THE NEW WOMAN LAWYER AND THE CHALLENGE OF SEXUAL EQUALITY IN EARLY TWENTIETH-CENTURY AMERICA

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In 1917, Denver lawyer Mary Lathrop became the first woman admitted into the American Bar Association; in 1930, she confessed that she was tired of the equality she had achieved in the legal profession. Moreover, she yearned for the feminine privileges women lawyers had received in the past. "Women have gained rights but they have lost privileges. They receive no more courtesy and chivalry. Personally, I'm rather tired of rights. I'd love to have a few privileges .... I advise any girl who contemplates entering laws to stay away from marriage and concentrate on the legal business."[1] In one brief moment, Lathrop unveiled the sacrifices inherent to women lawyers' quest for professional equality with men. Moreover, she revealed that they had not even achieved their goal of sexual equality. As far as Lathrop was concerned, women lawyers still could not balance the dual responsibilities of marriage and career with the same ease as men. Rather, the only way for women to succeed in law in 1930 was to accept the same separation of marriage and career as nineteenth-century women lawyers had endured.

It had not always seemed so discouraging. Rather, the generation of the new woman lawyer began the twentieth century with great hope and optimism about the promise of sexual equality for women in the legal profession. And they had good reason. The new woman lawyer was part of a generation of women who did not have to face the rigid legal and institutional barriers that had obstructed women's entry into the legal profession in the nineteenth century. By 1920, every state bar was open to women, all but twenty-seven of 129 law schools admitted women, and the suffrage amendment made women full and equal citizens. As the sexual barriers crumbled, the number of women lawyers soared. Whereas there were only 200 women lawyers in 1880, by 1920 there were 1738. Moreover, another 1171 women were enrolled in law schools and would join the ranks of the 3385 women who were lawyers by 1930.[2]

Having been spared the struggles of nineteenth-century women lawyers to gain admittance to bar associations and law schools, women lawyers in the early twentieth century faced their future with optimism and self-confidence, believing in their ability to succeed in the legal profession. Embracing the new ideal of sexual equality, they relished competition with men and anticipated success on male terms in all areas of their professional lives. For one, they cast their sights beyond the office, the appropriate arena for the nineteenth-century woman lawyer, and claimed the courtroom as their rightful

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1. *Bar Group Assails Rivals of Lawyers*, N.Y. TIMES, Aug. 19, 1930, at 16 [hereinafter *Bar Group*].

2. RONALD CHESTER, UNEQUAL ACCESS: WOMEN LAWYERS IN A CHANGING AMERICA 8 (1985); CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW 4 (1981).

domain. In doing so, they signalled an end to the sexual division of labor in legal practice. In addition, whereas nineteenth-century women lawyers had made a special claim to protect the legal rights of women and children, the generation of new women lawyers claimed the once male-identified areas of legal practice such as litigation, bankruptcy, and criminal law as well.[3]

The new women lawyers also brought sexual equality into their private lives. Rejecting the notion of a woman's so-called natural domesticity, they redefined marriage and motherhood as lifestyle options rather than womanly obligations. They insisted that the new woman lawyer who chose this route could confidently expect to balance the needs of her family with the obligations of her professional life.[4] In both their private and professional lives, new women lawyers sought to throw out the rules of the past and expected to play the game like men.

In the minds of these new women lawyers, their claim to sexual equality signalled the end of the deep conflict between femininity and professional identity. This conflict had plagued women lawyers in the nineteenth century, demanding that they be at once sentimental and objective, domestic and career-oriented. Instead, the new women lawyers of the 1910s and 1920s proudly proclaimed that the era of sexual equality had arrived, permitting them to shed the burden of their feminine identity.[5] One woman lawyer expressed the faith of her generation in the new sexual equality, explaining that "the day has arrived when there are only *lawyers*, and not *men* and *women* lawyers."[6] Another woman echoed this view. "For my part, I want merely to be known as a 'lawyer' and not as a 'woman lawyer' . . . ."[7]

While the generation of new women lawyers began the century believing in the promise of sexual equality for women in the legal profession, by the end of the 1920s they understood that their optimism had been misplaced. Despite the remarkable success of some individual women lawyers, most women lawyers never came close to achieving the professional prestige, autonomy, fulfillment, or financial security of women like Lathrop.

At the height of the era of optimism in the early twentieth century, the Bureau of Vocational Information sought to discover the reality of women lawyers' professional lives. The Bureau of Vocational Information (BVI) was an all-women's organization founded in New York City in 1919. Like the Equity Club,[8] a correspondence club for women lawyers in the 1880s, it was run by women to serve women's unique needs. At the same time, the BVI bore the stamp of the new generation of early twentieth-century

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3. Virginia G. Drachman, *Entering the Male Domain: Women Lawyers in the Courtroom in Modern American History*, 77 MASS. L. REV. 44, 48 (1992).

4. *See* Virginia G. Drachman, *"My 'Partner' in Law and Life": Marriage in the Lives of Women Lawyers in Late 19th- and Early 20th-Century America*, 14 J. LAW & SOC. INQUIRY 221 (1989).

5. *See generally* NANCY F. COTT, THE GROUNDING OF MODERN FEMINISM (1987); ROSALIND ROSENBERG, BEYOND SEPARATE SPHERES: INTELLECTUAL ROOTS OF MODERN FEMINISM (1982).

6. *Sane Suggestions*, 14 WOMEN LAW. J. 9, 9 (1926).

7. 9 WOMEN LAW. J. 6, 6 (1919).

8. *See* VIRGINIA G. DRACHMAN, WOMEN LAWYERS AND THE ORIGINS OF PROFESSIONAL IDENTITY IN AMERICA: THE LETTERS OF THE EQUITY CLUB, 1887 TO 1890 (1993); Virginia G. Drachman, *Women Lawyers and the Quest for Professional Identity in Late Nineteenth-Century America*, 88 MICH. L. REV. 2414, 2415 (1990).

women. It eschewed the intimate, personal character of the Equity Club and embraced the modern idealization of objectivity and a science of society. In its search for "a body of authenticated facts," the BVI employed the empirical methods of the new social sciences.[9] While the women of the Equity Club had spoken through personal letters, the BVI asked women to communicate through survey questionnaires so that statistically verifiable norms, rather than personal experiences, could be presented.

By 1920, women comprised almost half the student population on college campuses. The BVI believed it had a special mission to help these young educated women make reasonable choices after graduation. With an eye toward providing college-educated women with hard facts, the BVI gathered data on women in a wide range of vocations and professions, from agriculture to medicine, and provided their findings to educators and guidance counselors.

In 1920, the BVI turned its attention to the law as a profession for women and published its survey of women lawyers, *Women in the Law.* Prepared by Beatrice Doerschuk, Assistant Director of the BVI, *Women in the Law* provided the young woman lawyer-to-be with a range of information about her place in the legal profession, from her educational opportunities to her employment possibilities. To gather her data, Doerschuk compiled a list of approximately 1700 women who had either graduated from law school or had been admitted to a state bar. From this list, she sent questionnaires to 827 women, and she received 297 responses.[10] The majority of the women who answered the questionnaire (sixty-two percent) were practicing lawyers.[11] Most (fifty-two percent) were general practitioners while the remaining ten percent worked in law offices. The BVI survey revealed that most practicing women lawyers in 1920 moved in the legal world of small practitioners, just like most male attorneys.

At the same time, there was a considerable minority (thirty-eight percent) of women lawyers who did not practice law at all. In seeking to identify the range of opportunities for women in the law, the BVI inadvertently discovered the sobering fact that many women lawyers did not practice law. Instead, they worked in law-related vocations or in business, in positions typically filled by women such as social work, stenography, education, and librarianship. Yet, these non-practicing women lawyers still identified with the legal profession and defined themselves as lawyers even if they did not practice.

In several ways, the women in the BVI survey expressed the new woman's optimism regarding the prospects for women in the legal profession. For one, they were very

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9. BEATRICE DOERSCHUK, WOMEN IN THE LAW: AN ANALYSIS OF TRAINING, PRACTICE AND SALARIED POSITIONS *vii* (1920); *see also* Bureau of Vocational Information 14 (1925) (on file in the Bureau of Vocational Information Collection [hereinafter referred to as BVI Collection without cross-reference] at the Arthur and Elizabeth Schlesinger Library on the History of Women in America [hereinafter referred to as Schlesinger Library without cross-reference], box 1, folder 2). On the rise of a science of society and its impact on American culture, *see generally* EDWARD A. PURCELL, JR., THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM AND THE PROBLEM OF VALUE (1973).

10. DOERSCHUK, *supra* note 9, at 9.

11. These statistics as well as those discussed later in this essay are drawn from the author's quantitative analysis of the original questionnaires of practicing women lawyers gathered by the BVI. Unless otherwise stated, all statistical information in this essay is from the author's quantitative analysis of the questionnaires.

hopeful about the importance of suffrage in helping forward women's legal careers. As a political touchstone, suffrage had been the single-most powerful issue for women for nearly eighty years. The BVI, acutely aware of the importance of suffrage, sought to examine its practical impact. Nearly one-half of the BVI women believed that suffrage helped women in law while another six percent hoped it would. Eleven percent did not believe that suffrage would make a difference while twenty-five percent were unsure. Some among the optimistic majority focused on the intangible benefits of suffrage. They viewed the legal right to vote as an actual empowerment which enhanced women lawyers' status and respect. Others took a more practical view and tied suffrage to their desire to run for public office or to win appointments to positions in the courts.

Not all women were so optimistic about the benefits of the vote. Twenty-five percent were unsure about the impact of suffrage, while eleven percent did not believe that suffrage would help women in law. Women lawyers in the east and midwest, however, were more optimistic about the gains of suffrage than women in the south and west. Surprisingly, women in the south and west were four to five times as likely to say that suffrage was not a help to women in law. Women who went to law school after 1910, however, were twice as likely to ascribe significance to suffrage as were Victorian women.

Like suffrage, World War I was seen as another defining moment in women's lives, and most women lawyers viewed the impact of World War I with the same optimism as they viewed suffrage. Over one-half of the BVI women believed that the war had opened up new areas of work for women lawyers, providing them with opportunities which had not previously existed. Seventeen percent viewed women lawyers' positions as unchanged by the war, while only 2.3% said women lawyers had less opportunity with the war.

Despite the many claims about an era of great opportunity and professional progress for women in the law, women lawyers discovered that profound sexual discrimination still impeded their professional success. As early as 1912, Boston attorney Alice Parker Lesser exposed the hard reality behind the claims of progress. "I realize that for years I and other women lawyers have lied when we said that we were on an equal basis with men in our professions. It is not so, and I am going to tell the real truth about the situation now. The field of law is no better today for girls than it was 20 years ago when they entered it." Women had more opportunities than ever before to study law, she explained, but they still lacked the opportunity to practice it. "Of course, she has all the book learning any lawyer can have. . . . But practice of law tells another tale."[12]

In 1920, in the midst of the heady days of the suffrage success and the claims of feminist victory, many women lawyers acknowledged that they were losing the battle to make it in the law. In 1920, New York lawyer Anna Parrons complained to the BVI that women had no opportunities for lucrative corporate work. "The big corporations will never give their work to women, and unless one can get big business the chances of financial success are small."[13] But while some women lawyers deplored the dearth of

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12. *"Girl Lawyer has Small Chance for Success," Says Mrs. Lesser*, BOSTON SATURDAY EVENING TRAVELLER, June 8, 1912, at 2.

13. BVI questionnaire no. 18 (March 2, 1920) (on file in the BVI Collection at the Schlesinger Library) [hereinafter referred to as "BVI questionnaire" without cross-reference].

opportunities for women in the elite corporate law firms, others lamented an even more serious problem—the near impossibility of finding even a modest clerkship or office position. One woman lawyer claimed that male lawyers in New York City only hired women "if they haven't the money to pay a man."[14]

This was precisely the experience of Anna Moscowitz Kross, a Jewish immigrant from Russia and a graduate of New York University Law School. Law firms continually rejected her with the brazen claim, "We want a man." She finally found work in the office of a friend where she gained experience but earned no money.[15] Gertrude Smith, another graduate of New York University Law School, encountered the same hostility in her search for a clerkship. In a letter to lawyer Inez Milholland, Smith explained that she had answered every ad for a legal position and was willing to accept a small weekly salary of only five dollars to cover the costs of cabfare and lunch. But despite her law degree from New York University and her desperate willingness to accept any position, she was always turned down. "They inform me very politely that I must not forget I am a woman and therefore would not be of any service to them." With little money to spare and no prospect of work in sight, she asked: "My dear Miss Milholland, are there no men in this city [who] have enough to give a woman lawyer a chance to show her worth . . . ?" Nearly broken by the relentless discrimination she encountered from male lawyers in New York, Smith confessed to Milholland: "I have lost all my ambition and courage."[16]

The sexual discrimination Smith encountered was not unique to New York City. In Chicago, Irene Hanks reported that she had "been denied openings on the sole objection of sex."[17] Alice Greenacre explained that not only had she failed to find a clerkship in Chicago, but other women lawyers had informed her that "no woman had ever had a law clerkship in a law office in Chicago."[18] In addition to facing discrimination in their search for employment in Chicago, one woman lawyer reported that the Chicago Bar Association was "not cordial in its treatment of its women members."[19]

Women lawyers endured the same prejudice and hardships in other cities throughout the country. N. L. Riley of Tacoma, Washington echoed Parson's complaint that corporate law positions were closed to women, and that they only found opportunities in the "least remunerative branches" of law.[20] Bertha Green of Mountain Home, Idaho reported that in her "part of the country a woman can hardly get a position in a law office, as 'there ain't no sich animile.'"[21] Elizabeth Parsons reported an even bleaker situation in Omaha, Nebraska. "[I]n this city the legal firms won't have a woman lawyer around except in the capacity of stenographer or clerk."[22] As a result, four or five women tried to set up law practices in Omaha, but all of them gave up because they could not make a

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14. BVI questionnaire no. 131 (March 27, 1920).

15. *70,000 Work People Clients for Woman*, N. Y. TIMES, July 22, 1923, at 7.

16. Letter from Gertrude Smith to Inez Milholland (no date available) (on file in the Inez Milholland Papers at the Schlesinger Library, reel 2, folder 21).

17. BVI questionnaire no. 200.

18. BVI questionnaire no. 146 (March 7, 1920).

19. BVI questionnaire no. 199 (April 6, 1920).

20. BVI questionnaire no. 239 (March 13, 1920).

21. BVI questionnaire no. 95 (March 11, 1918).

22. BVI questionnaire no. 253 (April 22, 1920).

living. The State of Nebraska was no more hospitable to women lawyers than the city of Omaha. Of thirty-three women who had successfully passed the Nebraska bar, only Parsons and one other woman were in active practice.[23]

Women lawyers in the South encountered particularly strong resistance. Tiera Farrow could not find one male attorney in Kansas City, Missouri to hire her. As a result, she and another woman lawyer had to open an office together at a greater financial expense than either could afford. Their office was a very modest venture; they shared one room with two desks, four chairs, a bookcase of law books and a typewriter. Despite their efforts to economize, business was so meager that survival forced both women to find other jobs. They were insulted or ignored by male lawyers and judges, and after two years of working together, they had made no money. Farrow's partner became so discouraged that she quit the law and went to New York to become a secretary. On her own, Farrow moved to an even smaller office, tried to live even more modestly, and settled into a solo practice which barely allowed her to make ends meet.[24]

In Baltimore, the city bar association refused to admit women as late as 1931. This policy effectively locked the women lawyers of Baltimore out of both the Maryland state bar and the American Bar Association because both associations required its members to belong to their local bar association.[25]

The situation for women lawyers in Georgia was even worse because the Georgia bar did not open to women until 1916 and then only after a bitter struggle. The debate began in 1911 when Minnie Anderson Hale, a graduate of the Atlanta Law School, applied for, but was denied, admission to the bar.[26] Several weeks later, the Georgia legislature defeated a bill which would have made women eligible for the bar;[27] but, it could not escape the issue. The following year, Georgia McIntire-Weaver, a one-time dressmaker, stenographer, and finally honors graduate of Atlanta Law School, forced the Georgia legislature to reconsider reforming the law, which prohibited women's admission to the bar. Despite the support of eminent male attorneys and judges, the legislature again refused to pass the reform. However, even the Georgia legislature could not stop Georgia McIntire-Weaver. She relocated to West Virginia, which had admitted women lawyers since 1896, passed the bar, and set up practice.[28] Having passed the bar in another state, McIntire-Weaver was finally eligible to return to Georgia to practice.

The situation in Georgia was closely monitored by the press, including professional journals such as *Law Notes* and *Women Lawyers' Journal* as well as the popular women's magazine, *Good Housekeeping*. In its article, *Your Daughter's Career*, *Good Housekeeping* used the example of Weaver-McIntire in Georgia to warn its female readership of the obstacles awaiting the aspiring woman lawyer.[29] In 1916, the Supreme

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23. *Id.*

24. TIERA FARROW, LAWYER IN PETTICOATS 61-66, 75-77 (1953).

25. Henrietta Dunlop Stonestreet, *Women Lawyers vs. The Baltimore Bar Association*, 19 WOMEN LAW. J. 18, 18-19 (1931).

26. *See Women Lawyers vel non in Georgia,* 15 LAW NOTES 84 (1911).

27. *Women Lawyers in Georgia? Not Yet*, 15 LAW NOTES 102 (1911); *Georgia Legislators Set Back the Clock of Progress*, 1 WOMEN LAW. J. 17 (1911).

28. 2 WOMEN LAW. J. 66 (1913).

29. Rose Young, *Your Daughter's Career*, 61 GOOD HOUSEKEEPING 470 (1915); *see also* 2

Court of Georgia once again denied women admission to the bar;[30] but, this was the last time. Within months, the Georgia legislature passed an act to permit women to practice law; and, on August 19, 1916, Georgia joined the ranks of the other forty-five states or territories that had already admitted women to the bar on equal terms with men.[31]

Two women lawyers, Mary Johnson and Betty Reynolds Cobb, immediately gained admission to the Georgia bar in 1916. Nevertheless, women lawyers in Georgia still faced an uphill fight. There were only twenty-five of them in the entire state by 1920. Compared to states such as Massachusetts with over 100 women lawyers and California with almost 350, the women lawyers of Georgia were a very small and insignificant group. Representing barely one percent of the practicing attorneys in the state, they made their careers alone under conditions strikingly similar to the pioneer generation of women lawyers a half century before. Cobb admitted that, even though she had what she described as a "pleasant and reasonably remunerative" office practice, Georgia was still reticent to welcome women lawyers.[32] "I do not think our section of the country is ready, quite yet, to make 'easy sailing' for a woman lawyer."[33] Moreover, Cobb linked what she perceived to be the deep hostility against women lawyers in Georgia to the women's suffrage movement and the advancement of women in general. In a blunt warning to women not to try to establish a legal career in the south, she explained: "To put it in a nutshell, I would not advise any young woman to study law with a view to practicing it below the 'Mason and Dixon Line' for the next generation at least. We haven't the vote yet; and if we ever get it, it will be when it is forced upon our law makers by a Federal Amendment and will not come as a State Law. Can I say anything more illuminating on the attitude of our men toward women?"[34]

While the situation for women lawyers may have been unusually harsh in Georgia, it was not unique. The difficulties encountered by women lawyers in New York, Chicago, Baltimore, Nebraska, and Washington indicate the existence of a national pattern of discrimination against women in the legal profession. Frances R. Calloway, Office Manager and Registrar at DePaul University Law School in Chicago, attested to the pervasiveness of this sexual discrimination. "Out of hundreds of requests for law clerks . . . I have never received one request for a young woman, nor have I been able to place one unless through influence, as the daughter of a lawyer."[35]

African-American women suffered even deeper discrimination as race combined with sex to yield tougher obstacles to overcome. While a few were able to overcome the hardships of economic struggle and racism to make it in the legal profession, for the most part, black women who became lawyers were part of the privileged elite in the African-

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WOMEN LAW. J. 66 (1913); *Woman Lawyer Follows up Case*, 3 WOMEN LAW. J. 29 (1914).

30. *Ex parte* Hale, 89 S.E. 216, 217 (1916).

31. ACTS AND RESOLUTIONS OF GENERAL ASSEMBLY OF STATE OF GEORGIA No. 471 (Aug. 19, 1916).

32. Letter from Betty Reynolds Cobb to Emma P. Hirth (April 9, 1920) (BVI Collection, box 9, folder 142) [hereinafter Cobb]. On the numbers of women lawyers in Georgia, see IV UNITED STATES BUREAU OF THE CENSUS, THE FOURTEENTH CENSUS OF THE UNITED STATES 70-71 (1920).

33. Cobb, *supra* note 32.

34. Cobb, *supra* note 32.

35. BVI questionnaire no. 251 (March 1, 1920).

American community.[36] Jane Bolin grew up in the middle class town of Poughkeepsie, New York, went to Wellesley College and then to Yale Law School, and married a lawyer.[37] Sadie Mossell Alexander's father was the first African-American to graduate from the University of Pennsylvania Law School, and her husband was a graduate of Harvard Law School.[38] Inez Fields of Hampton, Virginia was the daughter of a lawyer and the wife of a professor of industrial education.[39] Sallie White of Kentucky was the wife of the dean of faculty at the Central Law School, the so-called "colored" state university in Kentucky.[40]

The economic comfort, social status, and professional advantages they derived from the men in their lives, either their fathers or husbands, linked these women. For women such as Alexander, White, and Bolin, marriage to a lawyer eased their way into the legal profession and moderated the dual handicaps of their sex and race. Yet, even these most privileged of African-American women faced obstacles white women lawyers never new. Racial discrimination was a harsh reality that left women like Sadie Alexander with little patience for the problems of white women lawyers. "When I hear white women lawyers complaining about their lot it amuses me. It is the same problem I have been facing all my life."[41]

In the end, no degree of social privilege could fully shelter an African-American woman lawyer from the dual prejudices of racism and sexism. The paltry number of African-American women lawyers testifies to that fact. While three black women lawyers practiced law in Virginia in the 1920s, they remained the only African-American women to practice law there until after World War II.[42] Black women lawyers fared even worse in other southern states. None practiced law in Mississippi, Louisiana, Kentucky, or Arkansas before 1945.[43] Nor did they do much better in other regions of the country. There were only four African-American women lawyers in the District of Columbia, three in New York and none in Massachusetts in 1930.[44] By 1940, there were only thirty-nine African-American women lawyers scattered throughout the country. These thirty-nine black women lawyers stood in stark contrast to the 4146 white women lawyers in the country in 1940. And, these white women lawyers were still but a small group when compared with the 172,329 white male lawyers in 1940.[45]

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36. On African-American women lawyers, see NOTABLE BLACK AMERICAN WOMEN (Jessie Caney Smith ed., 1971); J. CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844-1944 (1993) [hereinafter EMANCIPATION]; *Lady Lawyers*, EBONY 18 (August 1947) [hereinafter *Lady Lawyers*]; NEGRO WOMEN IN THE JUDICIARY (Alpha Kappa Alpha Sorority, Inc. Heritage Series no. 1, 1968).

37. WOMEN LAWYERS IN THE UNITED STATES 56-57 (Dorothy Thomas ed., 1957); NEGRO WOMEN IN THE JUDICIARY, *supra* note 36, at 5.

38. NOTABLE BLACK AMERICAN WOMEN, *supra* note 36, at 5-6.

39. WOMEN LAWYERS IN THE UNITED STATES, *supra* note 37, at 191.

40. *Women Lawyers*, 35 WOMAN'S J. 153 (May 14, 1904).

41. *Lady Lawyers*, *supra* note 36, at 19.

42. Peter Wallenstein, *"These New and Strange Beings": Women in the Legal Profession in Virginia, 1890-1990*, 101 VA. MAG. HIST. AND BIOGRAPHY, Apr. 1993, at 193, 211.

43. EMANCIPATION, *supra* note 36, at 300-03, 331, 351-52.

44. EMANCIPATION, *supra* note 36, at 632.

45. By 1940, the thirty-nine African-American women lawyers were scattered around the country as

Overall, the total number of women lawyers in the era of the new woman ranged from 558 or 1.1% of the legal profession in 1910, to 1738 or 1.4% in 1920, to 3385 or 2.1% in 1930.[46] The bleakness of the situation did not escape the women lawyers surveyed by the BVI. At least two-thirds thought that sexual discrimination in some form was the single most important limitation to a law career for women. Some said men received the best jobs, others said the profession was overcrowded with men, while still others said it was hard and lonely to be a pioneer in a profession run by men.

Another group, about one-fourth of the BVI women, linked gender concerns with the economics of law practice. Some found that, as women, it was hard for them to attract clients. Others believed that women had a harder time than men getting started in their careers. Still others lamented the timeless women's complaint that they did not have the uninterrupted time required to establish and maintain a career in law. For these women, sexual discrimination and economic limitations overlapped.

A few women in the BVI survey saw the law differently. Identifying a range of problems which transcended women's issues, they defined the legal profession as dry, undignified, unstimulating, or too difficult. But these women were in the minority. Most felt that any limitations on a law career were directly related to women's secondary status. In fact, the BVI found that women overwhelmingly (seventy-three percent) believed that men had a better chance to succeed in law than women. Nine percent were more hopeful, arguing that women's chances in law were increasing. Seven percent said that it was up to the individual woman to make her own way, while some twelve percent actually believed that women had an equal chance with men in the legal profession.

For most of the BVI women, however, sexual discrimination was their major obstacle. While they sought professional and personal empowerment through a career in law, most of them understood the stark reality that prejudice against women prevented them from succeeding as equals with men. A few (twenty-four out of 112) perceived the problem in more structural terms, pointing to the fact that women were so new and so few in the profession that they could not yet hope to be equal with men. While these women envisioned a future of sexual equality in the legal profession, they shared with the majority of BVI women the understanding that sexual discrimination still prevailed.

Sexual discrimination not only limited women's chances in the legal profession, but, according to sixteen percent of the BVI women, it was the main reason why many women lawyers were not in practice at all. Yet, twice as many women (thirty-four percent) pointed to the problems of women's personal lives, explaining that the demands of marriage and motherhood and concerns about women's health kept women from practicing law. Sexual discrimination in the public arena and the problems women confronted in the private sphere were linked because they both reflected distinctly women's concerns. Taken together, women's concerns were cited by one-half the BVI women as the reason women lawyers were not practicing. Not all BVI women saw the problem in terms of gender, however. Some (twenty-eight percent) saw it as an economic

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follows: ten in New York, eight in Illinois, three each in California and Virginia, two each in Indiana, Michigan, Ohio and Pennsylvania, and only one in Alabama, the District of Columbia, Florida, Iowa, Massachusetts, Minnesota, and Texas. There were no African-American women lawyers in thirty-four states. EMANCIPATION, *supra* note 36, at 635-36.

46. EPSTEIN, *supra* note 2, at 4.

issue, explaining that many women found it impossible to succeed financially in the law. Yet, this too, may be related to prejudice against women lawyers. Others (sixteen percent) believed that women lawyers did not practice because they simply were not interested.

While many women lawyers did not practice, for those who did, the task of finding a job was not easy. Sexual discrimination confronted them at every turn. The new corporate law firms were havens of elite white male lawyers. And, the courtroom continued to be viewed as the arena of legal combat, inappropriate for the woman lawyer. Some women lawyers admitted that litigation was a physical and emotional strain on many women. Competing against men who had experience in the courtroom placed them at an undue disadvantage. "[I]t takes years of practice and familiarity with court routine to acquire the ease of manner and sureness of action that the man lawyer seems to have naturally in the court-room," explained one woman lawyer in 1920.[47] In fact, most women lawyers in the 1910s and '20s who found jobs worked in offices. Despite the optimistic claims women lawyers made about the golden age of opportunity for women in the legal profession, litigation and courtroom work remained as closed to the modern woman lawyer of the 1910s as they were to the Victorian woman lawyer a generation before, while the new field of corporate law emerged as a bastion of the most elite of male lawyers only.

In fact, by 1920 the late nineteenth-century patterns of discrimination against women lawyers in the courtroom were reinforced rather than altered. Only eight percent of women lawyers specialized in trial work, including litigation, criminal law, federal practice and bankruptcy. Women lawyers understood that their best opportunities were not in litigation but in office practice. In their quest for independence and power, they followed the trend toward professional specialization, but found their professional opportunities outside of the courtroom and apart from elite corporate and financial institutions. While most of the BVI women had general office practices (fifty-six percent), the leading specialty among the BVI women was probate law (thirty-six percent). In sharp succession were domestic relations (thirteen percent), general practice (eleven percent), and real estate (ten percent). Solidly in place by 1920, these patterns of practice for women lawyers remained unchanged for the next fifty years.[48]

On the other hand, the BVI women broke the feminine stereotype in that few saw opportunities in the "helping" side of law, such as social welfare, juvenile work, or legal aid. However, they did not totally reject the notion of helping through the law. Rather, they redirected it from public law to probate practice. Probate law, domestic relations, general practice, and real estate shared an important feature: each represented the legal side of the caring quality in women. Women lawyers envisioned themselves employing their feminine strengths by acting as counselors of law, negotiators, mediators, and drafters of documents for the family.

While many women lawyers in the 1910s and '20s joined the chorus of women hailing sexual equality in the public arena, most actually built their professional lives on the old, familiar refrain of sexual differences. At the same time that women lawyers

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47. BVI questionnaire no. 81 (April 16, 1920); *see also* BVI questionnaire no. 150 (March 1, 1920).

48. *See generally* EPSTEIN, *supra* note 2.

argued that each woman's individual temperament determined her own unique approach to the law, they also argued precisely the opposite—that women lawyers, as a group, often approached the law differently from men.[49] In deliberately emphasizing what one woman lawyer termed "the eternal feminine," women lawyers in the 1910s and '20s contradicted their very claims to sexual equality in the legal profession.[50] But, most women lawyers of the era understood all too well that despite the budding signs of sexual equality in society, women still suffered enormous discrimination in the legal profession. As a result, they believed that their femininity, not their equal potential with men, was their key to professional success. When asked what qualities a woman needed to succeed in law, one woman lawyer in 1920 gave the following advice: "[C]ultivate and maintain a woman's natural sweetness and femininity. It helps not only to *secure* clients but to hold them."[51] Male lawyers, when they were sympathetic to women lawyers, typically echoed these views. "Do not let yourself become unfeminine," warned one male lawyer in a speech to women lawyers in 1918. "If you do, then much of your power and usefulness in your chosen profession will have departed."[52]

Like the Victorian women lawyers who thrived on their sexual differences from men, modern women lawyers understood that they could use their femininity to claim their niche in the legal profession. Some women lawyers believed that they could serve male and female clients equally. Yet, most expressed the more traditional view that they, rather than men, were especially suited to women clients because women would find it easier to discuss personal legal matters with them rather than with men. In fact, almost thirty percent of the BVI women developed practices that were comprised of at least sixty percent women clients. Another thirty percent had practices which were forty to fifty-nine percent women, while another forty percent had practices of less than thirty-nine percent women. The experiences of the BVI women practitioners reveal that women clients were, indeed, an important element for many of them. However, while many relied heavily on women clients, others did not.

Women lawyers emphasized the virtues of their femininity in other ways as well. They argued that their "flair for detail" made them valuable partners in male law firms. "In my opinion," explained one woman lawyer, "the ideal firm of attorneys is one consisting of both men and women working as a complement to each other."[53] Expressing the optimism of many women lawyers of her day, she predicted that sexually integrated law firms would be "quite universal in the next decade."[54]

At the same time that women lawyers relied on their unique womanly qualities to serve their own professional interests, they also argued that, because of their feminine

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49. DOERSCHUK, *supra* note 9, at 48.

50. Bessie Isabel Giles, *The "Eternal Feminine,"* 2 WOMEN LAW. J. 54 (1912).

51. BVI questionnaire no. 191 (April 24, 1920); *see also A Truer Perspective?*, 4 WOMEN LAW. J. 47 (1915); Young, *supra* note 29.

52. *Address of Hon. John M. Patterson, Associate Judge of the Court of Common Pleas, No. 1 of the County of Philadelphia, Made on the Occasion of the First Meeting of the Portia Club*, 7 WOMEN LAW. J. 49, 64 (1918).

53. Vere Radir-Norton, *The Practice of Law from the Viewpoint of a Woman Lawyer*, 1 PHI DELTA DELTA 14, 15 (1923).

54. *Id.*

virtues, the legal profession would benefit from their very presence. Echoing the themes of a generation before, they claimed that their womanly sympathies, morality, and domestic nature would complement the competitive and aggressive qualities men brought to the law. Women would uplift the profession, preserve the humane point of view, and protect the legal needs of women and children. Moreover, women lawyers would replace the combative approach of men with their own conciliatory style. While male lawyers often chose the more aggressive tactic of arguing their cases in court, women lawyers typically preferred to prevent litigation by solving cases in their office. Employing a medical metaphor which revealed a similar sexual division of labor in medicine, one woman lawyer explained that women lawyers were especially skilled at "the social hygiene of law as opposed to legal surgery."[55]

By the early twentieth century, women lawyers' emphasis on conciliation rather than confrontation had gained greater respect throughout the legal profession. The catalyst for this new view was the growth of corporations and trusts which brought the legal profession into closer relations with business in the last quarter of the nineteenth century and the first quarter of the twentieth. By the turn of the century, business law had emerged as a specialty dominated almost exclusively by wealthy and powerful male lawyers. At the same time, it thrived on the restraint and mediation skills women tended to bring to the law. In an article defending women's place in the legal profession, William P. Rogers of Indiana University School of Law pointed out the advantages of the womanly approach of compromise and conciliation to his male colleagues.[56] Specifically, he advised them to reject their contentious, flamboyant approach, to adopt a more moderate and even-tempered style, and to rely on negotiation and compromise in the law office rather than expensive court battles:

> [T]he business world is seeking more and more to steer clear of [the jury lawyer's] domain by consulting in advance his less pretentious but more valuable associate. The shrewd business man knows of how much more worth it is to be kept out of a law suit than to win one. The aim of the true lawyer is not and should not be to promote litigation. To the contrary, it should be to avoid it.[57]

At the same time that some men lawyers began to question the value of combativeness in law practice, some women lawyers sought to distance themselves even further from the male model of success. In striking contrast to the view that financial success was the route to professional equality with men, many women lawyers seized upon the notion of female differences. They took it beyond the usual claim that women would complement men in the legal profession, however, making the more radical assertion that it was up to women lawyers to sharpen their differences with men and to mount a crusade to reform the legal profession.

Jessie Ashley issued this challenge to women lawyers in an essay in the *Women Lawyers' Journal* in 1912.[58] Born into a wealthy family, Ashley rejected the privileges

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55. Zora Putnam Wilkins, *Portias Undisguised*, 9 WOMAN CITIZEN 14, 15 (1924).

56. William P. Rogers, *Is Law a Field for Woman's Work?*, 24 A.B.A. REP. 548, 552 (1901).

57. *Id.*

58. Jessie Ashley, *Shall We Reverence the Law?*, 2 WOMEN LAW. J. 37 (1912).

of her social class and dedicated her life to social revolution. She studied law at New York University, where her brother, Clarence Ashley, was dean and a strong advocate of women's legal education. After graduating, Ashley became involved in socialism and dedicated herself to a range of reforms including suffrage, birth control, the labor movement, and the legal rights of women. In 1912, she turned her attention to the ways in which women lawyers could contribute to her social revolution.[59]

In her essay, Ashley launched a bitter critique of women's efforts to pursue equality in the legal profession by blindly following the lead of men. "With pathetic eagerness to conform to all traditions and to be like men lawyers they bow to custom, conform to theory and go on uncomplaining in their brother's footsteps . . . ."[60] Sexual equality on male terms, according to Ashley, demanded that women lawyers passively accept a legal system which protected property before people. Ashley called on women lawyers to reject equality on male lawyers' terms and to resurrect the traditional commitment of women to reform in an all-out attempt to redefine the values and goals of the American legal system.[61]

This was a bold call, but Ashley was no blind idealist. She recognized the enormity of her request and understood that most women, as much as they might wish to reform the law, were engaged in a professional struggle simply to survive. As a result, they were in no position to take up her challenge. To do so, she acknowledged, "would lead to professional suicide. It is hard enough for women lawyers to earn their bread in practice of the law under the most favorable conditions, and to be known as 'crank' lawyers seeking to 'reform the world' would make starvation certain."[62] Torn between their ideals on the one hand and their desire for professional acceptance on the other, women lawyers, according to Ashley, were tormented by the question, "Shall we reverence the law?"[63]

Several years later, another New York lawyer, Elinor Byrns, echoed Ashley's themes. In an essay in the *New Republic* entitled *The Woman Lawyer*, Burns elaborated on the problems women lawyers faced when they took up Ashley's torch and rejected the terms of male-defined success in the legal profession.[64] Byrns identified three groups of women lawyers in the 1910s.

The first group were male-identified and had achieved sexual equality in the legal profession by emulating men. "Their creed is that by proving their ability to do, in the same way that men do, some of the things men lawyers are doing, they will establish their fitness for the practice of law and will gradually be given greater opportunities."[65]

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59. *See* A.C.B., *Jessie Ashley*, N.Y. CALL (no page nor date available (probably 1919)) (on file in the Mary Ware Dennett Papers at the Schlesinger Library, box 2, folder 30 [hereinafter Dennett Papers]); *Friends Pay Tribute to Miss Ashley's Memory*, N.Y. CALL (no page nor date available (probably 1919)) (on file in the Dennett Papers, box 2, folder 30); *Jessie Ashley a Victim of Pneumonia*, N.Y. CALL, Jan. 21, 1919 (on file in the Dennett Papers, box 2, folder 30).

60. Ashley, *supra* note 58, at 37.

61. Ashley, *supra* note 58, at 37.

62. Ashley, *supra* note 58, at 37.

63. Ashley, *supra* note 58, at 37.

64. Elinor Byrns, *The Woman Lawyer*, Jan. 8, 1916 NEW REPUBLIC 246, 246 (1916).

65. *Id.*

The second group of women lawyers had become disillusioned by the gap between their personal ideals and the actual practice of the law. As a result, they had "dropped out" of the legal profession to become active in social reform where they could put their principles into action.[66]

The third group of women lawyers wished to stay in the law, but rejected the male model of success. "[T]hey do not want success if it means they must do what the successful men lawyers are doing," Byrns wrote.[67] Like Ashley, Byrns accused male lawyers of allying with the "rich and powerful" in a relationship where male lawyers and big business colluded to protect property and profit at the expense of human welfare.[68] It was the role of male lawyers in this relationship to find ways to circumvent the law whenever it threatened to impede the interests of big business.[69]

Byrns developed her perspective on corporate law first-hand while she worked in one of the elite corporate law firms in New York City. Over the course of her two years as a file clerk, she evolved from a young lawyer aspiring to be as good as the men in the office to their sharpest critic, accusing them of using their "knowledge of the law . . . to help big business."[70] In a piercing attack, she charged that the firm's prestige and power came from its ability to protect the "dignity and security" of its clients as it helped them "conduct their business as they pleased."[71] Disgusted with these policies, Byrns left the law firm and established her own solo practice. Rejecting the men who turned law into what she called a "game" for the rich and powerful, she redirected her efforts towards the needs of the community.[72]

Byrns called on other women lawyers to join her crusade to transform the practice of the law. But she understood all too well the conservative position which entrapped most women seeking to make their livelihood in the law. The only hope for change lay among a few "revolutionists at heart," that is, those women lawyers who were part of the women's movement. "The suffrage campaign and our struggles for feminism have developed our fighting spirit," she explained.[73] But even with the backing of a vibrant women's movement, Byrns remained bewildered about how she and other women lawyers could effect social revolution. Unable to offer a plan of action, she acknowledged the dilemma of her position. Echoing Ashley's query, "Shall we reverence the law?," she could do no more than pose the haunting question: "What are we to do?"[74]

A minority of privileged women lawyers had the financial resources to devote their public lives to the causes of women and the poor. Others found their answers to Byrns's and Ashley's questions in the women's legal institutions and the social welfare institutions of the progressive era, which reinvigorated and redirected the nineteenth-century women lawyers' movement for the early twentieth century. Institutions such as legal aid

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66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.* at 247.
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.*

societies, women's courts, and children's courts were the product of the combined efforts of feminists, male social reformers, and liberal male lawyers who wished to make the law accessible to the needs of the poor and dependent.

Moreover, these institutions brought professionalism and reform together by paying lawyers to protect those without the means to protect themselves. As a result, these institutions changed the terms of the long-standing debate over the place of philanthropy and reform in women lawyers' professional lives. Women lawyers in the 1880s had divided sharply over the issue, with some insisting that women lawyers should not permit charity and politics to interfere with their private practice, while others chose to devote their professional lives to social reform. Women lawyers in this generation who participated in the new legal welfare institutions no longer had to choose between law practice and reform because their work embraced both.

The new institutions of legal reform were an answer to Ashley's and Byrns's calls for action, providing women lawyers with a way to earn their livelihood in the male-dominated profession of law while they devoted their careers to the traditionally feminine task of helping others. Whereas women lawyers in the 1880s often defended their efforts on behalf of the needy, women lawyers in the 1910s could proudly claim that their work for the poor and dependent placed them in the vanguard of the scientific reform of society. "Everywhere the women lawyers are serving the public not through amateurish and sentimental meddling, but through planned application of trained intelligence to social problems," reported one woman.[75] Anna Moscowitz Kross, a labor lawyer in New York City and a long-time advocate of women judges, expressed a similar view in calling for women judges in special night courts for women.[76] Women lawyers, she argued, would bring both "sympathetic hearts" and a "scientific system" to the sensitive problem of prostitution.[77]

In their new positions of legal authority, women lawyers helped to reform the judicial system so that it would be more responsive to the needs of women. Tiera Farrow used her position as municipal court judge in Kansas City to redirect the focus away from the prostitutes who came to her court and onto the men who patronized them.[78] "The law is directed solely against you women," she told prostitutes in her court; and, she instructed police officers to arrest the men who sought the services of prostitutes as well as the women themselves.[79]

Women lawyers found their first significant professional opportunities to penetrate the court system through the juvenile courts founded at the height of progressivism and feminism in the first decade of the twentieth century. The rise of the juvenile courts was the direct result of an alliance between feminists and liberal male attorneys. The nation's first juvenile court, which opened in Chicago in 1899, represented the joint efforts of Jane Addams and Julia Lathrop of Hull House, the Chicago Woman's Club, and the Chicago Bar Association. Appalled by what they saw as an unjust penal system which treated

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75. Wilkins, *supra* note 55, at 25.

76. Anna Moscowitz, *The Night Court for Women in New York City*, 5 WOMEN LAW. J. 9, 9 (1915).

77. *Id.*

78. FARROW, *supra* note 24, at 170.

79. FARROW, *supra* note 24, at 170.

juvenile offenders as adults by incarcerating them with adults and subjecting them to the same sentences, women activists and male liberals in the legal establishment joined forces to create a separate court system for young offenders in cities throughout the country including New York, Los Angeles, St. Louis, and Memphis. The creation of a juvenile court system institutionalized into the American courts the principle of state protection of children, which was at the core of early twentieth-century protective labor legislation.[80]

At the heart of the juvenile court system was the notion that child offenders needed an alternative system of justice that would guarantee them special attention and protections not given to adults. Rather than the cold, severe environment of the adult courtroom, the ideal juvenile court was modelled after the home. When a young girl entered the juvenile courtroom in Los Angeles, she saw "pictures on the walls, curtains, not bars, at the windows; and a big vase of roses, fresh from the garden."[81] And rather than the harsh punishments meted out by male judges, children in the juvenile courts encountered women lawyers who gave them the firm but gentle direction best given by a mother at home. In the juvenile courts where sympathy and understanding were so highly valued, women lawyers found a corner of the legal profession especially suited to their traditional feminine virtues. "Here women of gentle, yet firm, strong character, trained in the law, yet with the mother heart . . . may find a field for labor which is truly feminine. Surely this is woman's own department," wrote one woman lawyer who argued that no male lawyer, regardless of his professional experience, could match women lawyers' understanding of childhood and domestic matters in the courtroom.[82]

Women lawyers found some of their first opportunities for judgeships in the juvenile courts. Women such as Mary Bartelme of Chicago and Luella North of Herkimer County in upstate New York benefited from the cultural assumption that women judges would sit on the bench as the legal mothers of the children brought before them. "It seems to me," wrote one woman lawyer on behalf of women judges in juvenile courts, "that the child feels a higher regard for promises made to mother, teacher or woman than to man and that woman inspires the child to worthier and nobler achievements than men."[83] In 1918, Woodrow Wilson put his presidential authority behind this claim by appointing a woman lawyer, Kathryn Sellers, to the position of judge of the Juvenile Court of the District of Columbia.[84] His action won strong praise not only from women lawyers but from men in the profession as well. An editorial in the legal journal, *Law Notes*, expressed the prevailing view: "The judge of the juvenile court is a parent more than a judge, and . . . the President has done well to provide a judicial mother for the delinquent children of Washington."[85]

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80. *See generally* ROBYN MUNCY, CREATING A FEMALE DOMINION IN AMERICAN REFORM, 1890-1935 at 18 (1991); Louise C. Wade, *Julia Clifford Lathrop*, *in* NOTABLE AMERICAN WOMEN 370 (Edward T. James et al. eds., 1971).

81. *Orfa Jean Shontz Referee Juvenile Court, Los Angeles,* 6 WOMEN LAW. J. 30 (1917).

82. GRACE IRENE ROHLEDER, WOMAN ON THE BENCH 16 (1920).

83. L. L. Fawcett, *Plea for Woman on the Bench*, 6 WOMEN LAW. J. 37 (1917).

84. *The Woman Judge*, 22 LAW NOTES 83 (1918).

85. *Id.* On Kathryn Sellers, see *What our First Woman Judge Thinks of Judging*, LITERARY DIG. 46 (May 9, 1925) (on file in the Kathryn Sellers Papers at Smith College, Sophia Smith Collection, box 40, folder Sellers).

In the 1910s and '20s, cities such as Los Angeles and New York took the idea of women lawyers' special protective role in the judiciary system a step beyond juvenile courts and established separate courts for women. Drawing on the principles of protective labor legislation, the women's courts rested on the belief that women, like children, needed special protections before the law. Many argued that the harsh treatment and stiff punishments dealt to male offenders in the criminal courts were inappropriate to female offenders. Instead, women needed a different approach that emphasized understanding and rehabilitation. Within the privacy of the women's court, female offenders would encounter a wise and sympathetic woman judge who would understand their unique needs and would help them to reform.

Judge Georgia Bullock of the Los Angeles Women's Court, the first such court in the country, brought her womanly sensibilities to the bench. Her vision of the woman's court was that it should administer social welfare as much as justice. With this in mind, Bullock did not hesitate to incarcerate women, but her sentences were intended to be restorative rather than punitive. Motivated by her keen understanding of the harsh realities of poor women's lives, she often sent women to jail, but for a rest, not for a punishment:

> In my court these girls and women are sent to jail—not because I want to punish them, but because I want to help them, if possible. If they are arrested and fined today, they return tomorrow to the same path. *But*, if we give them a jail sentence, they rest and receive medical treatment. Thirty or sixty days later they might come out refreshed, with brighter eyes and a gain in weight—at least a little bit better equipped to attempt a come-back to health and respectability, if they are so inclined.[86]

Together with the juvenile courts, the women's courts made up a separate women's legal system apart from, but supported by, the male-dominated mainstream of the legal profession. Many male lawyers encouraged the view that women lawyers, rather than men, could best interpret the law for women and children and protect their legal rights. And, women lawyers defended this claim. They were quick to argue that in the women's courts they could provide women with the justice unavailable to them from male lawyers. They claimed that while male lawyers understood the needs of men before the law, they could never fully comprehend the legal needs of women and, therefore, could not offer women full justice. "The differences between man's nature and woman's nature are a bar, eternal as are Nature's laws, to the equitable administration of justice for humanity by

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86. Pat Noonan, Her Honor, Georgia Bullock, at 6-7 (unpublished essay on file in the Georgia Philipps (Morgan) Bullock Collection, Department of Special Collections, University Research Library, UCLA, box 4 [hereinafter Bullock Collection]). On Bullock in the Los Angeles Women's Court, see Beverly B. Cook, Institution-Building: A New Public Role for Professional Women in the Los Angeles Women's Court (unpublished paper delivered at the Seventh Berkshire Conference, Wellesley College, June 19-21, 1987). Bullock's willingness to imprison female offenders was similar to the practice of women doctors of the day to keep their maternity patients in their separate all-women's hospitals longer than male doctors did at their hospitals. As women, female physicians were acutely sensitive to the harsh conditions of poor women's lives, and like Bullock who imprisoned female offenders in order to give them a rest, they wanted to give their female patients the opportunity to recuperate before they returned to the demands of their family and workplace. *See* VIRGINIA G. DRACHMAN, HOSPITAL WITH A HEART 71-89 (1984).

men alone," wrote one woman lawyer.[87] In divorce cases, for example, women lawyers claimed that male judges tended to view divorce through the eye of the husband. "The judge is familiar with the wants of men in the business world," wrote one woman lawyer, "so, without meaning to be heartless or unfair, he, because of his incompetency to view the situation of the woman from the standpoint of experience, fails in complete equity."[88]

Women lawyers also charged that male judges were guilty of the same bias when it came to prostitutes and victims of sexual abuse. Washington D. C. lawyer Grace Rohleder explained that women could not receive fair treatment in the traditional male-run courtroom: "Men sympathize with men and make allowances for them, and in a court room filled with men, with a male judge upon the bench and male officials in every department, the unfortunate victim of male-self-indulgence will find no sympathy and very little justice."[89] The only answer to the problem, Rohleder insisted, was the appointment of women to the bench to oversee women's cases.[90]

Women lawyers appreciated the advantages which the separate women and children's courts offered them. Here they could be both women and lawyers, bringing what many of them still argued were their unique feminine qualities of nurturing, sensitivity, and understanding to cases dealing specifically with women and children.

But, the courts did more than ideologically support women lawyers' claims to the courtroom. From a practical point of view, they provided women lawyers with their best, if not only, opportunity to find positions as judges. Along with Georgia Bullock in Los Angeles, women such as Mary Bartelme of Chicago, Reah Whitehead of Seattle, Kathryn Sellers of the District of Columbia, Luella North in upstate New York, and Jean Norris of New York City all gained positions on the bench in juvenile, family, and women's courts in the early twentieth century. These courts for women and children became so popular in the early twentieth century that popular magazines such as *Good Housekeeping*, the barometer of white middle-class female culture, enthusiastically supported them.[91]

The idea of a separate women's legal system was not new when it gained support in the 1910s and '20s. It had been popularized in 1888 in Edward Bellamy's utopian novel, *Looking Backward*, in which Bellamy described his vision of the ideal judicial system for the year 2000.[92] In Bellamy's legal system, only women judges heard cases involving women, and men judges heard cases involving men.[93] But, Bellamy's vision for the

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87. Martha Strickland, *Woman and the Forum*, 3 GREEN BAG 240, 240 (1891).

88. *Id.* at 241-42.

89. ROHLEDER, *supra* note 82, at 19; *see also Extracts from an Interview with Judge Reah Whitehead*, 5 WOMEN LAW. J. 11 (1915); *Women Should be Judged by Women*, 4 WOMEN LAW. J. 45 (1915); Edith Meserve Atkinson, *Wanted—More Women Juvenile Judges*, 5 PHI DELTA DELTA 198 (1927); Dorothy Dix, *The Case for Women Judges*, 59 GOOD HOUSEKEEPING 48 (1914).

90. ROHLEDER, *supra* note 82, at 19.

91. *See* Dix, *supra* note 89; Anne Shannon Monroe, *When Women Sit in Judgment*, 70 GOOD HOUSEKEEPING 46 (1920). Also, on the advantages of women judges, see Mildred Adams, *Can Women Make Good as Judges?*, *in* THE CHRISTIAN ADVOCATE 1520 (1925) (on file in the Florence Allen Collection at Smith College, Sophia Smith Collection, box 1, folder 2).

92. EDWARD BELLAMY, LOOKING BACKWARD 37 (1960).

93. *Id.*

twenty-first century never evolved. The juvenile courts were short-lived, falling victim to women lawyers' desire for professional integration and male lawyers' insistence that women should compete as equals with men for court positions. But, for a brief time in the 1910s and '20s, women lawyers successfully staked out a territory for themselves in both the women's courts and the juvenile courts. In this era of the new woman and sexual equality, women lawyers found their greatest opportunities for judgeships and courtroom work in the separate women's courts designed to perpetuate the Victorian emphasis on woman's inherent domesticity and need for special care and protection.

It was also in this era that women lawyers further identified themselves as separate from their male colleagues by establishing their own all-women's professional organizations. In 1899, the Women Lawyers' Club of New York was founded. Others followed shortly thereafter, including the Massachusetts Association of Women Lawyers in 1904, the Women's Bar Association of Illinois in 1914, the Women's Bar Association of the District of Columbia in 1917, and the Portia Club of Milwaukee in 1920. In establishing these bars and associations, women lawyers participated in the general trend of organization which permeated the entire legal profession. Throughout the last quarter of the nineteenth century and the early decades of the twentieth, local and state bar associations grew in number and size, gradually bringing structure, hierarchy, and formality to the legal profession. From this point of view, the founding of women's legal associations placed women lawyers squarely within the mainstream of their profession.[94]

At the same time, the founding of women lawyers' separate professional groups revealed just how far outside the mainstream of the legal profession women lawyers really were. In fact, in establishing their own bar associations, women were motivated as much by sexual discrimination as they were by professional identification. Many of the male-run bar associations, including those of New York City and the District of Columbia, as well as the American Bar Association (ABA), did not admit women. As a result, women lawyers reached back to the nineteenth-century tradition of institution-building and founded their own bar associations because they were locked out of those run by men.

Just as women in the middle of the nineteenth-century had made their way into moral reform work, temperance, abolition, and even medicine by establishing their own separate all-women's organizations, so women lawyers in the early twentieth century established their own associations to smooth their path in the legal profession. The founding of the Women Lawyers' Club in New York City in 1899, for example, reflected the familiar themes of earlier women's organizations. On the one hand, it was borne out of discrimination. The underlying reason for its organization was the fact that women were

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94. *See* Jean H. Norris, *The Women Lawyers' Association*, 4 WOMEN LAW. J. 28 (1915); Sarah Stephenson, *Co-Operation of Women Lawyers*, 7 WOMEN LAW. J. 68 (1918); and, *Annual Banquet of the Women Lawyers' Association*, 11 WOMEN LAW. J. 17 (1922) [hereinafter *Annual Banquet*]. On the Women's Bar Association of the District of Columbia, see CLARICE F. HENS, THE FIRST FIFTY YEARS . . . 1917–1967: A BRIEF HISTORY OF THE WOMEN'S BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA, WOMEN'S BAR ASSOCIATION, 1967, and Ida Moyers McElroy & Edwina Austin Avery, *The Women's Bar Association of the District of Columbia*, 21 WOMEN LAW. J. 21 (1935). On the Women's Bar Association of Illinois (WBAI), see WOMEN'S BAR ASSOCIATION OF ILLINOIS, WOMEN'S BAR ASSOCIATION OF ILLINOIS: 20TH ANNIVERSARY JOURNAL AND DIRECTORY, 1934–1935 (1934) (available at the Chicago Historical Society). On the Portia Club of Milwaukee, see *The Portia Club of Milwaukee*, 53 CHICAGO LEGAL NEWS 53 (1920).

excluded from the Bar Association of New York City. At the same time, the Women Lawyers' Club provided women lawyers with the unique opportunity to come together for social as well as professional interaction. In 1900, it institutionalized its ties to the women's movement by joining the General Federation of Women's Clubs.[95]

Sexual discrimination and feminism were once again linked almost twenty years later when women lawyers in the nation's capital founded their own professional organization because they were excluded from the Bar Association of the District of Columbia. Established in 1917 at the height of the women's suffrage movement, the Women's Bar Association of the District of Columbia had close ties to women's rights leaders. At its first annual dinner, its members hosted a number of these leaders, including one-time president of the National American Woman Suffrage Association, Dr. Anna Howard Shaw, and social worker and advocate of a juvenile court system, Julia Lathrop.[96]

The founding of the *Women Lawyers' Journal* in 1911 helped expand the women's bar associations beyond their local regions. The *Women Lawyers' Journal* was established by the Women Lawyers' Club in New York as a way to attract new members, and it achieved its goal almost immediately. Membership grew from twenty in 1911 to seventy-six in just two years and, by 1914, the ranks had swelled to about 130. The new members were not only from New York. They came from fifteen states as well as Canada and France. Moreover, they included some of the most distinguished women lawyers in the country, including Washington attorneys Emma Gillette and Ellen Spencer Mussey, Chicago attorney Catharine Waugh McCulloch, and San Francisco attorney Annette Adams. The new members broadened the scope and character of the Women Lawyers' Club; and, in 1913, the name of the club was officially changed to the Women Lawyers' Association to convey its national focus.[97]

The *Women Lawyers' Journal* had a special mission; namely, to meet the unique professional needs of women lawyers. It became the major vehicle for women lawyers to share a range of concerns. Its editors kept close track of professional matters such as which bar associations remained closed and which were opened to women. It invited its readers to share their views on practical matters such as how to start a practice and how to attract clients. Further, it enabled women lawyers to discuss and monitor the progress of legal reforms such as custody rights, protective labor legislation, the establishment of women's and children's courts, and suffrage. It also provided a way for individual women lawyers to announce career developments. The opening of an office, the passing of a bar, the winning of a case, or the appointment to a judgeship all became newsworthy items to share with other women lawyers.

The success of the *Women Lawyers' Journal* helped to build a national network of women lawyers. Just as the Equity Club letters had brought women lawyers together in the late 1880s, the *Women Lawyers' Journal* made it possible for women lawyers around the country to communicate with each other. To be sure, the *Women Lawyers' Journal* was a larger, more formal and structured endeavor than the circulation of the letters of the Equity Club ever was. It reached more women and persisted through the twentieth century. Still, it was fuelled by the same blend of professional and womanly concerns

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95. Norris, *supra* note 94; Stephenson, *supra* note 94.

96. McElroy & Avery, *supra* note 94.

97. *Women Lawyers' Association Dinner*, 3 WOMEN LAW. J. 62 (1914).

which had inspired the Equity Club. The age-old quest of nineteenth-century women lawyers for professional community and sisterly support was unmistakable within the pages of the *Women Lawyers' Journal*. In this era of new women, it muted the call for individual success and sexual equality with its strong spirit of sisterhood.

The national influence of the *Women Lawyers' Journal* placed the women lawyers of New York at the center of the growing network of women lawyers. As early as 1919, the Women's Bar Association of the District of Columbia began to urge the Women Lawyers' Association to look beyond its metropolitan roots and to formalize its growing national influence. In 1923, the group reorganized and became the National Association of Women Lawyers (NAWL).[98] By this time, many women lawyers were already members of the ABA, which had opened its doors to women in 1917. While membership in the ABA was an important step toward professional integration and equality for women lawyers, the leaders of the Women Lawyers' Association went forward with its reorganization into a national association, insisting that women lawyers still needed their own national organization.

Not all women lawyers agreed with the need for a separate women's professional organization. Instead, the growth of women lawyers' organizations created another arena for women lawyers to debate the larger issue of balancing sexual equality with the traditions of sexual difference. Alice Birdsall of Phoenix, Arizona was one lawyer who believed that where sexual equality existed, "organized effort . . . should not be limited along sex lines."[99] The spirit of equality which she claimed prevailed in her state enabled women lawyers to practice "without thought of sex lines."[100] Thus, there was "no need of separate organizations" for women lawyers in Arizona.[101] L. H. Shoemaker of Jacksonville, Florida agreed with Birdsall that the achievement of equality with men eradicated women lawyers' need for their own professional organizations. She called for a unification of the profession, urging all lawyers, men and women, to join one national organization, the ABA: "[T]here is need for and in fact should be but *one* National Lawyers' Association, and that the American Bar Association."[102]

The leaders of NAWL disagreed. They claimed that NAWL would supplement, rather than duplicate, the services of the ABA, providing women lawyers with social and professional advantages which were unavailable to them in the male-run organizations. Throughout the 1920s, the leaders of NAWL continued to remind women lawyers that sexual discrimination still permeated the legal profession and that collective action, rather than individual effort, was the only way to overcome the problem.

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98. *See* 75 YEARS OF NATIONAL ASSOCIATION OF WOMEN LAWYERS, 1899-1974 (Mary H. Zimmerman ed., 1975); Burnita Shelton Matthews, *Why an Association of Women Lawyers*, 21 WOMEN LAW. J. 32 (1935); Marion Gold Lewis, *Minutes of the National Association of Women Lawyers, Atlantic City*, 19 WOMEN LAW. J. 10 (1931); Katharine R. Pike, *The National Association of Women Lawyers*, 18 WOMEN LAW. J. 14 (1930); Lillian D. Rock, *The Need for and the Purpose of the National Association of Women Lawyers*, 18 WOMEN LAW. J. 15 (1930).

99. 9 WOMEN LAW. J. 6, 6 (1919).

100. *Id.*

101. *Id.*

102. *Sane Suggestions*, *supra* note 6.

In the 1930s, this call for solidarity took on a more poignant ring. With the economic depression threatening to dismantle the inroads women had made into the legal profession, women lawyers increasingly called on each other to sacrifice individual gain for the good of the community of women lawyers.[103] In 1935, Burnita Shelton Matthews, the President of NAWL, reminded women lawyers that even though the ABA was opened to women, some bar associations still refused to admit women. In addition, she argued that the ABA and other sexually integrated bar associations rarely gave women committee appointments or leadership positions. Moreover, Matthews argued that in the few cases where women attained positions of stature, they owed their positions to the collective efforts of the women's bar associations, which placed continuous pressure on the male-run associations to give women lawyers a chance. Despite women lawyers' claims of progress and optimism for professional success in the 1910s and '20s, Matthews confronted the hard truth that in the 1930s women lawyers still had not reached their goal of sexual equality with their male colleagues. "Although the dawn is in the sky, the day of equal opportunity for women lawyers has not yet come," she declared.[104]

In order to hasten that day of equal opportunity, Matthews and others in NAWL called on women lawyers to put aside personal goals and self interest and to join with NAWL to work for the interests of women lawyers as a whole. Lillian Rock, the chair of the membership committee in 1930, emphasized the importance of creating a community of women in the law and called on women lawyers to recognize the limits of their individualism and to stand together. "No one of us, no individual standing alone, isolated, is so powerful as to be beyond the need of kindred support either in adversity or success . . . ." Yet, in this era of economic suffering and human pain, Rock pushed women lawyers even further, calling on them to use the power of women's legal community for more than professional and personal gain. "We will refuse to believe that you are content merely with the study and practice of that law; rather, we are convinced that you will want and eventually must have a part in the making and blending of that law." She envisioned NAWL as the ideal vehicle to bring about this legal reform and social change. She called on women lawyers to move past "personal success" and join in this united effort to do "something more encompassing, more humane and less personal."[105]

Burnita Sheldon Matthews was one woman who built her legal career on this model of sisterhood and social concern. She worked in a law firm with two other women, Laura Berrien and Rebecca Greathouse. The three women practiced law together and shared a deep commitment to advancing women's legal rights. As a president of both the Women's Bar Association of the District of Columbia and NAWL, Matthews was a leader in the efforts to promote women lawyers' professional interests. In addition, she was a leader in the reform of women's legal rights. Her strong belief in the importance of women's equality before the law led her to the National Woman's Party (NWP). As chair of NWP's lawyers' council, she directed extensive research into the laws of the United States as they related to women. She was a strong supporter of an equal rights amendment as well as an advocate of women's property rights and juror rights. She

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103. *See* Rosalind Goodrich Bates, *Loyalty and the Woman Lawyer*, 19 WOMEN LAW. J. 29 (1932).

104. Matthews, *supra* note 98.

105. Rock, *supra* note 98, at 16.

drafted the women juror law for the District of Columbia and revised the inheritance statutes of New York in 1923 so that they would no longer discriminate against women.[106]

Other women lawyers, such as Sue Sheldon White and Lucy Somerville Howorth, found opportunities to link their legal careers with their politics in the new government agencies of the 1930s. Yet, these government positions were premier jobs which were not easy for women to obtain. While many women lawyers and law students looked to Washington for job opportunities, the activist government of the Roosevelt administration and its sympathy for minorities and the poor did not translate into significant job opportunities for women lawyers. Only a small group of women lawyers who had political ties received the coveted government appointments.

In 1932, Mary Connor Myers, a Washington D. C. lawyer, surveyed the federal positions held by women lawyers and discovered that the federal government during Roosevelt's administration engaged in blatant sexual discrimination when it came to the treatment of women lawyers. She found that women lawyers held only a small minority of federal jobs. Moreover, most of their positions were classified as clerical, administrative, or fiscal jobs, which required no legal training and paid a lower salary than jobs classified as professional positions. The War Department and the Department of Agriculture employed seven women lawyers each, but in neither department did any woman hold a legal position. There were nineteen women lawyers in the Department of the Interior, but only one held the status of attorney. Seventeen others were doing legal work, but under a lower classification and receiving a smaller salary. The Treasury Department employed thirteen women lawyers to do highly technical tax law but gave them less desirable assignments and paid them lower salaries than men in similar positions. Five women lawyers held strictly legal positions in the Department of Justice, but one, after her marriage, was demoted and given a salary of one thousand dollars less than the only other attorney, a man who did precisely the same work. The Department of Labor, which housed the Naturalization Bureau, the Children's Bureau, and the Women's Bureau, was the only Department that escaped complaints about sexual discrimination. Yet, even here, only a dozen or so women held professional positions. Even the Women's Bureau employed only three women lawyers and, while their work included studies of labor legislation and court decisions relative to the employment of women, they were hired as social economists rather than as attorneys.

The bleak conclusion was hard to avoid. Women lawyers who went to Washington to find positions in the federal government found sexual discrimination rather than job opportunities. "There is no doubt," wrote Myers, "despite protests to the contrary by most administrative officers, that there exists an intention, if only subconscious, to admit

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106. *See* Burnita Shelton Matthews, *Women Should have Equal Rights with Men: A Reply*, 11 ABA J. 117 (1926); Burnita Shelton Matthews, The Status of Women, 1927 (typed report prepared by Burnita Shelton Matthews on file in the Burnita Shelton Matthews Papers at the Schlesinger Library, box 2, folder 51 [hereinafter BSM Papers]); Burnita Shelton Matthews, *Women Lawyers and Lawmaking*, KAPPA BETA PI Q., 11 (1929) (on file in the BSM Papers, box 2, folder 33); Burnita Shelton Matthews, The Equal Rights Amendment, Speech made at the Council Meeting of the General Federation of Women's Clubs in Hot Springs, Arkansas (May 1934) (transcript on file in the BSM Papers, box 2, folder 50); Burnita Shelton Matthews, *Glimpse of Laws Shows Need for Equal Rights* (no date available) reprinted from Equal Rights by National Women's Party (on file in the BSM Papers, box 2, folder 50). *See generally* BSM Papers.

professional women only to inferior positions on an equal basis with men."[107] Myers called on women lawyers to work together to pressure the government to open more positions for women lawyers. Echoing Rock's critique of individualism, Myers claimed that "the Horatio Alger days are over, if they ever existed." The best way for women lawyers to advance their cause was to "throw aside their individualistic attitude and proceed to accomplishment through cooperation."[108]

Despite the call for collective action, most women lawyers in the 1910s through the 1930s worked in a solitary way. They looked for employment in law offices, tried their hands at solo practice, or found positions in the business world of banks, real estate offices, and insurance agencies. Some considered themselves lucky if they found a job as a stenographer or law clerk, while others were unable to find legal work at all. For these women, law practice was a job they performed for financial support, detached and away from sexual politics and the world of ideals.

Like their professional lives, the personal lives of the new women lawyers fell short of their expectations. Companionate marriage, the hope and promise for the new woman, proved to be frustrating rather than fulfilling. Ideally, the companionate marriage offered women hope in its emphasis on friendship, mutuality, and equality between husband and wife, rather than the dependency, obligation, and obedience which characterized the ideal Victorian wife. Husband and wife were to be close companions who discussed household matters together and made joint decisions about financial and domestic concerns. They were to share their leisure time, and to enjoy sex together.

But the emphasis of the companionate marriage on the empowerment of women in their homes ignored the importance of their public lives. Many feminists of an earlier generation, including Charlotte Perkins Gilman and Jane Addams, lashed out at this new emphasis on women's domestic bliss, and were particularly skeptical about the sudden strident call for husband and wife to pay careful attention to the wife's sexual needs. Their skepticism revealed the fatal flaw in the modern marriage of the 1910s and '20s, namely that the new emphasis on equality and companionship between husband and wife was meant for the privacy of the home and stopped at the doorway to the world beyond. The career wife rarely received the respect and support for her work from her husband that she was expected to give to him.

Given the limitations of the new companionate marriage, many women lawyers in the 1910s and '20s were dubious about the possibility of married women competing as equals with men in the legal profession. The experience of Tiera Farrow of Kansas City, Missouri, was typical of what many women lawyers encountered. She became engaged to one of her law school classmates who persuaded her that they would "make a good team in a law office." Farrow was horrified, however, when she discovered that her fiancé's vision of their marital partnership would keep her in the office functioning as a stenographer and clerk while he went off to court. Her strong desire for sexual equality

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107. Mary Connor Myers, *Women Lawyers in Federal Positions*, 19 WOMEN LAW. J. 19, 20 (1932).

108. Mary Connor Myers, *Women Attorneys in the Department of Justice*, 21 WOMEN LAW. J. 13, 16 (1935).

and her fiancé's distinctly different vision of the nature of a companionate marriage made contemplation of marriage impossible, and she broke off her engagement.[109]

Mabel Walker Willebrandt also discovered that a modern marriage was incompatible with her career aspirations. Just two years after she married, both she and her husband, Arthur, set their sights on studying law at the University of Southern California. The agreement between them was that first Arthur would go to law school full-time for a year while Mabel worked full-time to support them and studied part-time at night. Then in the second year, Arthur would work so that Mabel could study law full-time. Unfortunately, their agreement never worked out as they had planned. For three years, Mabel worked full-time as a teacher and principal of a school to pay for the tuition of both her husband as well as herself. At the same time, she assumed full responsibility for the domestic demands of cooking, cleaning, and other household chores. Remarkably, she found the time and energy to take evening and early morning law classes. With Mabel's support, Arthur graduated from law school in 1915. Mabel, however, was still teaching and taking law classes part-time and had yet another year of study before her. Her husband's betrayal of their agreement combined with the burden of assuming all the domestic responsibilities doomed the young marriage to failure. Faced with the choice between her marriage or a career in law, Willebrandt left her husband in 1916.

While Willebrandt's attempt at a companionate marriage failed, her divorce freed her from the encumbrances of marriage, and she began a remarkably quick rise up the professional ladder. She began her professional ascent in 1916 working as a public defender for women's cases while building a private practice. In addition, she immersed herself in professional activities and women's organizations, making a name for herself throughout California. In 1921, only five years after her divorce, President Harding appointed her to replace Annette Abbott Adams as assistant attorney general. The position made Willebrandt the highest ranking woman in the federal government and one of the most powerful women lawyers in the country. Willebrandt's struggle to study law while holding a job and caring for her husband had revealed the inequality at the heart of a supposedly companionate marriage. In contrast, her meteoric climb from public defender in Los Angeles to assistant attorney general in only five years was testimony to the personal freedom and professional opportunity she derived from leaving her husband in 1916.[110]

Years after her divorce, Willebrandt sought to advise younger couples on how to avoid the mistakes of her marriage. In an article entitled *Give Women a Fighting Chance*, she reinterpreted companionate marriage to meet women's needs. In Willebrandt's reconception of the ideal marriage, the wife did not submerge her needs to those of her husband. Having failed to achieve this in her own marriage, she emphasized the importance of creating a relationship of "mutual understanding" that respected and nurtured the wife's intellectual, emotional, and economic independence. The lesson Willebrandt learned from her own marital failure was that in a healthy marital partnership

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109. FARROW, *supra* note 24, at 170. On marriage and career for women lawyers, see generally Drachman, *supra* note 4. On the new companionate marriage, see generally ELAINE TYLER MAY, GREAT EXPECTATIONS: MARRIAGE AND DIVORCE IN POST-VICTORIAN AMERICA (1980).

110. *See* DOROTHY M. BROWN, MABEL WALKER WILLEBRANDT: A STUDY OF POWER, LOYALTY, AND LAW (1984).

the husband made "necessary adjustments" so that the wife could "have both a 'child' and a 'job' if she wants both."[111]

But even Madeleine Doty, a graduate of New York University Law School, feminist and pacifist in the 1920s, could not make her companionate marriage survive with one of the most liberal thinkers of the era, Roger Nash Baldwin, director of the American Civil Liberties Union. Their marriage had all the elements of the modern marriage of the day. Doty retained her maiden name, had an active public career, supported herself financially, and gave over the household chores to a domestic servant. All of this seemed to have the support of her husband. Years later he reminisced about their marriage: "We were both busily at work, but we shared expenses on a 50-50 basis, since we both agreed on our independence, and Madeleine was a staunch feminist. She never took my name nor did we have joint accounts save to divide 50-50 the rent and housekeeping. A maid came in by the hour, cleaned up and cooked when required, though I did most of it, since Madeleine neither could cook a dinner nor wanted to learn."[112]

Unfortunately, neither the equality of their relationship nor Doty's independence and freedom could guarantee them happiness. In fact she and her husband had different notions of the very meaning of freedom in their lives. Doty wanted freedom in the intellectual and spiritual parts of her life; but, she wanted structure, not freedom, in the daily pattern of her marriage. "To me . . . daily life was like the red and green lights of traffic. Without them there was confusion," she explained.[113] Baldwin, on the other hand, wanted a broader open-ended freedom that resisted any marital responsibility. Their conflicting interpretations of marital freedom doomed the relationship from the start. When Doty wanted her husband to stay home in the evenings, Baldwin resisted. "I was too obstinate to yield my presumed freedom to marriage obligations," he admitted years later.[114] Tragically, the love Doty and Baldwin shared for each other and their attempts at compromise could not save their marriage and they divorced in 1935.

Farrow's, Willebrandt's, and Doty's failed attempts at marriage revealed the real difficulties women encountered as they contemplated marriage and a legal career. In this era when forty-four percent of the BVI women believed that companionate marriage and sexual equality among husband and wife represented the new ideals for a modern age, fifty-six percent of the BVI women questioned these new values and expressed deep concerns, much like those of Victorian women lawyers decades before, about the age-old problem of combining marriage and a law career.

Some shared the separatist view of nineteenth-century women lawyers that a woman had to make a choice between marriage and law. "Either is a full size job if properly

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111. Mabel Walker Willebrandt, *Give Women a Fighting Chance!,* SMART SET 24, 25 (1930). *See also* BROWN, *supra* note 110, at 19-34. On the more general problem of the lack of companionship women endured in the modern marriage, see R. Le Clerc Phillips, *Getting Ahead of the Joneses*, 154 HARPER'S MAG. 579 (1927).

112. Memo on Madeliene Zabriskie Doty by Roger Nash Baldwin (Oct. 1978) (on file in the Madeleine Zabriskie Doty Papers at the Sophia Smith Collection, Smith College, Northampton, Massachusetts, box 1, folder 4 [hereinafter Memo on Doty]); PEGGY LAMSON, ROGER BALDWIN, FOUNDER OF THE AMERICAN CIVIL LIBERTIES UNION, 121-22 (1976); *Roger Nash Baldwin, in* AMERICAN REFORMERS 45-48 (Alden Whitman ed., 1985).

113. LAMSON, *supra* note 112, at 151.

114. Memo on Doty, *supra* note 112. *See also* LAMSON, *supra* note 112, at 150-54, 210.

filled. One must choose," explained one BVI woman.[115] "If they want to practice law, eliminate the word *matrimony* from their vocabulary and vice versa," echoed another.[116] Once married, a woman lawyer assumed a host of domestic responsibilities which made it impossible for her to compete as an equal with men in the legal profession. "A single woman has a tremendous advantage over a married woman, as she can give her whole attention to her business as a man does. No married women's opportunity can compare with that of a man, married or single," wrote Bertha Green, a woman lawyer from Nebraska who was the wife of a lawyer and the mother of three children. Acknowledging that she barely practiced law and only did so "to show my family that I could support myself if I had to," she confessed that she could never figure out how to make a husband and wife equal in their professional lives. "I have never yet been able to figure out a way that would make a married woman as free in mind and body to follow her chosen business as a married man is."[117]

On the surface, the views of women lawyers such as Green sounded strikingly similar to nineteenth-century women lawyers who expressed the separatist view that women could not have both a marriage and a career. But this group of modern women lawyers was different. They rejected the notion that marriage and career were inherently incompatible for women. Rather, they believed it was the only pragmatic response to the reality of womens' lives. In taking this view, women lawyers linked their separatist stand to their sharp critique of men, who, they believed, left women no other practical choice. Pointing the finger directly at men, they accused them of holding expectations about women which made it impossible for women to manage marriage and career. One BVI woman explained that men simply did not like to marry professional women. "Men do not care to marry women with set ways, independent character, who are able to care for themselves. They admire the type, but love never. They may make excellent mothers but men want wives who are more dependent upon them and look up to them."[118] Exposing the essential flaw in the companionate marriage, namely that it did not promise equal opportunity for wife and husband in the workplace, Bertha Green also held men accountable, explaining that married men simply did not intend to make the same sacrifices for their family that they expected of their wives. "A woman with a husband and children cannot make a great success of the law without neglecting them. If little Jim has the diptheria, the father takes a room at the hotel and goes right on with his practice, the mother lawyer is quarantined with Jim."[119]

Since this group of modern women lawyers laid the blame on men, all that was needed was for men to change—to give up their tradition-bound views of womanhood and treat women as truly equal partners. Then, claimed many women lawyers, the need for the separatist approach would disappear. As one woman lawyer explained, women would finally be able to balance marriage and career as equals with men when "a new and

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115. BVI questionnaire no. 26 (no date available).
116. BVI questionnaire no. 190 (April 19, 1920).
117. BVI questionnaire no. 95 (April 3, 1920).
118. BVI questionnaire no. 150 (March 1, 1920).
119. BVI questionnaire no. 95 (April 3, 1920).

different generation of men arrives who will be trained to regard women as equals in all respects."[120]

While some women lawyers took the separatist approach to marriage, more than three times as many expressed the Victorian view that marriage must take priority over career in the life of a married woman lawyer. "A woman should give up her profession when she marries," explained one woman lawyer.[121] "I believe woman's true sphere is in the home," echoed another. "[A] true woman gladly fills her place in the home when true love comes."[122]

While this sounded like the nineteenth-century Victorian view of marriage, it was really a revised version more suitable to the new century. Like the reconstructed separatist approach of the early twentieth century, the new version of the Victorian view no longer projected an absolute, immutable condition. Rather women understood the Victorian approach as a practical response to the realities of a woman's life. Personal sacrifice was not a universal reality for all married women. Embedded in the advice to follow the husband's lead was the unspoken message that a woman could, in fact, combine marriage and law if she married a man who treated her fairly.

Nor did children require absolute sacrifice on the part of the mother. Rather, women lawyers in 1920 believed that motherhood necessitated only a temporary sacrifice when children were young and at home. "If there are children," explained one woman, "there seems to be no other way then to drop out of the profession for a few years."[123] Another, Sarah Shulkjobe of Hope, Arkansas advised women to marry a lawyer, miss a few years when their children were young and then to "get right back into work."[124] Hortense Ward, the first woman to be admitted to the Texas bar, followed this model. She "was the usual married woman with three small children" before she joined her husband, also a lawyer, in practice.[125]

To these women lawyers, it was motherhood, not marriage, that required the sacrifice of their legal careers, and even this sacrifice was short-lived. "Unless there are children, there should be no conflict," explained one.[126] Another echoed this same view by stating that when "no children bless the union . . . it would be unthinkable to engage in no profitable or worthwhile business. The world needs workers too badly for women to sit idle."[127] Florence Allen, well-known as a pioneer woman judge, revealed the same views. "I believe that the time of the average housewife is taken up more with the *house* than with the *family* except when the children are small," she explained.[128]

While women lawyers in 1920 may have viewed marriage and career in a more progressive way than women lawyers in the 1880s, their views were a far cry from the self-assured claim to companionate marriage that seemed to propel so many women of

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120. BVI questionnaire no. 254 (Aug. 10, 1920).
121. BVI questionnaire no. 142 (March 5, 1920).
122. BVI questionnaire no. 148 (March 2, 1920).
123. BVI questionnaire no. 152 (March 20, 1920).
124. BVI questionnaire no. 136 (March 2, 1920).
125. BVI questionnaire no. 26 (no date available). *See also* BVI questionnaire no. 242 (April 26, 1920).
126. BVI questionnaire no. 189 (no date available).
127. BVI questionnaire no. 131 (March 27, 1920).
128. BVI questionnaire no. 6 (March 12, 1920).

this new generation into matrimony. In fact, many of the BVI women had serious doubts about how a woman lawyer would actually organize her life to balance marriage and career. Throwing their hands up in the air, they left that task to each individual woman. In doing so, they freed women from the behavior expected of Victorian women and embraced instead the new emphasis on individuality and diversity among women. But with this freedom came little guidance. Some (eight percent) admitted they had no idea how to resolve the paradox. Many of the staunchest advocates of marital equality (twenty-two percent) were at a loss to offer women any concrete suggestions on how to achieve that equality. Instead, they saw the question of balancing marriage and career as a personal one that each woman would have to resolve for herself. "If a professional woman marries and has children" wrote one woman, "whether she continues her chosen vocation is too personal for me to undertake: I can't dictate what her course shall be."[129] Another woman echoed her sentiment: "If a woman marries, she should solve her own problems. Any woman capable of passing a bar examination has mentality enough to map out her own life."[130] Single women felt especially unqualified to offer advice. "I am a spinster," explained one woman lawyer, "[m]y theories of marriage are so entirely without practical experience in the subject that I have no judgment in the matter."[131] Another echoed her views: "'Tis not for a very contented old maid to rush in where angels fear to tread."[132]

Simply put, to many women lawyers who advocated the integrated view of marriage and career, the question of how to balance the two successfully was "a matter of individual taste."[133] These women lawyers in 1920 insisted that each woman must reach her own solution, emphasizing individuality and diversity among women. Embedded within this emphasis was the new political goal shared by many women in the early twentieth century to replace the Victorian goal of equity between men and women with the modern goal of sexual equality.

However, this tendency to place the problem of balancing marriage and career in the hands of each individual woman lawyer revealed a darker side as well. Despite the optimistic claims about the hope of a future where women lawyers could balance marriage and career just as men, the call was more rhetoric than reality. Even among those women lawyers who were the most enthusiastic about the pursuit of this marital equality, half were at a complete loss to offer women lawyers any ideas about how to arrive at this goal. Moreover, by the mid-1920s, many women lawyers discovered first hand how difficult it was to balance their careers with marriage. Some, like Doty and Willebrandt, grew tired of the struggle and gave up their marriages. Others took the more traditional route, sacrificing their careers to save their marriages. Some women lawyers in 1920 counseled younger women to give up their career aspirations if their husbands did not want them to work. "[I]f your husband objects to your pursuing your profession, give it up," explained

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129. BVI questionnaire no. 156 (March 8, 1920).

130. BVI questionnaire no. 145 (March 1, 1920).

131. BVI questionnaire no. 146 (March 7, 1920).

132. BVI questionnaire no. 19 (March 19, 1920).

133. BVI questionnaire no. 304 (July 20, 1920). *See also* BVI questionnaire no. 122 (no date available).

one woman.[134] "[I]f the man objects," echoed another, "for the happiness of all concerned, give it up."[135]

Lucy R. Tunis, of Boston, followed this advice. Though she was a successful lawyer, she abandoned her active career for her husband. In an article entitled "I Gave Up My Law Books For A Cook Book," she admitted to the readers of *American Magazine* that she had failed in her attempt to have both a marriage and a career.[136] When she faced a choice between her own professional needs and those of her husband, she willingly abandoned her law practice in Boston and moved with her husband to New York. But according to Tunis, her sacrifice brought its own rich rewards, namely domestic fulfillment in the sanctuary of her home:

> And what was I to get in return? I would find happiness in the home that I knew I could create, the home that was to be an inspiration for my husband. I would gain satisfaction in being perfect at one job at least, in conquering the problem of housework that had baffled me, and in striving to make the husband I loved happy.[137]

In reality, there was no single, simple answer. Despite all the optimistic claims about equality for women in marriage and the possibility of balancing family and career, the truth was that for most women lawyers in the early decades of the twentieth century, marriage and law were not so easy to balance. Instead, a woman lawyer still faced the wrenching choice between building her career and nurturing her family. Sue Shelton captured the no-win situation: "Marriage is too much of a compromise; it lops off a woman's life as an individual. Yet the renunciation too is a lopping off. We choose between the frying-pan and the fire—both very uncomfortable."[138]

By the 1930s, several issues were clear. Women lawyers were practicing law in every state of the union and had established themselves as permanent members of the legal profession for the twentieth century. They worked in a wide range of situations including solo practice, law firms, business offices, government agencies, and courts. These accomplishments had fueled the optimism that many women lawyers shared at the beginning of the twentieth century. But by the 1920s many women lawyers began to recognize the limits of their professional progress. As they continued to encounter sexual discrimination, their high hopes of the future gave way to a more realistic acceptance of their current situation. The prediction in the 1920s of sexually integrated law firms in the 1930s looked increasingly naive and unattainable. Gradually, women lawyers faced the harsh truth that they were far from achieving their goal of professional equality with men.

And, so we return to Mary Lathrop, the first woman to integrate the ABA in 1917, who by 1930 had come to recognize the limits of women lawyers' accomplishments.

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134. BVI questionnaire no. 134 (no date available).

135. BVI questionnaire no. 144 (March 31, 1920).

136. Lucy R. Tunis, *I Gave Up My Law Books For a Cook Book*, AM. MAG. 34, 173 (1927).

137. *Id.* at 174; *see also* Jane Allen, *You May Have My Job: A Feminist Discovers Her Home*, 87 F. AND CENTURY 228 (1932).

138. THESE MODERN WOMEN: AUTOBIOGRAPHICAL ESSAYS FROM THE TWENTIES 52 (Elaine Showalter ed., 1978).

"The law is a man's field and will remain so. It will always be a battle for women."[139] Five years later, Burnitta Matthews echoed Lathrop's lament about men's power. "We live as yet in a man's world instead of a world for *all* human beings."[140] Moreover, even as women lawyers as a group traded in their optimism for a more realistic assessment of the task before them, they reached no consensus on how best to achieve their goal. Some women lawyers held on to the traditional feminine ways by reinterpreting the notion of sexual differences and women's unique virtues for the twentieth century. Others turned their back on these nineteenth-century values and pushed forward on their professional road, claiming the virtues of universal equality between men and women. For all women lawyers, the challenge of equality remained unresolved.

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139. *Bar Group*, *supra* note 1.

140. Matthews, *supra* note 98.