p. 23). Such a comment fully embraces law’s professional ethos and the need to appear to be “lawyers” just like men: “rational, autonomous, self-contained, self-possessed, self-sufficient, and formally equal before the law” ([93], p. 14). In such a context, women lawyers probably understood that public comments about rejections, setbacks and professional discrimination were unlikely to elicit commendation or support. By contrast, in a press interview decades later in 1973, which focused on Hyndman’s work on the Royal Commission on the Status of Women in Canada, the press report captured her blunt assessment about discriminatory practices in the legal profession:

Asked if she is disappointed not to be a Supreme Court judge, she replied: ‘I have been at peace over unfulfilled ambitions for 20 years. Not appointing a woman judge has been discrimination. It was broken with the appointment of Mabel Van Camp. Again, as in most top jobs, a woman has to be much better than a man. This applies to women judges,’ she concluded [94].<sup>23</sup>

As is evident, Hyndman was “breaking silence” on the issue of discrimination, although it is notable how she also continued to be silent about her private feelings of disappointment. Thus, the “powerful unspoken presence” in the text remains a challenge for feminist theories and methods in the process of interpretation.

#### 4. Twenty-First Century Reflections on Early Women Lawyers

How are those who cross the threshold received? If they belong to a group different from the one already “inside”, what are the terms of their incorporation? How do the new arrivals understand their relationship to the place they have entered? What are the terms of identity they establish ([95], p. 179)?

Although Joan Wallach Scott posed these questions about women becoming professional historians in the United States in the nineteenth century, her questions appear equally relevant to women who began to enter the legal professions. As the public record of their comments generally attests, moreover, early women lawyers espoused their equality as members of the legal professions, and there are very few examples of private sorrows, disappointments, or regrets. As Laura Legge explained, “You see, I never thought of myself as a woman lawyer. I always thought of myself as a lawyer...My experience was you don’t become obsessed with discrimination and problems: just work around them and get on with life” ([96], pp. 54, 61). In this context, Geiger’s suggestions that

<sup>22</sup> Wright had been admitted to the bar of Massachusetts.

<sup>23</sup> As Rosemary Auchmuty pointed out, the language of “discrimination” was more in use in the 1970s than it was in the 1940s; however, in the 1980s, some women lawyers (including Laura Legge and Rose Heilbron, noted in the text) were still using the language of “equality.” Justice Mabel Van Camp was the first woman lawyer in Ontario to be appointed to the province’s Supreme Court in 1971. The *Report of the Royal Commission on the Status of Women in Canada* was released in 1970 and became a touchstone for social and legal reforms in women’s interests; for example, it recommended the appointment of women as judges.

the stories of women's lives need to take account of "the gendered elements of the broader social world" and to "accept women's own interpretations of their identities, their experiences, and social worlds..." appear highly significant. Clearly, women were challenging male exclusivity as they gained admission to the legal professions, but the "gendered elements" of this social world was still defined as a "gentleman's profession". Although current feminist insights clearly identify discriminatory and unequal treatment for early women lawyers, there is a need to "accept women's own interpretations" of their experiences and identities. Feminist methods require an appreciation of both women's agency and its limitations in the context of social structures of exclusion and discrimination. Feminist theories require acknowledgement of material realities, including the fact that many women needed support from male lawyers to obtain work in pursuit of financial independence, as well as their attraction to ideas of formal equality in their quest to attain a measure of success in the practice of law.

At the same time, from the perspective of the 21st century, we may want to take seriously Michael Grossberg's conclusion that although *women* eventually succeeded in becoming lawyers in the late-19th and early-20th centuries, they never effectively challenged the *gender* premises of the law and the legal professions ([97], p. 148). Similarly, Virginia Drachman argued that "the professional and personal challenges that confront women lawyers today did not have their origins in the 1960s...They reach back...to the pioneer generation of women lawyers who were the first to articulate and grapple with the challenges facing women in the legal profession" ([28], p. vii). Significantly, Fiona Kay suggested that recent scholarship about contemporary women lawyers, which has explored "the way lawyers form their professional identities, the rewards and sanctions resulting from feminist and reform commitments in the legal professions, and the extent to which women have achieved integration in the legal professions", confirms the "importance of contextualizing women's contemporary roles as lawyers within dominant discourses of equality, professionalism, and pervasive gender norms" ([98], pp. 417–18).<sup>24</sup> In this way, Judith Bennett's argument about the need to distinguish between *changes in women's experiences* on one hand, and *transformations in women's status* on the other seems especially critical; as she suggested, while there have been changes in women's experiences as workers, there has been "very little transformation in their work status in relation to that of men" ([101], p. 74).<sup>25</sup>

Such a claim suggests a need for more, and more nuanced, research about the experiences of early women lawyers in the contexts of their own times, as well as how some of their challenges continue to impact women in contemporary legal professions. Indeed, when contemporary women lawyers tell their stories, they often reflect the "counter-narratives" that were so evident in the variety of descriptions of experiences among early women lawyers. Unfortunately, the paucity of personal records and archival materials represent significant challenges in our efforts to reach definitive conclusions about their experiences—and their unflinchingly positive public comments. Nonetheless, their stories remain important as well as interesting because, in spite of numerical equality in the legal professions, exclusionary gender practices (often invisible) may continue to exist for women lawyers today, and elite networks may continue to advance men's legal careers more often than women's. As Hilary Sommerlad and Peter Sanderson bluntly concluded in their assessment of the culture of legal practice for solicitors in England and Wales at the end of the twentieth century, "masculinity per se remains the core cultural capital for the profession" ([105], p. 119). In this way, ongoing research about the experiences of early women lawyers, especially research that explores their experiences with questions that "open" up ways of understanding women lawyers *in their own contexts*, may foster critical insights about contemporary issues of gender and legal professionalism.

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<sup>24</sup> Citing (inter alia) [99,100].

<sup>25</sup> See also ([101]; [102], p. 105; [103], p. 114; [104]).

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