

Book Review: Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status, by Hilary Sommerlad and Peter Sanderson

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BOOK REVIEW

Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status

BY HILARY SOMMERLAD AND PETER SANDERSON
(Aldershot: Ashgate/Dartmouth, 1998) 348 pages.¹

The underlying issue which we are seeking to address through this book is the extent to which women and men are able to exercise real choice over the way in which they work and construct their careers... We criticise the role of the concepts of commitment and choice and the way they are mobilised to both affect and justify women's marginalisation in the professional labour market. The ambiguity of both terms is construed as an essential component of the profession's capacity to respond to women's increased presence in the profession with practices that ensure continued closure.²

This recent study of women solicitors in England and Wales adds significantly to theoretical perspectives and empirical data about women lawyers in the common law world. It directly confronts the traditional gendered culture of the legal profession and critically assesses the idea that women make different "choices," in contrast with men, and that it is women's different choices that deflect their legal careers.³ The study is based on research that was commissioned by the Law Society (U.K.) in the early 1990's to assess training needs that would encourage the re-entry of women solicitors to the legal profession,⁴ and then subsequently up-dated and reassessed in the mid-1990s. The authors argue that the "culture of

¹ [hereinafter *Gender, Choice and Commitment*].

² *Ibid.* at 7, 13.

³ This claim has also been examined critically by other scholars: see e.g. D.L. Rhode, "Perspectives on Professional Women" (1988) 40 *Stan. L. Rev.* 1163; C. Cockburn, *In the Way of Women: Men's Resistance to Sex Equality in Organizations* (Basingstoke: Macmillan, 1991). For a different assessment of the nature of "choice," see C. Hakim, *Key Issues in Women's Work: Female Heterogeneity and the Polarisation of Women's Employment* (London: Athlone Press, 1996).

⁴ The initial project attracted the interest of the Law Society (U.K.) (hereinafter *Law Society*) because of a threatened shortage of solicitors in the late 1980s as a result of the commercial property boom. In such a context, "women solicitors were, and were regarded as, a valuable human resource which employers would want to attract back to the profession, and ... the main problem was how to ease their re-entry": *Gender, Choice and Commitment*, *supra* note 1 at 8. As the authors note, the recession of the early 1990's resulted in the supply of solicitors exceeding demand with a consequential drop in the Law Society's interest in the retention of women solicitors. In addition, however, the authors' research revealed difficulties with existing strategies of retention because they did not address the major deterrents to women returning to the profession; rather than the problems of skills' deficit, the authors suggest that it was "the ethos, working practices and career structure of the profession itself" which diminished women's interest in returning to the profession: *ibid.* at 9.

lawyerdom” is a significant feature of the legal profession, particularly in relation to issues of gender, and that it has implications for understanding not only historical aspects of women’s experiences as lawyers, but also contemporary gender issues in the legal profession.

The book examines theories of gender and the labour market, focusing especially on women’s experiences in professional work (chapter 2). It then provides a brief analysis of the history of women’s entry into the legal profession in England and Wales, revealing close connections between ideologies and legal practices (chapter 3). The authors examine the reported experiences of men and women solicitors in more recent decades and the “choices” women make in the context of workplaces that are culturally masculine and that often fail to respond to the needs of many women solicitors in the ways they actually live their lives (chapters 4, 5, and 6). The authors’ analysis in these chapters reviews how “neutral” firm practices result in the exclusion of women solicitors. For example, the authors consider the ways in which ideas about “cultural capital” influence decision making about promotions and the impact of efforts to provide “accommodation” for women in the practice of law. The book also includes a detailed analysis of career breaks for maternity (chapter 7), which the authors regard as “pivotal to the book as a whole,” both because it is the most telling difference in the career trajectories of men and women who are lawyers, and also because the profession’s response to issues connected to motherhood “illuminate some particularly murky corners of the law as a patriarchal profession.”⁵ Throughout the book, Sommerlad & Sanderson critique theories which seek to explain career breaks in terms of different degrees of “commitment” and “choice” on the part of women and men in the legal profession. As the authors acknowledge, the book generally presents a rather bleak picture of women solicitors. However, in their thoughtful analysis of the kinds of policies that would contribute to a more equitable occupational culture, the authors make a significant contribution to the literature on women lawyers even as they recognize how difficult it may prove to achieve equality goals in practice.⁶

Gender, Choice and Commitment represents an important contribution to recent literature on women lawyers and builds in significant

⁵ *Ibid.* at 13.

⁶ The authors provide an excellent analysis of the complexity of achieving change in the legal profession. Significantly, they are sceptical about “the efficacy of measures which locate the source of the problem at the level of individual exchanges and interactions” since both perpetrator and victims of individual acts of discrimination are “enmeshed in sets of socially validated assumptions about legitimate behaviour... .” *ibid.* at 273. The authors’ recommendations are discussed more fully below.

ways on an increasing number of studies about women in the legal profession, most of which have appeared in the decade after Carrie Menkel-Meadow's stimulating comparative analysis of women lawyers in the late 1980s.⁷ Some of these recent studies have focused on the cultural context for women in the legal profession and have often been augmented by personal interviews with women with experiences in different kinds of legal workplaces. In Clare McGlynn's 1998 study of women members of the legal profession in the United Kingdom,⁸ for example, she carefully documented the barriers and opportunities (more of the former than the latter) which continued to exist for many of them. Her revealing narratives of women's experiences in academe, and as solicitors, barristers, and judges, demonstrated women lawyers' perseverance and optimism, often in the face of significant difficulties and disappointments. McGlynn rightly identified a need to connect these individual experiences and "herstories" to broader, institutional practices, "the economic structure of the firm and the legal profession, the nature of the law and legal culture, [and ...] the fact that women as a whole are disadvantaged in society as well as in the legal academy and profession."⁹

McGlynn's study in the United Kingdom followed a major theoretical study in Australia undertaken by Margaret Thornton in which she characterized women lawyers as merely "fringe-dwellers of the jurisprudential community."¹⁰ Thornton's study is important as the first

⁷ See C. Menkel-Meadow, "The Comparative Sociology of Women Lawyers: The 'Feminization' of the Legal Profession" in R. Abel & P. Lewis, eds., *Lawyers in Society: Comparative Theories*, vol. 3 (Berkeley: University of California Press, 1989) 196. This paper was part of a major comparative study of the legal profession worldwide, published in three volumes, although the gender issues were not addressed frequently in other contributions to this study. Menkel-Meadow's research relied on national reports prepared for the legal profession project in Canada, the United States, the United Kingdom, Scotland, New Zealand, Belgium, Germany, Norway, France, Italy, Spain, Yugoslavia, Brazil, Venezuela, Japan, and India. See also C. Menkel-Meadow, "The Comparative Sociology of Women Lawyers: The 'Feminization' of the Legal Profession" (1986) 24 *Osgoode Hall L. J.* 897.

⁸ C. McGlynn, *The Woman Lawyer: Making a Difference* (London: Butterworths, 1998).

⁹ *Ibid.* at 3. In Mona Harrington's 1994 study of women lawyers in the United States, there are also interesting narratives of women's experiences in the legal profession. Like McGlynn in the United Kingdom, Harrington identified barriers in the nature of law, legal education, and the culture of legal practice and law firms: see M. Harrington, *Women Lawyers: Rewriting the Rules* (New York: A.A. Knopf, 1994). For earlier studies of women lawyers in the United States, see C.F. Epstein, *Women in Law* (New York: Basic Books, 1981); C.F. Epstein, *Women in Law*, 2d ed. (Chicago: University of Illinois Press, 1993); and R.M. Kanter, "Reflections on Women and the Legal Profession: A Sociological Perspective" (1978) 1 *Harv. Women's L.J.* 1.

¹⁰ M. Thornton, *Dissonance and Distrust: Women in the Legal Profession* (New York: Oxford University Press, 1996) at 3-4.

sustained theoretical assessment of the reality of legal work and the impact of day-to-day culture within the legal profession at the end of the twentieth century. In particular, Thornton focused on changes in the nature of legal work that have coincided exactly with the entry of women in significant numbers to the legal profession. As she concluded:

... while acceptance of women within legal practice is hailed as a sign of progress, the dramatic changes that have occurred simultaneously in the structuring of law firms have rendered the advances a pyrrhic victory. The lawyer in the modern corporate law firm is subject to disciplinary practices that are a far cry from the claimed independence and autonomy of the past. The filling in of time sheets and the need to generate specific levels of income signify the most notorious manifestations of control.... The focus on income generation, effected through the phenomenon of billable hours, engenders a great deal of ambivalence among women, as employed solicitors are expected to dedicate themselves totally to their careers and to the firm.... Loyalty to the firm includes never complaining about its practices to an outside body...¹¹

Thornton critiqued the new trends to "corporatism" in the legal profession and the "commodification" of lawyers which has so frequently resulted. At the same time, she acknowledged how the reality of legal work now constitutes a formidable barrier to changes which would affect gender equality goals. Her theoretical analysis is especially important for its conclusion that "neither an increase in women nor the passing of time can provide an automatic remedy."¹²

Thornton's analysis is supported by the conclusions of other scholars in the United States¹³ and in Canada. For example, in their 1995

¹¹ *Ibid.* at 149-51.

¹² Thornton suggested that even the women who do "make it in a man's world" can do so only by assimilating the traditional (male) characteristics of the profession. Yet, she argued that "there is nothing potentially radical about such women because they do not wish to change any aspect of legal practice as it is"; moreover, women who conform to the traditional culture of the profession may confirm for others that gender is not an issue, and that there is no professional obligation to take initiatives which further gender equality goals: *ibid.* at 290-91.

A number of women solicitors interviewed by Sommerlad & Sanderson revealed how "women who do make it often accept the culture and become great exponents at it ... it's a real pity that these women perpetuate it all when they get there...": *Gender, Choice and Commitment*, *supra* note 1 at 191. As the authors note, however, some female partners who responded in these interviews explained that they experienced a distinct lack of power, relative to male partners, as a result of their small numbers and perceived "tokenism": *ibid.* at 192. See also C. Menkel-Meadow, "Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change" (1989) 14 *Law and Social Inquiry* 289 at 310.

¹³ The 1995 study by Bernard Lentz and David Laband, for example, analyzed thousands of responses to the *National Survey of Career Satisfaction/Dissatisfaction* administered by the American Bar Association in 1984 and again in 1990. They concluded that "relative to comparable men lawyers,

longitudinal study of the legal profession in Toronto, John Hagan and Fiona Kay¹⁴ examined the impact of gender in the context of survey data about reported experiences of men and women lawyers in relation to initial articling placements, progression to partnership, work and family conflicts, billing practices, and satisfaction levels. They concluded that the Toronto legal profession had become a “contested domain”¹⁵ by the end of the 1980s, with increased opportunities at the entry level for both male and female lawyers, but with evidence of a “glass ceiling” for women and also for some men. As the authors noted, “this was a period of growth with a ceiling on upward outcomes... Although the actual numbers of women and men lawyers at partnership levels of these firms increased in absolute terms during this period, their relative shares of partnership positions declined, and this ceiling effect was more pronounced for women than for men.”¹⁶ Moreover, as Joan Brockman’s more recent analysis of men and women in the legal profession in British Columbia¹⁷ confirms, one of the effects of this differential impact is the steady exit of higher numbers of women from the profession in the 1990s. In spite of their sense of commitment to the legal profession, revealed by long hours and successful client relationships,

women lawyers report a sense of powerlessness in the workplace, and they do not believe that their performance is evaluated on the basis of merit...” B. Lentz & D. Laband, *Sex Discrimination in the Legal Profession* (Westport, Conn.: Quorum Books, 1995) at xviii. For another analysis of the ineffectiveness of using civil rights law to challenge gender and other forms of inequality in the United States, see Kristin Bumiller, *The Civil Rights Society: The Social Construction of Victims* (Baltimore: Johns Hopkins University Press, 1988). See also J. Rosenberg *et al.*, “Now That We are Here: Discrimination, Disparagement, and Harassment at Work and the Experience of Women Lawyers” (1993) 7:3 *Gender and Society* 415.

¹⁴ J. Hagan & F. Kay, *Gender in Practice: A Study of Lawyers* (Oxford: Oxford University Press, 1995).

¹⁵ For other studies exploring the shifting and contested context of sex discrimination in the workplace, see G. Morgan & D. Knights, “Gendering Jobs: Corporate Strategy, Managerial Control and the Dynamics of Job Segregation” (1991) 5:2 *Work, Employment & Society* 181; and S. Halford & M. Savage, “Restructuring Organisations, Changing People: Gender and Restructuring in Banking and Local Government” (1995) 9:1 *Work, Employment & Society* 97.

¹⁶ Hagan & Kay, *supra* note 14 at 182. For a review of Hagan & Kay, as well as Thornton, *supra* note 10, see K. Hull and R. Nelson, “Gender Inequality in Law: Problems of Structure and Agency in Recent Studies of Gender in Anglo-American Legal Professions” (1998) 23 *Law & Social Inquiry* 681.

¹⁷ J. Brockman, *Gender in the Legal Profession: Fitting or Breaking the Mould* (Vancouver: UBC Press, 2001). Brockman used an initial sample which included all women and men called to the Bar of British Columbia between 1986 and 1990 and who were still members on 25 June 1993. Only those practising in government, a private law firm, or industry were included. The final group included women and men with from three to seven years at the Bar, with equal numbers of men and women among the one hundred lawyers interviewed individually for the study: *ibid.* at 14-17.

they often feel inadequately rewarded or acknowledged; it is *this* problem which shapes their “choice” to leave private practice.¹⁸

These studies are significant for their increasingly theoretical approach to recent developments in the legal profession and the extent to which gender shapes (and is also shaped by) women lawyers’ experiences in the profession. In this context, Sommerlad & Sanderson provide some further quantitative data, including the results of survey data and individual interviews with men and women solicitors in England and Wales;¹⁹ their data and survey responses suggest that the position of women solicitors in the United Kingdom is strikingly similar to the conclusions of the studies undertaken in other jurisdictions. Thus, the United Kingdom data confirms that the entry of large numbers of women to the legal profession in the United Kingdom has not resulted in the erosion of gender bias or in the elimination of obstacles for women who engage in legal work.²⁰ However, numerical equality has contributed to claims that differing levels of achievement for women and men who are solicitors must be due to different kinds of “choices” and degrees of “commitment.”²¹ By contrast,

¹⁸ As Brockman, *ibid.* at 198, argued:

For the women in this study, partnerships in large firms were non-existent. The six women partners worked with their spouses or in other small firms... A number of women, on the verge of partnership, had left their firms with glowing references when they were told they were not going to make it. In contrast, ten men were partners ... and another fourteen aspired to partnership... Clearly, there is little indication that women are achieving partnership status in firms even when they set out to do so.

Moreover, as Deborah Rhode commented, the exit of women (and men) with different priorities leaves firms without dissenting voices in terms of its homogeneous culture; according to Rhode, the result of exits by “lawyers with noncompetitive orientations or strong commitments to family or nonprofit pursuits drift out of firm hierarchies, leaving management composed largely of those who accept revenue-maximizing priorities. That selection process perpetuates a culture well insulated from alternative values”: D.L. Rhode, “Ethical Perspectives on Legal Practice” (1985) 37 *Stan L. Rev.* 589 at 634. See also D.L. Rhode, *In the Interests of Justice: Reforming the Legal Profession* (Oxford: Oxford University Press, 2000).

¹⁹ The study was longitudinal, based on surveys and interviews conducted at three different periods with a total of forty-seven women solicitors in “adjacent rural and urban areas in the North of England, although some of the 1997 interviewees were drawn from London”: *Gender, Choice and Commitment*, *supra* note 1 at 304. Survey data and interviews were also assessed in relation to training providers, recruitment agencies, the Association of Women Solicitors, local Law Societies, and model firms and other employers. For details of the methodology of the study, see *ibid.* at 8-11, 291-305.

²⁰ See *ibid.* at 153, 158, quoting Rosenberg *et al.*, *supra* note 13 at 422.

²¹ See also J. Williams, “Gender Wars: Selfless Women in the Republic of Choice” (1991) 66 *N.Y.U.L. Rev.* 1559; K. Hull & R. Nelson “Assimilation, Choice, or Constraint? Testing Theories of Gender Differences in the Careers of Lawyers” (2000) 79 *Social Forces* 229; and M.J. Mozzman,

Sommerlad & Sanderson argue that the culture of the profession increasingly requires that solicitors have more than technical skills and legal knowledge; real success in the profession requires:

cultural, and, specifically, relational capital. Consequently, the individual solicitor needs to demonstrate the kind of social knowledge and ability which is a sign of eligibility for patronage. This sort of cultural capital can not be accumulated simply through formal study, but requires participation in complex forms of socialisation and 'initiation rites', many of which revolve around masculine culture. As a result, arguably masculinity per se remains *the* core cultural capital of the profession, largely because this in turn assists the professional to build up the relational capital which is vital to a firm's survival.²² [footnotes omitted]

As a result, the authors conclude that, by contrast with earlier generations of women lawyers, sex discrimination is now taking place *during* a woman's career trajectory, rather than *at the point of entry*.

Overall, this book provides further data, both quantitative and qualitative, about women lawyers' experiences, and thoughtfully explores theoretical explanations for the differences between the careers of women and men solicitors in the United Kingdom. In this way, the authors have made an important contribution to the project of mapping contemporary issues for women in the legal profession.²³ Yet, the book is perhaps even more important for its careful analysis of the systemic barriers to meaningful change in the profession and its assessment of the kinds of strategies which might be useful for those who want to pursue needed changes. Like others, Sommerlad & Sanderson recognize that there are formidable barriers to accomplishing real changes in the legal profession. As Judith Resnik suggested, in the context of the work of numerous task forces on gender bias in the American legal profession,

"Lawyers and Family Life: New Directions for the 1990's" (1994) 2 *Feminist Legal Stud.* 61 & (1994) 2:2 *Feminist Legal Stud.* 159.

²² *Gender, Choice and Commitment*, *supra* note 1 at 119. The authors also quote a female academic and former practitioner who suggested that a "very laddish culture" appeared to be taking over from the "old, more gentlemanly style of male culture" in aggressive commercial firms: for this respondent, the laddish culture focused on sex, drinking, etc, and other "disgusting" manifestations: *ibid.* at 148. Interestingly, Brockman reported that one of her female respondents suggested that sex discrimination in the legal profession was perpetuated not only by members of the "old boys' club," but also among younger male lawyers—the "baby dinosaurs"—who were replacing them: see Brockman, *supra* note 17 at 200.

²³ For an overview of women lawyers in a number of different jurisdictions, see U. Schultz & G. Shaw, eds., *Women in the World's Legal Professions* (Oxford: Hart, 2002). In the United Kingdom, see also C. McGlynn, ed., *Legal Feminisms: Theory and Practice* (Aldershot: Ashgate/Dartmouth, 1998); H. Sommerlad, "The Myth of Feminisation: Women and Cultural Change in the Legal Profession" (1994) 1 *International Journal of the Legal Profession* 31.

a decade of academic and court-based documentation of deep-seated and endemic unfairness has not undermined the resiliency of legal culture. Although task forces find pervasive discriminatory behavior (predicated on race, ethnicity, and "even gender") that affects the judicial process in a myriad of illicit ways, "apocalyptic consequences" have not followed. The powerful structures of the law ... can even authorize inquiry, ask forbidden questions, obtain information, and still remain impenetrable to profound change. The fundamental accusation—oppression intrinsic in the delivery of justice—remains beyond comprehension.²⁴

In this context, Sommerlad & Sanderson adopt Bourdieu's concept of social fields to explain how individual agency is structured within social fields.²⁵ They argue that in the "juridical field" of the legal profession, it is necessary to take account of the interrelationship between the discourse and ideology of law, the position of women in society, and the culture of legal practice to explain how "asymmetrical power relations between men and women, both in the workplace and in society at large" are reproduced.²⁶ Accordingly, the authors suggest that "strategies which are designed to transform the properties of the social field which is the legal profession are more likely to have a lasting effect than those which aim to transform the prospects of individuals."²⁷ Included among these strategies are efforts to make men visible as a category through sex discrimination litigation, with support from organizations of women lawyers and the Law Society to overcome the "privacy" claims of firms. They recognize a role for the Law Society in exercising regulatory restraint over the profession, but argue that the achievement of real change will require alliances between the Law Society and autonomous women lawyers' organizations, statutory bodies with responsibility for effecting anti-discrimination policies, and sympathetic bureaucrats.²⁸ In addition to these strategies, however, Sommerlad & Sanderson also explore the ways in which the state, as a

²⁴ J. Resnik, "Ambivalence: The Resiliency of Legal Culture in the United States" (1993) 45 *Stan. L.R.* 1525 at 1535. For an assessment of the CBA task force recommendations in Canada, see M.J. Mossman, "Gender Equality Education and the Legal Profession" (2000) 12 *Supreme Court L.R.* (2d) 187.

²⁵ P. Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field" (1987) 33 *Hastings L.J.* 805.

²⁶ *Gender, Choice and Commitment*, *supra* note 1 at 259.

²⁷ *Ibid.* at 273-74, quoting S. Fredman, *Women and the Law* (Oxford: Clarendon Press, 1997) at 415.

²⁸ They make suggestions for Law Society policies about different levels of practising fees and insurance premiums, training programmes for those returning to practice after a career break, and the production of information packages for firms and employees about standardized firm practices: *Gender, Choice and Commitment*, *supra* note 1 at 276.

major client of legal services, could use its role as “a major lever for initiating professional change,” especially in relation to contracts for legal services, including legal aid services. As well, they suggest that the current context of upheaval in the legal profession might provide some incentive for firms to adopt measures of assessment which meet criteria of “economic rationality and neutrality and fairness” rather than using “fee targets as a measure of performance, where quantity tends to be a proxy for quality.”²⁹ And significantly, Sommerlad & Sanderson argue that “the transformation of mothering (and caring in general) into a genuinely valued, visible and socialised occupation known as parenting, is fundamental to both achieving deep-seated professional and cultural change ... and to making different career trajectories a matter of unconstrained individual choice—for both men and women.”³⁰

Gender issues are buried deep in the culture of the legal profession, and not only in the United Kingdom. In their book, Sommerlad & Sanderson have demonstrated how the individual experiences of men and women solicitors reveal systemic patterns of “choices,” and that reform initiatives will succeed only to the extent that they confront these underlying, fundamental barriers to change. For both women and men who are lawyers, therefore, the pressing challenge is to explore “the extent to which women and men are able to exercise real choice over the way in which they work and construct their careers.”³¹ *Gender, Choice and Commitment* represents a major contribution to the problems and possibilities of addressing this issue.

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²⁹ *Ibid.* at 280-81.

³⁰ *Ibid.* at 282, quoting: A. Hochschild, *The Second Shift: Working Parents and the Revolution at Home* (New York: Viking Penguin, 1987); and S.M. Okin, *Justice, Gender and the Family* (New York: Basic Books, 1989).

³¹ *Gender, Choice and Commitment*, *supra* note 1 at 7. As Sommerlad has argued elsewhere, “beneath the rhetoric of change and the appearance of transparent bureaucratic procedures, we can see a shadow structure in which lip service is paid to these procedures whilst power is preserved through the flexibility of such concepts as merit...”: see H. Sommerlad, “Women Solicitors in a Fractured Profession: Intersections of Gender and Professionalism” (W.G. Hart Legal Workshop, Institute of Advanced Legal Studies, 27 June 2001) at 15.