

“WOMEN AND THE LEGAL PROFESSION IN THE US: THEN AND NOW”

BY

CYNTHIA GRANT BOWMAN *

On July 12th, 2017, Cynthia Grant Bowman gave a talk titled “Women and the Legal Profession in the US: Then and Now” as part of the Comparative Legal Gender Studies Network-Project.

Professor Bowman introduced her talk by stating that she intended to tell the story of women’s very slow and still incomplete acceptance into the legal profession in the US. She started by dividing the history of women’s entry into the profession into five stages. The first stage in the 19th century was a time of total exclusion. It was followed by a time of continued exclusion with a few exceptions, in which some women had won the right to practice their profession. The third stage was characterized by women filling the gap that was created by men being away due to wars. In the following stage women began to fight back, filing lawsuits pursuant to civil rights legislation that had been passed in the 1960s. Consequently, significant progress ensued, yet major problems continued, leading to today’s stage with still existing barriers and inequality.

1. Stage of total exclusion: 19th century

Professor Bowman began by explaining that Myra Bradwell can be seen as a beginning point of the story. She was denied admission to the bar in Illinois in 1870, and appealed the decision all the way to the US Supreme Court. The Court found that the exclusion did not violate the Constitution, in a judgment describing the destiny of women as being only wives and mothers.

A similar judgment was reached in the case of Lavinia Goodell by the Wisconsin Supreme Court in 1875, basically arguing that women’s nature was allegedly unsuited for the legal profession.

2. Continued exclusion with exceptions: Early 20th century

After statutes were passed guaranteeing women the right to practice the occupation of their choice, women persisted in trying to become lawyers. Nevertheless, most law schools did not admit women, and big law firms openly rejected them because they were women

Jane Foster graduated from Cornell Law School in 1918 and was an editor of the law review. Yet, she tried in vain to get into the legal profession as an attorney. So, she only ever worked as a legal assistant. She made financial investments and donated money to Cornell Law School when she died. The building that houses the Cornell law faculty today was built with her donation.

Another exceptional woman was Mary Donlon. She was the first woman in the US to be elected editor in chief of a law review. She was admitted to the bar and was the first woman partner in a

* Dorothea S. Clarke Professor of Feminist Jurisprudence at Cornell Law School.

Wall Street firm. She became a federal court judge in 1955 on the Court of Customs Appeals. She only married when she was 78 years old and had retired, and did not have any children. Mary Donlon supported women coming behind her and helped them to success.

3. “Work for us only when we need you; go home when we don’t” (1941-1945)

For the stage afterwards, Professor Bowman elaborated that during wartime law firms only hired women if they did not find a man for the job, yet replaced them with male attorneys after they came back from war. Even though it took women much longer to get into the upper ranks of the law, some managed to be admitted to the bar and practiced in smaller firms.

Professor Bowman further explained that there were two diverging paths which can be illustrated by the lives of the following two women.

Doris Banta Pree from Cornell Law was the second woman to be editor in chief of a US law review. She was admitted to law school due to the scarcity of men because of the war. She was hired by a law firm in St. Louis only after the intervention of one of her law professors. Only after 20 years of working there was she finally made a partner, while men achieved the position after 5 years. For a while only her first initials were placed on the firm stationery to conceal her gender. She was never allowed into litigation, which had been her dream.

A different story is the one of Elizabeth Story Landis. She earned a doctorate in law, but was unable ever to get hired as an attorney. She worked at different jobs and became an expert on African studies, working briefly with the UN. Cornell received a multi-million dollar gift after her recent death.

Two other women who were not able to find jobs as attorneys when they graduated during this period were future-Supreme Court Justices Sandra Day O’Connor and Ruth Bader Ginsburg.

4. Women begin to fight back (1970s)

In the middle of the 1970s the number of women studying law increased steadily. This was when women filed lawsuits in federal court alleging sex discrimination under the Civil Rights Act of 1964. Women law students and lawyers decided to challenge in court the following conditions they faced: Only small quotas of women were allowed in law schools; firms did not interview female graduates for jobs or hire them; female attorneys were not allowed in litigation; women were paid less than male attorneys; and they were subject to discriminatory treatment.

Because of the war in Vietnam there were critical masses of women students at some law schools. Moreover, the Civil Rights Act was amended in 1972 prohibiting sex discrimination in education. After a series of lawsuits women enrolled in law schools in increasing numbers. Additionally, women started to organize themselves politically and established a national organization of women law students through which they shared their stories and fights. The NYU group joined together with the women’s group at Columbia law school and then filed law suits against discrimination in hiring and promoting women against ten large Wall Street firms. Consequently, in January 1975 a federal civil rights action was filed in federal district court in New York. Soon they reached settlement agreements with most of the law firms. The impact of the lawsuits can be seen by the change in the percentage of female lawyers. In 1971 only 3 % of all lawyers were female, in 1980 there were already 8 %, but today they make up about 36 %.

In 1990 law firms also launched initiatives designed to attract and retain women attorneys.

5. Today’s stage: Continued barriers & inequalities

Today there are continued problems, as many women leave law firms and only few are made partner. Women continue to face the following problems: A substantial pay gap, glass ceilings which block women's progress to higher positions, maternal walls, lack of mentors, inheritance of clients by male lawyers from older male lawyers, stereotypes and implicit discrimination.

Over the last decades there have been great changes in the structure of law firms. Yet, none of these changes have been beneficial to women, especially those with family responsibilities. Multiple levels of attorney status have been introduced, yet women are still overrepresented in all lower positions and underrepresented among partners, especially equity partners. Women of color fare the worst, with hardly any representation at the top of the hierarchy. Male lawyers are also paid more than their female counterparts at every level, which means that women's work is devalued. In the classes affected by the 2008 recession, these gender disparities increased, making the gender gap in practice settings substantially larger. Also, women often do not have mentors at law firms, not even male ones.

Professor Bowman explained that behind these issues and discrimination were stereotypes and implicit bias, by which women are seen as less committed and competent at legal tasks. This has been proven by experiments. This unconscious bias is reinforced and especially problematic as the evaluations in a legal context are often highly subjective.

So, despite all the progress women have made, they still face substantial discrimination in the highest levels of their profession. Today in the US, women's preferred areas of practice are often government work, legal aid and defender programs, and judicial departments. In the last years the status of women in the legal profession has in some ways been getting worse. Experts are convinced that the problem also lies with the business model of law firms and its lack of fit to women's lives. Yet, some new law firms have established innovative ways to try and make the job more flexible and adaptable to women's lives.

When taking a look at high political posts, women are also underrepresented there, e.g., in the US Congress. Yet, on the Supreme Court, there are three women, close to the 36 percent which women make up of the total number of lawyers in the US.

In sum, Professor Bowman concludes that we have come a long way from the days of total exclusion of females from the legal profession. In the early 20th century, there were women who were held back in practicing law, while others managed it despite all odds. And most women at mid-century and after were subjected to discrimination, at first open discrimination, and then increasingly subtle discrimination, as well as discrimination that continues in the form of institutional, or structural, discrimination.

Today women are admitted to law school and work in law firms, and it is thought normal. But they still find it difficult to combine a legal career with having a family. For these and other reasons, more women than men leave law firms. Sometimes they leave the legal profession altogether, but more often they find other more flexible ways of practicing law. Women will never be truly assimilated into the legal profession until this becomes the goal of men and women alike.

Vera Strobel