

SISTERS



IN LAW

Women Lawyers in
Modern American History

VIRGINIA G.
DRACHMAN

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Introduction

"**D**ear Sisters in Law," wrote lawyer Jane Slocum to the women lawyers in the Equity Club in 1887.¹ Slocum was not alone in her use of this salutation to address her colleagues. Women lawyers in the nineteenth century frequently referred to each other as "sisters in law."² The phrase revealed women lawyers' consciousness that they were part of a distinct group of women, a community of women lawyers. In an age when women derived their identity from their place in the family, women lawyers defined themselves as sisters in the family of women lawyers.

The history of women lawyers is a powerful story of discrimination, integration, and women's search for equality and autonomy in American society. This book tells that story. It begins in the 1860s, when women first began to seek entrance into the legal profession. It follows women lawyers over more than half a century as they gained admission to most law schools, integrated all state bars, established professional careers, and tried to balance the traditional responsibilities of their private lives with the new demands of their professional careers. It ends in the 1930s, when women had achieved modest professional success and recognized the limits of their progress, a pattern that barely changed until the mid-1970s.³

I began this book over ten years ago, after completing a history of women doctors. I wanted to look for similarities between their history

and that of women in another male-dominated profession. I discovered that along with the similarities, the history of women lawyers was distinct from the history of women in all other professions. The uniqueness of women lawyers is rooted in two major historical facts. First, more than any other profession women sought to enter in the nineteenth century, law was the most engendered and closed to women. Second, the legal profession was especially difficult to integrate because sexual discrimination was rooted in the legal system. Simply put, masculinity was part of the very foundation of the profession; it was fundamental to its principles, values, and culture.⁴ A few simple numbers reveal the extent of the sexual discrimination and engendered nature of the legal profession. By 1920, women made up 86 percent of all schoolteachers, 66 percent of all social workers, 5 percent of all doctors, 4.7 percent of all scientists, and only 1.4 percent of all lawyers.⁵

But numbers do not tell the whole story. There were reasons unique to the legal profession that made it so impenetrable to women. Unlike medicine, in which women founded their own all-women's schools and hospitals in the mid-nineteenth century, until the very end of the century law had no separate all-women's institutions to ease women's entry into the legal profession.⁶ Instead, access to the legal profession was obtained through male-controlled institutions: courts, bar associations, law schools, and law firms. Moreover, women lawyers faced an obstacle unique to women professionals: their profession made and interpreted the laws that denied women access to the rights of equal citizenship, including the practice of law. The very act of gaining admission to practice law demanded that women change the law of the land. Women had to persuade male judges and legislatures to reinterpret the male-constructed jurisprudence that made their entry into the legal profession not only unthinkable, but illegal.

As I examined the attempts of women lawyers to gain equality with male lawyers, I discovered that, more than any other group of professional women in nineteenth-century America, women lawyers linked their cause directly to the campaign for woman suffrage. Just as women suffragists claimed equal citizenship with men in order to win the right to vote, so nineteenth-century women lawyers claimed their status as citizens equal with men in order to justify their right to practice law. The demand that women practice law was almost as radical as the demand

that women vote because its advocates dared to follow the suffragists' challenge—to place women in the public arena, independent of their domestic ties, and as equal citizens with men.⁷ Nineteenth-century women lawyers did not duplicate the suffrage movement, nor did they create the broad organizational structure or attain the national attention that the suffrage movement did. Nevertheless, it is clear that women lawyers joined together in what they understood to be a community of "sisters in law" to overcome sexual discrimination in the legal profession.

As I uncovered the ways in which women lawyers sought the right to practice law and strived to carve their niche in the legal profession, I began to understand that the community of "sisters in law" composed a women lawyers movement. In the 1860s and 1870s in particular, the women lawyers movement shared some of the important characteristics of the nineteenth-century woman suffrage movement. Women lawyers articulated a body of shared ideas about the importance of reform of the American legal system; they advocated equal citizenship with men so that women could practice law; they supported each other through groups such as the Equity Club, the first attempt by women lawyers to organize nationwide; they urged the sexual integration of law schools; they publicly exposed sexual discrimination in the legal profession through law journals such as Myra Bradwell's *Chicago Legal News*, and they brought numerous lawsuits in order to integrate the bar. All of these efforts made up the women lawyers movement, which, like the woman suffrage movement, though on a much smaller scale, grappled with the question of women's power as defined by the law and the place of women in a male-constructed legal system.

As women tried to integrate the legal profession, they confronted a tension between their gender and professional identity, or what one nineteenth-century woman lawyer described as the burden of "double consciousness."⁸ Few women lawyers escaped this burden. The pervasiveness of sexual discrimination in the legal profession forced women lawyers to reconcile continually their quest for sexual equality with their long-held belief in female uniqueness. As law students, for example, they considered whether they should speak out in the classroom like their male classmates or sit quietly as ladies. Once in practice, they made difficult professional choices between the visibility of courtroom practice or the privacy of office practice, and between the selflessness

of charity law or the personal benefits of law for profit. They even struggled over what the proper woman lawyer should wear, especially when she was in the courtroom.

The tension between their gender and professional identity also intruded into the private lives of women lawyers, forcing them to make difficult decisions about marriage, motherhood, and health. Could they marry and have families like male lawyers did, or did they have to make sacrifices? Could they compete physically and mentally with male lawyers, or did they need to take special precautions? Their concerns reveal that nineteenth-century women lawyers debated these personal issues well before women sought equality in marriage in the early twentieth century.⁹

By the early twentieth century, nearly all of the institutional barriers to women's entry into the legal profession had crumbled, and younger women who entered law felt confident that they would not have to face the tension between gender and professional identity that had plagued nineteenth-century women lawyers. This generation of women believed that the new ideal of a meritocracy in the legal profession promised them a fair and equal chance to prove their ability and to succeed in the profession. Many also marched headlong into marriages, trusting that they would be better able than their predecessors to balance marriage and motherhood with their careers. An exceptional elite reached the pinnacle of professional accomplishment. But the majority of women lawyers achieved only modest success.

The optimism of the new women lawyers of the early twentieth century was also undermined by new and persistent forms of sexual discrimination. Although practically all law schools, including some of the most prestigious ones, were open to women by the early twentieth century, most women lawyers graduated from bottom-tier institutions. Corporate law firms, the new institutions of power and prestige in the early twentieth century, excluded women lawyers. Lucky women graduates achieved modest success as solo practitioners or found office positions as clerks or in law-related sectors of the economy. With the exceptional elite as the standard of success, however, even this modest achievement seemed a disappointment. By the 1930s, it was clear that double consciousness, identified more than half a century before and fostered by sexual discrimination, remained an inescapable burden for

women lawyers—the legacy of their integration into the legal profession.



The history of women lawyers from the 1860s to the 1930s is part of the rich fabric of American culture. It is central to two broad areas of American historiography—the history of women in the professions, and the history of the legal profession.

Women's historians have paid a great deal of attention to women's entry into the public sphere.¹⁰ But although they have looked at women in a wide range of professions, they have given little attention to women lawyers.¹¹ They have shown that nineteenth-century women first entered the public arena through separate all-women's institutions such as women's colleges and women's clubs. This trend was certainly true for women doctors, who entered medicine through their own medical schools and hospitals.

The history of women lawyers reveals a different story. In an era of rigid sexual separatism, nineteenth-century women entered the law through male-dominated institutions, thereby integrating the profession from the outset in the late 1860s and 1870s. Moreover, at the turn of the century, when women began to integrate American society and women doctors in particular began to dismantle their separate women's medical institutions, women lawyers had their first opportunity to study at law schools created specifically for them. As a result, women lawyers did not reap the benefits of the separate women's organizations of the nineteenth century. Nor did they face the tension women doctors encountered at the turn of the century between loyalty to separatism and the lure of integration.

The path of immediate integration taken by nineteenth-century women lawyers contrasted with the more typical route from separatism to integration followed by other women professionals. This study of women lawyers reveals that the model of immediate integration, which coexisted with the well-established paradigm of separatism to integration, is also part of the broad history of women's entry into the public arena.

Central to the immediate integration of women in law were their experiences as a minority in the profession. Although historians of the

legal profession have begun to explore the entry of minorities into the law, they have essentially left women out of their interpretations of the development of the modern legal profession.¹² Lawyers in the 1860s were primarily solo practitioners who shared the values of small-town, protestant America. They were white, Anglo-Saxon, and male. By the early twentieth century, the profession had become more diverse. Minorities, particularly Jews and African-Americans, had entered the law, usually at the bottom of this highly stratified profession. A small elite of wealthy, American-born, protestant men who made up the leadership of corporate law firms and prestigious law schools in the nation's largest cities, however, still dominated the profession. This book places women into the diversity and inequality in the modern legal profession and shows that although a few reached the top of the professional hierarchy, most women lawyers joined ethnic and racial minorities on the lower rungs of the professional ladder.

Women's first challenge was to win the right to practice law. The legal history of this struggle has tended to begin and end with Myra Bradwell.¹³ Historians of the law have emphasized the 1873 case of *Bradwell v. State of Illinois* because it was the first decision by the United States Supreme Court that foreclosed women's efforts under federal, constitutional law to gain the right to practice law. The focus on a single "great case" such as the *Bradwell* decision, however, eclipses the efforts of numerous nineteenth-century women lawyers who tested the limits of the law in state and federal courts. This book moves the judicial thought on women lawyers to center stage by examining the legal thought of nineteenth-century state court judges and the legal rhetoric of women lawyers as they sought to make sense of a gender polity in disarray. Issues of natural law; common-law rights; citizenship under federal, constitutional law; and equality are examined in order to understand why the keepers of the rule of law in American society denied women lawyers their basic rights, and, ultimately, how women lawyers gained the right to practice by forcing a reformulation of women's position in American law.

From the outset, I sought to cast a wide net around my subject, to provide a broad history of women lawyers that was national rather than local in scope. I have taken an inclusive approach, reinterpreting the experiences of well-known as well as barely known women lawyers within the broader contours of the story. Women lawyers were a diverse

group. They came from large cities and small towns and from all sections of the country. At the same time, they were homogeneous. Women lawyers were, for the most part, white, middle-class, and protestant, though by the early twentieth century daughters of working-class immigrant families—and to a lesser degree, African-American women—had made their way into the profession. This is therefore primarily a study of white, middle-class women, though issues of race, ethnicity, and social class are important interpretive strands of the story. At the same time, my intent here is to look at the women lawyers themselves. I have not sought to measure them against male lawyers. Nor have I sought to compare them with the history of women in other professions, although as the context of the book warrants I draw comparisons at times, particularly to women doctors.

The sources I uncovered for this study were remarkably rich and diverse. They included the usual tools of a historian studying a group of professional women: manuscript collections of women lawyers, law schools, and professional organizations, as well as popular printed sources, including newspapers, magazines, short stories, and novels. (I have described the quantitative sources in Appendix 2.) I also relied heavily on the sources of the legal historian such as judicial decisions, statutes, legal periodicals, appellate court briefs, the *Martindale-Hubbell Law Directory*, and biographical directories of women lawyers published during the first half of the twentieth century. Among this diverse collection of sources, two stand out as unique and especially significant: the letters of the Equity Club, a correspondence club of women lawyers in the late 1880s, and the questionnaires of the Bureau of Vocational Information, completed by women lawyers in 1920. These two collections enabled me to portray in remarkable depth two groups of women lawyers—women lawyers of the late nineteenth century, and the new women lawyers of the early twentieth century.

Finally, I have sought at every turn to tell a story. Though I have relied at times on diverse sources and methods, this work is at its heart a narrative. It follows a clear chronological path, yet it weaves the important interpretive themes into the chronology to create an analytic tale. It begins with women's first efforts to enter the legal profession in the late 1860s and ends in the early twentieth century when a new generation of women lawyers, though finally part of the legal profession, recognized the limits of their progress. The result is a story that