

Study on Sociological Study of Women Lawyers: The Process of Feminizing the Legal System

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Abstract: *This paper examines the process of assimilation of women into the legal profession from many viewpoints. Initially, information regarding the involvement of women in the legal field is documented, primarily from secondary sources, such as the national reports created for the Working Group for Comparative Study of Legal Professions. It is important to acknowledge that the data presented exhibits a disproportionate representation of industrial nations in the western world, while Third World and impoverished states are significantly underrepresented. This can be attributed, at least in part, to the degree of advancement of the legal profession within these countries. Our capacity to comprehend the influence of some colonial legal systems on the indigenous legal culture is constrained by the limited availability of data from these nations. Furthermore, this study will examine the consequences of a swift and significant increase in the number of women lawyers entering various sectors of the legal field. The focus will mostly be on conjectures and recommendations for further research. The aforementioned conjectures are derived from extant evidence and recommendations derived from feminist theory and scholarly investigations in the field of occupational sociology. Drawing a realistic depiction of women's participation in the legal profession at this stage may be premature. By posing a few thought-provoking inquiries at this juncture, we may focus our attention on the most crucial topics for investigation. This paper provides an overview of many aspects pertaining to the concept of 'feminization' within the legal profession. On one hand, it might be argued that the profession has become feminized due to the growing involvement of women.*

Keywords: Legal profession, women involvement, sociology, feminisation, women lawyers

I. INTRODUCTION

The Narrative of women in the legal profession is a straightforward task, even when considering the vast differences in national and legal traditions. Historically, there has been a notable underrepresentation of women in the fields of law, including law degrees, legal professionals, and occupations related to legal work, albeit with a broad definition. The majority of nations experienced a significant transformation in the 1970s, characterized by the broadening of university education to encompass women and the concurrent emergence of a heightened involvement of universities in the education of legal professionals across several countries. In certain nations, women were legally barred from pursuing legal professions, regardless of their legal education or apprenticeship with a lawyer. In these countries, a modification in the regulations for admission to legal practice required a legal change, either through legislation or the evolution of common law. While women were not legally barred from pursuing the profession in other nations, they did not actively participate in the sector. The level of women's involvement in the profession closely mirrors the progress observed in other nations that face more pronounced formal obstacles. The influence of social barriers on individuals' entry and engagement in the profession appears to surpass the constraints imposed by legal regulations. Likewise, the global women's movement, the democratization of higher education, novel contraceptive technologies, and shifting perspectives on the family have had a significant impact on the involvement of women in the legal field. Conversely, the matter of whether the profession will undergo 'feminization' - meaning, be altered or impacted by women in the profession - is a distinct matter. The definition of 'feminized' exhibits a certain degree of complexity. For individuals who associate 'feminine' attributes with women (or men), the legal profession is considered 'feminized' when these feminine qualities (such as empathy, relatedness, nurturance, and collectiveness) are acknowledged, valued,

and integrated into the execution of legal duties and responsibilities. For others, the profession is 'feminized' not through stereotypical ascriptions of gender qualities, but through a 'feminist' impact on the profession that encompasses modifications in the practice of law (such as adjustments in work-family dynamics) and in the substantive law itself (including issues related to employment discrimination, family law, and criminal law). The issues at hand, stemming from significant research in feminist jurisprudence, revolve around whether women who join the legal profession will adhere to a male paradigm of what it entails being a lawyer, or if the profession will embrace and adjust to include previously marginalized individuals who may bring fresh insights on how the practice of law can be carried out. Sociologists in the legal profession play a valuable role in documenting the quantity and distribution of specific social groups within the profession. Statistical patterns provide valuable insights into the narrative of macro-level societal transformation. However, it is important to note that identifying the patterns of aggregate change is but one aspect of the narrative. Initially, it is vital to formulate elucidations of the patterns. Furthermore, it is important to identify changes and trends at both the micro and qualitative levels. This is not only crucial for predicting future macro changes, but also for gaining a deeper understanding of the probable reasons and observing deviations from norms that may offer insights into social innovation.

The intriguing aspect lies not just in the act of tallying numbers, but also in the significance and interpretation of those figures. An important topic in any examination of women in the legal field is whether women will undergo transformation as a result of the legal profession, or if the legal profession will undergo transformation due to the growing representation of women. In summary, the study aims to examine the effects of a previously excluded population on the profession by identifying the dependent and independent factors. How will the inclusion of women impact the profession? Will disparities be evident due to the cultural, sociological, or biological distinctions between women and men, resulting in distinct approaches to carrying out legal responsibilities? Will women make contributions to the profession from their position as previously excluded outsiders, as dominated and oppressed beings" who will reject the hierarchy and unnecessary stratification of the profession, or as people with family responsibilities and interests who will require adaptations in the workplace? Next, what will be the nature of women's contributions to the legal profession? Will they be changes in the way law is practised, in the structure of work, in the substantive law, or in the very basic forms of the legal system? These are some of the questions and themes to be explored in a study of women in the legal profession. Other themes include macro questions. As women begin to approach constituting half of the profession, will the status of the profession decline? As women and the things, they do have been devalued in various cultural forms, will the increased performance of legal tasks by women affect the social and political regard of these legal functions? We already see evidence of this in the clustering of women in the legal jobs typically lowest in the social hierarchy in virtually all countries. In a less likely turn of events, might the status of the legal profession rise with changes in the profession wrought by women; a profession that truly helps through warmer, less aggressive, more honest practices? Once participation in the profession exceeds token levels new questions emerge. Will only exceptional women succeed or rise in the professional hierarchy? Will average women do as well as average men? In short, what is the nature of gender discrimination? Are those women, who act like men, allowed to penetrate the restricted boundaries, while those who act more like women are kept out? With the demand for equality as the theoretical construct on which much feminist theory is based, what will happen when some women are not 'equal' to men but in positions of authority over them? Again, the nature of gender discrimination is implicated in far more complex forms. Women may be 'equal' to men, but when they are in superior positions in functional or occupational stratification systems, does the resistance become another form of the 'women are inferior' argument - they cannot be better than, above, or superior to men? What effect has the large influx of women into the profession had on others now excluded? As expansion of the profession declines in the 1980s and the places available in the profession become more limited, who are women displacing and what effect does that have on social structures? Many of the national reports demonstrate that as gender barriers are eliminated or reduced, the class barriers may get stronger.

A large proportion of the increasing number of women entering the profession are from the middle class. Does this suggest that class discrimination is more resistant to change than gender discrimination? Finally, a comparative study of women in the legal profession must look at women's participation in other professions. Are the questions suggested here particular to the legal profession, or are there more universal clusters or patterns that characterize women's participation in the professions or in the workforce generally? It will be useful to compare women's participation in the

professions previously denominated 'men's professions' and those denominated 'women's professions', and men's participation in previously female dominated professions (nursing, teaching, et cetera). This is a particularly difficult enterprise when conducted across cultures and nations. These themes will be explored with the hope of illuminating some of the questions that future research will have to address.

The Involvement of Women in the Legal Profession:

The participation of women in the legal profession is remarkably uniform (with a few notable exceptions) in the western industrialized nations. Since the 1970s, women have entered the legal profession in dramatic numbers. In many nations these accounts fully for the growth in the legal profession, and for the growth in the number of law students studying for admission to the bar. The entrance of women into the profession has come at a time when the profession in general has been growing; women have for the most part entered the profession without displacing men and therefore without disturbing the male-dominated power structure. Women are also entering the profession at a time of increased unemployment of lawyers generally. They are disproportionately represented among the unemployed, part-time employed, and underemployed, and tend to earn less money than men in equivalent jobs. Most significant for purposes of this study, women are disproportionately represented in different spheres of legal activity. While the sphere or location of women lawyers may differ from country to country, the spheres of women's activities are almost always found at the bottom of the professional hierarchy.

while women appear to have greatly increased their participation in meritocratic university education, their actual participation in legal practice is moving at a generally slower, but widely varying pace, as the controls imposed by the university end and the controls of the presently male constituted profession take over. Barriers to entrance or success in the legal profession operate in complicated ways that reinforce the current male-created structure of the legal profession. While some of the barriers can be attributed to blatant or subtle discrimination by particular male actors, others are socially constructed structural impediments that begin as external forces but appear to many to be internal in operation (that is, choices by women not to pursue full-time practice or some particular form of practice). Thus, as long as partnership decisions are timed to coincide with childbearing plans, women may be unable as a class to "succeed" in large numbers in the large law firm context. Even where, as in the United States, some firms attempt to adapt their structures, such as by permitting maternity leave or allowing part-time work, women who avail themselves of such 'innovations' find they are considered less committed as lawyers; they have failed to live up to the male constructed image of a dedicated lawyer. Thus, women are perceived as "opting out" without any examination of whether the work structure has within it impediments or obstacles that pre-ordain the outcome. As is said in employment discrimination doctrine, such "neutral rules or constructs have disproportionate impacts" on particular segments of the workforce.⁴ A significant question arising from this picture of disproportionate entrance into the profession is whether it is the profession that will innovate and adapt to women's life cycles or whether women will have to adapt to current male structures of work organization that assume an unbroken lifetime commitment to full-time work. At present, the latter appears to be the case.

The Professions of Women in the Legal Field

The most startling finding of this comparative study of women in the legal profession is that women are disproportionately located in different spheres of the profession in virtually every country. What is most interesting, however, is that although women cluster in what are considered the lowest echelons of the profession, the particular form of legal practice differs somewhat from country to country. Thus, in aggregating the national data that we have, women are performing virtually all lawyering tasks, but in any particular culture or country they may be excluded from a particular branch of the profession either because they are generally restricted from high status occupations or because particular stereotypes of what women are good or bad at relegate them to certain tasks or locations. There is, therefore, a sort of push pull effect where women are 'pulled' into what they are perceived to be good at (domestic relations work) and 'pushed' (or more likely kept) out of what is considered high status work - usually private commercial work in western capitalist regimes. Another factor operating to increase gender segmentation of the workforce is the compatibility of particular occupations with life cycle choices. Thus, in most western European nations where government programmes for child-rearing leaves exist, women will be found disproportionately in government legal

posts.

What will be the implications of the feminization of the legal profession for both the profession and the field of law?

The feminization of the legal profession is clearly a process which is well on its way, if what is meant by feminization is increasing numbers of women in the profession. There are more women lawyers now and there will be even more women lawyers in the coming years. What makes this social process interesting is the question of whether women will have a unique or different perspective to offer the practice of law or the development of substantive doctrine. Such questions involve important issues in feminist theory. If women demand equality to men on the basis that they are the same as men, more women in the profession should be no more significant than more blue-eyed lawyers. Because some feminists believe that equal participation does not necessarily require 'sameness', particularly when what women are supposed to be the same as is a male model, notions of difference can be introduced into what contributions women may offer to the profession. This is a dangerous and problematic argument, though one I am willing to make, because of the possibility that arguments or claims about differences can be distorted into claims about inabilities or stereotypic devaluing of what is labelled female. The 'difference' argument can be explained as follows. First, we see and experience differences every day. Problems arise when the differences are used to devalue one-half of the set of differences, usually the female versions, without recognizing their possible strengths and functional possibilities (particularly in the context of the legal profession). Second, to observe the differences is not to endorse them or necessarily to have a view about their origin (social, biological, cultural, or political). My view is that the origins are mostly, though not exclusively, social (that is, transformable through socialization) and political (women are what they are in part because they have been defined by those who have the power to speak the definitions, men). Thus, what follows is more in the nature of a speculative suggestion on the basis of current data and theory of what contribution women may make to the law and to the legal profession with projection into the future of what might happen to the profession with the greater participation of women.

Similarly, there is some evidence that women are more concerned with the peculiar form of situational ethics that the adversary system requires by placing one's client at all times above the welfare of the other side. One of Carol Gilligan's subjects, a lawyer, suggested that she would have preferred to turn over to the court a document from the other side that an incompetent lawyer had failed to use. This would have defeated her client's case but achieved the 'just' result. The subject of this study was concerned not only with achieving the correct result, but with expressing concern for the other side; the adversary is cared for, thought about, and dealt with, rather than being treated as a 'end' to be defeated in the way the adversarial system contemplates. Will the imagery and vocabulary of litigation associated with wars and sports change as women enter these fields and seek to modify them? From these suggestive data, one could ask a series of questions that might explain some of the occupational segregation demonstrated above.

Do women seek judgeships or other non-adversarial jobs in disproportionate numbers? Are job choices in less adversarial systems (that is, the Continental European inquisitorial systems) different from common law adversarial systems? Are women choosing occupations they prefer for these reasons (self-selection), or are they channelled into certain jobs because of perceptions by others that these are the jobs they would best be suited to (discrimination based on stereotype)? Of course, while the positive sides of these differences can be observed, we should also look at the negative aspects. Do women resist litigation because they fear or prefer to avoid conflict? Is that a good quality for a legal professional to possess? Does over-solicitude or caring for the other side diminish the loyalty or zeal given one's own client? Are the stereotypic feminine qualities of empathy and altruism possible in the practice of law, as currently constituted or even as it can be imagined in a different society? Can women transform the stereotypes that devalue them ('women are good with people') to functions they have been barred from in the professions (that is, client relations in large law firms)? It appears that, as in law, women in the corporate sector are assigned to particular jobs and industries based on the negative attributions of stereotypes, while the mainstream and power lie elsewhere. Women trial advocates have argued for a different style of trial advocacy - conversations with fact-finders - rather than persuasive intimidation. Women have expressed interest in broadening the nature of relevance, wanting to know more of the facts involved in a problem than what is legally relevant; a search for what feminist theorists call "contextualism and particularity" rather than the application of a few facts to general, abstract principles of law.

II. CONCLUSION

To the extent that the difference women make is based on their position as outsiders, the discriminated against and dominated, one can imagine a time when parity is achieved that the particular contribution of women to the profession may simply "wither away" as discrimination diminishes and women enter the profession in ever-larger numbers. Those who imagine this time can contemplate an androgynous legal profession, whatever shape that might take. Or, if the differences are of a more complicated origin, some particular contributions of women will continue in forms we probably cannot yet imagine. The hope would be that differences in approach, practice, and substance might serve to broaden the practice of law in such a way that the source of the different contributions would no longer matter - women would make contributions as well as men and the previously disempowered would be empowered so that the source of their disempowerment (gender), might no longer matter. In this view, the feminization of the legal profession is not for feminists only. If feminism's purpose is to help redeem humanism, then the feminization of the legal profession should help redeem the profession from the flaws of client domination (both by and for clients), unnecessary and harmful contentiousness, dehumanizing segmentation, stratification, and alienation in the workplace. Much of what has been suggested above is as yet untested, culture and legal system dependent, and will require cross-cultural study and verification. We must examine the meaning of the entrance of women into the legal profession from more than the perspective of quantitative sociology. As we collect data and observe gender differences in location and type of practice, favoured tasks, and specialties, we should be prepared to examine the transformative potential of these social facts.

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