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# LAWYERS FOR MARIANNE: THE NATURE OF DISCOURSE ON THE ENTRY OF FRENCH WOMEN INTO THE LEGAL PROFESSION, 1894-1926

Christine Alice Corcos<sup>†</sup>

## INTRODUCTION

While historians have examined the entry of women into the legal profession in various countries<sup>1</sup> and the motivations for women challenging traditional gender roles,<sup>2</sup> no historian has examined the early history of French women lawyers<sup>3</sup> to discover their reasons for pursuing such a difficult goal.<sup>4</sup> American women, for example, studied law in ever-increasing numbers and

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1. KAREN B. MORELLO, *THE INVISIBLE BAR* (1986). In her book *WOMEN IN LAW*, Cynthia Fuchs Epstein includes a few pages on the history of women in the U.S. legal profession, as well as an examination of anti-female sentiment among male lawyers. CYNTHIA F. EPSTEIN, *WOMEN IN LAW* (1983). *LAWYERS IN SOCIETY* includes essays on the legal profession around the world with some attention paid to women attorneys. *LAWYERS IN SOCIETY* (Richard L. Abel & Philip S.C. Lewis eds., 1988).

2. See generally EPSTEIN, *supra* note 1.

3. There are some studies of French male lawyers, primarily dealing with the seventeenth century, Revolutionary period, and late nineteenth century. Martine Acerra, *Les Avocats du Parlement de Paris (1661-1715)*, 2 *HISTOIRE, ECONOMIE ET SOCIETE* 213 (1982); David A. Bell, *Des Strategies d'Opposition Sous Louis XV: L'Affaire des Avocats, 1730-31*, 9 *HISTOIRE, ECONOMIE ET SOCIETE* 567 (1990); Michael P. Fitzsimmons, *THE PARISIAN ORDER OF BARRISTERS AND THE FRENCH REVOLUTION* (1987) (Harvard Historical Monographs; 74); Gerald A. Greenberger, *Lawyers Confront Centralized Government: Political Thought of Lawyers During the Reign of Louis XIV*, 23 *AM. J. LEGAL HIST.* 144 (1979); Maurice Gresset, *Le barreau de Louis XIV à la Restauration*, 36 *REVUE D'HISTOIRE MODERNE ET CONTEMPORAINE* 487 (1989); Lucien Karpik, *Lawyers and Politics in France, 1814-1950: The State, the Market, and the Public*, 13 *LAW & SOC. INQUIRY* 707 (1988); Benjamin F. Martin, *The Courts, the Magistrature, and Promotions in Third Republic France, 1871-1914*, 87 *AM. HIST. REV.* 977 (1982); David A. Bell, *Lawyers and Politics in Eighteenth-Century Paris (1700-1790)* (Ph.D. dissertation, Princeton University 1991).

4. See Anne Boigeol, *The French Bar: The Difficulties of Unifying a Divided Profession*, 2 *LAW. IN SOC'Y* 258 (Richard L. Abel & Philip S.C. Lewis eds., 1988). The history of the French legal profession generally remains to be written. *Id.*

managed to gain admission to numerous state bars after Myra Bradwell's celebrated failure to gain entrance into the profession in 1872.<sup>5</sup> However, French women were slow to imitate their American sisters. Because they did not view the law as either a route to female emancipation or as a desirable profession, they failed to press for admission to the bar until 1897, gaining it in 1900.<sup>6</sup>

While the rise of women's rights in France has been discussed and studied at some length,<sup>7</sup> the beginning of female participation in the legal profession has not. The struggle for admission once launched seemed relatively easy, achieving success within three years.<sup>8</sup> Histories of the period, even those concentrating on social and political movements, give the entry of women into the legal profession very little attention.<sup>9</sup> Even a comprehensive work such as *The Third Republic from its Origins to the Great War 1871-1914*,<sup>10</sup> a volume in the prestigious *Cambridge History of Modern France* series, simply documents the event: "[O]n 30 June 1898 the Chamber liberally passed Viviani's motion granting women holding the required diplomas the right to follow the profession of barrister."<sup>11</sup> The authors dismiss the vote as one of several "small indications" that "reflected the general trend."<sup>12</sup> Nor do specialists in the history of the French legal profession<sup>13</sup> or the women's movement<sup>14</sup>

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5. The Illinois Supreme Court denied Bradwell's request for admittance in 1872. *In re Bradwell*, 55 Ill. 535 (1872), *aff'd* 83 U.S. 130 (1873) (Chase, C.J., dissenting). On the increase of U.S. women students in higher education, including law, see W. T. Harris, *Why Many Women Should Study Law*, 50 OHIO EDUC. MONTHLY 289 (1901).

6. *Loi du 1er decembre 1900 (J.O.)*. Although the law allowed for women to enter the profession of law (*avocat*), it did not allow women to become judges (*magistrates*) until the middle of the twentieth century (*loi no 46-644 du 11 avril 1946 (J.O.)*). The profession of *magistrat* required a slightly different education and dictated a much different career path from that of the practicing lawyer. See Boigeol, *supra* note 4, at 259.

7. A good basic introduction is CLAIRE G. MOSES, *FRENCH FEMINISM IN THE NINETEENTH CENTURY* (1984). On European women's history generally, see BONNIE S. ANDERSON & JUDITH P. ZINSSER, *A HISTORY OF THEIR OWN: WOMEN IN EUROPE FROM PREHISTORY TO THE PRESENT* (1988).

8. See *Loi du 1er decembre 1900 (J.O.)*.

9. JEAN-MARIE MAYEUR & MADELEINE REBERIOUX, *THE THIRD REPUBLIC FROM ITS ORIGINS TO THE GREAT WAR 1871-1914* (J. R. Foster, Trans., 1984).

10. *Id.*

11. *Id.* at 208.

12. *Id.*

13. Michael Burrage, *Revolution and the Collective Action of the French, American, and English Legal Professions*, 13 LAW & SOC. INQUIRY 225 (1988) is particularly

consider the event worthy of much notice, possibly because of the seeming ease with which the law passed. The real battle for equality in the French legal profession began after the admission of women to the bar, when supporters and opponents arrayed their arguments, overwhelmingly legal in substance as well as form, while keeping a close eye on the performance of female lawyers. This Essay introduces this neglected subject as an area of research worthy of study not only for legal historians, but for lawyers interested in the effects of minority inclusion into the profession.

Although it predated women's right to vote,<sup>15</sup> the acceptance of women into the French legal profession paralleled or lagged behind women's acceptance into other male-dominated disciplines.<sup>16</sup> The relatively late acceptance of French women into the law is attributable to the following three factors: (1) the resistance of many males to the participation of women in a traditionally male-dominated profession; (2) the relative political weakness of the governments, first republican and then socialist, that championed the rights of women; and (3) the rhetoric advanced against and in favor of women's entry into the profession. This took the form of legal and policy arguments rather than overt discussion of the likelihood of women's future beneficial influence on the mores of society.

The statute granting women the right to practice law took effect in 1900, three years after the first French woman requested entry into the profession.<sup>17</sup> Yet by 1907, only five French women had been admitted to the bar.<sup>18</sup> Part of the

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interesting on self-regulation and admission to practice, as is Karpik, *supra* note 3. Neither mentions the admission of women to the French bar as an event of any importance.

14. Richard Evans disposes of the question with a few brief references and no analysis. RICHARD J. EVANS, *THE FEMINISTS: WOMEN'S EMANCIPATION MOVEMENTS IN EUROPE, AMERICA AND AUSTRALASIA, 1840-1920* 51, 111, 117, 128, 220 (1977).

15. Women were admitted to the bar in various U.S. states beginning in the late nineteenth century, but did not gain the right to vote until 1920. U.S. CONST. amend. XIX. Women were admitted to the bar in England at about the same time, but gained the vote, if they were over the age of thirty, in 1918. 7 & 8 Geo. 5, ch. 64 (1918). For a good comparative history of feminist movements in the United States and England during the period, see CHRISTINE BOLT, *THE WOMEN'S MOVEMENTS IN THE UNITED STATES AND BRITAIN FROM THE 1790S TO THE 1920S* (1993).

16. Boigeol, *supra* note 4, at 270. France did not grant women suffrage until 1945. *Id.*

17. *Loi du 1er Decembre 1900 (J.O.)*.

18. STEVEN C. HAUSE & ANNE R. KENNEDY, *WOMENS SUFFRAGE AND SOCIAL*

reason is that French women achieved whatever political gains they desired slowly but relentlessly, and without the kind of militancy and political violence resorted to by their English and American counterparts.<sup>19</sup> In addition, lawyers did not traditionally dominate the French legislature.<sup>20</sup> Since neither sex viewed a legal career as either a direct route to political power or the ability to affect social change, the mere entry of women into the profession may not have seemed as threatening to the nonlawyers then in the legislature.<sup>21</sup>

This Essay suggests some areas in which an investigation into the origins of French women in the law might be profitable and sheds some light on the success or failure of comparable movements in other countries. In addition, investigation into the discussion surrounding the admission of women into the law generally suggests some avenues of exploration for those interested in the impact of minorities in any heavily regulated profession.

#### I. WRITINGS ABOUT FRENCH WOMEN LAWYERS IN GENERAL

Writings about the right of women to enter the French legal profession are less common than those about their rights to vote, train as teachers or doctors, and engage in political discourse.<sup>22</sup> In general, these writings were by male attorneys, who used legal rather than political rhetoric to advance their arguments. Such professional language gives essays about women lawyers a discernibly different tone from contemporaneous political or social writings about women as the equal partners of men in the domestic or public spheres. Fewer men actively supported the idea of women as lawyers than supported the idea of women as doctors or teachers. The practice of law seemed decidedly "different" intellectually from the practice of medicine. Opponents

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POLITICS IN THE FRENCH THIRD REPUBLIC 251 (1984).

19. *Id.*

20. Boigeol, *supra* note 4, at 269. In 1881, only 27% of the representatives to the Chamber of Deputies were lawyers; in 1906, 25%; in 1924, 24%; and in 1936, 28%. *See id.* at 285.

21. *See generally* JEAN-BAPTISTE SIALELLI, LES AVOCATS DE 1920-1987 (1987) (attempting to create a French equivalent of the American Bar Association). The attempt to "unionize" and integrate all French lawyers into the mainstream (as envisioned by Parisian attorneys) met with less than optimal success, based primarily on the lack of attorneys willing to practice in the provinces. *Id.*

22. *See sources cited supra* note 3.

of female participation emphasized the logical and reasoned analysis necessary for successful law practice skills, which they believed women did not possess. To support their contentions, opponents marshalled evidence and formulated arguments as if preparing briefs for court. The perceived lack of capacity for the intellectual demands of the profession seemed to such opponents to be so gender specific as to deny the possibility of successful female lawyers, even those with adequate education. In turn, male supporters of women lawyers presented evidence persuasively, attempting to negate opposing views through the use of legal argument. Whether such works appeared in 1900 or 1930, they used the same approach: opponents emphasized the lack of historical and scientific evidence for women's ability to compete in the profession, and supporters argued that this lack of evidence meant only that women had not yet obtained sufficient opportunity to show their ability to compete.

After briefly reviewing the success of French women in the political, educational, and civic spheres, this Essay will examine in more detail the quality and type of arguments advanced for the entry into and the continued presence of women in the French legal profession. It will conclude by suggesting some future avenues of research into the question.

## II. FRENCH WOMEN'S GAINS IN POLITICAL, EDUCATIONAL, AND CIVIC RIGHTS

Many commentators, particularly those from abroad, observed that the rights of French women were particularly circumscribed in comparison with the rights of women in England and the United States.<sup>23</sup> In the land of *liberté, égalité, and fraternité*, the emphasis was on the last word to the detriment of the first two.<sup>24</sup> After the initial euphoria of the freedom and equalities brought by the French Revolution, whose contribution to the liberation of women was short lived,<sup>25</sup> women receded into

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23. See generally FRANCES IDA CLARK, *THE POSITION OF WOMEN IN CONTEMPORARY FRANCE* (1937).

24. On feminist movements of the period see generally EVANS, *supra* note 14. A more expansive work, in French, is LEON ABENSOUR, *HISTOIRE GENERALE DU FEMINISME DES ORIGINES A NOS JOURS* (1979).

25. See generally JAMES F. McMILLAN, *HOUSEWIFE OR HARLOT: THE PLACE OF WOMEN IN FRENCH SOCIETY 1870-1940* 76-79 (1981). While the focus of this Essay is not the status of women during the French Revolution. See Elizabeth Racz, *The Women's Rights Movement in the French Revolution*, *SCI. & SOC'Y* 151 (1953). For a

secondary status once again. The pervasive social philosophy known as *masculinisme*, based in large part on the Code Civil,<sup>26</sup> permeated all parts of French society.<sup>27</sup>

The feminist fight for women's rights that began in the 1860s proceeded by fits and starts until the 1880s. Particularly after the advent of the Republicans to power after 1868 and the subsequent split of the republican and socialist parties, the unwillingness of liberal feminist supporters to follow the socialist agenda<sup>28</sup> beyond a certain point created resentment and antagonism among the more radical feminist socialists, who believed that the movement had stalled.<sup>29</sup> While the Republicans championed the cause of women's secondary and university education,<sup>30</sup> they stopped short of opening one of the most crucial professional avenues of advancement: the study of law.<sup>31</sup>

For many liberal feminists, female education served the nation's cause because it provided better education for mothers, to whom the youth of France were entrusted during their tender

history of women during the nineteenth century, see PATRICK KAY BIDELMAN, *PARIAHS STAND UP! THE FOUNDING OF THE LIBERAL FEMINIST MOVEMENT IN FRANCE, 1858-1889* (1982) (Contributions in Women's Studies; 31); MOSES, *supra* note 7, contains valuable notes and bibliography. Feminism from 1870 was heavily linked with the fortunes of the Republican and Socialist parties. See generally MOSES, *supra* note 7.

26. The CODE CIVIL, originally the CODE NAPOLEON, was drafted by the most eminent legal thinkers of France under Napoleon I's direction and promulgated in 1804. After 1815, it was renamed the CODE CIVIL, but retained its essentially male-dominated, conservative character. "What we ask of education is not that girls should think, but that they should believe," wrote Napoleon, and in that at least the Bourbons agreed with him. Among its more conservative positions were the abolition of divorce and the relegation of married women to a secondary position in society, unable to exercise even the most elementary control over their children and property without the consent of their husbands. See generally Naoki Kanayama, *Suppléments à Fenet, ou Mieux Comprendre le Code Civil Français de 1804 (I)*, 1 HIMEJI INT'L. F. L. & POL. 85 (1993); Xavier Martin, *Liberté, Egalité, Fraternité: Inventaire sommaire de l'idéal révolutionnaire français*, 1 HIMEJI INT'L F. L. & POL. 3 (1993).

27. It extended to the right to head the country, at least under the monarchy. Women were barred from the throne by the Salic Law, first invoked in the fourteenth century. Nor could they pass their claims on to their male descendants, a rule that Edward III of England and his family challenged in the Hundred Years' War. For a survey of the feminist fight against the *masculinisme* of the mid-nineteenth century, see BIDELMAN, *supra* note 25.

28. See MOSES, *supra* note 7, at 197-98 (discussing the positions of republican and liberal feminism).

29. See generally *id.*

30. On the history of education in this period, see generally GEORGE WEISZ, *THE EMERGENCE OF MODERN UNIVERSITIES IN FRANCE, 1863-1914* (1983).

31. See MOSES, *supra* note 7, at 175-77.

years, and provided men with more cultivated and agreeable companions.<sup>32</sup> Demands were for an equivalent, not necessarily the same, education.<sup>33</sup> These arguments paralleled those put forth in such writings as Mary Wollstonecraft's *A Vindication of the Rights of Women*.<sup>34</sup> In France, supporters of the "separate but equal" argument maintained that functionally equivalent educations were in the best interests of both sexes.<sup>35</sup> "How many mothers today are in a position to bring up a daughter, and more importantly [sic] a son? Very few, if one takes into consideration the kind of education that is universally afforded them . . . . We need [women] to give us sons who are enlightened, stronghearted, steady-spirited, with well-developed intellects.'"<sup>36</sup> In 1878, the economic section of the *International Congrès du Droit des Femmes* called for the opening of the *facultés* (professional schools) of the universities to women;<sup>37</sup> however, like calls for political rights for women (including suffrage), women's rights to enter the legal profession lingered unenacted through the end of the nineteenth century.<sup>38</sup>

Similarly, many Socialists concentrated their efforts on furthering women's rights to employment outside the home in such areas as factory work, teaching, and nursing.<sup>39</sup> The

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32. See generally *id.*

33. *Id.* at 199-202 (discussing the thoughts of journalist Leon Richer). Such earlier writers as Mary Wollstonecraft (Godwin) and John Stuart Mill made similar arguments. See MARY WOLLESTONECRAFT, *A VINDICATION OF THE RIGHTS OF WOMEN* (Mary Warnock ed., 1986); JOHN STUART MILL, *THE SUBJECTION OF WOMEN* (Mary Warnock ed., 1986). The upper class women of Jane Austen's novels certainly prepared themselves for home and husband through education, and Charlotte Brontë's Jane Eyre was considered suited for a career (teaching) only because of her lack of family and wealth. French literary heroines were no different: the poorer educated women of Balzac's novels worked only because they had to, not because they wanted to, and abandoned the workplace if they could find men to marry and support them.

34. WOLLESTONECRAFT, *supra* note 33.

35. See MOSES, *supra* note 7, at 205.

36. *Id.* (alteration in original) (quoting Leon Richer). Moses suggests that Richer deliberately softened his public writing in order to convince the fence-sitters that rights for women were a necessity. *Id.* at 206-07.

37. *Id.* at 207.

38. See *id.*

39. *Id.* Teaching could have liberated many women from the confining atmospheres of homes dominated by male relatives, but did so mainly for unmarried females only. Women who entered the teaching profession were required to devote ten years of uninterrupted service to either the same position or geographic location. Because married women were also required by law to follow their husbands who might take up residence elsewhere, married female teachers found it difficult to fulfill this obligation. Hence, the teaching profession became increasingly dominated by young



argument that women's participation in these occupations would uplift the quality of moral discourse (a favorite theme beginning with the earliest feminists) was not sufficiently persuasive when discussion shifted to female participation in the legal profession.<sup>40</sup> Social commentators in many countries urged women interested in practicing any profession, particularly medicine and dentistry, to limit themselves to dealings with other women and children so that their gentle natures and nurturing tendencies would be an advantage.<sup>41</sup>

Many French women did not see the practice of law as an obvious route to the attainment of political and civil rights,<sup>42</sup> particularly the right to vote.<sup>43</sup> They seem to have been correct in their assumptions, since their American counterparts acquired the right to practice law long before they received the right to vote,<sup>44</sup> and their English counterparts, who were formally allowed to enter the profession in 1919,<sup>45</sup> gained only a limited

single women who delayed and as the years passed never entered into marriage. *Id.*

40. A great deal of the historical literature discusses these arguments. "[N]ineteenth century feminists added something to liberal ideology: the notion that women would bring some special moral quality into civic and political life. French feminist Maria Deraismes stated this clearly: 'By her constitution and the nature of her mandate . . . [woman is] the moral and pacific agent par excellence.'" Marie Kennedy & Chris Tilly, *At Arm's Length: Feminism and Socialism in Europe, 1890-1920*, 19 *RADICAL AM.* 35, 37 (1985) (alterations in original).

41. CLARK, *supra* note 23, at 46. Clark notes that women dentists tended to practice primarily among other women and children.

It is among the clientele provided by women and children that the most successful women dental surgeons have been found. Others prophesy that with her deft manipulation, gentleness, and lightness of touch the woman dentist of the future will win over the male clientele, who will desert the old order in favour of advantages to be gained from the new. But here we are in the realm of pure speculation and only the future can decide the issue.

*Id.* On the subject of women physicians, she noted:

[t]here are authorities who think that the characteristic qualities of the female sex would militate against the efficiency of the medical service, that women are in fact too kind, that they show too much pity and compassion in situations which call for no display of sentiment but cold business acumen.

*Id.* at 44-45.

42. See Karpik, *supra* note 3, at 719. Karpik maintains that during the Second and part of the Third Republic lawyers had firm control of the government; however, he admits that lawyers never formed more than a quarter of the entire body of the legislature. *Id.*

43. *Id.*

44. U.S. CONST. amend XIX.

45. 9 & 10 Geo. 5, ch. 71 (1919) (Eng.) (Sex Disqualification Removal Act).

suffrage two years before.<sup>46</sup> In contrast, French women received the right to vote only after the Second World War.<sup>47</sup> Apparently, few French citizens expected women to take advantage of the right to a legal education granted by the socialist government. In general, French women did not approach the question of women's rights and the cause of feminism with as much vigor as their American and English counterparts, perhaps because they feared that the Republic was too fragile to withstand the kind of violent confrontations taking place in other countries.<sup>48</sup> The republican-socialist coalition had already disintegrated; the gains the French feminists were likely to make were largely dictated by the length of tenure of a favorite political climate.<sup>49</sup>

### III. THE ARGUMENTS FOR AND AGAINST THE PARTICIPATION OF WOMEN IN THE LEGAL PROFESSION

Women entered the *Facultes de Droit* to study law as early as 1884, which was later than women entered other disciplines.<sup>50</sup> By 1889, support for women as legal practitioners began to attract attention.<sup>51</sup> The first two women entrants into the Faculty of Law of the University of Paris were foreigners, a Romanian and a Russian, who began the course of study in 1884-85.<sup>52</sup> Jeanne Chauvin, who in 1892 was the first Frenchwoman to receive a degree,<sup>53</sup> was also the first to request admission to the bar.<sup>54</sup> Although sponsored<sup>55</sup> by Maître Guyon,<sup>56</sup> she was

46. 7 & 8 Geo. 5, ch. 64 (1918) (Eng.) (Representation of the People Act). This act only allowed women over the age of thirty to vote. *Id.*

47. HAUSE & KENNEY, *supra* note 18; *see also* BOLT, *supra* note 15 and accompanying text.

48. HAUSE & KENNEY, *supra* note 18, at 26-27.

49. *See generally id.*

50. *See generally* WEISZ, *supra* note 30.

51. LOUIS FRANK, *LA FEMME-AVOCAT AU POINT DE VUE DE LA SOCIOLOGIE* 296 (1898). This book first appeared in 1888, very likely in support of the 1888 application of Marie Popelin to be admitted to the Belgian bar. *See* Andrée Despy-Meyer, *Les femmes dans le monde universitaire*, in *FEMMES, LIBERTÉS, LAÏCITÉ* 47 (Yolande Mendes da Costa & Anne Morelli, eds., 1989) (Laïcité, Série "Actualités", 8), at 56. The *procureur general* in the Chauvin case of 1897 cites to it. *See* CHAUVIN C. PROCUREUR GENERAL, Cour d'appel de Paris (1er chambre), G.P. 2, 1897, 600-01 [hereinafter CHAUVIN].

52. CLARK, *supra* note 23, at 54. The Russian student, Mlle. Bilescu, whose French was not fluent, dropped out after a short time. *Id.*

53. HAUSE & KENNEY, *supra* note 18, at 24. The authors point out the admission of women to the universities was met with violent opposition. CLARK, *supra* note 41.

54. *See* CHAUVIN, *supra* note 51; FERNAND CORCOS, *LES AVOCATES* 30 (1926).

55. In order to practice law, not only a degree in law (the *licence en droit*), but

refused.<sup>57</sup> The reactions of the government and supporters of the feminist movement were immediate. Only a year later, Louis Frank, a prominent Belgian attorney, published a new edition of *La Femme-Avocat*, a tract in defense of women's admission to the bar.<sup>58</sup> By 1900, the socialist government, shepherded by the politician Rene Viviani,<sup>59</sup> passed the law that permitted female entry.<sup>60</sup> Such quick action did not necessarily indicate that a sea of change was occurring. Rather, admission to the bar was part of a larger movement carried out by the republican and socialist governments to bring about equality between the sexes. French women did not immediately swarm to the study of law.<sup>61</sup> More than ten years later, one study indicated that sixty-eight percent of the female law students studying in French universities were foreigners.<sup>62</sup> By 1907, only five French women had been admitted to the bar.<sup>63</sup> During this period, the discourse about women lawyers consisted of arguments of legality and equity, rather than arguments emphasizing women's higher moral and ethical sense, which dominated the discussions about women's participation in other professions.<sup>64</sup> Such arguments were more difficult to make due to the nature of the legal profession and the patterns of thought required, and since, unlike in other countries, women had never participated in the legal profession<sup>65</sup> in France.<sup>66</sup>

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sponsorship by the local bar is required. Chauvin had received not only the *licence*, but also the *doctorat en droit*, the highest degree possible in the French educational system.

56. The title *maitre* is somewhat similar to the appellation *esquire*, though it connotes somewhat more prestige in the French legal system. The French legal profession was, at the time, a bifurcated one consisting of *maitres* and *notaires*, *maitres* having the right to appear in court and *notaires* handling many of the duties of the American notary public along with legal responsibilities. The fact that Chauvin was not sponsored by an officer of the bar association made up part of the case against her. See CHAUVIN, *supra* note 51, at 602.

57. HAUSE & KENNEDY, *supra* note 18, at 24.

58. FRANK, *supra* note 51.

59. MAYEUR & REBERIOUX, *supra* note 9, at 160.

60. See Boigeol, *supra* note 4.

61. See *supra* notes 17-18 and accompanying text.

62. HAUSE & KENNEY, *supra* note 18, at 24. The authors do not give a citation for this figure; however, it seems to be derived from Frances Clark's work. See CLARK, *supra* note 23.

63. HAUSE & KENNEY, *supra* note 18, at 53 (discussing the case of Maria Verone).

64. See *supra* notes 40-49 and accompanying text.

65. The lists of "illustrious women," whose contributions were primarily political, advanced by both supporters and opponents of *avocates*, consisted primarily of females with a personal connection to a powerful male, such as Madame de Maintenon, the second (morganatic) wife of Louis XIV; Diane de Poitiers, the long-time mistress of

Moral and ethical arguments to justify women's participation in the "helping" professions made more intuitive sense because these professions emphasized empathy with others as well as the exercise of professional judgment. In the minds of those opposed to female entry into the legal profession, whom I call anti-*avocates*, the practice of law did not emphasize relationships as much as it did reasoned analysis and coherent thought. The woman as educator was an easier example to find in French society; women had traditionally been involved in the care of the sick and the young. While detractors still made the argument that women were not as good as men in these areas, supporters could insist that, given equivalent educations, women were likely to be as good or, at least, no worse. Such arguments could not be made as easily in the case of law, because women had no history of participation in the legal profession: they could not be notaries or judges, whose career paths were controlled as completely by the university law faculties as was the profession of *avocat*.

The French language did not even have a term in general use to describe the woman lawyer, such as a feminization of the noun *avocat*:<sup>67</sup> the best that contemporary writers could do was use the term *femme-avocat* (woman lawyer).<sup>68</sup> French supporters only had the examples of non-French women as lawyers (in general, never a persuasive argument in French discussion), rational extrapolations from other examples (somewhat more in the French tradition), and the possibilities of argument from

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Henri II; non-French born females who held property, hence power, like Eleanor of Aquitaine, Queen successively of France and England; the queens regnant of England, Sweden, and the Netherlands; and Catherine the Great, the Tsarina of Russia, who was born in a small German principality and achieved power by deposing her husband. Apart from the Salic law, which precluded the possibility of a French female sovereign, factors contributing to the dearth of women in important political roles included the fact that the king chose his counselors, either noble or clergy, from groups exclusively or nearly exclusively male. Generally, only males held French noble titles, either by inheritance or by elevation to the *noblesse de robe* (a class specifically made up of *avocats* and *magistrats*). Since France, officially a Catholic country, drew its clergy exclusively from the male sex, those clergy, such as Cardinals Richelieu and Mazarin, who held powerful secular offices, were also necessarily males.

66. For a contemporaneously written history of women as lawyers, see JEAN SIGNOREL, *LA FEMME-AVOCAT* (1894).

67. Compare with the feminine of the noun *pharmacien*, *pharmacienne* (pharmacist), and *docteur*, *doctoresse* (used for doctor or physician), although the latter is also sometimes used perjoratively. See HARRAP'S STANDARD FRENCH AND ENGLISH DICTIONARY 277 (J.E. Mansion ed. 1962).

68. See, e.g., SIGNOREL, *supra* note 66.

negation. That they succeeded so quickly argues more for the power of the socialist government of the late 1890s than for any lack of opposition. That their success was tied to a political rather than a social movement is indicated by the fact that, between the 1890s and the 1920s, supporters of the women lawyers' movement relentlessly continued to make the same arguments, although bolstered by increasing evidence, apparently hoping to persuade by the sheer weight of increasing evidence as well as by ridiculing the arguments of the opposition through mock serious debate. Indeed, by the 1920s, supporters tended to defend the woman lawyer's right to be as mediocre as her male counterpart, rather than to be as good.<sup>69</sup>

The same arguments that prompted passage of the law allowing women to enter the profession continued to be advanced in their favor, even after the Socialists fell from power.<sup>70</sup> Many of the advances women made in political and civil rights were closely tied to the political fortunes of their supporters, most of whom were either Republican or Socialist.<sup>71</sup> The republican point of view tended to predominate in its emphasis of legal equality as a matter of right (the equality argument) rather than the Socialists' emphasis on policy (the moral uplift argument).<sup>72</sup> Thus, earlier writings about women lawyers tended to advance legal rather than public policy arguments for the admission of women. After the split between the Republicans and Socialists in the late nineteenth century, the feminist movement lost momentum. The only basis upon which women could claim a right to enter the profession remained a legal or equitable one, which Republican rather than Socialist feminists supported, and which even some opponents of female entry into the profession admitted.<sup>73</sup>

At the same time, French women won certain political and civil rights quite steadily through the end of the nineteenth and

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69. That the entry of women into the practicing bar was the result of politics rather than the conscious decision of male attorneys to change their minds based on rational reflection is made clear by both the speed of the admission and the ridiculousness of the arguments advanced by opponents. If a majority of male lawyers had been willing to admit women to the bar, such arguments as those described in this Essay would not have deterred them.

70. See generally MOSES, *supra* note 7.

71. See generally *id.* at 223-24.

72. See *id.*

73. See, e.g., SIGNOREL, *supra* note 66.

beginning of the twentieth centuries, including the right of girls to secondary and university educations, the equal rights of mothers to custody of minor children, and the right of wives to their wages.<sup>74</sup> Thus, women seemed less inclined to demand full participation in the legal system as makers of law because they were gaining control of their domestic and labor situations in other areas. In addition, the unsettled political and social situation in early twentieth-century France may have contributed to the belief that French women should try to keep the moderately pro-feminist government of the shaky Third Republic in power rather than risk an abrupt and unfavorable change in Paris. The Dreyfus affair,<sup>75</sup> anarchist and socialist bombings of public places (including judges' homes),<sup>76</sup> and assassinations of prominent political dissidents<sup>77</sup> all led to several decades of political uncertainty in France.

#### A. *The Opinion of the Court of Appeals*

Against this background, Jeanne Chauvin appealed to a French court to reverse the denial of her application to become an attorney. Setting aside the physical and intellectual questions surrounding the fitness of women to be lawyers, the *Paris Cour d'Appel*, which heard Chauvin's appeal, addressed the question as one only of law: "[T]he only question submitted to the court is that of determining 'whether, according to present law, a woman may be admitted to take the attorney's oath, as a result, to

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74. MOSES, *supra* note 7, at 229-30.

75. Alfred Dreyfus was a French Jew convicted of treason on trumped-up charges. The affair turned into a legal travesty, bringing much of the French legal system into disrepute. Much has been written on the trial and its aftermath. See generally MICHAEL BURNS, *DREYFUS: A FAMILY AFFAIR 1789-1945* (1991); NICHOLAS HALASZ, *CAPTAIN DREYFUS: THE STORY OF A MASS HYSTERIA* (1955); ROBERT L. HOFFMAN, *MORE THAN A TRIAL: THE STRUGGLE OVER CAPTAIN DREYFUS* (1980). As a young journalist, Fernand Corcos transcribed the proceedings of the first trial and telephoned them to his newspaper; he later published related materials. See FERNAND CORCOS, *AFFAIRE DREYFUS, TEXTES ET DOCUMENTS* (1903).

76. See generally RICHARD D. SONN, *ANARCHISM AND CULTURAL POLITICS IN FIN DE SIECLE FRANCE* (1989).

77. Among those assassinated was Jean Jaurès, for whom Corcos worked during his early membership in the Socialist party and with whom he worked closely as a member of the *Ligue des Droits de l'Homme*. See HENRI SEE, *HISTOIRE DE LA LIGUE DES DROITS DE L'HOMME* (1900).

practice the profession.’<sup>78</sup> To find the answer, the court looked to existing law as well as to history and tradition.

Citing a Napoleonic law of July 2, 1812, which set out the requirements for admission to the bar, and pointing out that no subsequent legislature had seen fit to make any changes, the court stated:

[I]t is universally recognized that in old law, in areas with written laws as well as in areas with customary law, all imbued on this point with principles of Roman law, it is universally acknowledged that the legal profession was formally closed to persons of the female sex; that the rare supposed exceptions cited by *demoiselle* Chauvin, refer . . . not to the woman lawyer, but to the woman with a power of attorney or pleading on her own behalf, could not counter these absolute rules that were simply the logical application of the principle that the legal profession has always been considered as a masculine one . . . .<sup>79</sup>

Dismissing Chauvin’s argument that the exclusion of women violated the right to work guaranteed by law, the court hewed to the line traditional in French courts and deferred to the legislature to make such a sweeping change in the law.<sup>80</sup> The court could not admit Chauvin to the practice of law by swearing

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78. La seule question soumise à l’appréciation de la court est celle de savoir si, “[d]ans l’état actuel de la législation, la femme ne peut être admise à prêter le serment d’avocat, et, par suite, en exercer la profession.” CHAUVIN, *supra* note 59. This analysis was not unusual. The Illinois Supreme Court followed essentially the same line of reasoning when it refused to overturn a decision denying admission to an unsuccessful male applicant, citing both precedent, and statutory and common law, and the traditional tendency of courts to interpret statutes as narrowly as possible. *In re Day*, 54 N.E. at 648-50.

79. CHAUVIN, *supra* note 51, at 601-02 (as translated by the author).

Considerant qu’il est universellement reconnu que dans l’ancien droit, dans les pays de droit écrit comme dans les pays de droit coutumier, tous imbus, sur ce point, des principes du droit romain, il est universellement reconnu que la profession d’avocat était formellement interdite aux personnes du sexe féminin; que les quelques rares prétendues exceptions invoquées par la demoiselle Chauvin, se referant, au surplus, non à la femme-avocat, mais à la femme munie d’une procuration ou plaidant pour elle-meme, ne sauraient faire échec à ces regles absolues qui n’ont été que l’application logique du principe en vertu duquel on a toujours considéré la profession d’avocat comme un office viril . . . .

*Id.*

80. *Id.* at 602.

her in because that right belonged to the bar associations.<sup>81</sup> It suggested that she attempt to gain admission to another bar association by apprenticing for a time,<sup>82</sup> ignoring the fact that in order to apprentice she would need to have been admitted by a bar association, at least provisionally. Finally, the court required her to pay the costs of the appeal.<sup>83</sup> The only point on which the court agreed with Chauvin was in rejecting the requirement that an applicant to the bar be sponsored either by the president of the bar association or by a member of the governing board, a point on which the *procureur general* had put great emphasis.<sup>84</sup> However, the court adopted the *procureur general's* contention that it did not have the capacity to grant her admission to the bar.<sup>85</sup> In its reasoning, the court echoed the sentiments and arguments of writers such as Jean Signorel, an early anti-*avocate*, and one might say, an anti-*Chauviniste*.<sup>86</sup>

#### B. *Jean Signorel and Early Anti-Avocate Writings*

By the end of the nineteenth century, both opponents and supporters of women lawyers knew that women had been admitted to practice in the United States, England, Canada, Germany, and Haiti, among other jurisdictions.<sup>87</sup> The objections raised against the entry of women into the legal profession, namely that women are physically, intellectually, and emotionally "different" from men,<sup>88</sup> were the same ones that were raised, and eventually abandoned, against the participation

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81. *Id.* at 601.

82. *Id.*

83. *Id.* at 602.

84. *Id.*

85. *Id.*

86. See generally SIGNOREL, *supra* note 66.

87. See *id.* at 17.

88. For a contemporary statement of women's perceived intellectual, spiritual, moral, physical, and emotional differences from men, see EMILE FAGUET, *LE FEMINISME* 106 (1910).



of women in medicine,<sup>89</sup> science,<sup>90</sup> and other areas. However, male opponents found it difficult to argue initially that a woman's perceived physical inferiority to a man's was sufficiently disabling to prevent her from performing the duties of an attorney successfully, although they certainly proceeded from that assumption.<sup>91</sup> Instead, they argued in the time-honored tradition: by citing precedent and interpreting existing law, either broadly or narrowly, as suited their purpose.<sup>92</sup> Jean Signorel, for example, suggested that the denial of women's entry into the legal profession was a subject legitimately decided by the bar associations, which alone had the power to "register"<sup>93</sup> new lawyers on their membership rolls, rather than by the courts.<sup>94</sup> His book was structured like a brief and intended to persuade readers that women were legitimately barred from participation in the legal profession through a correct interpretation of the existing law, which itself was based on a proper understanding of the capacities and natural occupations of both sexes.<sup>95</sup>

In Signorel's opinion, the courts' only legitimate function was to determine whether an applicant possessed the proper credentials allowing him or her to request admission.<sup>96</sup>

To obtain the title of lawyer, I have already said that only one condition must be satisfied: the degree of *licencie en droit*. Through many decisions, all the authorities acknowledge that only taking the oath confers the title of lawyer and that this oath-taking is imposed after the degree has been verified. The title of lawyer mandates only this requirement, and it belongs by right to he who fulfills it, even if he should be unable to practice the profession. When a credential is presented to a court, the court should be

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89. See E. MOBERLY BELL, *STORMING THE CITADEL: THE RISE OF THE WOMAN DOCTOR* (1953). On the unsuitability of women as physicians and pharmacists, see FAGUET, *supra* note 104, at 106. "Women do not, or have not up to now, shown any desire for the profession of pharmacist . . . pharmacy is a profession open to women which they do not pursue." *Id.* at 107 (as translated by the author). "Les femmes n'ont, ou ne manifestent jusqu'à présent aucun goût pour le métier de pharmacien . . . la pharmacie est une profession ouverte aux femmes et ou elles n'entrent pas." *Id.*

90. *E.g.*, Marie Curie.

91. See generally SIGNOREL, *supra* note 66.

92. See generally *id.*

93. "Enscrire."

94. SIGNOREL, *supra* note 66, at 43.

95. *Id.*

96. *Id.*

concerned only with its validity and not with the more or less arguable ability of the one who presents it. The error in all these decisions is precisely that they forget that women are asking only for the title of lawyer and act as if what were in question was actually their appearance in court.<sup>97</sup>

The bar associations, which held the sole power to determine whether an applicant should exercise all the functions of a lawyer, including appearing in court, could therefore prevent women *licenciees* from acquiring all the rights accruing to their male counterparts and create, in effect, a subclass in the legal profession. Signorel counted on the bar associations to oppose female participation, as indeed they did, and presented them with a legal argument in support of their position.<sup>98</sup> He arrayed his arguments in support of his fundamental philosophical opposition to women as lawyers: women are by nature weaker, less intelligent beings.<sup>99</sup> He did not accept the suggestion of feminist supporters that the entry of women into public life generally would bring a higher moral tone and better educated future citizens. He argued that women are fundamentally incapable of exercising several professions, including the law, and should remain in the sphere in which they excel—the home.<sup>100</sup> While he believed that such occupation would be of immeasurably greater value for the French nation than work outside the home, particularly in the legal profession,<sup>101</sup> he

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97. *Id.* at 42 (as translated by the author).

Pour obtenir le titre d'avocat, j'ai déjà dit qu'une seule condition est requise: le diplôme de licencie en droit. Avec de nombreux arrêts, tous les auteurs reconnaissent que la simple prestation de serment confère uniquement le titre d'avocat et que cette prestation s'impose lorsque la régularité du diplôme est certaine. Le titre d'avocat n'exige que cette condition, et il appartient à celui qui la remplit, lors même qu'il serait dans un cas d'incompatibilité de nature à lui interdire l'exercice de la profession. Quand un diplôme est présenté à une Cour, elle n'a qu'à se préoccuper de sa régularité et non de la capacité plus ou moins discutable de celui qui le produit. L'erreur de tous les arrêts a été justement d'oublier que les demanderesses ne réclamaient que le titre d'avocat et d'avoir procédé comme s'il avait été question de l'exercice de la plaidoirie.

*Id.* (footnotes omitted).

98. *See generally id.*

99. *Id.* at 47-48 (citing relative brain weights and structural differences between men and women).

100. *Id.*

101. *Id.* at 50.

appealed to the writings of philosophers, politicians, and world leaders to support his position.<sup>102</sup>

Along with a universe of famous men: Aristophanes, Cato, Juvenal, Tertullien, Saint Augustine, Grotius, Hobbes, Puffendorff, Thomassius, Wolff, Luther, Bossuet, Napoleon the First, Proudhon, Schopenhauer, Michelet, Paul Gide, Jules Simon,—I mention just a few names that come to mind,—I declare that I am for this last solution and I adopt the saying formulated by de Bonald during the Restoration: man and woman are not equal and can never be. Woman is less than man and more than he, that is to say, she is different.<sup>103</sup>

Signorel asserted that supporters who suggested that women have in the past been excellent political leaders are simply pointing to exceptions that prove the rule.

Others will be tempted to respond: tradition! but it does not support your position: you forget those distinguished women famous from history, who have governed with a certain amount of ability: Anne de Beaujeu, Queen Anne, Blanche of Castille, Elizabeth of Hungary, Elizabeth of England, Catherine the Great, Marie-Therese, and today, Queen Victoria. To these innovators, I will respond that these are the exceptions that prove that, when necessary, when exceptional circumstances require it, some women, six or seven throughout the history of the world, have shown some talent in the difficult art of government, and I would confront them with Turgot's famous saying: the rights of men and women are based on their history,—more than anything on their nature.<sup>104</sup>

102. *Id.* at 44-45.

103. *Id.* (as translated by the author).

Avec une pleiade d'hommes illustrés: Aristophane, Caton, Juvenal, Tertullien, Saint-Augustin, Grotius, Hobbes, Puffendorff, Thomassius, Wolff, Luther, Bossuet, Napoleon Ier, Proudhon, Schopenhauer, Michelet, Paul Gide, Jules Simon,—je ne cite que quelques noms au hasard,—je me prononce pour cette dernière solution et j'adopte la maxime posée sous la Restauration par de Bonald: l'homme et la femme ne sont pas égaux et ne pourront jamais le devenir. La femme est moins que l'homme et plus que lui, c'est-à-dire elle est autre.

*Id.* (footnotes omitted).

104. *Id.* at 47 (as translated by the author).

D'autres seront tentés de m'objecter: la tradition! mais elle n'est pas en votre faveur: vous oubliez ces femmes distinguées dont les noms sont passés à la posterité, qui on meme gouverne avec un certain éclat de

As a lawyer, Signorel appealed to precedent and to legal argument to limit the right of women to participate in the legal profession; however, he mounted these arguments because he was already convinced of women's intellectual and physical inferiority, but still felt the need to justify the limitation.<sup>105</sup> Legal argument as well as statistics were intended to prove women's physical and intellectual inferiority.<sup>106</sup> Signorel was not alone; other opponents of female entry into the profession advanced both legal and public policy arguments, some of them quite bizarre.<sup>107</sup>

In a survey of the prevailing attitudes against women lawyers in the 1890s, Fernand Corcos reprinted some of the more popular ones.<sup>108</sup> Some opponents believed that judges would be swayed by a woman lawyer's appearance rather than her arguments.<sup>109</sup> "People already accuse judges of all sorts of crimes, no doubt once your law is passed, they will accuse them of allowing themselves to be convinced by other than sound legal argument."<sup>110</sup> Others maintained that the practice of law was unnatural for women,<sup>111</sup> a common enough criticism at the time.<sup>112</sup> "Each

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grands royaumes: Anne de Beaujeu, la reine Anne, Blanche de Castille, Elisabeth de Hongrie, Elisabeth d'Angleterre, Catherine la Grande, Marie-Thérèse, et aujourd'hui la reine Victoria.—A ces novateurs, je répondrai que ce sont là des exceptions qui prouvent que, soumises à certaines nécessités, à certains circonstances exceptionnelles, quelques femmes, six ou sept dans l'histoire du monde, ont manifesté un certain talent dans l'art si difficile du gouvernement des peuples, et je leur opposerai le mot célèbre de Turgot: les droits des hommes et des femmes sont fondés sur leur histoire,—surtout sur leur nature.

*Id.*

105. *See generally id.*

106. *See generally id.*

107. CORCOS, *supra* note 54, at 17-18.

108. Corcos (1875-1959) earned a doctorate in *Sciences Politiques et Economiques* after training as a lawyer and gaining admission to the Paris Bar. He was active in various socialist and left-wing causes and organizations, including the *Ligue des Droits de l'Homme et du Citoyen*, and received the honor of membership in the *Legion d'Honneur*. As a young journalist, he reported the proceedings of Alfred Dreyfus' first trial for treason. He was the author of at least fifteen books on politics and international law. WHO'S WHO IN FRANCE 1953-1954, at 221-22 (Jacques Lafitte & Stephen Taylor eds., 1953).

109. CORCOS, *supra* note 54, at 17.

110. *Id.* (as translated by the author). "On accuse déjà le juge d'une foule de crimes, il n'y a pas à douter qu'une fois votre loi votée, on ne l'accuse encore de s'être laissé convaincre autrement que par de bons arguments juridiques." *Id.*

111. *Id.*

112. *Id.*

sex is called to occupations that suit it, its action is circumscribed within boundaries that it cannot breach, because nature that imposes limits on man, acts imperiously and recognizes no law."<sup>113</sup> Such arguments had a legal basis since it was ludicrous to give women permission to enter a profession for which they had no aptitude. These opponents had no sympathy for the natural law arguments advanced by the liberals and socialists who cited such philosophers as John Stuart Mill.<sup>114</sup> According to one commentator, even the discussion of legislation was a farce: "Representatives are elected to pass serious legislation and not scenes from operetta."<sup>115</sup>

Although not hostile to the idea of women attorneys, some commentators believed that any positive legislation would give false hopes to women desiring acceptance as the equals of men in the profession.<sup>116</sup> "The idea promises women many fewer advantages than bitter disappointments."<sup>117</sup> Some were cynical as well: "We will pass a law, but when it is in force, this law, which could be a real platform for women, we count on women not to use it."<sup>118</sup>

Some objections were both bizarre and sinister, invoking ancient laws concerning the proper demeanor required of attorneys.

They cite seriously a decree of the Parliament from 1540 that "prohibits lawyers from having a beard or a moustache." This meant that women could not be lawyers. And that objection astounds us; the decree assumes on the contrary that women have in advance complied with its words, because they wear neither beards nor moustaches.<sup>119</sup>

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113. *Id.* (as translated by the author). "Chaque sexe est appelé à un genre d'occupations qui lui est propre, son action est circonscrite dans un cercle qu'il ne peut franchir, car la nature qui a imposé ses limites à l'homme, commande imperieusement et ne reçoit aucune loi." *Id.* (citing M. Massubau). Corcos later used the phrase "limites à l'homme" as the title of one of his most successful books, published in 1944.

114. MILL, *supra* note 33.

115. CORCOS, *supra* note 54, at 18 (as translated by the author). "Les députés sont nommés pour voter des lois sérieuses et non pas des canevas d'opérette." *Id.*

116. *Id.*

117. *Id.* (as translated by the author). "La proposition ménage aux femmes beaucoup moins d'avantages réels que d'amères desillusions." *Id.*

118. *Id.* at 18 (as translated by the author). "On va voter une loi, mais quand elle existera, cette loi, qui pourrait devenir pour les femmes un véritable piège, on compte sur les femmes pour ne pas s'en servir." *Id.*

119. *Id.* at 19 (as translated by the author).

Anti-feminists postulated extreme situations, such as a female attorney interrupting a trial in order to give birth.<sup>120</sup> Some trotted out ancient assumptions concerning the demonstrable intellectual inferiority of women.<sup>121</sup>

It would be a great disservice to women to allow them into a profession that they are incapable of practicing. One must first ask oneself whether women are able to practice the profession. Well, the question is already answered: women are incapable of thinking in generalities; they judge by unimportant facts, by appearances. There are no women's names among the notables of science and the arts. They have never made any discoveries and only produce inferior art and inferior science. Their thought patterns are not suited to the practice of law.<sup>122</sup>

Overall, however, the appeal was to precedent (women had never been admitted to the bar in any country until recently) and to scientific proof of women's inability to carry out the requirements of the profession: lack of stamina, lack of demonstrated intellectual capacity, and ties to home and family rather than to the demands of a rigorous and exacting profession.<sup>123</sup> Policy arguments advocating the "moral uplift" that women would undoubtedly bring to other professions fell upon deaf ears. Expanding admission to legal practice was not an avenue for that kind of social change.

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On invoqua sérieusement un arrêté du Parlement de 1540 qui "interdit aux avocats de porter la barbe et la moustache." C'était donc que les femmes ne peuvent être avocates. Et cette objection nous étonne; l'arrêté suppose au contraire que les femmes ont, par avance, respecté le texte, puisqu'elles ne portent ni la barbe ni la moustache.

*Id.*

120. *Id.* at 20.

121. *Id.*

122. *Id.* at 22 (as translated by the author).

Ce serait rendre un très mauvais service aux femmes, que le leur ouvrir une profession qu'elles sont incapables d'exercer. Il faut d'abord se demander si la femme est capable d'exercer la profession. Or, la question est jugée: les femmes sont incapables d'idées générales; elles jugent par les petits faits, par l'extérieur. Parmi les noms de la science et de l'art, il n'y a pas de noms de femmes. Elles n'ont jamais fait de découvertes et ne s'occupent que de l'art inférieure de la science inférieure. Leur esprit ne convient pas au droit.

*Id.* (citing Maître Destrée, a Charleroi attorney).

123. See generally *id.*

C. *The Writings of Early Supporters*

Such was the nature of the anti-*avocate* discourse in 1897, when Chauvin attempted to enter the profession for which she had been trained.<sup>124</sup> After the refusal of the Paris Bar to admit her and the subsequent failure of her appeal, the more progressive politicians who dominated the French legislature reacted quickly.<sup>125</sup> Rene Viviani introduced legislation that would give women the right to be admitted to the bar, and liberal politician and future Prime Minister of the Republic Raymond Poincaré<sup>126</sup> became Reporter of the study that followed.<sup>127</sup> In his discussion of the necessity for women in the law, Poincaré made both legal and equitable arguments.<sup>128</sup>

From year to year, we have continued to open up schools of higher education to women; at the university level, we have granted them the bachelor's, *licence*, and doctoral degrees. The Medical School has granted them status which allows them to practice medicine. The School of Pharmacy, the School of Law and finally the School of Fine Arts have been successively opened to women.

French women have essentially been *invited* to emerge from the ignorance in which previous centuries have kept them; we have encouraged them to develop their intelligence, to exercise their abilities; finally the Government has employed them in the elementary schools as teachers and inspectors, in the girls' secondary schools as teachers; we have even allowed them to hold certain civil service positions . . . .

Only one of the liberal professions and of those which do not directly implicate the exercise of political rights is still

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124. *Id.* at 20-21. Objections in other European countries were not much more intelligible when Mlle. Popelin attempted to be admitted to the Brussels Bar.

Attendu que la nature particulière de la femme, la faiblesse relative de sa constitution, la réserve inhérente à son sexe, la protection qui lui est nécessaire, sa mission spéciale dans l'humanité, les exigences et les sujétions de la maternité, l'éducation qu'elle doit à ses enfants, la direction du ménage et du foyer domestique confiée à ses soins, la placent dans des conditions peu conciliables avec les devoirs de la profession d'avocat et ne lui donnent ni les loisirs, ni la force, ni les aptitudes nécessaires aux luttes et aux fatigues du barreau.

*Id.* at 21 (citing FRANK, *supra* note 59).

125. See MAYEUR & REBERIOUX, *supra* note 9 and accompanying text.

126. MAYEUR & REBERIOUX, *supra* note 9, at 208.

127. CORCOS, *supra* note 54, at 15.

128. See *id.*

closed to them, [and] that is *avocat à la cour d'appel*. But that profession should not be closed to women any more than any other. Women, like men, must work, in order to live honestly and honorably; they must therefore be allowed to work according to their abilities. Just as we do not prevent men, under the pretext that they are women's professions, sewing clothes or measuring laces or ribbons, the modern legislator cannot allow an omission from the law that is interpreted as a prohibition against the exercise of the legal profession by women.<sup>129</sup>

By 1900, the socialist government then in power pushed through legislation permitting women to practice law.<sup>130</sup> The Socialists could not, however, legislate women's acceptance by their male colleagues. The very arguments that supporters tended to advance in favor of women's inclusion in social activities—that they would elevate the moral discourse and would be better mothers and wives—were turned against them when it came to the participation of women in the legal profession. Supporters therefore took refuge in legal arguments,

129. *Id.* at 15-17 (as translated by the author).

[D]'année en année, on a toujours plus largement ouvert aux femmes toutes les écoles supérieures; dans les universités, on leur a conféré les grades de bachelier, de licencié, de docteur. Les Ecoles de médecine leur ont donné des grades qui leur permettent d'exercer la profession médicale. Les Ecole de pharmacie, les Ecoles de droit et enfin l'Ecole nationale des Beaux-Arts, ont été successivement ouvertes aux femmes.

Les femmes françaises ont donc été, pour ainsi dire, *invitées* à sortir de l'ignorance où les avaient maintenues les siècles précédents; on les a encouragées à développer leur intelligence, à tirer parti de leur facultés; enfin le Gouvernement les a employées dans les Ecoles primaires comme institutrices et comme inspectrices, dans les lycées de jeunes filles comme professeurs d'enseignement secondaire; on leur a même concédé l'exercice de certaines fonctions publiques . . . .

Une seule des professions libérales et de celles qui n'impliquent pas essentiellement la jouissance des droits politiques, leur est encore actuellement fermée, c'est celle *d'avocat à la cour d'appel*. Or cette profession-là, pas plus que les autres, ne doit être interdite aux femmes. Les femmes, comme les hommes, sont obligées de travailler, pour vivre honnêtement et honorablement; elles doivent donc pouvoir travailler selon leurs facultés. De même qu'on n'interdit pas aux hommes, sous prétexte que ce seraient là plutôt des occupations féminines, de coudre des vêtements ou de mesurer des dentelles ou des rubans, de même le législateur moderne ne peut pas laisser subsister dans les lois un silence que l'on interprète comme une prohibition faite aux femmes d'exercer la profession d'avocate.

*Id.*

130. *Loi du 1er Decembre 1900 (J.O.)*.



which, considering the subject matter, were more *à propos*. Thus, writers discussing women lawyers avoided making the same kinds of arguments in support of female empowerment as did writers discussing other areas of women's emancipation.<sup>131</sup>

The first defense of French women as lawyers came not from a Frenchman, but from a Belgian, Louis Frank,<sup>132</sup> who subtitled his work *en cause de Mlle. Chauvin* (in support of Miss Chauvin).<sup>133</sup>

The courts of Turin and Brussels have based in large part their decree of exclusion on these sociological considerations: "The particular nature of woman, her relative physical weakness, the reserve inherent in her sex, the protections necessary to her, her special role in the human race, the duties and subjections made necessary by pregnancy, the education that she owes to her children, the oversight of the household and domestic matters confided to her care, place her in situations little reconcilable with the obligations of the profession of lawyer, and give her neither the free time, nor the strength, nor the abilities necessary to the battles and exhaustion caused by the legal profession."<sup>134</sup>

Like protectionist thinkers in other countries, anti-feminists based their opposition on perceived physical weaknesses and mental deficiencies, both of which they attributed to the inherent inferiority of women rather than to any defect of educational opportunity or unfavorable environment.<sup>135</sup> Therefore, Frank

131. See *supra* notes 40-45 and accompanying text.

132. CORCOS, *supra* note 54, at 26. The seemingly close association of the French and Belgian bars is also evident in Gaston-Duveau's *LE TITRE D'AVOCAT* (1913), an historical and legal study of what today is known as professional responsibility. What connections existed between the French and Belgian bars of the time require further study.

133. FRANK, *supra* note 51.

134. *Id.* (as translated by the author).

Les Cours de Turin et de Bruxelles ont basé en grande partie leur arrêt d'exclusion sur ces considerations sociologiques: La nature particulière de la femme, la faiblesse relative de sa constitution, la reserve inhérente a son sexe, la protection qui lui est necessaire, sa mission spéciale dans l'humanité, les exigences et les sujétions de la maternité, l'éducation qu'elle doit à ses enfants, la direction du ménage et du foyer domestique confiée à ses soins, la placent dans des conditions peu conciliables avec les devoirs de la profession d'avocat, et ne lui donnent ni les loisirs, ni la force, ni les aptitudes nécessaires aux luttes et aux fatigues du barreau.

*Id.*

135. See, e.g., *Muller v. Oregon*, 208 U.S. 412, 421 (1908) (holding that women's working conditions could be regulated because of their physical inferiority).

and other supporters found themselves in the position of having to demonstrate that either the differences were irrelevant or were unsubstantiated by experiential data. In the first instance, supporters used male attorney history and behavior against their opponents to argue that mere maleness was not a guarantee of competence. In the second instance, they argued either from extrapolation based on inferences about likely female performance in the field or data acquired on non-French women lawyers. Lawyer-like, they reformulated the discourse to focus on the factors they considered relevant to successful legal practice rather than allowing the anti-women lawyer movement to define both the terms of the argument and the measure of any victory. Further, Frank suggested that women may be better suited for the practice of law than men.<sup>136</sup>

Frank's discussion of the case for the woman attorney began with a survey of the then present state of women's rights and positions in the workplace, which he found unjustifiably circumscribed.<sup>137</sup> Although women showed more success than men in completing the requirements for various diplomas,<sup>138</sup> they were seriously underrepresented among the professional or corporate classes.<sup>139</sup> Responding to the objections of the anti-*avocates* that women do not have the stamina necessary to engage in legal work, which may require quick action and intense, long hours, Frank pointed out that, on the contrary, most male lawyers complain that the work is uneventful.<sup>140</sup> He noted that men allow women to practice as physicians and pharmacists and questioned whether these professions were not equally demanding physically and mentally.<sup>141</sup> In addition, according to Frank, male lawyers could not legitimately complain that women lack the physical or mental ability to be successful lawyers.<sup>142</sup>

In response to Signorel's abbreviated list of famous women, Frank mentioned other accomplished French women: "Mme. de Chantal, Mme. de Sevigne, Mme. de la Fayette, Mme. de Maintenon, Mme. Dacier, Mme. Guyon, Mme. de Longueville,

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136. See generally FRANK, *supra* note 51.

137. See *id.* at 145-71.

138. *Id.* at 159.

139. *Id.* at 171.

140. *Id.*

141. *Id.* at 175.

142. See generally *id.*

Mme. du Chatelet, Mme. du Deffand, Mme. de Staël, Mme. Roland, Mme. Sand, Maria Deraismes, Clemence Royer . . . .”<sup>143</sup> In addition, other countries have their share of notable women: rulers such as “Anne de Beaujeu, et la bonne reine Anne, et Blanche de Castile, et Elisabeth de Hongrie, et Elisabeth d’Angleterre, et Marie-Thérèse, et Catherine la Grande, et Victoria, et la reine Emma, et la reine Marie-Christine . . . .”<sup>144</sup> Any of these women, many of whom are also on Signorel’s list, could have become lawyers.<sup>145</sup> Statistical differences in brain size, on which Signorel put much emphasis, were based on a small sample (thirty-two individuals) and were so small as to be insignificant since among any selection of people, brain sizes will differ radically.<sup>146</sup> Scientists agree that women’s brains do not substantially differ in size from the brains of men.<sup>147</sup>

Nor does social scientific evidence, Frank argued, confirm the beliefs of philosophers and religious leaders that women are morally or intellectually inferior to men.<sup>148</sup> “Is woman devoid of a sense of right? Is she really a ‘dangerous type’? Really!”<sup>149</sup> He pointed out that women are much less likely, statistically speaking, to commit crimes.<sup>150</sup> Due to their biological differences, women are more orderly, intuitive, and less likely to drink than men.<sup>151</sup> They are the guardians of the best traditions of the human race.<sup>152</sup> Women who commit crimes, or otherwise fall from grace, do so from the evil and corrupting influences of men rather than from any gender-specific inferiority.<sup>153</sup> All these facts make women much more moral, therefore more fit, for the practice of law than men.<sup>154</sup> Frank, more than other advocates for women attorneys, urged the

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143. *Id.* at 157. Most of these women were primarily writers, although some, such as Mme. de Maintenon, the morganatic wife of Louis XIV, Maria Deraismes, and Mme. Roland played political roles as well. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.* at 158.

148. *Id.*

149. *Id.* at 163. “La femme est-elle depourvue du sens du bien? Est-elle reellement une ‘espèce dangereuse’? Voyons!” *Id.*

150. *Id.* at 163-64.

151. *Id.*

152. *Id.* at 165.

153. *Id.*

154. *Id.*

“moral uplift” argument on his readers, but did so by citing scientific evidence rather than philosophical arguments.<sup>155</sup>

Frank also appealed to both natural law and social science to justify the entrance of women into the workplace and the professions, including law.<sup>156</sup> Indeed, to prohibit women from working is to commit a criminal offense as well as a philosophical one.<sup>157</sup> If women are to be prohibited from exercising a male occupation, such as law, all men must in fairness be barred from practicing “female” occupations, such as those with any direct connection to fashion or beauty.<sup>158</sup>

Like Corcos after him, Frank pointed out that other countries welcomed women into formerly male bastions, such as national legislatures and other branches of the government.<sup>159</sup> The United States allowed women to serve as judges and attorneys without causing any discernable damage to the legal system.<sup>160</sup>

Contrary to the claims of the anti-*avocates*, experts agree that attorneys are not primarily public officials.<sup>161</sup> If they were, minors and foreigners would not be allowed to practice law in France.<sup>162</sup>

“According to current law,” writes Mollot, “the profession of attorney is not public in nature, nor is it a privilege. It is not a public office, because the lawyer does not exercise executive power. It is not a privilege, because even if only those holding the *licence* in law can practice, the law’s only object is to ensure the standard of accomplishment and morality of individuals, for the public good.”<sup>163</sup>

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155. *Id.*

156. *Id.*

157. *Id.* at 167.

158. *Id.* at 172-73.

159. *See generally id.*

160. *Id.* at 177-78.

161. *See generally id.*

162. *Id.* at 195.

163. *Id.* at 195-96 (as translated by the author).

“D’après les lois actuelles,” écrit Mollot, “la profession d’avocat n’est ni une fonction publique, ni un privilège. Ce n’est point une fonction publique, car l’avocat ne reçoit pas l’investiture du pouvoir exécutif. Ce n’est pas un privilège, car s’il n’est permis d’exercer cette profession qu’à ceux qui sont licenciés en droit, la loi a eu pour unique objet, en imposant ces conditions, de s’assurer de la capacité et de la moralité des individus, dans un intérêt général.”

*Id.*

Like a good lawyer, Frank used these very arguments of the anti-*avocate* writer, Mollot, whose work was cited approvingly by the *procureur general* in the Chauvin case.<sup>164</sup>

Regarding the opinions of past rulers of France, to suggest that Napoleon I's pronouncements on the role of women be taken seriously is to destroy the very basis of French law and civilization. Napoleon was a great military leader, but not a legal scholar.<sup>165</sup>

According to Frank, all that should concern the law is whether a woman lawyer can legally enter into the lawyer-client contract.<sup>166</sup> Certainly, single women were able to do so; as for married women, who might have been unable to complete their duties under a contract because of spousal objections, the bar associations could have refused to admit them.<sup>167</sup>

The question of the married woman lawyer was clearly one that concerned both opponents and supporters of women lawyers, and Frank devoted much attention to it.<sup>168</sup> The suggestion that married women attorneys might not be able to practice law because they must live with their husbands, and thus may leave the jurisdiction in which they were admitted, was completely irrelevant to him.

If the objection were at all a serious one, it would be necessary to prohibit a married woman from becoming a licensed seller of goods, since she might have to leave to follow her husband. We should have to exclude from all teaching occupations and administrative functions married women, who might find themselves having to abandon their duties to follow their husbands. Finally, the minor should not be admitted to practice either, since he has to live with his parents.<sup>169</sup>

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164. See CHAUVIN, *supra* note 51, at 602.

165. FRANK, *supra* note 51, at 198-99.

166. *Id.* at 219.

167. *Id.* at 219-20.

168. See generally *id.*

169. *Id.* at 221 (as translated by the author).

Si l'objection avait le moindre caractère sérieux, il faudrait interdire à une femme mariée de devenir marchande publique, sous prétexte qu'elle pourrait devoir suivre son mari. On devrait exclure du personnel enseignant et des administrations publiques, les femmes mariées qui pourraient se trouver dans la nécessité d'abandonner leurs fonctions pour accompagner leurs maris. Enfin, le mineur ne devrait pas non plus être admis au barreau, puisqu'il est tenu d'habiter avec ses parents.

Frank disposed of other objections to women attorneys, such as the problem of the woman attorney married to a male colleague<sup>170</sup> and the problem of the woman attorney who is also a mother.<sup>171</sup> He also maintained that any legal incapacity under which women may suffer under the Civil Code should be read strictly to suggest that if women are unable to enter into enumerated relationships, they are logically able to enter into those not enumerated.<sup>172</sup> Thus, the Civil Code actually tends to empower women rather than disempower them.<sup>173</sup>

The ability of the woman [to enter into contracts, for example] is the fundamental principle of civil legislation, and effectively constitutes common law. All the items specifically listed, restricting this ability, are specific exceptions that cannot be expanded, based on this rule of interpretation: *exceptions are to be strictly construed.*<sup>174</sup>

He disposed of further Code-based arguments through a careful analysis of the political and legislative history of the Code<sup>175</sup> and through similar attacks on arguments from Roman law.<sup>176</sup>

Frank's work is clearly intended to overwhelm any objection to the entrance of women into the profession, from its evaluation of the real bases and history of the legal profession, through its attempts to persuade the reader of the most favorable interpretation of contrary evidence, and its adducements of scientific and social support for the physical and intellectual equality of women. It is clear from an examination of Fernand Corcos' work of 1926, in which the same anti-*avocate* arguments were examined after thirty years of women's participation in the profession, that it did not do so.

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*Id.* (citations omitted).

170. *Id.*

171. *Id.* at 222 (citing the cases of Myra Bradwell, Anna Fall, and Nettie Lutes, all American lawyers).

172. *Id.* at 225.

173. *Id.*

174. *Id.* (as translated by the author).

La capacite de la femme est donc le principe fondamental de la legislation civile, et constitue en somme le droit commun. Toutes les dispositions particulieres, restrictives de cette capacite, sont des dispositions exceptionnelles qui n'admettent aucune extension, en vertu de cette regle d'interpretation: *Exceptiones strictissimae interpretationis.*

*Id.*

175. *Id.* at 225-34.

176. *Id.* at 234-35.

#### D. *Later Writings*

After their entry into the profession in 1900, French women lawyers were few in number and their contributions were less than spectacular.<sup>177</sup>

What is strange is that it was not [Mlle. Chauvin] but Mme. Petit who actually first took the lawyer's oath . . . Mme. Petit, by the way, only practiced a short time at the Palais [de Justice]. Mlle. Jeanne Chauvin's first appearance in court was in *police correctionnelle* [a criminal court]. According to M. Georges Montorgueil, she represented an *aiguilleur* for negligence in a train accident. She requested application of the First Offenders Act; she spoke for eleven minutes and won her case. The first woman to appear at the assizes was Mlle. Dilhan of the Toulouse Bar; the first woman in France appointed as a professor in a law school was Mlle. Bequignon.<sup>178</sup>

Women lawyers' seeming failure to excel was gleefully pointed out by detractors and became one of the focal points of Fernand Corcos' work, along with serious discussion of what he considered to be misguided behavior or shortcomings of his female colleagues.<sup>179</sup> Anti-*avocates* now had thirty years of female participation in the legal profession to critique, and they made their objections known. The difference between works such as Louis Frank's *La Femme-Avocat* of 1898 and Fernand Corcos' *Les Avocates* of a generation later went beyond the feminization of the term *avocat*, though, as Corcos pointed out, by 1926 *avocate*

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177. CORCOS, *supra* note 54, at 35.

178. *Id.* at 28-29 (as translated by the author).

Et ce qu'il y a de curieux c'est que, c'est, non pas elle, mais Mme Petit qui, en fait, fut la première ayant prêté serment . . . Mme Petit ne fit, d'ailleurs, qu'une brève apparition au Palais. La première plaidoirie de Mlle Jeanne Chauvin fut prononcée en police correctionnelle. D'après M. Georges Montorgueil elle défendait un aiguilleur pour négligence dans un accident de chemin de fer. Elle demanda l'application de la loi de sursis; elle plaida onze minutes et eut gain de cause. La première femme qui plaida en cour d'assises fut Mlle Dilhan du barreau de Toulouse; la première femme qui fut admise en France, à professorat dans une faculté de droit fut Mlle Bequignon.

*Id.*

179. Part of his passionate interest in the future of women attorneys may be attributable to his own long-term relationship with a female colleague. Interview with Alain F. Corcos (Dec. 24, 1993).

was no longer an unusual term.<sup>180</sup> Frank was concerned with obtaining justice for women desiring to become lawyers. Corcos focused on the criticisms concerning practicing women lawyers and attempted to further the women's cause through reasoned argument. For Frank, the first hurdle was the admission of women to the bar. Corcos identified the next one—the pernicious suggestion that women are not as intelligent or capable as men—a suggestion that persisted and grew after women were admitted, primarily because, as he admitted, women lawyers did not “act” like their male colleagues. For Corcos and other supporters, the failure of women to adopt many male behaviors was the real reason for continuing opposition to women lawyers.<sup>181</sup> The more conservative male members of the profession continued to resist sharing power with a minority that did not resemble them physically, emotionally, or intellectually.<sup>182</sup>

Detractors advanced other criticisms from the somewhat banal suggestion that women lacked the physical power and the vocal ability to present forceful arguments in court<sup>183</sup> to the more dangerous claim that women desired admission to the bar, but once admitted refused to practice or practiced only until they married.<sup>184</sup> The second theory suggests that women were interested only in finding wealthy husbands or in entertaining themselves with pretensions to a career, which would displace equally talented or more talented men from the universities and eventually the bar.<sup>185</sup> Further, even potential women clients refused to hire female attorneys, although they frequented women doctors with no compunctions.<sup>186</sup> Thus, the anti-*avocates* crowed that they had demonstrated persuasively that women lawyers were inferior to their male counterparts.<sup>187</sup> Women had thirty years to show themselves to be the equals of men in the field and had achieved the success that would have been expected of them.<sup>188</sup>

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180. CORCOS, *supra* note 54, at 11.

181. *See generally id.*

182. *See generally id.*

183. *Id.* at 52-53.

184. *Id.* at 54-55.

185. The suggestion that women were displacing men would have had much more impact in France, which has always regulated entry into higher education, both by examination and through age limits, than in the United States, where there were more law schools and where age was much less a consideration.

186. CORCOS, *supra* note 54, at 60-61.

187. *Id.*

188. The criticisms were not limited to women's perceived failure in law. As early as



Corcos refused to accept the thirty-year designation.<sup>189</sup> First, the war intervened (1914-1918), preventing an orderly flow of women into the profession.<sup>190</sup> Second, the first few years after the initial admission of women into the profession was so marked by ad hoc procedures that one cannot speak of a regular procedure through which women, as well as men, entered the profession.<sup>191</sup> Corcos only admitted to about fifteen years during which women had been serious participants in the legal profession.<sup>192</sup> Thus, women did not have sufficient time to excel in the profession.<sup>193</sup> First, they had to examine the best ways to proceed and to make their mark.<sup>194</sup> If no great woman lawyer had yet emerged, that fact alone was not evidence that no woman could be a great lawyer.<sup>195</sup>

To determine the extent and nature of anti-*avocate* sentiment from the 1890s to the 1920s, Corcos synthesized much of the pre-1900 commentary and conducted interviews with over fifty of his fellow attorneys, both male and female.<sup>196</sup> He then arranged his book, *Les Avocates*, to resemble a pleading, beginning with a statement of the facts (the history of women lawyers), continuing with testimony garnered through the interviews he conducted, discussing the intellectual weakness of many of the opposition's criticisms, and ending with suggestions to ameliorate the situation.<sup>197</sup> He considered many of the criticisms to be gender based—the result of resentment on the part of male attorneys who interpreted the desire of women to be lawyers as a desire to

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1910, Faguet complained that women could be "doctors, lawyers, professors, . . . pharmacists," but failed to take advantage of these opportunities. FAGUET, *supra* note 88, at 102-03. He attributes such failure not to any shortcomings of enabling legislation, but to social attitudes which discourage women from entering these occupations and men from accepting them. *Id.* at 105. He also blames the "ligue antimasculine," what we would very likely call the "feminist movement," for an anti-male approach that alienates even supportive men. *Id.* at 115-28.

189. CORCOS, *supra* note 54, at 140-41.

190. *Id.*

191. *Id.*

192. *Id.* at 141.

193. *Id.*

194. *Id.*

195. *Id.* at 142. He points out that, at the time of his writing, there were only 300 women lawyers in France. *Id.* at 157.

196. *Id.* at 59. He uses the term "confrères," suggesting that this section of the book contains interviews with men only, and he reprints their opinions without attribution; however, earlier in the work he makes it clear that he has consulted at least one woman attorney for her reaction to a male colleague's statement. *Id.* at 53.

197. *Id.*

challenge men on their own turf.<sup>198</sup> Corcos clearly believed that women could not and should not deny their feminine natures, but in order to compete with men, they had to show that they could accomplish the same tasks without resorting to “feminine wiles” or demanding special treatment.<sup>199</sup>

The second part of Corcos’ work summarized the continuing objections of male attorneys to their female colleagues.<sup>200</sup> In general, male attorneys objected to what they perceived to be the assumption on the part of women that, once they had been admitted to the bar, the battle was over.<sup>201</sup> Men believed that women felt they deserved a like amount of acclaim without doing anything to earn it,<sup>202</sup> since their contributions were modest and uninspiring.<sup>203</sup> Further, many women dropped out of the profession without having contributed anything to the practice of law.<sup>204</sup> Male attorneys of the 1920s finally admitted that the first women to gain admission were exceptionally gifted; the later ones, however, lacked the talent of the first-comers.<sup>205</sup> Some male attorneys objected that the very idea of a woman attorney seemed to redefine the roles of the sexes.<sup>206</sup> If women could be lawyers fighting in the courtroom, why not soldiers fighting on the battlefield?<sup>207</sup> According to detractors, women lawyers could not even attract women clients.<sup>208</sup> Even the world famous Parisian fashion industry would not hire women attorneys.<sup>209</sup> Some male lawyers still objected to the idea of female participation in the legal profession, asking why feminists campaigned so hard to enter traditionally male-dominated professions when they controlled other professions so completely and why they did not champion the right of men to enter and excel at those professions.<sup>210</sup> They asserted that women should remain in the professions for which they were suited by intellect

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198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.* at 60.

203. *Id.* at 98.

204. *Id.* at 60-61.

205. *Id.* at 62.

206. *Id.*

207. *Id.* at 65.

208. *Id.*

209. *Id.* at 66-67.

210. *Id.*

and ability.<sup>211</sup> The roles of dentist and pharmacist should be enough for them.<sup>212</sup> Why did they seek to be physicians and surgeons<sup>213</sup> (and by implication, lawyers)?

Others professed concern that only ugly and unmarriageable women would actually practice for more than a few years; the other women would quickly become engaged to some charming or influential colleague or politician.<sup>214</sup> Once married, female lawyers would be active in social causes, but would be forever lost to the real practice of law.<sup>215</sup> Those married to successful husbands would feel no necessity to earn a living (and presumably those married to unsuccessful husbands would feel social and personal pressure not to eclipse them financially).<sup>216</sup>

Women in general do not ask of the legal profession what men ask.

Many women, incontestably, want the title, independently of its obligations; others, wanting a little supplement to the family income, and even accepting the hypothesis that a woman who really wants to practice law, like a man would, in order to compare her to a man, we would have to imagine her single, living alone, being, in terms of the tax laws, a single fisc, very precisely like a single man; and even so, a man living alone, always has, let us say it without irony, . . . special expenses, since contemporary morality wants us to say it.

The man thus will have expenses that the woman generally does not have. In addition, if he gets married and if he has children, this family will live on his earnings as a lawyer; in contrast the single woman, if she marries, that will bring her not additional expenses but additional earnings.

As a result under any circumstances the woman can be content with professional earnings lesser than the man's.

Do not neglect that aspect of the problem when you identify certain bad feelings held by some of our colleagues.<sup>217</sup>

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211. *Id.*

212. *Id.*

213. *Id.* at 66.

214. *Id.*

215. *Id.* at 68.

216. *Id.* at 70.

217. *Id.* at 71-72 (as translated by the author).

Other complaints were more unexpected, but directly related to the question of women's physical and mental fitness for the bar.<sup>218</sup> Women did not know how to speak eloquently in the courtroom; they did not know how to project their voices adequately enough to be heard, and they were much too emotional, a fact that they betrayed in their voices.<sup>219</sup> The most recalcitrant detractor declared that law required a certain amount of physical as well as mental force, of combat one might say, particularly for court appearances.<sup>220</sup> Women simply could not compete with men in this area.<sup>221</sup> They were, therefore, incapable of fulfilling the requirements of legal practice.<sup>222</sup>

In general, male attorneys, even if theoretically in favor of female participation in the profession, objected to women's lack of understanding of the intellectual and career demands of the law and to their lack of physical strength (stamina), which translated

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Les femmes ne demandent en général pas à la profession d'avocat ce que les hommes lui demandent.

Beaucoup de femmes, incontestablement, recherchent tout d'abord le titre, indépendamment de son rendement; d'autres, cherchent un petit supplément à leurs ressources familiales et, en prenant même l'hypothèse d'une femme qui veut vraiment exercer la profession, comme le ferait un homme, pour la comparer à un homme, il faudrait la supposer célibataire, vivant seule à son foyer étant, au point de vue des impôts, une unité fiscale, très exactement comme le serait un célibataire homme; et encore un homme vivant seul a, toujours, disons-le sans ironie, quelques suppléments de dépenses . . . spéciales, puisque la morale contemporaine le veut ainsi.

L'homme aura donc un chapitre de dépenses que la femme n'a généralement pas. De plus, s'il se marie et s'il a des enfants, cette famille vivra sur ses recettes d'avocat; tandis que la femme seule, si elle se marie, cela lui apporte non pas un supplément de dépenses mais un supplément de recettes.

De sorte qu'en toute hypothèse la femme peut se contenter d'un rendement professionnel inférieur à celui de l'homme.

Ne négligez pas cet aspect du problème quand vous constaterez quelque mauvaise humeur chez certains de nos confrères.

*Id.*

218. *Id.*

219. *Id.* at 73-74. But one interviewee seems to have valued the difference in approach and language that a female attorney brought to a criminal court proceeding. He found it different from the approach he would have provided, but effective, and efficient: it lasted approximately ten minutes. Although he does not identify the lawyer, from the facts provided it is possible that he is describing the first appearance of Jeanne Chauvin. *Id.* at 91-92.

220. *Id.*

221. *Id.*

222. *Id.* at 74-75.

into a lack of ability for a very crucial part of legal practice.<sup>223</sup> Women's willingness to put their marriages and families ahead of their careers was a further indication that they lacked the mental ability and force of will to be good lawyers.<sup>224</sup> Alternatively, they tried to compete with men rather than capitalize on their own abilities as nurturers and peace-makers.<sup>225</sup> Male attorneys completely opposed to female participation found nothing in the performance of women in the past thirty years to indicate that women had any talents suited for the practice of law.<sup>226</sup>

Having deposed his opposition, Corcos sought either to counteract their statements, if he thought them unsupported by the evidence, or to provide his women colleagues with ammunition against them when he deemed the statements to be true.<sup>227</sup> Some of the criticisms needed to be addressed, although he pointed out that none of them were particularly telling against women lawyers.<sup>228</sup>

The question of the inferior quality of women's voices is a criticism, which recurs amazingly often, and must be addressed.

Women will always have their voices held against them in battles in the courtroom. In listening to their little thin voices, I tell myself that their opponents will always be able to "get" them.

One could object that in the theater women's voices are quite acceptable. That is true, but an important point is that in the theater women, when they speak, act the part of the woman, represent the woman's point of view, are always in the role of the woman. In court, despite everything, the woman plays "the man." In addition, no matter what we say, nothing will change; women are in court, that is a fact, and being impartial about that creates many enemies.<sup>229</sup>

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223. *Id.*

224. *Id.*

225. *Id.* at 86-87.

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.* at 98 (as translated by the author).

Les femmes auront toujours contre elles, dans les batailles de la barre, leur voix. En entendant leur petite voix fluette, je me dis que l'adversaire pourra toujours "les avoir."

On objecte qu'au théâtre la voix des femmes est parfaitement admise. C'est vrai, mais il y a une observation importante, c'est que, au

Addressing the question of women's failure to attract clients, which was related to their perceived lack of courtroom success, one commentator suggested that they accept the inevitability of failure.<sup>230</sup>

A general criticism of women lawyers is this: they are less likely to admit that they can lose their cases than are men; this is a professional shortcoming that they share with men, but that is more pronounced in them. They have visualized the case developing in a certain way, and they cannot let it go; because they have misjudged the question, the judge must misinterpret the law. The judge is much more careful with a woman lawyer against whom he rules than with a man to whom he does the same thing.<sup>231</sup>

Did women have trouble attracting clients? Yes, and Corcos asserted that they would continue to do so until people became accustomed to the idea of women as lawyers.<sup>232</sup> He recommended that women explore every avenue available to them, including politics and journalism, in order to publicize their availability.<sup>233</sup> Was lawyering an exhausting occupation, and did women need physical endurance to pursue it? Yes, and there were times when women were at less than their peak, but that was also true for men.<sup>234</sup>

Did women's voices grate on the ears of those accustomed to the deeper, more authoritative tones of men? Yes, so women

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théâtre, les femmes, quand elles parlent, tiennent toujours le rôle de la femme, soutiennent la thèse de la femme, sont toujours dans une situation de femme. Au palais, malgré tout, la femme "fait homme." Au surplus, tout ce qu'on pourra dire ne changera rien à rien; les femmes sont au Palais, c'est un fait, et d'étudier leur action avec impartialité cela seul donne beaucoup d'ennemis.

*Id.*

230. *Id.*

231. *Id.* at 63-64 (as translated by the author).

Un reproche est fait généralement aux avocates; elles admettent moins aisément que les hommes qu'elles peuvent perdre leur procès; cela est une déformation professionnelle qui leur est commune avec les hommes, mais beaucoup plus prononcée. Elles ont envisagé le débat sous un certain angle, et elles ne veulent pas en démordre; parce qu'elles ont vu le procès de travers, il faudrait que le juge statuât de travers. Le juge évitera beaucoup plus soigneusement une avocate à qui il a fait perdre son procès qu'un avocat à qui il a fait subir le même sort.

*Id.*

232. *Id.*

233. *Id.* at 161-62.

234. *Id.* at 162.

should take voice and acting lessons in order to learn to modulate and project their voices to make their points.<sup>235</sup> Certainly, the theater was not a precise analogy to the courtroom, but any differences could be an advantage, proving the ability of women to compete in both traditional and nontraditional arenas.<sup>236</sup> Women lawyers, expected to think on their feet, could use their theatrical abilities to create persuasive arguments rather than rely on words previously written for them, as actresses did.<sup>237</sup> Further, acting ability certainly did not preclude intellectual agility.<sup>238</sup> As to the charge that women did not have the intellectual ability to be lawyers, Corcos responded that, in fact, the great male lawyers were great actors, who played on the emotions of the judge and jury, as well as great intellectuals.<sup>239</sup> "But is lawyering really such an intellectual subject? Lente, Lachaud, were they really intellectuals? Were they not rather great emoters[, in other words, actors]?"<sup>240</sup>

Did women lawyers have an advantage in the courtroom based on the charms they could exert over male judges? Of course not; judges could differentiate between the power of charm and the power of a good legal argument.<sup>241</sup> Additionally, male lawyers could be equally seductive, though in different ways.<sup>242</sup> Did women lawyers resist the idea that they could lose a case? Of course, but that was equally common for men and equally capable of being overcome.<sup>243</sup>

Ultimately, Corcos suggested to women that they learn and appreciate the basic demands of legal practice without abandoning their unique contribution to the profession.<sup>244</sup> He believed there was room for the "feminist" view of the law, but

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235. *Id.* at 163.

236. *Id.*

237. *Id.*

238. *Id.* at 163-65.

239. *Id.*

240. *Id.* at 146 (as translated by the author). "Mais le métier d'avocat est-il tellement un métier d'intellectualité? Lenté, Lachaud, étaient-ils tellement des intellectuels? N'étaient-ce pas plutôt des émotifs?" *Id.*

241. *Id.* at 163.

242. *Id.* at 163-65.

243. *Id.* at 168.

244. *Id.*

not at the expense of the traditions of the law.<sup>245</sup> He quoted the contemporary author Leon Daudet:

“Up to now, no woman has excelled through her eloquence, nor through her legal theory, admitting that such a thing exists . . . . But there are always exceptions and maybe we will see one day a female Berreyer or Lachaud . . . . Woman should not ape man. The masculinization of woman would be a scourge for all of civilization and for her, because she would lose her advantage and her prestige. Let her be a doctor, lawyer, suffragette, minister, anything she wants, but that she remains a woman, and does not play at being a man, in pants and in the smoking room, like Madame Dieulafoy did.” We are in agreement, now it is only a question of behavior.<sup>246</sup>

Fundamentally, Corcos did not believe that women required specific legislation enabling them to exercise their rights.<sup>247</sup> Nor was he sympathetic to feminists who supported social legislation designed to differentiate between the sexes.<sup>248</sup> He suggested instead that women abandon their traditional roles and their traditional behavior and act, not like men, but like professionals.<sup>249</sup> In doing so, he responded directly to the comments of contemporary attorneys who supported the cause of women lawyers, but found fault with their behavior.<sup>250</sup> However, he did not directly address the question of the impact

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245. *Id.*

246. *Id.* at 177-78 (as translated by the author).

“Jusqu’à présent, aucune femme avocat n’a brillé par son éloquence, ni par sa science juridique, en admettant que celle-ci existe . . . . Mais il y a toujours des exceptions et peut-être verrons-nous se lever, un jour, dans le prétoire, une Berryère ou une Lachaude . . . . La femme ne doit pas se faire le singe de l’homme. La masculinisation de la femme serait un fléau pour toute la civilisation et pour elle-même. Car elle y perdrait son ascendant et son prestige. Qu’elle se fasse doctoresse, avocate, suffragette, ministresse, tout ce qu’elle voudra; mais qu’elle reste femme, et ne joue pas le hommes, en pantalon et au fumeur, comme le faisait Mme Dieulafoy.” Nous voilà d’accord, ce n’est plus qu’une question de tenue.

*Id.*

247. *Id.*

248. For an examination of the view of feminists, particularly socialist feminists, who advocated legislation as a means of redressing the imbalance created by discriminatory laws and court decisions, see Sybil Lipschultz, *Social Feminism and Legal Discourse: 1908-1923*, 2 *YALE J. L. & FEMINISM* 131 (1989).

249. See generally CORCOS, *supra* note 54.

250. See generally *id.*



of women's natural style on the profession, although he considered it in other works.<sup>251</sup> To him, legal argument was not fundamentally gender based, but was dictated by the nature of the subject.<sup>252</sup> He did not suggest that legal discourse advanced the agenda of those in power;<sup>253</sup> such a suggestion would have undermined his argument.

Much of the criticism concerning women's inability to effect much social change seemed to Corcos to be true, but irrelevant. Women desired to be equal, not superior. He seemed not to expect much change in the profession based on an influx of women lawyers.<sup>254</sup> Just as he believed that women were the equal of men in intellect and ability, he also believed that they could be equally mediocre.<sup>255</sup> He did not expect women to change the profession or make it more responsive, gentle, and understanding of the problems of women, children, poor, and disadvantaged.<sup>256</sup> Ultimately, he did not impose on them the duty to provide the moral leadership that men could not provide for themselves.

#### SUGGESTIONS FOR FURTHER RESEARCH

Of what use is an examination of the entry of French women into the legal profession? An analysis of the early history of French women lawyers might reveal some interesting comparisons with women lawyers' experiences in other countries. The kinds of objections made to French women's practice of law resemble objections made in other countries and have continued for some time. When, if ever, the majority of French male attorneys made up their minds to accept the presence of women in the courtroom needs some investigation, as it bears directly on the broader question of whether and how minorities are admitted

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251. See FERNAND CORCOS, *LA PAIX? OUI, SI LES MERES VOULAIT* (1929) (PEACE? YES, IF MOTHERS WANTED IT). Like ASHLEY MONTAGU'S *THE NATURAL SUPERIORITY OF WOMEN* (rev. ed. 1970), several of Corcos' other books emphasize the nurturing and pacific, hence superior, approaches of women to dispute resolution.

252. See generally CORCOS, *supra* note 54.

253. See generally *id.*

254. See generally *id.*

255. See generally *id.*

256. However, based on his other works, which trumpet the superiority of women in the area of peace and stability, he may not be stating his philosophical views completely. See FERNAND CORCOS, *LES FEMMES EN GUERRE* (1927); FERNAND CORCOS, *LA PAIX? OUI, SI LES FEMMES VOULAIT* (1929); FERNAND CORCOS, *LA PAIX ORDONNEE PAR LES MERES* (1934).

into the "inner circle" of heavily regulated professions. Additionally, one should inquire into the backgrounds and subsequent histories of the women who studied law during this period. What attracted them to the profession? How did their careers develop? What was the overall quality of their interaction with male colleagues? What types of cases did they handle and what effect, if any, did their participation have on the development of French law? Research into journals, diaries, and memoirs written at the time by both men and women attorneys will undoubtedly produce some fascinating insights into the period.

To what extent female inclusion alters the practice of highly regulated professions is another question that continues to be debated.<sup>257</sup> Writers like John Gray and Deborah Tannen suggest that, in the United States at least, men and women suffer a severe communication gap.<sup>258</sup> In France, where language tends to define identity and nationality to a much greater extent<sup>259</sup> and where various politicians and philosophers even attempt to regulate means of expression,<sup>260</sup> a similar gap in communication might be expected.<sup>261</sup> Additionally, until recently, French women were reluctant to identify specific male behaviors, including "jokes[,] . . . pressure for dates for sexual purposes, strong verbal advances (including telephone calls), and unwanted touchings" as sexual harassment: behavior that many American women have identified as sexist and demeaning for some years.<sup>262</sup> Thus, a French woman's means of

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257. See, e.g., NOELLE DEWAVRIN, *LES DEFENDRES TOUTES* (1986).

258. JOHN GRAY, *MEN ARE FROM MARS, WOMEN ARE FROM VENUS* (1993) (explaining men and women's analytical styles through the metaphor of myth); DEBORAH TANNEN, *TALKING FROM NINE TO FIVE: HOW WOMEN'S AND MEN'S CONVERSATIONAL STYLES AFFECT WHO GETS HEARD, WHO GETS CREDIT, AND WHAT GETS DONE AT WORK* (1994) (arguing that men and women tend to misinterpret unspoken messages based on their interpretation of overt methods of verbal expression).

259. The celebrated French "nationality" is the subject of many treatises. For a short analysis that places it within the time period discussed in this essay, see THEODORE ZELDIN, *FRANCE 1848-1945: INTELLECT AND PRIDE* 205 (1980).

260. Alice Rawsthorn, *Toubon Vows To Continue His War of Words*, *FINANCIAL TIMES*, August 1, 1994, at 2 (on French cultural minister Jacques Toubon and his campaign to ban foreign words, especially American ones, from use).

261. French feminists have long focused on the impact of language in defining discourse. See the collection *NEW FRENCH FEMINISMS* (Elaine Marks & Isabelle de Courtivron eds., 1980), and in particular the essay by Xavière Gauthier arguing that French grammar and vocabulary traditionally subjugate women. Gauthier, at 162.

262. Anne T. Goldstein, *Sexual Harassment, Continental Style*, *LEGAL TIMES*,

accommodating traditional male behavior differs interestingly from that of her American colleagues. Language, dress, and behavior are the most obvious signs that a newly incorporated minority may be exerting influence on time-honored practices. The differences, if any, in styles of advocacy introduced by French women lawyers and their impact on law and public policy remain to be examined. Early memoirs by the first and second generations of French women attorneys need to be unearthed, if they exist, and examined as eyewitness testimony to the great changes in which their writers participated. The relationships, if any, among the struggles for various political, social, and educational rights need further investigation. Further study in this area may yield not only interesting observations, but also useful insights into the interaction of law and society.