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WOMEN LAWYERS AND WOMEN'S LEGAL EQUALITY: REFLECTIONS ON WOMEN LAWYERS AT THE 1893 WORLD'S COLUMBIAN EXPOSITION IN CHICAGO

MARY JANE MOSSMAN*

I. WOMEN LAWYERS AND THE CHICAGO EXPOSITION IN 1893: GENDER AND THE EMERGENCE OF PROFESSIONAL IDENTITY

The woman lawyer is largely a development of the last twenty-five years and of this country. . . . No other country has half as many women in the legal profession.¹

As this comment in *Leslie's Illustrated Weekly* proclaimed in 1896, women in the United States were the first to successfully challenge their exclusion from the legal profession in the last decades of the nineteenth century. Thus, Arabella Mansfield became the first woman to gain admission to the Iowa bar in 1869, while Ada Kepley was the first woman to obtain the LLB (Bachelor of Laws) degree when she graduated from what is now Northwestern University in 1870.² Although a major setback for women lawyers occurred when the United States Supreme Court denied Myra Bradwell's claim for admission to the bar of Illinois in 1873,³ later statutory reforms permitted women to become members of the legal profession in Illinois and in other states in significant numbers.⁴ For example, by 1900, there were over 100 fe-

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1. *Women Lawyers*, 83 *LESLIE'S ILLUSTRATED WKY.* 363 (1896).

2. MARY JANE MOSSMAN, *THE FIRST WOMEN LAWYERS: A COMPARATIVE STUDY OF GENDER, LAW AND THE LEGAL PROFESSIONS* 26-27 (2006). See also VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* (1998); D. Kelly Weisberg, *Barred from the Bar: Women and Legal Education in the United States 1870-1890*, 28 *J. LEGAL EDUC.* 485 (1976-77).

3. *In re Bradwell*, 55 *Ill.* 535 (1869); *Bradwell v. Illinois*, 83 *U.S.* 130 (1872).

4. MOSSMAN, *supra* note 2, at 26-28. See also KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA 1638 TO THE PRESENT* (1986).

male members of the Illinois bar, including one African American woman.⁵

In this context, women's success in gaining access to state bars in the United States provided encouragement to women in other jurisdictions to challenge the male exclusivity of their legal professions. For example, when Marie Popelin's application for admission to the bar in Belgium was denied by a lower court and also by the Court of Appeals in 1888, she noted that the courts' decisions had cited Roman law, customs of the Middle Ages, and the Napoleonic Code, but they had failed to address changes in women's lives and "especially . . . the experience [of the woman lawyer], tried with success in the United States."⁶ By the turn of the twentieth century, women began to achieve some success in their quest to gain admission to the bar in a few jurisdictions beyond the United States, including Canada, New Zealand, France, and Australia.⁷ However, in many other countries, including England and Belgium, women did not become eligible to join the legal professions until after World War I, and, unfortunately, Marie Popelin died in 1913 without ever achieving her goal of becoming an *avocat*.⁸

Yet, with increasing numbers of women lawyers in the United States in the 1890s, and perhaps as a means of encouraging women to seek admission to the bar in other jurisdictions, a group of American women lawyers decided to participate in the Congress on Jurisprudence and Law Reform, one of a number of international Congresses planned in conjunction with the World's Columbian Exposition in Chicago in 1893.⁹ As a contemporary account explained, these Congresses were intended to discuss themes in relation to art, science, literature, education, government, jurisprudence, ethics, religion, reform, "and other departments of intellectual activity and progress."¹⁰ According to

5. Gwen Hoerr Jordan, *Creating a Women's Legal Culture: Women Lawyers in Illinois, 1855-1939*, at 1 (2004) (unpublished PhD dissertation, University of Illinois at Chicago) (on file with University of Illinois). See also CHICAGO BAR ASSOCIATION ALLIANCE FOR WOMEN, *BAR NONE: 125 YEARS OF WOMEN LAWYERS IN ILLINOIS* (Gwen Hoerr McNamee ed., 1998).

6. Letter from Marie Popelin to the Equity Club in the U. S. (1890), in *WOMEN LAWYERS AND THE ORIGINS OF PROFESSIONAL IDENTITY IN AMERICA: THE LETTERS OF THE EQUITY CLUB, 1887 TO 1890*, at 199 (Virginia G. Drachman ed., 1993) [hereinafter *WOMEN LAWYERS*].

7. Clara Brett Martin was admitted to the bar in Ontario, Canada in 1897, and a few months later, Ethel Benjamin was admitted as a barrister in New Zealand. After an unsuccessful application for admission to the Paris bar in 1897, a statutory amendment permitted Jeanne Chauvin and Olga Balachowsky-Petit to be admitted to the bar in France in 1900. In Australia, Grata Flos Grieg was admitted to the bar of the state of Victoria in 1903. For details, see MOSSMAN, *supra* note 2, at chs. 2, 4, 6.

8. MOSSMAN, *supra* note 2, at 117-19, 274-75.

9. CHI. LEGAL NEWS, July 15, 1893, at 397.

10. *Law Reform Congress*, 95 L. TIMES: J. REC. L. LAW. 330 (1893) (Eng.).

Mary Greene, a woman lawyer in Boston, it was Myra Bradwell who was responsible for achieving inclusion of four women lawyers on the Congress platform alongside male judges and lawyers, rather than holding a separate Congress for women lawyers on their own.¹¹ Not surprisingly, the appearance of women lawyers at this international legal Congress was regarded as a notable achievement. As the *Law Times* in England reported, this was “the first time in the history of the world [that] an international congress of lawyers has been held in which women lawyers have taken part.”¹²

In the context of women lawyers’ success in achieving participation in the Congress on Jurisprudence and Law Reform, my paper examines the presentations of the four women lawyers who were selected to participate along with male lawyers and judges. In doing so, I want to assess whether, or to what extent, the women lawyers’ papers reveal a sense of connection between these women lawyers and the significant reform issues promoted by the nineteenth century movement for women’s equality. In this way, my paper engages with Nancy Cott’s observation that the first American women to enter the professions in the nineteenth century generally recognized their struggles as part of the greater “Cause of Women.” In Cott’s words, early women lawyers understood “the practice of law [as] . . . a part of the broad movement to achieve equal rights [for women]. . . .” Yet, as Cott also noted, as a result of the increasing magnetism of “professional ideology” by the turn of the twentieth century, women lawyers increasingly sensed more of “a community of interest between themselves and professional men, and a gulf between themselves and nonprofessional women.”¹³ That is, the sense of gender identity between the first women lawyers and the women’s equality movement in the decades of the 1870s and 1880s gradually receded and was replaced by a new sense of identity with the legal profession and its culture and ideology in the early twentieth century.

In this way, the papers presented by these four women lawyers at the Congress on Jurisprudence and Law Reform in 1893 offer a significant “moment in time” to examine this question about identity among women lawyers in the last decade of the nineteenth century, as they negotiated between their gendered experiences as *women* and their

11. Letter from Mary Greene to Louis Frank, (Sept. 9, 1896) (on file with Bibliothèque Royale, Brussels, Section des Manuscrits, Papiers Frank # 6031 (file 2)).

12. *Women in the Law Reform Congress*, 95 L. TIMES: J. REC. L. LAW. 402 (1893).

13. NANCY F. COTT, *THE GROUNDING OF MODERN FEMINISM* 232–34 (1987).

professional roles as *lawyers*. Indeed, the Chicago Exposition reflects some of this transition in women lawyers' identity. Thus, on one hand, the Congresses associated with the Chicago Exposition in 1893 confirm Cott's conclusion about the magnetism of "professional ideology," since women lawyers participated alongside male lawyers and judges in the Congress on Jurisprudence and Law Reform. By contrast, women lawyers were generally unrepresented in the Congress on Representative Women after a split developed between some women lawyers and the married women philanthropists involved in the women's Congress.¹⁴ On the other hand, at the same time that women lawyers' participation in the legal Congress may have emphasized an emerging sense of professional identity among them, and a "gulf between themselves and nonprofessional women," women lawyers at the Chicago Exposition also organized their own meetings, as *women* lawyers, under the auspices of the Queen Isabella Association,¹⁵ an arrangement that may suggest the emergence of a companion identity that is professional but also gendered: an identity as *women* who were also *lawyers*. In this way, the Chicago Exposition provides an opportunity to examine and reflect on these questions about women lawyers and their identity in terms of gender and professionalism in the late nineteenth century.¹⁶

In the context of these issues, this paper focuses specifically on the presentations of the four women lawyers who participated in the Congress on Jurisprudence and Law Reform in 1893. Since the overall theme of the Congress was law reform, the paper examines whether, or to what extent, these four women presenters used their opportunity as participants in the Congress on Jurisprudence and Law Reform to promote the equality goals of the women's movement in their presentations. More precisely, to what extent did women lawyers at the Congress on Jurisprudence and Law Reform in 1893 envisage a (continuing) responsibility to foster law reform in women's interests? The next section provides some biographical information about these four women lawyers and an overview of their presentations to the Congress. In the final section, the paper offers an assessment of these presentations in relation to issues in the movement for women's equal-

14. Jordan, *supra* note 5, at 247–51.

15. Letter from Catharine Waugh-MacCulloch to Louis Frank, enclosing the program for the meetings of the Queen Isabella Association, Law Department (on file with Bibliothèque Royale, Brussels, Section des Manuscrits, Papiers Frank # 7791–6 (enveloppe 1)). CHICAGO BAR ASSOCIATION ALLIANCE FOR WOMEN, *supra* note 5, at 34.

16. See Mary Jane Mossman, 'Le Féminisme' and Professionalism in Law: Reflections on the History of Women Lawyers, in TRANSCENDING THE BOUNDARIES OF LAW: GENERATIONS OF FEMINISM AND LEGAL THEORY 9, 18–19 (Martha Albertson Fineman ed., 2011).

ity, and some comments about whether, and to what extent, these four papers reflect an emerging professional identity for women lawyers in 1893.

II. GENDER EQUALITY AND LAW REFORM: WOMEN LAWYERS' PRESENTATIONS AT THE CONGRESS ON JURISPRUDENCE AND LAW REFORM¹⁷

The Congress on Jurisprudence and Law Reform commenced on Monday, August 7th, and all four of the women lawyers' papers were presented on the second day of the Congress. Two of these four women lawyer participants were Americans: Mary Greene, admitted to the bar in Boston in 1888,¹⁸ and Clara Foltz, the first woman admitted to the bar of California in 1878.¹⁹ By 1893, Greene had become involved in legal education, and she had published several articles on legal topics, and these accomplishments may have encouraged Bradwell to select her as a presenter. Foltz was also an accomplished speaker, writer, and campaigner on a variety of public policy issues (including women's suffrage), and may have been selected by Bradwell to ensure representation from both eastern and western states. Greene and Foltz both attended the Congress and presented their papers in person.

In addition to these two American women lawyers, Bradwell's committee invited two women who had studied law in England, although neither of them was yet a member of the legal profession in 1893. However, since there were almost no women lawyers outside the United States in 1893, these two women reflected how women were aspiring to join the professions, including law, at the end of the nineteenth century. Interestingly, the two women selected to participate in the Congress from jurisdictions outside the United States were both actively engaged in legal work in 1893 (even though they had not attained formal admission to the profession). For example, Eliza Orme had become the first woman to attain the LLB degree at the University of London (and in the British Empire) in 1888, but she had also opened a law office in Chancery Lane in the 1870s, after a short apprenticeship at Lincoln's Inn. By the early 1890s, she was well known for her legal work, and also for public speaking and writing, particularly on issues

17. Most of the papers presented at the Congress on Jurisprudence and Law Reform, including those of the four women lawyers, were published in *CHI. LEGAL NEWS*, Aug. 12, 1893, at 431–33. The program for the Congress appeared in *CHI. LEGAL NEWS*, July 15, 1893, at 425.

18. Lelia J. Robinson, *Women Lawyers in the United States*, 2 *GREEN BAG* 10, 30–31 (1890).

19. BARBARA ALLEN BABCOCK, *WOMAN LAWYER: THE TRIALS OF CLARA FOLTZ* 30–32 (2011).

about women's equality rights and suffrage.²⁰ The other international participant was Cornelia Sorabji, a Parsi Christian woman from Pune in India, who had studied law at Oxford and was the first woman to sit the BCL (Bachelor of Civil Law) exams there in 1892, even though she did not receive her law degree until Oxford University began to grant degrees to women after World War I.²¹ By 1893, Sorabji had returned to India and she had started to represent clients, particularly the *Purdahnashins* ("secluded women"), in some indigenous courts in India. Unfortunately, however, neither Orme nor Sorabji was able to attend the Congress on Jurisprudence and Law Reform in person. As a result, their papers were read by women lawyers from Chicago, Mary Ahrens and Bessie Bradwell Helmer, respectively.²²

Before assessing these papers and their connections, if any, to ideas about legal reform and women's equality rights, this section provides an introduction to these four women lawyer presenters and a brief overview of their papers.

*A. Mary A Greene: "Married Women's Property Acts in the United States, and Needed Reforms Therein"*²³

As noted, Mary Greene was a strong proponent of education (including education about law) for women. Indeed, her correspondence reveals her conviction that women's equality would be better achieved by more education about women's rights, rather than by the vote. As she explained in correspondence with the Belgian barrister Louis Frank, Greene firmly disagreed with suffragists that the "ballot will cure all ills," and preferred to "teach women how to use the power and the rights they already possess."²⁴ By the late 1880s, Greene was probably becoming well known through her writing. For example, she had appeared in a case in which she argued in support of the legal enforcement of contracts between husband and wife, and then published her arguments in the *American Law Review*.²⁵ Greene had also trans-

20. Leslie Howsam, *'Sound-Minded Women': Eliza Orme and the Study and Practice of Law in Late-Victorian England*, 15 ATLANTIS: WOMEN'S STUD. J. 44, 46 (1989). See also MOSSMAN, *supra* note 2, at ch. 3.

21. See SUPARNA GOOPTU, CORNELIA SORABJI: INDIA'S PIONEER WOMAN LAWYER 71, n.76 (2006). See also MOSSMAN, *supra* note 2, at ch. 5.

22. CHI. LEGAL NEWS, Aug. 12, 1893, at 431, 434.

23. *Id.* at 433-34.

24. Letter from Mary Greene to Louis Frank (May 1895) (on file with Bibliothèque Royale, Brussels, Section des Manuscrits, Papiers Frank, 7791-6 (envelope 1)).

25. Robinson, *supra* note 18, at 30.

lated a monograph about women lawyers, written in French by Louis Frank, which had been published serially in the *Chicago Law Times* in 1889.²⁶ Thus, she was well qualified to present a paper to the Congress on Jurisprudence and Law Reform.

Greene's paper for the Congress in Chicago provided a comprehensive and detailed overview of recent statutory reforms concerning married women's property rights throughout the United States. Her paper carefully explained their impact, and identified where further reforms were needed to overcome inconsistencies and omissions. The paper reveals that Greene's goal was to define a "perfect" statute: one that provided "an orderly and systematic application of a definite theory of the condition and powers of a wife."²⁷ In particular, Greene argued that a "perfect" Married Women's Property Act should not only confirm the wife's sole ownership of her property, but provide expressly for her sole control and power of disposition *inter vivos* or by will, and for her right to make contracts, incur liabilities, and to sue and be sued (including as between husband and wife).

Having identified the content of a "perfect statute," Greene's presentation then focused on the terms of existing statutes, concluding that the "Perfect Married Women's Property Act is not yet evolved." For Greene, therefore, there was a duty to enact additional statutory reforms because it was necessary for the law to respond to recent social changes. As Greene noted, the rise of trade and commerce, the growing significance of personal property rather than land, and the fact that women were no longer obliged to devote themselves to domestic duties exclusively, all created urgent needs for legal reforms that reflected new social realities. In defining the need to ensure that legal transactions between married women and third parties could be enforced, she argued that there was a need for "a systematic, logical application of a definite principle" to replace existing confusion in the statutes. As she asked rhetorically:

Is it not the duty of the law-making power to recognize [the need for legal reform] and to enact laws that shall place wives upon a footing of legal responsibility for their acts, rather than to encourage dishonesty and disregard of moral obligations by invalidating transac-

26. Louis Frank, *The Woman Lawyer*, 3 CHI. L. TIMES 74-86, 120-40, 253-68, 382-411 (Mary A. Greene trans., 1889).

27. Greene, *Married Women's Property Acts in the United States, and Needed Reforms Therein*, in CHI. LEGAL NEWS, Aug. 12, 1893, *supra* note 17. Significantly, Greene did not address the fundamental rationale for the reform of married women's property in the United States, an issue discussed in NORMA BASCH, *IN THE EYES OF THE LAW: WOMEN, MARRIAGE AND PROPERTY IN NINETEENTH-CENTURY NEW YORK* (1982).

tions made in good faith, on the sole ground that one of the parties thereto happens to be married?

As her paper clearly demonstrated, Greene was highly confident about the ability of law reformers to create order amidst the challenges of changing social conditions.

*B. Eliza Orme: "The Legal Status of Women in England"*²⁸

According to *The Law Times* in London in 1893, Eliza Orme was "regarded as one of the ablest women in England."²⁹ Indeed, by the early 1890s, Orme had been appointed by the British government to an important Royal Commission on Labour, with responsibility for investigating the working conditions for women in England, Scotland, Wales, and Ireland. When the report was submitted by Orme and her women colleagues in September 1893, Beatrice Webb's published review suggested that it was the "most valuable" of all the reports prepared for the Royal Commission.³⁰ However, because of her extensive research activity for the Commission, Orme had initially declined the invitation to attend the Congress in Chicago. Pressed by the organizers to reconsider, she agreed to prepare a brief paper about the status of women in England to be read at the Congress.

Orme's succinct paper included a brief description of women's constitutional rights, including their lack of voting rights. She noted briefly that the suffrage issue remained controversial, indicating that there were members of both political parties in Britain who supported, and also opposed, this reform. In relation to married women, Orme reported that although they did not yet have complete personal liberty, their rights were increasing as a result of a number of recent legal reforms. Significantly, however, Orme also reported on the reforms to married women's property enacted after 1870 in England. Moreover, she expressed reservations about the practical impact of these legal reforms, noting that:

Wealthy persons continue to protect their female relatives with settlements as before, while the poorer classes derive but little benefit

28. CHI. LEGAL NEWS, Aug. 12, 1893, at 431.

29. *Women in the Law Reform Congress*, *supra* note 12, at 402. Indeed, the visibility of Orme as a public figure was noted by Susan B. Anthony when she visited Orme in 1883, and by Jessie Wright, a recent member of the bar of Massachusetts, who visited her in 1888. For details, see CHRISTINE BOLT, *THE WOMEN'S MOVEMENTS IN THE UNITED STATES AND BRITAIN FROM THE 1790S TO THE 1920S* 179 (1993); Letter from Jessie Wright to the Equity Club (Apr. 23, 1888), in *WOMEN LAWYERS*, *supra* note 6, at 141-45.

30. Beatrice Webb, *The Failure of the Labour Commission*, 36 *NINETEENTH CENTURY* 2, 9-10 (July 1894).

from the change of law. A poor woman earning a weekly wage is cajoled or coerced into giving it to her drunken husband and *no law can prevent it*. I do not believe that the Married Women's Property Acts have had any appreciable effect on our social system (emphasis added).

Orme also criticized the custom of (equitable) settlements of property for married women on the basis that trustees, appointed to administer such property settlements had no personal interest in them, but also because such settlements ensured that women remained "mere children" with respect to their own property. As she concluded, "It would be a great advantage to England if property were always managed by those who spend the income."

Orme's critical views about married women's property reforms may have reflected her experience in her law practice, but they also revealed her longstanding conviction that women must take personal responsibility for themselves by *exercising* their rights. Indeed, Orme had published a similar argument in 1874 when she objected to references to independent women as "strong minded." Instead, she had suggested that independent women be regarded as "sound minded," arguing that women should be able to "take a journey by railway without an escort, . . . stand by a friend through a surgical operation, [but] . . . wear ordinary bonnets and carry medium-sized umbrellas."³¹ Moreover, although Orme's paper for the Congress was brief, more in the character of a legal memo than an academic paper, her personal commitment to women's independence and equality was clearly in evidence. Perhaps significantly, Belva Lockwood commented that Orme's contribution was "short but interesting."³² Orme continued her legal and public activities for at least a decade after the Chicago Exposition, but by the time that women became eligible for admission to the bar and the solicitors' profession in Britain after World War I, Orme was already in her early 70s and had retired from her legal work.³³

*C. Cornelia Sorabji: "The Legal Status of Women in India"*³⁴

Cornelia Sorabji's paper reveals her skilfulness in persuading a Western audience to respond to the needs of vulnerable women in India, a distant colony of the British Empire. Indeed, she had acquired this skill when she attended Oxford with support from prominent indi-

31. Eliza Orme, *Sound-Minded Women*, THE EXAMINER, Aug. 1874, at 820.

32. Belva A. Lockwood, *The Congress of Law Reform*, 3 AM. J. POL. 321, 324 (1893).

33. MOSSMAN, *supra* note 2, at 152–53.

34. CHI. LEGAL NEWS, Aug. 12, 1893, at 434–35.

viduals in England who were interested in educating Indian women (especially Christians) in the late nineteenth century, as part of a “mission” to send British-educated Indian women home to “civilize” native women in British India.³⁵ Both as the first woman to study law at Oxford, and as a Christian Indian woman in Britain, Sorabji had gained access to influential diplomatic, artistic, religious, and intellectual circles there, and was even presented to Queen Victoria before returning home to India in 1893.³⁶ Although not formally admitted to the bar in India, Sorabji was initially permitted to appear for clients in several indigenous courts in India.³⁷

Sorabji’s paper for the 1893 Congress was a revised version of a paper she had delivered to a private audience in London in March 1893, just before she returned to India.³⁸ Her paper for the Congress described in detail the substance of Muslim and Hindu laws about women and property in India, demonstrating how these women had greater rights with respect to property than women in Britain, even after the significant reforms enacted there in the 1870s and 1880s. Yet, notwithstanding the rights of Muslim and Hindu women, Sorabji’s paper explained how their rights were limited in practice because they often lacked access to independent legal advice and the means to enforce their rights. This problem occurred because, as *Purdahnashins*, women were prohibited from communicating with men other than family members, so that women’s interests could be thwarted by male relatives or their male agents in courts and other public settings.³⁹ After reporting some dire experiences with fraudulent agents on the part of Indian women, Sorabji concluded that this problem could be solved by the appointment of *women* lawyers in British India who could provide legal advice and representation for the *Purdahnashins*.

35. ANTOINETTE BURTON, AT THE HEART OF THE EMPIRE: INDIANS AND THE COLONIAL ENCOUNTER IN LATE-VICTORIAN BRITAIN 115 (1998).

36. MOSSMAN, *supra* note 2, at 205–06. See also CORNELIA SORABJI, INDIA CALLING: THE MEMORIES OF CORNELIA SORABJI 27–29 (1934).

37. Sorabji later achieved international fame in 1896 when she defended an accused in a murder trial in a British court in India, the first woman to plead in a British court within the British Empire. *A Pioneer in Law*, 27 ENGLISHWOMAN’S REV.SOC. INDUS. QUESTIONS 217–18 (1896).

38. Cornelia Sorabji, Address at Queen’s House, Chelsea: The Law of Women’s Property in India in Relation to Her Social Position (Mar. 19, 1893) (transcript available in the British Library, Sorabji Papers, F165/117) (later published as *The Legal Status of Women in India*, in THE NINETEENTH CENTURY 854 (November 1898)).

39. *Id.* Both Hindu and Muslim women lived in *purdah* in northern India in the late nineteenth century. Sorabji explained the nature of *purdah* for her British readers in *Safeguards for Purdahnashins*, 15 IMPERIAL AND ASIATIC REV. 69, 863–64 (January 1903).

As she concluded, the obvious remedy for this injustice was the creation of positions for

[a] few women with a love for and a knowledge of law, and a love for Indian women, and a knowledge of their needs, who will brave the reproach and the attendant difficulties of untried labor, and will devote their heads and . . . their lives to the work.

Sorabji's paper for the Congress reveals her skill in appealing to a sense of "mission" among these international jurists in relation to law in nineteenth century colonial jurisdictions. Indeed, Antoinette Burton concluded that Sorabji had "pathologized the world of the *Purdahnashin*" to achieve her goal as a woman lawyer, while identifying herself with the modern colonial establishment.⁴⁰ At the same time, Sorabji's bold proposal to the Congress in Chicago in 1893 reveals both her skilfulness in seeking international support for the employment of women lawyers in India and her determination to achieve her personal independence through legal work. And, significantly, in 1893, Sorabji was the only qualified candidate for any such employment in India. All the same, it was not until a decade later in 1904 that her well-orchestrated lobbying efforts resulted in her appointment as Lady Assistant for the Court of Wards in northern India, a position that she held until after World War I. In this work, she was involved in disputes about property, succession, and support for widows and minor children over a vast region. For example, in 1916, her annual report indicated that she had travelled more than 20,000 miles that year by rail, road, and water, an accomplishment that demonstrates her courage and independence, as well as her skilfulness in achieving her goal of independent work as a *woman* lawyer in India in the early twentieth century.

D. Clara Foltz: "Public Defenders"⁴¹

Clara Shortridge Foltz was the first woman lawyer admitted to the bar of California in 1878, and she also provided the catalyst, in a lawsuit she initiated with Laura de Force Gordon, to open Hastings Law School in San Francisco to women in 1879.⁴² Foltz practiced law in California for several years, but she was also engaged in political campaigns concerning suffrage, penal reform, and equal access to employ-

40. Antoinette Burton, *The Purdahnashin in Her Setting: Colonial Modernity and the Zenana in Cornelia Sorabji's Memoirs*, 65 FEMINIST REV. 145, 149 (Summer 2000).

41. CHI. LEGAL NEWS, Aug. 12, 1893, at 431-32.

42. BABCOCK, *supra* note 19, at 46-51.

ment and education, and active as a speaker and writer on a variety of legal and political issues. As her biographer, Barbara Babcock, concluded, she “enjoyed remarkable celebrity,” in part because she also lived as a single mother with several children to support.⁴³

In the context of her paper for the Congress, however, it was Foltz’s experience defending accused persons in criminal trials before all male juries that resulted in her proposed reform: the creation of a state-funded public defender system. In Foltz’s view, a public defender system was necessary to ensure equality between the prosecution and the defense, to achieve a fair trial, and to preserve the principle that an accused is innocent until proven guilty. As an accomplished public speaker, Foltz demonstrated in her paper her skill in weaving together fundamental philosophical principles and details of practical legal realities to argue that the defense of the innocent should find a “prominent and exalted place” in legal processes in the United States. After providing examples of the inequities in criminal trials, particularly for accused persons who could not afford representation, she asserted that counsel for the defense was absolutely essential to the “just examination of the case.” As she concluded, the current system placed an inappropriate burden on the judge and jury, wreaked unfairness on the accused, and ultimately destroyed an accused’s love of country.

In the context of criminal trials in the 1890s, Foltz explained how an accused with financial resources was required to pay for his own defense, even though it might “ruin his business, impoverish his family and make his wife and children objects of charity,” whether or not he was convicted. Moreover, where the accused had no financial resources, the court had a duty to appoint counsel, but the accused was then required to repay a debt to counsel in the future, a practice Foltz characterized as “a system of compulsory credit.” As she concluded rhetorically, in such cases, “the prisoner has asked for bread and is given a stone.”

According to Babcock, Foltz may have designed her paper to educate the jurists in the audience: elite members of the legal profession with no conception of proceedings in criminal courts and no appreciation for the extent to which urbanization, industrialization, and immigration were creating new challenges for both the legal profession and accused persons in these courts.⁴⁴ Foltz continued to support this idea of public defenders and even drafted legislation in the late 1890s.

43. *Id.* at ix.

44. *Id.* at 308–09.

However, it was not until Los Angeles voters passed a city charter just before World War I, introducing the first public defender office in the United States, that her proposal was finally adopted. Later on, the principle requiring defense lawyers to ensure fair procedures in criminal trials was enshrined in *Powell v. Alabama* in 1932 (prior to Foltz's death), and then in *Gideon v. Wainwright* in 1963.⁴⁵

III. REFLECTING ON WOMEN LAWYERS, LAW REFORM AND WOMEN'S LEGAL EQUALITY

In reflecting on the papers presented by these four women lawyers to the Congress in 1893, this comment focuses on three features of their presentations. First, the papers reveal some differing views about the scope of law reform. For example, Mary Greene's assessment of differences in statutory reforms for married women's property in the United States reveals her high level of confidence that significant change can be accomplished by reforming law, and particularly by enacting a "perfect" statute. By contrast, Eliza Orme expressed pessimism about the impact of reform statutes concerning married women's property in England, suggesting that such reform must be accompanied by social change, including changes in women's senses of responsibility to exercise their rights in relation to property. Sorabji also recognized relationships between substantive legal rights for women and the extent to which social norms might curtail them in practice, but her reform proposal focused on providing access to legal advice and assistance, rather than attempting to change social norms to strengthen the roles of women and enable them to enforce their substantive equality rights. And, although Foltz's paper promoted a significant and fundamental reform for criminal courts, the creation of a public defender system, her main goal was to ensure a more "perfect" trial and to alleviate financial distress for accused persons. Like Sorabji's focus on access to justice, Foltz's proposed reform did not address the underlying social context in which "criminal activity" and "criminals" were defined by law in the context of changing social conditions in the United States at the end of the nineteenth century. Thus, these four papers reflect quite different views about the scope of legal reforms and about women's roles in relation to such reforms.

Moreover, these four papers illustrate, to a significant extent, how issues regarding law reform initiatives reflect contemporary chal-

45. *Id.* at 318-19.

lenges as well those of the 1890s. For example, should reform initiatives focus on reform of the law itself (as suggested by Greene) or of legal processes and procedures (as suggested by Foltz)? Should legal reforms address issues about access to justice (as suggested by Sorabji), or is it necessary for legal reform to be accompanied by efforts to change social norms as well (as suggested by Orme)? While all of these views are often reflected in current law reform challenges in many different jurisdictions, this paper's concern about the extent to which the papers at the Congress on Jurisprudence and Law Reform reflected the equality goals of the women's movement needs particular attention.

In this context, it is arguable that only Orme's paper seems grounded in the need for *both* law reform *and* social change to achieve equality reforms for women in the late nineteenth century. In this context, the emphasis in the other papers on reforming "law," "legal process," and "access to justice" offers some support for Cott's argument about the gradual emergence of a more "professional" identity among women lawyers at the turn of the twentieth century. That is, this reading of the papers suggests that women lawyers at the Congress in 1893 were generally becoming more focused on *law* and less on *gender*. At the same time, it is clear that Orme had more experience in the practice of law than either Greene or Sorabji, and her comments may also reflect the focus of her own legal practice on property matters including conveyancing (i.e., land transfers) and succession. By contrast, Foltz's paper reflects her legal work in the courts, and particularly in criminal courts at the end of the nineteenth century. Yet, in the context of reforms promoting women's equality, it is difficult not to conclude that Orme's views—about the need to accompany legal reforms with social changes—were particularly prescient.

A second common feature of these four presentations is that all of their papers reveal some evidence of professional "tone," even though there are some differences among them. Greene's paper, for example, was quite academic in its focus on legal principles, reflecting her experience in education and in writing and publishing. Interestingly, while Foltz's paper was also academic in its tone and its many references to authorities, her paper showed greater flair and persuasive advocacy, and her references were used effectively to advance her rhetorical flourishes. Sorabji's paper also used advocacy, but her approach was more subtle, adopting well-honed persuasive phrases designed to elicit sympathy and support from an elite Western audience for the

legal needs of *Purdahnashin*. By contrast with the other papers, Orme's paper was almost brusque, confirming that it was written for the Congress by a woman who was in the midst of other important legal and political commitments. Nonetheless, in different ways, all four women's papers presented a professional tone, using academic references, skilful advocacy and blunt advice in their focus on ideas about law reform. All the same, it seems significant that there are few direct references to law reform as a means of promoting fundamental equality rights for women.

Indeed, this lack of focus in these women lawyers' papers on law reform as a means of promoting the nineteenth century equality goals of the women's movement is a third significant feature of their presentations. For example, it seems significant that Greene chose to focus on improving existing statutes to reform women's property rights, rather than on more controversial issues such as suffrage. Moreover, since it appears that she firmly opposed suffrage goals, and had little respect for the women who advocated them, her choice to examine the need for reforms to improve existing statutes regarding married women's property may reveal her increasing distance from the goals of the women's movement in the 1890s. Similarly, although Orme's paper presented a number of examples of women's legal status in Britain, and although she herself was much engaged in public activities in support of reforms concerning women's employment and suffrage, her paper included only a rather cryptic reference to women's suffrage in Britain. In the context of her own activities, the decision to excise controversial issues from her paper was, at least arguably, a conscious choice. Moreover, although Clara Foltz had been actively involved for decades in a variety of reform efforts in pursuit of women's equality claims (including suffrage) her paper about criminal justice reform never strayed into gender issues at all, even though there were undoubtedly women accused who would benefit (along with men) from the creation of a public defender system. Instead, it seems that Foltz strategically selected her topic to garner support for her public defender proposal from the Congress's powerful male audience, a decision that may have reflected her conclusion that her chosen topic had greater potential for eliciting sympathy from those attending this Congress on Jurisprudence and Law Reform. And, at least to some extent, Cornelia Sorabji's paper was also strategically designed to persuade the Congress about the need for women lawyers in India, an approach that both emphasized a role for legal advisors and also ensured an opportunity for her to do legal work. In this context, these women presenters all selected

important topics of legal reform in 1893, but all of them generally avoided confronting suffrage, probably the most controversial topic of the women's equality movement in the last decade of the nineteenth century.

In this way, the gendered voices of these four women lawyers at the Congress on Jurisprudence and Law Reform appear somewhat muted, at least in relation to pressing issues concerning women's equality rights. The papers by Greene and Sorabji focused on incremental changes to property rights for women, while Orme's paper included brief references to a number of issues, including issues about the impact of reforms concerning women and property. While Foltz boldly presented a plan for a public defender system that was certainly controversial, it also appeared to assume a male accused or at best one who was gender neutral. Thus, in their selection of legal reform issues, in their use of a professional tone, and in their avoidance of direct references to women's equality rights, these presentations at the Congress also tend to confirm Cott's argument about women lawyers' emerging identity as *lawyers* at the end of the nineteenth century, and a lessening of their "community of interest" with controversial issues in the women's equality movement.

Yet, this conclusion must also take account of the context for these four women lawyers at the Congress on Jurisprudence and Law Reform in 1893. In my view, it is possible that these four women lawyers astutely shaped their papers and presentations to suit the audience they were addressing. Thus, while Foltz and Orme both had highly successful experiences in public speaking on controversial matters, they may have recognized the Congress on Jurisprudence and Law Reform as a different audience and a different context, requiring a different kind of approach. In this context, moreover, both Greene and Sorabji appeared anxious to demonstrate their comprehensive grasp of their subjects, with Greene adopting a more objective academic tone and Sorabji providing details about the colonial context to support her proposal for women lawyers in India. To put this argument another way, consider how a paper advocating women's suffrage would have been received by this Congress of male lawyers and judges. Unfortunately, it seems all too likely that a paper about women's suffrage would have been rejected as a matter of "politics" rather than "law."

Thus, an assessment of these four papers requires recognition that these four women lawyers understood the unstated condition of their participation in the Congress: their conformity to emerging

norms of legal professionalism. Significantly, as Cott argued, these norms rendered women lawyers' gender invisible, "part and parcel of a larger process of purging politics, advocacy, or reform from within professional definition" at the end of the nineteenth century.⁴⁶ In this way, it seems that women lawyers accepted the need to subscribe to professional *male* norms as a condition of their acceptance as *women* who were also *lawyers* at the Congress on Jurisprudence and Law Reform. In this way, the Congress in Chicago in 1893 represents an important "moment in time" for women lawyers, as it reveals how this transition to "professional" identity was occurring in the 1890s.

For the women lawyers at the Congress in Chicago in 1893, these competing identities of gender and professionalism provided challenges that they met in different ways. Moreover, their experiences in 1893 may offer important insights for modern women lawyers, at least some of whom continue to experience gendered identities as legal professionals.⁴⁷

46. COTT, *supra* note 13, at 234.

47. Fiona M. Kay, *The Social Significance of the World's First Women Lawyers*, 45 OSGOODE HALL L.J. 397 (2007).

