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Leiper, Bar Codes: Women In the Legal Profession; Mossman, The First Women Lawyers: a Comparative Study of Gender, Law and the Legal Professions

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The Progress of Women in the Legal Profession

THE FIRST WOMEN LAWYERS: A COMPARATIVE STUDY OF GENDER, LAW AND THE LEGAL PROFESSIONS. By Mary Jane Mossman. Oxford: Hart Publishing. 2006. Pp. v, 329. \$54.00.

BAR CODES: WOMEN IN THE LEGAL PROFESSION. By Jean McKenzie Leiper. Vancouver: UBC Press. 2006. Pp. vi, 242. \$85.00.

*Reviewed by Renee Newman Knake**

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. This will be your surest way to . . . achieve success. . . . You can take this stand and yet . . . be ladies—true ladies in every sense of the word.¹

[F]or many [modern] women [lawyers], success has hinged on a denial of their own basic values and outward commitment to prevailing organizational norms. As lawyers, these women adopt masculine styles of practice in order to fit into the culture. . . . In effect, women who chose this route became surrogate men²

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1. MARY JANE MOSSMAN, *THE FIRST WOMEN LAWYERS: A COMPARATIVE STUDY OF GENDER, LAW AND THE LEGAL PROFESSIONS* 54 (2006) (quoting VIRGINIA G. DRACHMAN, *WOMEN LAWYERS AND THE ORIGINS OF PROFESSIONAL IDENTITY IN AMERICA* 66 (1993)).

2. JEAN MCKENZIE LEIPER, *BAR CODES: WOMEN IN THE LEGAL PROFESSION* 146-47 (2006).

While the number of female and male law school graduates has been almost equal for nearly a decade,³ the number of women remaining and advancing in the field does not reflect gender equality within the profession. According to a 2008 study by the American Bar Association, less than 32% of United States lawyers are women.⁴ As of March 2007, in the two hundred largest American law firms, only 16% of equity partners were women.⁵ With respect to law school administration, women fare somewhat better yet continue to be disproportionately represented. Consider, for instance, that just 19.8% of law school deans are women.⁶ The salary of American female lawyers also lags substantially behind that of male lawyers.⁷ This demonstrated lack of advancement for women in the profession is not unique to the United States. For example, women constitute only 23% of law partners in the United Kingdom⁸ and slightly more than 14% of law partners in New Zealand.⁹

Given that women have been practicing law for over one hundred years, statistics like these necessarily lead to the question: What has kept women from making more progress within the legal profession? Two recent books from Canadian scholars attempt to answer this question by addressing the progress (or

3. See Am. Bar Ass'n, First Year and Total J.D. Enrollment by Gender: 1947-2007, at 1, <http://www.abanet.org/legaled/statistics/charts/stats%20-%206.pdf>. Of law degrees awarded during the 2006-07 school year, 47.5% went to female students. Am. Bar Ass'n, Comm'n on Women in the Profession, A Current Glance at Women in the Law 2 (2008), <http://www.abanet.org/women/CurrentGlanceStatistics2008.pdf>.

4. Comm'n on Women in the Profession, *supra* note 3, at 1.

5. NAT'L ASS'N OF WOMEN LAWYERS, NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 2 (2007), www.nawl.org/Assets/Documents/2007+Survey+Report.pdf.

6. Comm'n on Women in the Profession, *supra* note 3, at 3. The statistics improve, however, when associate/vice/deputy deans (46.2% female) or assistant deans (66.5% female) are included. *Id.*

7. *Id.* at 4. Women lawyers earned only 77.5% of men's salary in 2007. *Id.* It should be noted that this statistic is an improvement from 2002, when women earned only 69.4% of men's salary. *Id.*

8. See Julie S. Ashby, Michelle K. Ryan & S. Alexander Haslam, *Legal Work and the Glass Cliff: Evidence that Women are Preferentially Selected to Lead Problematic Cases*, 13 WM. & MARY J. WOMEN & L. 775, 779 (2007) (citing LAW Soc'y, FACT SHEET SERIES: WOMEN SOLICITORS (2006)).

9. HUMAN RIGHTS COMM'N, NEW ZEALAND CENSUS OF WOMEN'S PARTICIPATION IN GOVERNANCE AND PROFESSIONAL LIFE 11 (2004), http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/11-Aug-2005_21-35-04_CensusofWomens_Participation.pdf.

lack thereof) made by women in the legal profession. One book is a history of the first women lawyers from countries around the world,¹⁰ and the second book is a contemporary assessment of modern women lawyers based upon a study conducted in Ontario, Canada.¹¹

In comparing the books, it is striking to note that certain elements of the struggles faced by the first women lawyers continue in various forms today, in particular, the effort to reconcile the “double consciousness”¹² associated with being a lawyer and being a woman, a tension illustrated by the quotations listed above. This review evaluates how these books contribute to the growing body of scholarship on women in the legal profession.¹³ Each book fills a particular gap in the interdisciplinary scholarship on women lawyers. Read together, these books provide an essential background for understanding the progress achieved toward gender equality in the legal profession and identifying the work that remains to be done in this regard.

The first book examined in this review is *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (“*First Women Lawyers*”) by Professor Mary Jane Mossman.¹⁴ The book presents the stories of a number of indi-

10. See MOSSMAN, *supra* note 1.

11. See LEIPER, *supra* note 2.

12. Use of the term “double consciousness” to identify the conflict between gender and professional identity is drawn from a 1887 letter written by Martha Pearce, then secretary of the women lawyers’ Equity Club, and is expounded upon by Virginia G. Drachman in her book *SISTERS IN LAW* (1998) [hereinafter, DRACHMAN, *SISTERS*]. Drachman explains that for the first women lawyers,

[t]he burden of double consciousness influenced every aspect of women lawyers’ professional lives: the type of practice they chose; their relationship to social reform; whether they entered the courtroom or remained in the office; and how they dressed. It even challenged them to justify the very existence of their legal careers. . . . Although admission to the bars and to law schools represented institutional victories of great magnitude in nineteenth-century America, arguably the greater task for women lawyers was to overcome the burden of double consciousness.

Id. at 65 (citations omitted).

13. For a list of works constituting the “hystiography” of women lawyers, see DRACHMAN, *SISTERS*, *supra* note 12, at 275 n.11. See also sources cited *infra* note 26. For a bibliography of writings on women lawyers from 1982-2002, see Judith L. Maute, *Writings Concerning Women in the Legal Profession, 1982-2002*, 38 *TULSA L. REV.* 167 (2002). See also sources cited *infra* note 95.

14. See MOSSMAN, *supra* note 1. Mary Jane Mossman is a Professor of Law at Osgoode Hall Law School of York University, Toronto, Canada. See Osgoode Hall

viduals who devoted their lives to opening the legal profession to women at the turn of the twentieth century.¹⁵ Mossman's study is grounded in historical and sociological research.¹⁶ Her work spans the globe, including the stories of the first women lawyers from North America, Western Europe, Asia, and Australia.¹⁷ Mossman focuses not only on the personal path that each woman took in her efforts to pursue a legal career, but also on their paths in the context of the women's movement at that time.¹⁸ Furthermore, to the extent possible, she addresses how their paths crossed, whether literally through the exchange of letters or symbolically as they encountered similar barriers to the profession.¹⁹ A familiarity with this history is necessary for addressing the continued challenges faced by contemporary women lawyers around the world. Mossman raises important questions based upon the lives of the first women lawyers that resonate with women lawyers today.²⁰

The second book examined in this review is *Bar Codes: Women in the Legal Profession* ("Bar Codes") by Professor Jean McKenzie Leiper.²¹ Her work focuses on the current situation of women lawyers and the future of gender equality in the profession.²² The book is based upon a study of approximately one hundred Canadian women lawyers conducted from 1993-2002.²³ *Bar Codes* recognizes that while women's access to the legal profession certainly has progressed since the first women became lawyers a century ago, stark gender differences remain, most notably with respect to opportunities for advancement.²⁴ Furthermore, Leiper observes that certain aspects of the masculine resistance faced by the first women lawyers continue in

Law School, York University, Faculty Directory, http://www.osgoode.yorku.ca/faculty/Mossman_Mary_Jane.html.

15. MOSSMAN, *supra* note 1, at 17.

16. *See id.* at 18-19.

17. *See id.* at 17-20.

18. *See id.* at 17-21.

19. *See id.* at 19-21.

20. *See id.* at 21.

21. *See* LEIPER, *supra* note 2. Jean McKenzie Leiper is a Professor Emerita at King's University College, University of Western Ontario. *See* UBC Press, Featured Title, http://www.ubcpres.ca/search/title_book.asp?BookID=4588.

22. *See* LEIPER, *supra* note 2, at 4-13, 15.

23. *Id.* at 4.

24. *See id.* at 4-6, 10-13.

present practice.²⁵ The stories documented in this book can play a vital role not only in understanding the present situation for women lawyers, but also in shaping the future for women who take up law as a career.

Part I of this review provides an overview of *First Women Lawyers* in an attempt to explain its significance and placement within the existing literature on women in the legal profession. Part II, in turn, is devoted to a similar overview of *Bar Codes*. Part III identifies several ways that the two books intersect and, in comparing the books, addresses the future of gender equality within the legal profession.

I. A History of Progress: Examining the Efforts of the First Women Lawyers

First Women Lawyers is a seminal work on the history of women in the legal profession. Professor Mossman's historical account is careful and comprehensive, unique in its attempt to present a global, comparative study of the first women lawyers.²⁶ At the outset, Mossman asserts that "the history of the first women lawyers is relevant to an understanding of contemporary issues of gender and professionalism,"²⁷ and she commits herself to meticulously making this point throughout the book.

25. See *id.* at 8-9, 10-13, 177-78.

26. Mossman is not, however, the first to examine the history of women lawyers. See JOAN BROCKMAN, *GENDER IN THE LEGAL PROFESSION* (2001) (reviewing the historical exclusion of women from the legal profession in Canada, as well as the results from her study of one hundred young lawyers currently practicing law in British Columbia); DRACHMAN, *SISTERS*, *supra* note 12 (examining the history of American women lawyers); KAREN BERGER MORELLO, *THE INVISIBLE BAR* (1986) (examining the history of American women lawyers); MARGARET THORNTON, *DISSONANCE AND DISTRUST* (1996) (conducting a study of the history and modern experience of Australian women lawyers); *WOMEN IN THE WORLD'S LEGAL PROFESSIONS* (Ulrike Schultz & Gisela Shaw eds., 2003) (an anthology addressing women in the legal professions in fifteen countries from four continents); Fiona M. Kay, *Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec*, 47 *MCGILL L.J.* 699 (2002) (examining the history of women lawyers in Quebec along with the results of a 1999 survey of members of the Barreau du Quebec); Linda J. Kirk, *Sisters Down Under: Women Lawyers in Australia*, 12 *GA. ST. U. L. REV.* 491 (1996) (covering the history of the first women lawyers in Australia); Carrie Menkel-Meadow, "Feminization" of the Legal Profession: *The Comparative Sociology of Women Lawyers*, 24 *OSGOODE HALL L.J.* 897, 902-12 (1986) (briefly reviewing the history of women lawyers in United States, Canada, Brazil, New Zealand, and European countries).

27. MOSSMAN, *supra* note 1, at 5.

The book is divided into six chapters, each representing the first women lawyers from different countries around the world. Though the book is not comprehensive in documenting the experience of all early women lawyers in their respective communities (as Mossman herself readily concedes),²⁸ the stories typify the common effort by women in North America, Asia, and Europe to find a place within the law. Each chapter could stand on its own as a separate project, but presenting them as a cohesive work allows Mossman to convey a much more dramatic (and accurate) picture of the pioneering accomplishments of the first women lawyers.

While in some ways scholarship on the history of women in the legal profession may be considered an emerging field,²⁹ as noted, Mossman certainly is not the first to examine the early efforts of women to become lawyers.³⁰ Her study stands apart from others, however, in several respects. For one, as she moves from country to country, she draws associations between the stories of the featured lawyers and the entry of women into the profession in the other countries.³¹ These associations include the common cultural or political movements at the time, for example suffrage,³² as well as the infrequent but important instances where the women's lives overlapped directly.³³

28. *Id.* at 18.

29. *See, e.g.*, DRACHMAN, SISTERS, *supra* note 12, at 5 ("Women's historians have paid a great deal of attention to women's entry into the public sphere. But although they have looked at women in a wide range of professions, they have given little attention to women lawyers.") (citation omitted); MORELLO, *supra* note 26, at xiii ("While there are some fine books and articles touching on the history of women in our profession, I could not find one book that dealt exclusively with the subject. Women had been practicing law for centuries and yet we had no written history.").

30. *See, e.g.*, sources cited *supra* note 26.

31. *See, e.g.*, MOSSMAN, *supra* note 1, at 16-21 (summarizing efforts to compile a comparative history of women lawyers); *id.* at 116-21 (contrasting the experience of British lawyer Eliza Orme, featured prominently in Chapter 3, with that of women lawyers in the United States, Canada, and Ireland); *id.* at 159-60 (contrasting the experience of New Zealand lawyer Ethel Benjamin, also featured prominently, with that of women lawyers in Australia, South Africa, and England).

32. *See id.* at 19.

33. *See, e.g., id.* at 64-65, 137-38 (observing that Clara Foltz and Mary A. Green of the United States, Eliza Orme of England, and Cornelia Sorabji of India were selected to present papers at the World's Congress of Jurisprudence and Law Reform in 1893, the first international congress of lawyers in which women took part).

Furthermore, *First Women Lawyers* is not merely a compilation of existing scholarship on the entry of women into the profession. Mossman has conducted independent research of historical records, court documents, news accounts, archived letters, and diaries, all of which she draws upon with an intent to give context to the work of others and to reach conclusions of her own.³⁴ Where her research diverges from the work of others, she carefully makes the case for her own findings. For example, much of the existing scholarship on the first women lawyers seems to characterize them as leading feminists, but Mossman's research, in some cases, suggests otherwise.³⁵

At least two additional distinctions separate Mossman's work from others documenting the history of women lawyers. First, Mossman takes an expansive view of the term lawyer, including in her definition women who practiced law despite never being formally admitted.³⁶ Second, Mossman recognizes the "contradictions and ambiguities" inherent in her endeavor to scrutinize both the personal paths chosen by early women

34. *See id.* at 17-21.

35. Mossman makes this observation for several of the women in her book. For example, Mossman draws heavily from the work of Virginia Drachman on the role of the first American women lawyers, but she does not adopt Drachman's observations wholesale. *See id.* at 62. In one such critique Mossman writes that "it is hard to accept Drachman's conclusion that 'the women lawyers of the Equity Club did more than participate in the Women's Movement; they took their place at its very center.' A more nuanced assessment suggests that women lawyers' relationships to the women's movement were not at all uniform." *Id.* (quoting DRACHMAN, *supra* note 1, at 21) (citation omitted). A second example of Mossman's effort to refine existing scholarship occurs in her discussion of Ethel Benjamin, whom Gill Gatfield has called a "leading feminist" of her time. *Id.* at 190 (quoting GILL GATFIELD, *WITHOUT PREJUDICE* 28 (1996)). Mossman suggests that this characterization fails to convey the "complexity of [Benjamin's] experience." *Id.* While Benjamin did handle cases to advance the interests of women, she also engaged in "work for the publicans in high profile prohibition litigation [that] must have seriously damaged any continuing relationships within the women's movement" *Id.* A third example is the case of Cornelia Sorabji. Mossman counters Antoinette Burton's position that Sorabji is an "unsung feminist heroine," arguing that "Sorabji would have abhorred such a characterization as she had no time for 'women's rights women' of her day." *Id.* at 237.

36. *Id.* at 9. Mossman employs the expansive definition of the term lawyer in what she calls an effort to "explore[] a wide range of strategies and experiences" *Id.*

lawyers, as well as the larger historical context in which they made their way.³⁷

Chapter 1 of the book presents a comprehensive overview of the first American women to enter the legal profession.³⁸ By the late 1860s and 1870s, some, but certainly not all, American state bars began to admit women.³⁹ Mossman includes the stories of Arabella Mansfield, the nation's first woman admitted to a state bar,⁴⁰ and Myra Bradwell, who was famously denied admission to the Illinois bar just a few months later by both the Illinois Supreme Court and the Supreme Court of the United States.⁴¹ Mossman explains that this inconsistency laid the groundwork for subsequent bar admission attempts by women in other states, with some courts granting admission and others deferring to state legislatures.⁴² In the late 1880s, American women lawyers had established the Equity Club, a group formed as a resource and encouragement to women lawyers in the United States, largely through the exchange of written correspondence—correspondence which provides Mossman a true inside perspective in her research.⁴³

Mossman takes care to place women's efforts to enter the legal profession within the larger picture of the pursuit of women's rights generally, such as suffrage.⁴⁴ She observes that recognition of the emerging goals of the women's movement in the late nineteenth century is critical to appreciating the history of women's desire to enter the legal profession, though at times these women lawyers were at odds with the overall movement.⁴⁵ She makes clear that while women lawyers and suf-

37. *See id.* at 15. Mossman recognizes that other feminist scholars identify a similar challenge in their work, but Mossman's approach draws out a number of interesting comparisons in light of the contradictions. Perhaps the most notable example is evidence that the women successfully admitted to the bar "appear to have been more inclined to eschew connections with the women's movement in favour of strictly personal identities." *Id.* at 21.

38. *Id.* at 23-65.

39. *See id.* at 17, 26-27.

40. *Id.* at 41. Arabella Mansfield was admitted to the Iowa bar in 1869. *Id.*

41. *Id.* at 41-48. *See also* Bradwell v. Illinois, 83 U.S. 130 (1873); *In re Bradwell*, 55 Ill. 535 (1869).

42. *See* MOSSMAN, *supra* note 1, at 44.

43. *Id.* at 17.

44. *See id.* at 48-49.

45. *See id.* at 40-41.

frage activists were “closely connected immediately after the Civil War, they increasingly diverged in the latter decades of the nineteenth century; indeed, it seems that a number of successful women lawyers gradually adopted a professional identity as *lawyers*, one that increasingly distanced them from other *women* activists,”⁴⁶ thus establishing a troubling dichotomy for women lawyers that persists today.

Mossman also addresses legal education for women in the United States. She remarks that while the women’s movement encouraged education, law schools “responded unenthusiastically, and sometimes with resolute opposition to women’s interest in studying law.”⁴⁷ Moreover, those women who managed to enter a legal education program encountered a variety of obstacles in obtaining their degrees, not to mention the additional hurdles faced when attempting to seek admission to the bar or to secure jobs after graduation.⁴⁸

By devoting the first chapter to the efforts of American women, Mossman lays the framework for a comparative analysis of efforts by women in other countries. In Chapter 2, Mossman continues to focus on North America, reviewing the progress of the first women lawyers in Canada.⁴⁹ Canadian women began to seek legal education and entry into the profession at the end of the nineteenth century, notably later than the women of the United States.⁵⁰ Mossman states that Britain, “where women were formally excluded from becoming solicitors or barristers until after World War I,”⁵¹ had greater influence over the Canadian legal profession and courts than it had in America.⁵² Accordingly, she questions, “it is important to assess whether the history of women’s admission to the legal profession in Canada reveals a fissure in current theories about a common professional project in law in North America, or whether there is some

46. *Id.* at 41.

47. *Id.* at 39. For example, Alice Jordan graduated from Yale Law School in the 1880s only to have Yale amend its admission policy to men only soon after her graduation. *Id.* at 37-38.

48. *See id.* at 39.

49. *See id.* at 67-112.

50. *Id.* at 68.

51. *Id.* at 72.

52. *See id.*

other explanation for this divergence between the United States and Canada”⁵³

In making this assessment, Mossman studies the arguments presented by women in specific court cases, as well as the court opinions rejecting women’s arguments for entry into the Canadian legal profession.⁵⁴ While American cases are cited in the arguments, the “decisions reveal how courts continued to defer to jurisprudence in Britain, a jurisprudence of male exclusivity for both barristers and solicitors.”⁵⁵ In contrast, however, a number of the Canadian provincial legislatures passed legislation permitting women to become lawyers, so long as they did so “‘on the same terms as men,’ an approach which simultaneously granted women admission to the bar and also confirmed the profession’s fundamental maleness.”⁵⁶ Mossman concludes that hinging women’s admission on “the same terms as men” had the effect of pushing women to the margins of the profession.⁵⁷ As in the United States, for many Canadian women, legislative action was required before they could enter the legal profession.⁵⁸

The next three chapters stand in contrast to Mossman’s studies of the American and Canadian female lawyers in definitive ways. First, most of the North American women’s experiences involved litigation regarding their admission to the legal profession, whereas the women in the other common law jurisdictions began to practice law without initiating a legal challenge in court regarding their admission to practice.⁵⁹ Second, and perhaps because of the first reason, Mossman spends a significant amount of time on detailed biographies of the individual women who represent the regions beyond North America. For example, in moving overseas to Britain in Chapter 3, Mossman focuses predominantly on Eliza Orme, who established a law office in 1875 and maintained her practice without seeking admission to the bar.⁶⁰ Orme’s activities in the law and in the

53. *Id.*

54. *See id.* at 73-88.

55. *Id.* at 72.

56. *Id.*

57. *Id.* at 88.

58. *See id.* at 72, 86-87.

59. *Id.* at 17.

60. *Id.* at 120.

suffrage movement receive over thirty pages of attention,⁶¹ compared to the handful of pages or paragraphs dedicated to the lives of the women lawyers, such as Myra Blackwell⁶² and Clara Brett Martin,⁶³ chronicled in Chapters 1 and 2.

Chapter 4 turns to the efforts of women in Australia and New Zealand.⁶⁴ The chapter opens with a general historical account, including highlights such as the admission of the first Australian woman, Grata Flos Greig, in 1905⁶⁵ and the delay experienced by Ada Evans in New South Wales, who was not admitted to the bar until nearly twenty years after her graduation from the University of Sydney's law school in 1902.⁶⁶ Mossman connects the experiences of these women to others in the world, writing that "the pattern for the first women lawyers in Australia was one of sporadic litigation and ongoing lobbying efforts to achieve legislation in each state, a pattern that was similar for women who aspired to become lawyers in other former British colonies, including Canada."⁶⁷

The heart of Chapter 4, however, directs the reader to the path that one woman took in her quest to practice law in New Zealand.⁶⁸ Ethel Benjamin was the first woman lawyer admitted to practice in New Zealand, having gained admission in 1897 without the challenges or delays experienced by most of the women featured in this book.⁶⁹ While she was entitled as a matter of law to be admitted to the bar, the culture of the profession was not very welcoming.⁷⁰ Mossman notes that Benjamin was excluded from certain activities of the professional bar, and she had difficulties at times sustaining her legal practice,⁷¹ though this also may have been due to her youth and Jewish background.⁷² Mossman cites Benjamin's difficulties and the fact that other women did not seek to enter the legal profession

61. *See id.* at 121-53.

62. *See id.* at 34.

63. *See id.* at 67-68.

64. *See id.* at 155-90.

65. *Id.* at 155.

66. *Id.* at 155-57.

67. *Id.* at 157.

68. *See id.* at 159-87.

69. *Id.* at 159.

70. *Id.*

71. *Id.* at 171-75.

72. *Id.* at 188.

in New Zealand for many years as confirmation of the impact that the strong male exclusivity had on the profession.⁷³

Additionally, as with the early American and Canadian women lawyers, Mossman declares that “Benjamin did not fit comfortably into the women’s movement in New Zealand.”⁷⁴ Nevertheless, Benjamin’s practice included a substantial amount of family law work on behalf of women and children,⁷⁵ though she also represented clients whose interests were not aligned with women’s issues.⁷⁶ As with the biography of Orme, Mossman devotes a sizeable portion of the book to Benjamin’s life (over thirty pages), permitting a fuller understanding of such seeming inconsistencies and the role that gender played in her legal career.⁷⁷

Chapter 5 follows the pattern of Chapters 3 and 4 with particular attention centered on the life and career of one woman, this time an Indian woman, Cornelia Sorabji.⁷⁸ Sorabji was the first woman to study law at Oxford University, sitting for examinations in 1892, despite the fact that women were neither entitled to Oxford degrees nor eligible to sit for the bar.⁷⁹ Nevertheless, she had a substantial legal career, including court appearances to the extent judges would permit her to appear on behalf of her clients.⁸⁰ In 1904, after many years of practicing law (while simultaneously facing repeated roadblocks in her effort to become admitted to the bar), she received a special government appointment as a legal advisor with the Court of Wards, the administrative agency charged with providing assistance to widows and children in Northern India.⁸¹ Only after World War I was she admitted as a barrister.⁸² Interestingly, a major source for Mossman’s research on Sorabji is her own autobiographic memoir, *India Calling*.⁸³

73. *See id.*

74. *Id.* at 173.

75. *See id.* at 176-79.

76. *Id.* at 179.

77. *See id.* at 159-90.

78. *See id.* at 191-97, 199-237.

79. *Id.* at 194.

80. *Id.*

81. *Id.*

82. *Id.* at 18.

83. *See, e.g., id.* at 192 n.3.

The final chapter of *First Women Lawyers* includes an overview of the efforts by Louis Frank, a Belgian barrister, to facilitate women's admission to the legal profession in European countries, including the struggle for admission of Lydia Poet in Italy, Jeanne Chauvin in France, and Marie Popelin in Frank's home country of Belgium.⁸⁴ Frank exchanged written correspondence with all three women (as well as others encountered earlier in the book) and met two in person as he worked to assist them in presenting their claims for admission, largely through the 1898 publication of his treatise, *La Femme-Avocat*, a comprehensive sociological analysis and historical documentation of women's roles, legal status, and efforts to practice law.⁸⁵ As Mossman discerns, these women's stories are significant because they show both the pioneering efforts on behalf of women in the law and the confrontation of civil-law based arguments against women in the law. They thus provide "interesting comparisons with women's claims for admission to the bar in common law jurisdictions."⁸⁶

The content of this final chapter is fascinating on two fronts. First, as in the prior chapters, Mossman's detailed biographies of the featured women once again are effective at illustrating the tensions and concerns in these specific women's lives and in the women's movement generally.⁸⁷ Her account of Frank's work is equally deliberate and compelling, aided by her successful effort to place it in the context of the work of early women lawyers around the world, many of whom the reader already has become acquainted with in the preceding chapters.⁸⁸

In her final reflections, Mossman considers how the experiences of these early women lawyers might illuminate "contemporary issues about gender and professionalism in the twenty-first century."⁸⁹ In many ways the greatest strength of this book is Mossman's ability to weave the stories of the first women lawyers across borders and oceans to create a cohesive history. Mossman conveys, with historical accuracy and intimate,

84. *See id.* at 239-68.

85. *Id.* at 239.

86. *Id.* at 245.

87. *See id.* at 246-54, 261-68.

88. *See id.* at 239-46, 254-61.

89. *Id.* at 289.

personal detail, the unique and at times inconsistent paths taken by women striving for the common goal of becoming lawyers. Notably missing, however, are stories from women in other parts of the world. Yet, Mossman sets a high bar for those who may come after her to document the stories of women from other countries in Europe, Latin America, South America, Africa, and the Middle East that remain to be told. Her work lays the foundation for future scholarship and demonstrates the real need for further work in this regard.

II. The Progress that Remains: A Snapshot of Modern Women Lawyers

Bar Codes is a highly readable compilation of history and sociological theory woven together to support and explain the results of a study conducted by Professor Leiper from 1993 to 2002, in which she tracked the careers of 110 women practicing law in Ontario, Canada.⁹⁰ The study participants included women lawyers in private practice, solo practice, government, corporations, and the judiciary.⁹¹ Leiper's research methodology was based upon taped interviews with the women and a written questionnaire.⁹² For many of the subjects, Leiper conducted follow up interviews later in their careers,⁹³ and she also attempted to contact all of them shortly before the publication of her book in order to provide a final update about their individual status, which appears as an appendix to the book.⁹⁴

Though she is not the first to conduct an interview-based study to examine the careers of women lawyers⁹⁵ or even wo-

90. See LEIPER, *supra* note 2.

91. See *id.* at 191-99.

92. *Id.* at 14.

93. See *id.*

94. See *id.* at 14, 190-99.

95. See, e.g., BROCKMAN, *supra* note 26 (interviewing lawyers in British Columbia); CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* (2d ed. 1993) (interviewing American women lawyers); CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* (1981) (same); MONA HARRINGTON, *WOMEN LAWYERS* (1994) (same); LAUREN STILLER KIKLEEN, *ENDING THE GAUNTLET* (2006) (same); SUZANNE NOSSEL & ELIZABETH WESTFALL, *PRESUMED EQUAL* (1998) (surveying over twelve hundred women working at top American law firms); THORNTON, *supra* note 26 (interviewing Australian women lawyers); Kay, *supra* note 26 (interviewing women lawyers in Quebec); Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 *TEX. J. WOMEN & L.* 27 (2004) (examining gender

men lawyers in Ontario,⁹⁶ hers is unique in utilizing follow up interviews of this nature. The data compiled through the interviews and questionnaires was processed through a sociological computer program,⁹⁷ but the book focuses mainly on direct quotations from the subjects to illustrate Leiper's observations about several recurring themes regarding the resistance and challenges faced by women in the legal profession.⁹⁸ These themes include appearance (represented by Shakespeare's character, Portia), legal education, time (especially the balance of work/family obligations), and career path.⁹⁹

Leiper opens her book by introducing the "codes" that women lawyers must identify and decipher to achieve success in the profession.¹⁰⁰ Her reference to "codes" includes more than just codes of civil law, criminal law, or professional conduct. Leiper's attention, rather, is focused on the hidden norms of the practice and the patterns of contradictory behavior presenting problems for women, such as "expectations about hours on the job, access to the best files, informal meetings, or unspoken views about pregnancy and childbirth."¹⁰¹ Indeed, the findings of her research seem to be directed primarily at those women (and, implicitly, men) who desire to "add parenting responsibilities to their load of legal duties."¹⁰² She ends the book with an attempt at "cracking the codes," offering some ideas on how the next wave of women lawyers might further the progress toward gender equality in the profession.¹⁰³

Chapter 2 introduces a central theme that runs throughout the book: the character of Portia from Shakespeare's *The*

disparity within the legal profession based upon surveys of male and female attorneys in Colorado).

96. See FIONA KAY & JOHN HAGAN, *GENDER IN PRACTICE* (1995) (exploring the lives of women and men lawyers based upon two studies, one surveying more than eight hundred lawyers in Toronto, and a second surveying more than one thousand lawyers across Ontario). See also Barry D. Adam & Kathleen A. Lahey, *Professional Opportunities: A Survey of the Ontario Legal Profession*, 59 CAN. B. REV. 674 (1981) (conducting a survey of all students graduating from Ontario law schools in 1974).

97. See LEIPER, *supra* note 2, at 15.

98. See *id.*

99. See *id.* at 7-13.

100. See *id.* at 6.

101. *Id.*

102. *Id.* at 4.

103. See *id.* at 177-89.

Merchant of Venice, who disguises herself as Balthasar, a respected and wise doctor of laws, to adeptly resolve a dispute.¹⁰⁴ Leiper provides an overview of feminist scholars' fascination with Portia over the years, but for her use she draws largely on the comparison between Portia having assumed the identity of a male judge with the views of the women in her study regarding wearing legal robes, a tradition for Canadian lawyers and judges.¹⁰⁵ Her study reveals that of the women asked this question in the interview,¹⁰⁶ "[w]omen lawyers reported an enhanced sense of identity when they appeared in their robes. Many of them felt that their professional legitimacy was strengthened and their personal confidence was elevated."¹⁰⁷ She goes on to observe that, "[w]hile some of them recalled having mixed feelings on first wearing their robes, most of them felt a sense of pride in their accomplishment,"¹⁰⁸ though she also acknowledges some rather unpleasant practical consequences of the robes, especially on warm summer days in old courtrooms without air conditioning or during one's pregnancy when the snug-fitting inner vest cannot be expanded.¹⁰⁹

In conclusion, Leiper states that "[o]n the whole, however, the robes authenticate their legal knowledge and expertise, allowing the women to move beyond the everyday duties of their practices as they prepare themselves for the adversarial climate of the courtroom."¹¹⁰ Leiper implies that the observations of the women, seemingly tied to the wearing of the robes, convey significantly more about their perceptions of the law and their role

104. Leiper is not the first to draw a comparison between women lawyers and Portia. See, e.g., Carrie Menkel Meadow, *Portia Redux: Another Look at Gender, Feminism, and Legal Ethics*, 2 VA. J. SOC. POL'Y & L. 75 (1994). Of Portia's "presence" in *Bar Codes*, Leiper writes: "Her presence in this book is haunting—a metaphor with a mixed message that highlights the transparency of women's performances and the ways in which they court professional failure when they turn their attention to family matters or deviate in any way from the prescribed patterns of practice." LEIPER, *supra* note 2, at 179.

105. See LEIPER, *supra* note 2, at 7-8.

106. *Id.* at 25. "The question was not addressed if the women did not wear their robes regularly or if [Leiper] felt that it would interrupt the flow of the discussion." *Id.* at 204 n.44.

107. *Id.* at 40.

108. *Id.*

109. *Id.* at 35-36.

110. *Id.* at 40.

as women who also are lawyers, generally.¹¹¹ These observations also serve to validate the fact that the first women lawyers' concern of double consciousness, at least on some levels, still persists for women lawyers today.

Next, Leiper takes on legal education.¹¹² While her study is limited to Canadian schools,¹¹³ her observations certainly reflect the evolution of legal education in America as well as other parts of the world. Lieper asserts that while the increased number of women in the profession has changed the face of law, the presence of women has not altered accepted masculine norms.¹¹⁴ In this discussion, she includes a concise but helpful summary of the existing literature and theory devoted to the issues surrounding women and legal education, concluding that this work "provides convincing evidence of inertia within the legal profession in response to women's requests for inclusion. The general body of legal knowledge remains intact and the power structure within law schools and large firms continues to favour men's interests."¹¹⁵

Her discussion of legal education also includes an in-depth examination of the law school system in Ontario, as well as law school culture and pedagogy generally, acknowledging the impact of the 1980s era when groups of feminist students and faculty began to question all aspects of legal education.¹¹⁶ Leiper then introduces her "Ontario sample," weaving in the stories of the women in her study and highlighting several recurrent concerns from their recollections of law school.¹¹⁷ Although the women expressed a wide range of views about their law school experience, from "very interesting"¹¹⁸ to "terrifying,"¹¹⁹ the most remarkable finding from Leiper's research on this issue is that the women did not seem to believe that gender had been an obstacle to their education. For example, she declares that the women's "experience in law school was not as

111. *See id.*

112. *See id.* at 41-78.

113. *See id.* at 63.

114. *Id.* at 46-47.

115. *Id.* at 49.

116. *See id.* at 52-62.

117. *Id.* at 64-75.

118. *Id.* at 65.

119. *Id.* at 66.

daunting as we might expect, given the reports from the first generation of women in large American law schools.”¹²⁰ Furthermore, a number of women were impressed by tensions in the law school environment other than gender, such as race, age, social class, and financial constraints.¹²¹ Leiper acknowledges these additional tensions and recommends that future scholarship explore them, but she does not cover them in depth.¹²²

Another dominant theme present in *Bar Codes* is that of time, whether through the stress of billable hours or the effort to balance work and family obligations.¹²³ Leiper again takes care to ground the responses of her study participants in a discussion of theory. She devotes one chapter to a summary of the relevant legal literature and sociological work regarding the concerns of time¹²⁴ and a second chapter to conceptualizing time, based largely upon feminist theories on the visions of women’s time.¹²⁵

To analyze the study participants regarding the issue of time, Leiper looked to an empirical method. She utilizes “the qualitative index of ‘time crunch,’ which was developed by testing responses to a battery of statements about the impact of temporal stress in respondents’ lives.”¹²⁶ In comparing other occupations, Leiper notes that women lawyers are among the most stressed, with higher-than-average levels of “time crunch”

120. *Id.* at 181.

121. *See id.* at 67, 181.

122. *See id.* Leiper’s limited comments on the issue of social class, however, do raise serious concerns:

The theme of social class is never far from the surface as we move from the image of the nineteenth-century professional gentleman through the lives of these women to the present and the potential for further segmentation within professional ranks. . . . Recent reports indicate that the most prestigious schools, led by the University of Toronto, intend to raise their fees beyond the level of affordability for most aspiring law students. Only the very affluent and the scholarship winners will be able to attend these schools. The move is partly motivated by the need to attract the best legal minds to permanent faculty posts, but it also serves to channel the students with higher class backgrounds into the most prominent law firms

Id. at 181-82 (citation omitted).

123. *See id.* at 11-12.

124. *See id.* at 79-104.

125. *See id.* at 105-42.

126. *Id.* at 79.

related stress.¹²⁷ This plays out in different ways for the study participants, whether as concerns of insufficient time for spouses, children, friends, and oneself, or simply not getting more than four or five hours of sleep most nights.¹²⁸

Leiper ends her analysis of time in the lives of women lawyers by reflecting on what might be learned from the experiences shared by the women in the study.¹²⁹ She observes that “we continue to hold out impossible ideals to women. In spite of the fact that their working hours are longer than average, they still shoulder much of the responsibility for their children’s lives.”¹³⁰ This conclusion is hardly novel or revolutionary.¹³¹ What is most compelling, and at the same time disturbing, about Leiper’s findings regarding time in the lives of women lawyers is that it seems little, if any, progress has been made on this front in the past twenty to thirty years.¹³²

A final theme Leiper addresses is challenging the assumptions surrounding the concept of a traditional career following a linear trajectory.¹³³ Again, she positions her study results in theoretical analysis, this time with an overview of career theory literature.¹³⁴ Critical of the traditional masculine vision of career as linear, an “unbroken, upwardly mobile path to status, money, and power,”¹³⁵ she suggests that this model is outdated and “does not accommodate women’s lives. . . . It is oversimplified and one-dimensional”¹³⁶ To counter the presumptions and stereotypes associated with the classical linear career, she tries to place the career trajectories of her study participants on a continuum ranging from the most linear to the most extreme.¹³⁷ Leiper selects twelve women from her sample, as rep-

127. *Id.* at 102.

128. *See id.*

129. *See id.* at 103-04.

130. *Id.* at 103.

131. *See, e.g.,* ARLIE RUSSELL HOCHSCHILD, *THE SECOND SHIFT*, at x (1989) (“One reason that half the lawyers, doctors, business people are not women is because men do not share the raising of their children and the caring of their homes.”).

132. *See* LEIPER, *supra* note 2, at 104.

133. *See id.* at 143.

134. *See id.* at 143-47.

135. *Id.* at 173.

136. *Id.*

137. *See id.* at 147.

representative of various points along this continuum, for a close analysis of the choices made in their legal careers.¹³⁸ Her analysis leads her to conclude that “[f]amilies would be better served by career expectations that allowed them time to deal with the other dimensions of their lives, particularly during the child rearing and eldercare years. This kind of flexible arrangement would provide a truly equitable approach to career-building and family life.”¹³⁹

In reflecting on the results of her research, the most positive development Leiper can identify is that a debate about gender issues exists.¹⁴⁰ This “mark of guarded success,” in her words, “would not have occurred without the influx of women to the profession.”¹⁴¹ Thus, “by their very presence, [women lawyers] have raised alarm bells and provoked responses from law societies and bar associations. They have also laid bare a vein of prejudice in firms that have remained committed to a masculine approach to practice.”¹⁴² And Leiper’s prognosis for the future is not entirely positive. She writes that

“[l]aw societies have responded . . . by generating volumes of model policies. Large law firms have commissioned more studies and prepared detailed policies, but, without addressing systemic inequities, the profession will continue to ignore the needs of more than half of its members and the culture will remain intact.”¹⁴³

Leiper’s research and analysis enhance the body of scholarship that endeavors to understand the legal profession through the compilation of women’s stories. Her work is limited, however, by its very nature in that the survey sample represents only a narrow segment of women lawyers practicing today. While their stories certainly can provide some insight on the experience of women lawyers generally, Leiper’s conclusions would be even more compelling if the sample were expanded. Indeed, she identifies this as an area for future work, recom-

138. *Id.*

139. *Id.* at 173.

140. *See id.* at 178-79.

141. *Id.* at 49.

142. *Id.* at 178.

143. *Id.* at 49 (citation omitted).

mending that “a solid random sample of the profession should include accurate proportions of lawyers from diverse backgrounds.”¹⁴⁴ Not only should future research of this kind include diverse backgrounds but, in the spirit of *First Women Lawyers*, future research should encompass global comparisons of contemporary women lawyers.

III. Intersections Between *First Women Lawyers* and *Bar Codes*: The Progress that Remains

Though different in approach and methodology, both *First Women Lawyers* and *Bar Codes* endeavor to respond to the question posed at the outset of this review: What has kept women lawyers from making more progress toward gender equality? It is interesting to note a number of intersections between the books with respect to both the concrete, explicit barriers faced by the first women lawyers more than one hundred years ago and the subtle, informal barriers faced by modern women lawyers today. These various intersections, for the most part, stem from strains of the double consciousness described at the outset of this review.¹⁴⁵

As an initial matter, both books reveal that the motivations of women to enter the legal profession have not changed very much over the years. Like many of Mossman’s first women lawyers, Leiper’s study found that women lawyers today choose the law primarily for economic independence and intellectual development.¹⁴⁶ Similarly, just as many of the first women lawyers were, perhaps surprisingly, not as supportive of the women’s movement as we might have expected them to be,¹⁴⁷ the women surveyed by Leiper also tended to avoid feminist issues, particularly during their education and when first attempting to assimilate into the legal culture.¹⁴⁸ Moreover, many of the same challenges facing the first women lawyers—like how to find work, whether to support feminist causes, and even what to

144. *Id.* at 188.

145. See *supra* note 12 and accompanying text.

146. LEIPER, *supra* note 2, at 180.

147. See MOSSMAN, *supra* note 1, at 40-41.

148. LEIPER, *supra* note 2, at 180-81.

wear to court¹⁴⁹—are the very challenges on the minds of women now.

The authors employ similar metaphors and symbols to describe the experience of women lawyers. For example, as discussed in Part II of this essay, Portia is a central theme for Leiper, representing the “competing visions” experienced by women who enter the law.¹⁵⁰ Portia was a major figure for the first women lawyers as well. Mossman explains that the first women lawyers were referred to as “Portias,”¹⁵¹ meaning that their “participation in public life arguably required that the first women lawyers disguise their gender in their professional identities.”¹⁵² Mossman further observes that, “[i]n this way, references to the first women lawyers as ‘Portias’ appeared to acknowledge women’s potential for effective advocacy, but they simultaneously confirmed a male model of legal professionalism.”¹⁵³

Another symbol present in both books is the kaleidoscope. Mossman concludes her book by suggesting that her “account of the complex interrelationships between different historical contexts and women’s responses to different circumstances” must be viewed as if through a kaleidoscope.¹⁵⁴ Only by continually adjusting the focus to accommodate different perspectives, she suggests, can we adequately assess the history of the first women lawyers.¹⁵⁵ Leiper employs the kaleidoscope in her discussion of the time pressure on women lawyers. She explains that time might best be envisioned:

[A]s a kaleidoscope of patterns, marked by sequence and duration, thought and memory, cycles and rhythms. At the most immediate level, it is about daily schedules and, by extension, the timing of career moves, but it also embraces the temporality that stretches across the life span, periodically evident in

149. MOSSMAN, *supra* note 1, at 106.

150. LEIPER, *supra* note 2, at 7.

151. MOSSMAN, *supra* note 1, at 284.

152. *Id.*

153. *Id.*

154. *Id.* at 277.

155. *See id.*

rites of passage such as graduation, marriage, or parenthood.¹⁵⁶

The authors' use of symbols like these highlights the ways in which the first women lawyers and modern women lawyers continue to have a great deal in common.

An additional example of the intersections between the books is the documentation of the ways women have adapted to create a place of their own to practice law.¹⁵⁷ Many of the first women lawyers who were denied admission to the bar did not allow it to keep them from practicing law in some form on their own terms. For example, Cornelia Sorabji took on women clients living in *purdah* (the Hindu practice of secluding women from men), "creat[ing] a niche for her legal work which 'supplemented,' but did not 'supplant,' the work of male lawyers."¹⁵⁸ And Eliza Orme established her own office where she handled patent and conveyance legal work for many years without a law degree or bar admission.¹⁵⁹ Similarly, Leiper found that some women in her study (who, perhaps not coincidentally, seemed most satisfied in their legal careers) created alternatives to traditional legal practice options, one transitioning from a litigation practice into mediation¹⁶⁰ and another opening her own practice in which she served the role of in-house counsel for her various clients.¹⁶¹

Finally, both books recognize that progress in gender equality for the legal profession has come (or will come) from women who acted (or will act) to change the law itself. Mossman found that this was the case for many of the first women lawyers who, in order to be admitted to the practice of law, first had to change the law.¹⁶² It remains true for women today. Leiper observes that while "a broad body of literature"¹⁶³ has been produced documenting the need to address gender equality and the work/life

156. LEIPER, *supra* note 2, at 183.

157. As Mossman notes, Virginia Woolf was the first to claim that women "could enter the professions and 'use them to have a mind of their own and a will of their own . . .'" MOSSMAN, *supra* note 1, at 5.

158. *Id.* at 234.

159. *Id.* at 131.

160. LEIPER, *supra* note 2, at 165.

161. *Id.* at 161.

162. MOSSMAN, *supra* note 1, at 12.

163. LEIPER, *supra* note 2, at 179.

balance, “the next giant step involves the implementation of progressive legislation and contractual terms of employment guaranteeing equal opportunity for all employees.”¹⁶⁴

First Women Lawyers and *Bar Codes* are significant additions to the scholarship on women and the legal profession. While the passage of time certainly has yielded some progress for women lawyers, both books acknowledge that work remains. These books are required reading for law scholars, historians, and social scientists who study women lawyers and will be appreciated by anyone who is concerned about gender equality in the legal profession.

164. *Id.*