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Virginia G. Drachman

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Virginia G. Drachman
Tufts University

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WOMEN LAWYERS AND THE QUEST FOR PROFESSIONAL IDENTITY IN LATE NINETEENTH-CENTURY AMERICA[†]

*Virginia G. Drachman**

Whenever Lelia Robinson, a nineteenth-century woman lawyer, prepared to take a case to court, she faced a particular problem — what to do about her hat. “Shall the woman attorney wear her hat when arguing a case or making a motion in court,” she asked in 1888, “or shall she remove it?”¹ Robinson’s question was not a frivolous matter of fashion, but a serious concern to every woman lawyer who entered the courtroom. As a proper lady of her day, it was not only appropriate that she wear a hat in public, it was expected of her. But as a lawyer, professional etiquette demanded that she remove her hat when she entered the courtroom.

This dilemma was but one of many perplexing problems that confronted Robinson and other women lawyers in late nineteenth-century America as they strived to establish their professional identity. At every turn they encountered the challenge of reconciling their traditional roles as women with their new roles as lawyers. As a woman, her place was at home, as the caretaker of domestic and family concerns. As a lawyer, her place was in the office and the courtroom, as the protector of justice and freedom. As a woman, she was expected to be modest, sentimental, and caring, the ideal true woman; as a lawyer, she was expected to be assertive, rational, and objective. Robinson’s quandary over her bonnet was part of the larger problem of how to balance her feminine and professional identities. However, Robinson, the first woman admitted to the bar in Massachusetts, did not have to face this problem alone. She turned for advice to a unique

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* Associate Professor of History, Tufts University. B.A. University of Rochester, 1970; Ph.D. (History) SUNY Buffalo, 1976. — Ed. The research and writing of this paper was completed with the support of an ACLS/Ford Fellowship while I was a Visiting Scholar at the Harvard Law School and a Schlesinger Library Honorary Visiting Scholar. I would like to thank Douglas L. Jones for his comments on earlier versions of this article. A modified version of this article will appear as part of the introduction to my book of edited letters from the members of the Equity Club (forthcoming, University of Michigan Press).

1. Letter from Lelia J. Robinson to the Equity Club (Apr. 7, 1888) (reproduced in *The Equity Club Annual*, 1888, at 45) (available in Lelia J. Robinson Papers, Dillon Collection, Arthur and Elizabeth Schlesinger Library on the History of Women in America, Radcliffe College, Cambridge, Mass. [hereinafter “Dillon Collection”]).

community of women lawyers — the members of the Equity Club.²

Founded in 1886 by a group of women lawyers and law students at the University of Michigan, the Equity Club was a correspondence club for women lawyers and law students throughout the country. Measured against large and powerful institutions, the Equity Club was by most standards a modest venture. It lasted only four years and had only thirty-two members. Nevertheless, the Equity Club was the first national organization of women lawyers in American history. Many larger and longer lasting women's legal institutions followed, including state and county women's bar associations, legal sororities, and the *Women Lawyers' Journal*. As such, the Equity Club's founding in 1886 marked the budding of professional identity among women lawyers in the late nineteenth century.

When the women lawyers at Michigan founded the Equity Club, the number of women lawyers in the United States was climbing to over 200.³ Scattered across the country, it was difficult, if not impossible, for these women to become acquainted with each other, much less to develop a sense of professional community and collective professional identity. The Equity Club provided women lawyers and law students with a way to transcend geographic distance and to build a community of women with similar professional interests and concerns. In the course of only four years, its small membership identified and grappled with a range of pressing issues. These issues fell into three general categories: professional matters, the dilemma of marriage and family, and the intimate details of health and sexuality. In addressing these issues, the women of the Equity Club defined the professional agenda for all women lawyers of their generation. Moreover, in doing so, they identified a more universal challenge — the question of how to strike a balance between their femininity and their professional roles.⁴

2. Much has been written on nineteenth-century womanhood and woman's place in society. See, e.g., N. COTT, *THE BONDS OF WOMANHOOD: "WOMAN'S SPHERE" IN NEW ENGLAND, 1780-1835* (1977); K. SKLAR, *CATHARINE BEECHER: A STUDY IN AMERICAN DOMESTICITY* (1973); Lerner, *The Lady and the Mill Girl: Changes in the Status of Women in the Age of Jackson, 1800-1840*, *MIDCONTINENT AM. STUD. J.*, Spring 1969, 5; Smith-Rosenberg, *Beauty, the Beast, and the Militant Woman: A Case Study in Sex Roles and Social Stress in Jacksonian America*, 23 *AM. Q.* 562 (1971); Smith-Rosenberg, *The Female World of Love and Ritual: Relations Between Women in Nineteenth-Century America*, 1 *SIGNS* 1 (1975); Welter, *The Cult of True Womanhood: 1820-1860*, in *OUR AMERICAN SISTERS: WOMEN IN AMERICAN LIFE AND THOUGHT* 93 (J. Friedman & W. Shade eds. 1973).

3. R. CHESTER, *UNEQUAL ACCESS: WOMEN LAWYERS IN A CHANGING AMERICA* 8 (1985).

4. On the Equity Club, see Drachman, "My 'Partner' in Law and Life": *Marriage in the Lives of Women Lawyers in Late 19th- and Early 20th-Century America*, 14 *LAW & SOC. INQUIRY* 221 (1989); J. ANTLER, *THE EDUCATED WOMAN AND PROFESSIONALIZATION: THE STRUGGLE FOR A NEW FEMININE IDENTITY, 1890-1920* (1987); J. Mohraz, *The Equity Club: Community Building among Professional Women* (unpublished paper available at the Schles-

It is no accident that the Law Department of the University of Michigan was the locus of this first all-women's legal association in American history. The University of Michigan admitted women well before other institutions of higher learning. When it opened its doors to women in 1870, it was one of the first eight state universities in the country to become coeducational. Its Medical Department was the first university medical school to admit women, and its Law School was the third in the country (after St. Louis University and the Union College of Law, now Northwestern) to accept women.⁵

But the University of Michigan did not always embrace the idea of coeducation. Rather, the admission of women in 1870 was preceded by years of debate and agitation dating back to the 1850s. Although the University's original statute of incorporation in 1837 provided that the University should be open to "all persons" regardless of sex,⁶ for decades women who applied to the University were rejected. In the 1850s, the question of accepting women at Michigan became a widely debated topic. At its annual meeting in 1855, the state Teachers' Association, with its large female membership, officially endorsed coeducation at the University.⁷ Over time they were joined by feminists — men and women — who supported the principle of coeducation, as well as taxpaying parents, particularly those with daughters. But the champions of coeducation faced formidable opposition from the state Board of Regents, a majority of the University's faculty, as well as University Presidents Henry Tappan and Erastus Haven. After much debate, the University of Michigan opened its doors to women in 1870 under the leadership of acting President Henry S. Frieze. Women finally had access to one of the most prestigious universities in the country.

By the fall of 1870, a total of thirty-four women were enrolled in the University, fourteen in the Literary Department, eighteen in the Medical School, and two in the Law Department. Opposition to wo-

inger Library, Radcliffe College). For a contemporary analysis of the tension between femininity and professional identity, see Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 *LAW & SOC. INQUIRY* 251 (1989).

5. On the history of the University of Michigan, see R. BORDIN, *THE UNIVERSITY OF MICHIGAN: A PICTORIAL HISTORY* (1967); H. PECKHAM, *THE MAKING OF THE UNIVERSITY OF MICHIGAN: 1817-1967* (1967). On women at the University of Michigan, see D. MCGUIGAN, *A DANGEROUS EXPERIMENT: 100 YEARS OF WOMEN AT THE UNIVERSITY OF MICHIGAN* (1970); B. SOLOMON, *IN THE COMPANY OF EDUCATED WOMEN: A HISTORY OF WOMEN AND HIGHER EDUCATION IN AMERICA* (1985). On the University of Michigan Law School, see E. BROWN, *LEGAL EDUCATION AT MICHIGAN: 1859-1959* (1959); Rogers, *The Law Department of Michigan University*, 3 *W. JURIST* 129 (1869); Rogers, *Law School of the University of Michigan*, 1 *GREEN BAG* 189 (1889).

6. D. MCGUIGAN, *supra* note 5, at 15.

7. *Id.* at 15-16.

men on campus persisted, however. Initially, the faculty ridiculed or patronized the new female students, while residents of Ann Arbor often snubbed them in town and in church. The medical faculty vehemently opposed the presence of female medical students, arguing that the sensitive nature of medical topics required separate classes for the female students. Male students opposed female medical students as well, derisively referring to them as "hen-medics."⁸

Despite this resistance to coeducation at Michigan, the University, under the progressive leadership of President James Burrill Angell, emerged as one of the most popular institutions of higher learning for women in the late nineteenth century. Its female graduates typically overlooked any opposition they encountered and looked back fondly on their days at Michigan. Michigan alumna and Equity Club member Cora Benneson explained that the female students took their place beside their male classmates "as if no lengthy discussion had ever been held in regard to the fitness of co-education."⁹ The women of the medical school provide a good example of the loyalty female students held toward the University of Michigan. They steadfastly held up their medical school experience as the model for their professional training, believing that other medical institutions simply could not compare with the University of Michigan. For years, Michigan graduates who went to Boston to train as interns at the all-women's New England Hospital, for example, expressed deep disappointment with their training experience and criticized the doctors at the hospital for not being as advanced and open-minded as their teachers at Michigan.¹⁰

In some ways, the experiences of the female law students at the University of Michigan differed from the experiences of their counterparts in medicine. First of all, there were simply far fewer women law students than women medical students. By 1900, 394 women had trained in the Medical School. By contrast, only 106 women had attended the Law School.¹¹

Secondly, with the numbers of female law students so small, the University did not see the need to organize separate classes for them. Henry Frieze explained in 1871 that "[no] separate lecture course is found necessary or desirable" Instead, while male and female

8. *Id.* at 31-37.

9. Benneson, *Life of Women at Michigan University*, WOMAN'S J., Aug. 3, 1889.

10. V. DRACHMAN, HOSPITAL WITH A HEART: WOMEN DOCTORS AND THE PARADOX OF SEPARATISM AT THE NEW ENGLAND HOSPITAL, 1862-1969, 116-17, 157-62, 165 (1984).

11. On numbers of women in the law school, see E. BROWN, *supra* note 5, at 700-01; on numbers of women at the medical school, see R. MORANTZ-SANCHEZ, SYMPATHY AND SCIENCE: WOMEN PHYSICIANS IN AMERICAN MEDICINE 232 (1985).

medical students attended separate classes, female and male law students did not. According to Frieze, this arrangement in the Law School produced none of the problems that were anxiously anticipated in the Medical School. "The Law Department encountered no difficulty in the admission of women," he explained in 1871.¹²

Despite these differences in the experiences of the women students in medicine and law at the University of Michigan, the female law students, like their counterparts in medicine, had warm and loyal feelings toward their alma mater. Margaret Wilcox, a graduate of both the Literary Department and the Law School, described her law school experience as "a pleasure beyond my expectations."¹³ Jane Slocum, a 1874 graduate of the Law School, reminisced about the fair treatment she and one other woman student, Mary Phoebe Stockbridge, received from their male classmates, who invited them to join the previously all-male Webster Society, a student-run literary club, with "every courtesy ungrudgingly extended to us."¹⁴

The women law students were graciously received by the faculty as well. Professor James V. Campbell and the Dean of the Law School, Judge Thomas M. Cooley, made them feel welcome and comfortable among so many male students. "Judge Campbell's scholarly and benignant face smiled upon us from the desk at regular intervals," Slocum recalled. Referring to Campbell and Cooley, she continued: "The generous interest of these distinguished jurists will never be forgotten by the grateful women who were treated not only as students who were welcome there, but as friends whom they were glad to aid in their life work."¹⁵ In reality, Cooley was more patronizing than accepting of the women students. In a letter to the president of Cornell

12. E. BROWN, *supra* note 5, at 252 (quoting PRESIDENT'S ANNUAL REPORT, 1871, at 18).

13. Letter from Margaret Lyons Wilcox to the Equity Club (May 2, 1887) (available in the Dillon Collection).

14. Letter from Jane M. Slocum to the Equity Club (1887) (available in the Dillon Collection). The Webster Society was a literary club run by the law students at the University of Michigan. Committed to the idea that literary culture was essential to their success in professional life, the members of the Webster Society met weekly for discussions, orations and music. In 1874, this once-exclusively male group approved the membership of Slocum and Stockbridge by the necessary two-thirds vote and graciously invited them to join. *Id.* Once admitted to the Webster Society, women did not take a back seat in its activities. In 1876, Martha Strickland was elected Secretary of the Society and her classmate, Mary Perry, was chosen to read the essay at the Society's annual public exercises. Minutes from meeting of the Webster Literary Society (1876) (available at the Bentley Historical Library, University of Michigan); Program from the Annual Exercises of the Webster Society, January 30, 1875 (available at the Bentley Historical Library, University of Michigan). Over the years, the female law students at the University of Michigan found other ways to be active in student life. Letitia Burlingame recalled proudly that in 1885 her classmates elected her Class Poet and another woman, Mary Merrill, Class Secretary. L. BURLINGAME, *HER LIFE* PAGES 318 (O. Burlingame ed. 1895).

15. Letter from Jane M. Slocum to the Equity Club (1887) (available in the Dillon Collection).

University in 1871, the year before Slocum arrived on campus, he revealed his ambivalence toward the new female students: "The number who come is small, and for the most part of the unlovely class, some of them afford the boys some amusement; . . ." Still, Cooley acknowledged that women could compete academically with the male students. "You are misinformed if you are told the standard for admission is lowered. The tendency has been in the other direction."¹⁶ Cooley was not alone in his patronizing view of the women law students. As late as 1900, even President Angell belittled them in his annual President's Report. "The number of women in the Law School is always small," he wrote. "Of those who graduate only a few engage much in practice in court. Some study the profession for the express purpose of assisting their fathers in office work. A few have taken the course in whole or in part with a belief that a knowledge of law would enable them to be more efficient teachers It seems improbable that any considerable number of women will find it congenial or remunerative to follow the profession of law."¹⁷

But the ambivalent feelings of men like Cooley and Angell did not seem to interfere with their respectful treatment of the women law students. For her part, Slocum was aware of only courteous and kind treatment from Cooley. In a letter to him she freely expressed her deep gratitude for his respect and kindness toward her. "It would in any case be impossible for me to express the gratitude which I feel for all your kindness and courtesy and for the advantages I have been permitted to enjoy here. One cannot know what a little cordial help is to any woman who tried to do something out of the beaten tracks, which makes people look with cold criticism if not with suspicion upon every motive and act, so you will never know how your abundant kindness will be treasured"¹⁸ More than a decade after Cooley confessed his inner thoughts, female graduates of the Law Department continued to speak appreciatively of their treatment at the Law School. Almeda Hitchcock, a 1888 graduate of the Law Department, recalled the respect she received as a law student. "The life here at college has been all that one could ask for," she wrote in 1887. "My classmates have treated me with respect and kindness. Not an unpleasant thing has occurred in my college life."¹⁹ Martha Pearce re-

16. Letter from Thomas Cooley to A.D. White (June 5, 1871) (available in the Thomas Cooley Collection, Bentley Historical Library, University of Michigan).

17. E. BROWN, *supra* note 5, at 253 (quoting PRESIDENT'S ANNUAL REPORT, 1900, at 6).

18. Letter from Jane M. Slocum to Judge Thomas Cooley (June 17, 1873) (available in the Thomas Cooley Collection, Bentley Historical Library, University of Michigan).

19. Letter from Almeda Hitchcock to the Equity Club (Apr. 30, 1888) (reproduced in *The Equity Club Annual*, 1888, at 26) (available in the Dillon Collection).

called a similar experience several years earlier. "We had received a hearty welcome from our brothers in law to their moot courts and debating clubs and had found that they forgot all troublesome distinctions just to the degree that we ourselves ignored them."²⁰

While the spirits of the women law students at the University of Michigan were high, their numbers were dismally low. Throughout the nineteenth century, women law students remained a remarkably small and isolated group within the large community of male students. In 1870, when the University first accepted women, there were more than 300 male students in the Law School. In 1872, Jane Slocum was one of only 3 female students among 327 men in the Law School. In 1886, the year after Burlingame graduated, and the year that the Equity Club was founded, there were finally 7 women in the Law School. This was the largest number of female students since women were first admitted in 1870. But for almost four decades thereafter, the number of women at the Law School did not again reach as high as 7. In 1924, there were finally 11 women in the Law School. By 1900, over 6000 men had graduated from the Law School. Ten years later, after forty years of coeducation, fewer than 40 women had received law degrees from the University of Michigan.²¹

It was not easy for most young women in the late nineteenth century to attend law school in an environment with so many men. On the one hand, they had few other women to turn to for friendship. At the same time, they had to be careful to maintain a respectable distance from their male classmates. Letitia Burlingame, a founding member of the Equity Club, provides an example of how one young woman in the 1880s resolved this dilemma. In 1884, shortly before she left her home in Joliet, Michigan for Ann Arbor, Burlingame worried about going to the University of Michigan precisely because she knew there would be so few other women law students. "With my dreadful bashfulness, which age seems very little to banish, I realize what a trial a course in the University, in a large class with few, if any, ladies will be, but I guess grit will conquer shyness, for I feel that I can really make a successful lawyer let me once get admitted to the bar."²²

Burlingame resolved the matter of her loneliness in a way typical of other University of Michigan students of her day; her mother went with her to live in Ann Arbor. While Letitia attended law school, her mother ran a boarding house for students of the university. In this

20. Martha K. Pearce, Report of the Corresponding Secretary, 1888, Bridgewater, Iowa, in *The Equity Club Annual* (1888) (available in the Dillon Collection).

21. E. BROWN, *supra* note 5, at 700-02.

22. Pearce, *supra* note 20; *see also* L. BURLINGAME, *supra* note 14, at 323-24.

way, Letitia's mother recreated a home away from home for her daughter, thereby protecting her from the loneliness and dangers young single women faced in a city alone. But in doing this for Letitia, the Burlingames temporarily broke up their nuclear family, for Letitia's mother left her husband for almost two years in order to stay with her daughter. This was no small sacrifice. Letitia recalled how difficult the break-up of her family was, particularly for her mother. "Such a general breaking up at home and leaving papa behind awakened sad thoughts. . . . Thus sadness was mingled with joy, for I knew it was all done for me, and mama cried for hours as if her heart would break."²³ The enormity of this sacrifice reveals the lengths to which the Burlingame family was willing to go to enable Letitia to attend law school at the University of Michigan.

With their numbers so small, the women law students at the University of Michigan were an isolated group within the large community of male law students. But their isolation brought them closer to each other. Burlingame, for example, built strong friendships with several other women lawyers and law students, including Martha Pearce, Rebecca May, and Margaret Wilcox. During the summer after her first year at law school, Burlingame had the opportunity to spend some leisurely time with other women. "Those were golden hours," she recalled. "How I feel refreshed and strengthened by the sympathy of kindred minds"²⁴ The friendships Burlingame and the others built were deep and enduring. Burlingame was particularly close to Martha Pearce. "It will be a long while before I shall find another friend in whom I can confide so unreservedly," she wrote in the midst of her second year of law school.²⁵ Moreover, these friendships lasted well beyond the days the women spent together in Ann Arbor. Three years after she graduated from law school, Burlingame wrote to Rebecca May, who was practicing law in Topeka, Kansas, to ask May to join her in her own practice with her. "I have some cases that it would be very difficult to manage alone," Burlingame wrote to May. "Would you at all consider a proposition to come here and go into partnership with me?"²⁶ Unfortunately, Burlingame and May never had the opportunity to work together because Burlingame became ill just two weeks after she wrote to May and died seven months later.

23. L. BURLINGAME, *supra* note 14, at 316. This practice was not unique to the Burlingame family. See Benneson, *supra* note 9.

24. L. BURLINGAME, *supra* note 14, at 323.

25. *Id.* at 326.

26. *Id.* at 366.

During their years together in Ann Arbor, Burlingame, Pearce, May, Wilcox, and a few other women law students built a small community of women lawyers and law students. The heart of this community was the Equity Club. On the evening of October 6, 1886, Burlingame, Pearce, and Wilcox invited the other women law students to Burlingame's home for a banquet, that is, a "co-ed spread," to honor the new female law students, or "lady 'freshies,'" as they were popularly known. Burlingame and her friends borrowed the idea from the women of the Literary Department who had initiated the tradition of inviting the new female literary students to a special annual dinner. The female medical students had taken up the tradition as well, but for years there were not enough women in the Law School to organize such a celebration. But, in the fall of 1886, there were nine women — four new students, three second-year seniors, and two alumnae living in Ann Arbor. From this group of nine, seven gathered at Burlingame's home to welcome the new students. By the end of the evening, they had formed the Equity Club and had chosen Burlingame as chairman and Pearce as corresponding secretary.²⁷

In their effort to build a professional community for women lawyers, the founders of the Equity Club made their organization as inclusive as possible. All women lawyers and law students, as well as nonpracticing women lawyers, were welcome to join. Requirements for membership were simple: an annual letter and an annual fee of two dollars. While the dues covered the costs of postage, stationery, copyright, and printing, the letters formed the backbone of the Equity Club. Dues sent without a letter were always rejected. On the other hand, a letter sent without dues was occasionally accepted.²⁸

Run by women for women, the Equity Club was a unique example of women's institution-building in the second half of the nineteenth century. During that period, thousands of women, primarily, though by no means exclusively, white and middle-class, began to form all-women's clubs, reform groups, and voluntary organizations. In part, these groups were the product of the sexual discrimination nineteenth-century women encountered whenever they sought to participate in the world beyond the home. Women founded their own anti-slavery societies, colleges, medical schools, and hospitals because they were excluded from comparable institutions run by men. Yet, women created separate organizations not only because they were excluded from those run by men, but because their own organizations differed from

27. *Id.* at 323-25; see also Pearce, *supra* note 20, at 4. One female student, Mary Whiting, did not participate in these plans.

28. Pearce, *supra* note 20 at 5, 8-9.

those of men. At the heart of women's organizations was female culture, that is, the values, customs and experiences that nineteenth-century women shared simply because they were women. Inspired by piety, purity, and domesticity, the tenets of nineteenth-century womanhood, women's clubs, schools, and professional organizations thrived, not only because of sexual discrimination, but precisely because they met women's unique needs.²⁹

The Equity Club deviated somewhat from the model of sexual discrimination and female culture which lay at the heart of most nineteenth-century women's institutions. While most women's organizations were founded because women were excluded from comparable institutions for men, it was women's very acceptance into the Law Department at Michigan which inspired them to found the Equity Club. Along with their acceptance into the Law School came isolation and loneliness among so many men. The creation of the Equity Club revealed women's attempt to nurture their female identity in a situation where, despite their acceptance into the Law Department at Michigan, their numbers were so small that, as Judge Cooley described it, their presence was a matter "of entire indifference."³⁰

Women's so-called "benign" isolation from the male lawyers and law students at Michigan foreshadowed a situation which was not encountered by women doctors until the early twentieth century when they began to attend male-run medical schools and hospitals instead of their own all-women's medical institutions. In 1905, the noted surgeon, Dr. Bertha Van Hoosen, a graduate of the Medical School at the University of Michigan, lamented the consequences of this new situation. "A generation earlier, women doctors were on the outside standing together. Now they were on the inside sitting alone."³¹ Women doctors responded to this isolation in much the same way as the women lawyers at Michigan did years before. They founded their own professional organizations to retain their female community. It is no accident that the all-women's American Medical Women's Association was founded in 1915, precisely the same year that the American

29. On women's institution building, see Freedman, *Separatism as Strategy: Female Institution Building and American Feminism, 1870-1930*, 5 FEM. STUD. 512 (1979). On the women's club movement, see K. BLAIR, *THE CLUBWOMAN AS FEMINIST: TRUE WOMANHOOD REDEFINED, 1868-1914* (1980); see also R. BORDIN, *WOMEN AND TEMPERANCE: THE QUEST FOR POWER AND LIBERTY, 1873-1920* (1981); M. BUHLE, *WOMEN AND AMERICAN SOCIALISM, 1870-1920* (1981); V. DRACHMAN, *supra* note 10.

30. Letter from Thomas Cooley to A.D. White (June 5, 1871) (available in the Thomas Cooley Collection, Bentley Historical Library, University of Michigan).

31. M. WALSH, "DOCTORS WANTED: NO WOMEN NEED APPLY": SEXUAL BARRIERS IN THE MEDICAL PROFESSION, 1835-1975, at 213 (1977).

Medical Association finally opened its doors to women.³² In the early twentieth century, women doctors finally discovered what the women lawyers in the Equity Club understood years before — that entry into the male-dominated mainstream was only the first step on the long road for women who sought to forge careers in a male-dominated profession.

While professional isolation rather than exclusion fueled the founding of the Equity Club, the Club shared with other women's organizations of its day a strong commitment to the unique needs and values of women. In fact, its members made it clear that the very appeal of the Equity Club was that, as an all-women's organization, it provided friendship and understanding from other women lawyers. Martha Pearce, the Corresponding Secretary of the Club, expressed this sentiment in her letter to the Club in 1887. "Our need of sympathy and encouragement has led each one of us at some time — at many times, perhaps, — to wish to clasp the hand and look into the eyes of someone who could understand, without a word For what can be so refreshing to an aspiring soul that has been stifled in a narrow conventionalism, as to be simply *understood*?"³³ Similarly, Laura de Force Gordon, a lawyer in San Francisco, confessed her need for the friendship and support she hoped to find from the women lawyers in the Equity Club. "Every woman in the Legal profession must feel the want of Professional companionship . . . (as I have for years) longed for expressions or assurances of that close sympathy []born of mutuality of interests, which women alone can extend to a woman."³⁴

While the purpose of the Equity Club was to address the unique needs of women in law, its founders took careful steps to ensure that they would not offend their male colleagues in the process. Appreciating the fair treatment they had received from men at the Law School, and recognizing how dependent they were upon the good will of these men, the founders of the Equity Club wanted to continue to cultivate these friendly professional relationships. With this in mind, the selection of a name for their club demanded careful consideration. On the one hand, the founders wanted a name that would convey the club's special commitment to the needs of women lawyers. At the same

32. V. DRACHMAN, *supra* note 10, at 182. Also on women doctors see G. MOLDOW, *WOMEN DOCTORS IN GILDED-AGE WASHINGTON: RACE, GENDER, AND PROFESSIONALIZATION* (1987), and R. MORANTZ-SANCHEZ, *supra* note 11.

33. Letter from Martha K. Pearce to the Equity Club (1887) (available in the Dillon Collection).

34. Letter from Laura de Force Gordon to the Equity Club, (Apr. 26, 1887) (available in the Dillon Collection).

time, they sought a name that would elicit the support rather than the antagonism of their male colleagues. "[W]e tried to avoid using any name which could raise a suspicion of opposition or rivalry," explained Pearce.³⁵ In particular, the founders wanted to avoid selecting a name that would convey the erroneous message that they had established a separate all-women's bar association. They feared that a women's bar would not only antagonize male lawyers, but would exclude many potential members, particularly students and nonpracticing lawyers. With so few women lawyers in the country, they needed a name that would welcome as many women in law as possible, but without alienating male lawyers in the process.

While the founders of the Equity Club recognized the need to convey a message of moderation to male lawyers, they also sought a name that would strike a balance for its members between their roles as women and as lawyers. From this point of view, the very naming of the Equity Club was, itself, an example of women lawyers' perpetual struggle to balance their femininity and their professional identity. Ironically, a man, Harry Burns Hutchins, Professor of Equity at the University of Michigan, unintentionally provided the founders with the name they sought. His statement, "Equity has been the saviour of woman," conveyed precisely the message the founders wanted, and they seized upon it.³⁶ In speaking of equity, Hutchins harkened back to the historical roots of equity law in England during the fourteenth and fifteenth centuries. Equity courts emerged during this era because the common law courts were unable to respond to the social and legal problems of an increasingly complex English society. The Equity Court was not an alternative system of justice designed to compete with the common law. Rather, the Equity Court was a complementary system of law, the purpose of which was to supplement the common law. The Equity Court had room for the flexibility and fairness that the rigidity of the common law courts made impossible. Thus, one sought fairness and justice from the Equity Court when the rigidity of the common law threatened a legal but heartless decision.³⁷

When Hutchins spoke of Equity as the savior of woman, he likely

35. Pearce, *supra* note 20, at 6.

36. *Id.*

37. On the history of the Equity Courts, see Katz, *The Politics of Law in Colonial America: Controversies over Chancery Courts and Equity Law in the Eighteenth Century*, in 5 PERSPECTIVES IN AMERICAN HISTORY: LAW IN AMERICAN HISTORY 257 (D. Fleming & B. Bailyn eds. 1971); A. HOGUE, *ORIGINS OF THE COMMON LAW* 157, 165-67, 177-78 (1966); 3 W. BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 426-55 (R. Couch ed. 1854). The standard treatise on equity law was published in 1881. See J. POMEROY, *A TREATISE ON EQUITY JURISPRUDENCE, AS ADMINISTERED IN THE UNITED STATES OF AMERICA* (C. Pomeroy & J. Pomeroy eds. 2d ed. 1892).

did so because of the popular notion of the Equity Court as softening the hard and rigid rules of the common law court. Indeed, the Equity Court embodied the ideal qualities of nineteenth-century femininity. First, it complemented, rather than competed with the Common Law Court. Secondly, with its emphasis on flexibility and fairness, it held out the hope of justice from the heart, while the common law courts promised rigid and pure legal decisions of the head.

In their search for a name for their club, the founders of the Equity Club found a comfortable place within the boundaries of equity law. Burlingame, for one, decided early in her law school days to make a specialty of equity law precisely because she believed it to be “a very nice subject for a lady to pursue.”³⁸ As a group, the founders of the Equity Club expanded Hutchins’ notion of equity beyond his focus on the law and infused it with their vision of woman’s professional place in law. Their interpretation of equity provided them with justification for their place within the male-dominated legal profession. Just as the Equity Court system supplemented the common law, so they envisioned themselves and other women lawyers as complementing, rather than competing with, male lawyers.

In the long run, the founders of the Equity Club did not seek pure equality with male lawyers, nor did they wish to sacrifice their ties to female culture as they established their professional identity. Rather they sought to bring their femininity to their professional lives. Whereas men claimed that the practice of law demanded an objective mind, nineteenth-century women lawyers insisted that law required an understanding heart as well. By calling their organization the Equity Club, its founders invoked an age-old legal tradition and reassured men and women alike that women lawyers would complement their male colleagues, not compete with them.

Having settled on the name for their organization, the founders of the Equity Club sent invitations to sixty-two women to join. Sixteen women responded with letters for circulation. While the number of respondents was smaller than the founders had hoped for, there was a rich diversity among this first group of club members. They spanned the country from Massachusetts to California. They came from urban centers such as Chicago and Boston, smaller cities like Omaha, Nebraska, southern cities such as Atlanta, Georgia, and smaller towns such as Hutchinson, Kansas. In addition, the Equity Club drew members from Hawaii, England, France, and Switzerland. There was little uniformity in their professional lives. Some were practicing lawyers,

38. L. BURLINGAME, *supra* note 14, at 322.

others were teachers or publishers, a few were still in law school, while a handful were not employed. Their private lives were varied as well. Some were single while others were married, and some had children while others did not. Some were well-known, such as Belva Lockwood, who in 1876 became the first woman admitted to practice law before the Supreme Court of the United States. At the other extreme was Michigan graduate Leoni Lonnsbury, a lonely housewife in Omaha, Nebraska. Scattered along the spectrum were women lawyers such as Ellen Martin, one of the most successful practicing attorneys in Chicago, Emma Gillett, a feminist and lawyer in Washington, D.C., who co-founded the Washington College of Law in 1896, and Catharine Waugh McCulloch, a leading suffragist in Chicago and a happily married mother of four.³⁹

The Equity Club provided a way for this diverse group of women to share their common ideas, professional goals and frustrations. Every year each member wrote a letter expressing her thoughts on women in law. The letters were collected by the corresponding secretary, Martha Pearce, in Ann Arbor, and hand-copied into a book, the *Equity Club Annual*. The *Annual* circulated among the members, who passed it on to one another and then waited for a new batch of letters the following year. Pearce's responsibilities as corresponding secretary increased over the years as the Club grew in size. In its second year, 1888, there were already sixteen new members, though nine of the original group dropped out. Pearce managed all the enquiries and correspondence for the club, but after four years she resigned as corresponding secretary, explaining that she could no longer keep up with all the responsibility. Since none of the other Equity Club members volunteered to take her place, the Equity Club disbanded in 1890. But from 1887 through 1890, the Equity Club members sought each other's advice on a range of issues including how to dress as a lawyer, how to justify their professional careers, the best type of practice for a woman lawyer, whether they could succeed in law while retaining their ties to charity and reform, how to balance marriage and career, and whether a woman had the physical constitution to withstand the demands of law practice. The diversity of these issues reveals the spectrum of women lawyers' concerns in the late nineteenth century. At the same time, at the heart of all of these issues was a common theme: how to strike a balance between femininity and professional identity. As women lawyers in the Equity Club corresponded about a range of

39. See generally the letters of the Equity Club (1887-1890) (available in the Dillon Collection).

issues, they simultaneously grappled with the dilemma of how to be both a lady and a lawyer in the late nineteenth century.

One of the first matters the Equity Club members considered was the problem of justifying their very professional lives. This was not a simple task. Equity Club members understood that they had to explain why it was appropriate that they, as ladies, should move out of their traditional arena, the home, and enter the male domain of the legal profession. At a meeting in Ann Arbor, the local club members attempted to address the issue by discussing the question, "What is our Duty as Women Lawyers in Society?" Some believed that their professional role dictated their obligations and that they should simply "peg along at [their] business, that is, the Law." Others argued that as women they had an obligation to "make a special effort . . . for other women besides [themselves]."⁴⁰

Equity Club members around the country divided along both sides of the issue. Some took the Victorian approach and justified their careers by emphasizing their womanhood, arguing that women brought distinctly female qualities to the legal profession. Insisting that they would be advocates of women's legal rights, they claimed that they would protect women's modesty and listen sympathetically to their legal problems. In fact, they argued that only women lawyers, precisely because of their sympathetic and maternal nature, could adequately protect women before the law.

One of the fullest elaborations of this argument came from University of Michigan Law School graduate Martha Strickland. In her essay entitled "Woman and the Forum," published in 1891 in the nineteenth-century legal journal, the *The Green Bag*, Strickland argued that sexual differences between men and women made it impossible for men ever to understand fully the needs of women. "The differences between man's nature and woman's nature are a bar, eternal as are Nature's laws, to the equitable administration of justice for humanity by men alone." From Strickland's point of view, male lawyers could never truly represent and protect women's legal rights. "I am merely saying that there are some things that men do not know, that men cannot learn, and that women do know."⁴¹

Other Equity Club members went a step beyond the focus on what women lawyers would do for women by insisting that women lawyers would also make an important contribution to the legal profession as a whole. Championing the virtues of sexual difference, they claimed wo-

40. L. BURLINGAME, *supra* note 14, at 325.

41. Strickland, *Woman and the Forum*, 3 GREEN BAG 240, 242 (1891).

men lawyers had a uniquely feminine mission: to protect and expand the ethics of the law. The result, wrote Ada Kepley, would be “sweeter manners — purer laws.”⁴² Fellow club member Sara Wertman, the first woman to graduate from the Michigan Law School in 1871, elaborated on this view. Men, she wrote, entered the legal profession for money and power. One need only look, Wertman wrote, at “[t]he wrecks of manhood strewn all along the shoals of this occupation to tell plainly how much *principle* has been sacrificed for success.”⁴³ In contrast, Wertman argued that women lawyers would elevate the legal profession beyond the crass materialism of male lawyers and transform it into a profession built upon a foundation of purity and ethics. “Woman’s place in the practice of the law, as elsewhere, is not so much to bring to it wisdom and justice, as the purifying graces, — lifting the profession to higher and nobler purposes than the selfish aggrandisement that now characterizes so much litigation.”⁴⁴

Not all Equity Club members shared the view that women lawyers brought uniquely feminine qualities to the law. Some emphasized women’s professional identity over their feminine identity and claimed that women should enter the law and practice it just as men did. Ironically, Lelia Robinson, who argued for the importance of wearing her hat in court, offered one of the clearest expressions of this view: “*Do not take sex* into the practice,” she advised young women preparing to enter law practice. “Don’t be ‘lady lawyers.’ Simply be *lawyers* and recognize no distinction — no existence of any distinction between yourselves and the other member of the bar.”⁴⁵

Other Equity Club members agreed with Robinson’s call for women not to be “lady lawyers.” Florence Cronise strongly disagreed with Ada Kepley’s claim that women lawyers would bring “sweeter manners-purer laws” to the profession. “I cannot agree nor feel any sympathy with our sisters of the Equity Club who think woman’s mission in the profession is to purify.” Describing herself as “too matter of fact” to tolerate such sentimental visions of womanhood, Cronise claimed that female sentimentality had no place in the legal

42. Letter from Ada H. Kepley to the Equity Club (July 3, 1888) (reproduced in *The Equity Club Annual*, 1888, at 30) (available in the Dillon Collection).

43. Letter from Sara K. Wertman to the Equity Club (May 7, 1888) (reproduced in *The Equity Club Annual*, 1888, at 53) (available in the Dillon Collection).

44. *Id.*

45. Letter from Lelia J. Robinson to the Equity Club (Apr. 9, 1887) (available in the Dillon Collection).

profession.⁴⁶

This claim that sentimentality had no place in women lawyers' professional lives had implications beyond the question of women's place in the legal profession. For example, as members of the Equity Club grappled with the role of femininity in their professional lives, they also debated the question of their participation in charitable, philanthropic, and reform activities. Victorian-American society created a clear distinction between business and charity. Business was defined as men's domain because it demanded the objectivity and hard-heartedness believed to be inherent to manhood. Charity and reform were accepted as part of women's domain because they relied on the supposedly womanly virtues of nurturance and sentimentality. This sharp division between business as part of men's sphere and charity and reform as part of women's sphere created another source of tension for women lawyers in the late nineteenth century. As women, it was appropriate for them to engage in charity and reform. But as lawyers, it was more acceptable for them to restrict themselves to business and professional concerns.

The women lawyers in the Equity Club had little consensus over the place of charity and social reform in their professional lives. Some argued that law and charity could not mix. These women adopted what they perceived to be the male lawyers' model of success. They believed that in order to succeed in law, they must follow men's example and harden themselves to the urge to engage in philanthropy. In fact, the women lawyers who took this approach believed that it was particularly important for women lawyers to avoid charity and reform because it was more difficult for women than men to establish successful legal careers. As Lelia Robinson explained in 1888: "Anything whatever that lures the woman attorney away from her office should be put aside — must be put aside — if women are ever to establish themselves as a recognized element of the bar of this country . . ."⁴⁷ Emma Gillett agreed. "I have endeavored . . . to stick to my profession and not be lured into any class of philanthropic or other work," she wrote to the Equity Club in 1888.⁴⁸ Ellen Martin took an even more hard-hearted approach. "Work for charity clients is more severe than that for business people because as a rule they are incompetent to

46. Letter from Florence Cronise to the Equity Club (1889) (available in the Dillon Collection).

47. Letter from Lelia J. Robinson to the Equity Club (Apr. 7, 1888) (reproduced in *The Equity Club Annual*, 1888, at 68) (available in the Dillon Collection).

48. Letter from Emma M. Gillett to the Equity Club (Apr. 18, 1888) (reproduced in *The Equity Club Annual*, 1888, at 21) (available in the Dillon Collection).

do anything for themselves and have no money for incidental outside expenses. . . . [W]hen I have anything to give away I will give it in money and not in legal services."⁴⁹

Martin's cold approach to her work contrasted sharply with the contemporary image of the kind-hearted and nurturing woman. But she was not alone among women lawyers in her impatience with charity and her rejection of sentimentality. Emma Gillett, for one, shared Martin's view of charity cases. "Charity clients should be shunned unless in extreme cases," Gillett wrote to the Equity Club. "They have no more right to a lawyer's services for nothing than a washerwoman's . . ."⁵⁰ Like Martin, Gillett articulated a view of charity that sharply contradicted the popular conception of the nurturing woman and left little room for sentimentality. "Nothing is more wearing than sympathy," she wrote. "I have cultivated a hardness of heart. I can listen to distressing things unmoved, visit the dying and sleep soundly after it and cut short a garrulous visitor without hesitation."⁵¹ Florence Cronise also linked her rejection of philanthropy with her rejection of woman's sentimental nature. "No thought of being a public benefactor ever entered my head. I cannot accept sentimental views of woman's mission — this world is plain, hard facts, sentiment may be beautiful to look at and indulge ones thoughts in occasionally, but it will earn no bread and butter, accomplish no genuine good and should be set aside for holiday narrations and not allowed to show itself on our hard work days."⁵²

Women like Gillett, Martin, and Cronise linked charity with the sentimentality of "True Womanhood" and hard-heartedness with the objectivity of the law. In doing so, they created an equation which left no room for philanthropy in their professional lives. With a clear conscience and with women's best interests foremost in their minds, they chose career over compassion, and self-interest over social reform. But to these women, charity was not simply an issue for each woman lawyer to resolve on her own. Rather, they transformed the question of charity work into a political issue, making it a test of women's commitment to the cause of women lawyers. From their point of view, the survival of a woman lawyer's career came before the legal needs of an impoverished client. Charity work drained energy from an individual

49. Letter from Ellen A. Martin to the Equity Club (May 25, 1888) (reproduced in *The Equity Club Annual*, 1888, at 35-36) (available in the Dillon Collection).

50. Letter from Emma M. Gillett to the Equity Club (Apr. 27, 1889) (available in the Dillon Collection).

51. *Id.*

52. Letter from Florence Cronise to the Equity Club (1889) (available in the Dillon Collection).

woman lawyer and by extension from the community of women lawyers. Thus, the woman lawyer who took on charity work indulged in sentiment at the expense of both her own professional advancement and the best interests of all women lawyers. On the other hand, the woman lawyer who rejected charity work proved her personal commitment to her own professional success as well as her political allegiance to the larger cause of women in law.

Other members of the Equity Club proposed an alternative model of practice that was rooted in the traditionally feminine values of the late nineteenth century. They argued that the politically appropriate act was to incorporate charity and reform into their professional lives. Unlike Cronise and others who defined individual business success as women lawyers' ultimate goal, these women lawyers urged others to put charity and reform at the heart of their professional lives. "There is something besides law to be studied," Marion Todd wrote to the Equity Club in 1888. "It is human justice." Referring to the poor women and children who toiled in factories and sweatshops, Todd insisted that women lawyers had an obligation to use their legal expertise to help the victims of industrial capitalism.⁵³ Todd was not alone in her call to women lawyers to help others. Catharine Waugh McCulloch confessed that "it is difficult for me to resist outside pressure to help in church, temperance, and suffrage work."⁵⁴ Not only did she graciously accept women clients who were too poor to pay her, but, throughout her professional life, McCulloch was a leader on behalf of a range of women's causes including temperance, suffrage, jury duty, and women's custody rights. Other women lawyers shared McCulloch's commitment to reform. Ada Kepley, the advocate of "sweeter manners-purer laws," was an ardent supporter of temperance who gave years of legal advice to the Women's Christian Temperance Union.⁵⁵

Some women lawyers believed that they should integrate their commitment to philanthropy into their law practice. Margaret Wilcox, for one, argued that there was a great need among women's re-

53. Letter from Mrs. Marion Todd to the Equity Club (Apr. 4, 1888) (reproduced in *The Equity Club Annual, 1888* at 48) (available in the Dillon Collection).

54. Letter from Catharine G. Waugh to the Equity Club (Apr. 26, 1889) (available in the Dillon Collection).

55. On Catharine Waugh McCulloch, see 2 *NOTABLE AMERICAN WOMEN, 1607-1950: A BIOGRAPHICAL DICTIONARY* at 459 (E. James ed. 1971) (biographical sketch). On Ada H. Kepley, see Pulliam, *Effingham's Fighting Female*, in *EFFINGHAM COUNTY ILLINOIS-PAST AND PRESENT* 299 (H. Feldhake ed. 1968), and A. KEPLEY, *A FARM PHILOSOPHY: A LOVE STORY* (1912).

form movements for the services of women lawyers.⁵⁶ Ada Bittenbender agreed. She combined her legal expertise with her commitment to reform and earned her livelihood as legal counsel to the national Women's Christian Temperance Union. Bittenbender disagreed with women lawyers who believed that close ties to reform groups would retard professional advancement. "We who have taken up 'side issues' receive many a rap in the Annual from you who have not or who have ceased to do so." She insisted that it was precisely because of her efforts on behalf of the WCTU that she met powerful male lawyers and politicians in Washington, D.C., men she would never have encountered without " 'dabbling in side issues.' "⁵⁷

While the women lawyers in the Equity Club grappled with the question of the place of charity and reform in their professional lives, they also tried to reconcile the problem of how to balance marriage and career. Lelia Robinson first raised the issue in her letter to the Equity Club in 1889. "Is it practicable for a woman to successfully fulfill the duties of wife, mother and lawyer at one and the same time? Especially a young married woman?" she asked.⁵⁸

In an era when women typically had to choose between marriage and career, and most chose marriage, the Equity Club members discussed with each other the possibility of having both.⁵⁹ Unmarried members of the Equity Club typically remained single because they believed that marriage imposed too many domestic obligations on women and was, therefore, incompatible with a serious career. "A glance through the [Equity Club] Annual," wrote Gillett, "would seem to indicate that the majority of the practitioners who are sticking to their work and plodding on in the sure and safe way to win success are unmarried."⁶⁰ Believing that they had to make a choice between marriage and career, single women sacrificed the former in hopes of establishing productive professional lives.

While many Equity Club members followed the path of the single life that was typical of most nineteenth-century professional women, what is most striking is that more than one half of the members of the

56. Letter from Margaret L. Wilcox to the Equity Club (Apr. 20, 1888) (reproduced in *The Equity Club Annual*, 1888, at 55) (available in the Dillon Collection).

57. Letter from Ada Bittenbender to the Equity Club (May 10, 1889) (available in the Dillon Collection).

58. Letter from Lelia J. Robinson to the Equity Club (May 22, 1889) (available in the Dillon Collection).

59. On marriage in the lives of nineteenth-century women lawyers, see Drachman, *supra* note 4.

60. Letter from Emma Gillett to the Equity Club (Apr. 27, 1889) (available in the Dillon Collection).

Equity Club — sixteen in all — were married. Moreover, the married Equity Club members were not unusual among women lawyers of their day. When Equity Club member Lelia Robinson sought to gather information on as many women lawyers in the country as possible, she found that one half of the 120 women lawyers she identified in 1890 were married. As Robinson concluded, the late nineteenth-century woman lawyer “exists to quite a numerical degree in the married state as in that of single blessedness.”⁶¹ In the Equity Club, a high proportion of married women balanced marriage and career. Thirteen of the sixteen married women continued to work after marriage. Of the thirteen married, working women, ten had married other lawyers and were in practice with their husbands. For these women, marriage enhanced rather than impeded their careers. In contrast to single women who typically had to confront sexual discrimination and the difficult search for work on their own, women lawyers who were married to lawyers usually found that their husbands not only shielded them from public disapproval but provided them with a secure and welcoming place to work.

Women lawyers whose husbands were lawyers typically shared a practice with them. In contrast to the idealistic notion that women should enter the law to help other women, most married women lawyers practiced law to help their husbands. Married women lawyers such as Mary Haddock, Laura LeValley, and Corinne Douglas all devoted their professional lives to assisting their husbands in their practice. Emma Haddock wrote to the Equity Club that her husband, a lawyer in solo practice, urged her to “enter the law school and prepare [herself] for office work.”⁶² Similarly, Corinne Williams Douglas’s husband explained to Lelia Robinson in a letter on his wife’s behalf that “[s]he studied law for the purpose of helping me and not for the practice generally.”⁶³ A husband gained many advantages in sharing his law practice with his wife. If he was in solo practice, as most lawyers were in the 1880s, the presence of his wife, trained in the law, could significantly reduce expenses as well as increase the ability of the law office to transact more business. Moreover, his wife was an assistant whom he could trust and whom he knew would promote the welfare of the practice.

There were also many practical benefits for the woman lawyer in practice with her husband. She did not have to worry about the ex-

61. Robinson, *Women Lawyers in the United States*, 2 GREEN BAG 10, 11 (1890).

62. Letter from Emma Haddock to the Equity Club (May 12, 1888) (reproduced in *The Equity Club Annual*, 1888, at 24) (available in the Dillon Collection).

63. Robinson, *supra* note 61, at 19.

penses of renting or furnishing an office nor did she have to worry to the same extent as a single woman about the problem of attracting clients. But the advantages for the married woman of sharing a practice with her husband went well beyond financial concerns. By assisting her husband in his law practice, a married woman lawyer came close to personifying the image of the lady lawyer. Unlike single women lawyers who often had to go into court, whether they wanted to or not, a married woman lawyer could rely on her husband to bring cases before a judge or jury. As a result, she could avoid the public scrutiny of the courtroom and stay protected within the privacy of the office.

Typically, women lawyers in the Equity Club who shared practices with their husbands willingly left the public responsibilities to their husbands while they worked modestly in the office. Emma Haddock, for one, explained that because she worked with her husband, she did not need "to take public part in the practice," and that, in fact, she "preferred the preparation of a case to its argument."⁶⁴ Laura LeValley described her situation similarly. "I have never made an effort to take an active part in court. In fact I never intended to do so, but have been assisting my husband in the office, and have given much time to stenography and office work"⁶⁵ Of course not all married women lawyers who shared a practice with their husbands restricted their legal work to the office. Ada Bittenbender, for one, wrote to the Equity Club that she enjoyed court practice more than office work. Moreover, Bittenbender pushed the boundaries of her practice even further than the courtroom, traveling to cities and towns throughout Nebraska to conduct legal business.⁶⁶

The relationship between a husband and wife in law practice together was typically built on a foundation of equity rather than on pure equality. In this way, the Equity Club marriages represented the expansion of the traditional Victorian marital relationship beyond the home. The husband exercised ultimate power and authority, while the wife usually served as his assistant. In addition, their working relationship mirrored the sexual division of labor that characterized Victorian-American marriages. Litigation and courtroom work tended to be the domain of the husband. This work demanded assertiveness,

64. Letter from Emma Haddock to the Equity Club (May 12, 1888) (reproduced in *The Equity Club Annual*, 1888, at 24) (available in the Dillon Collection).

65. Letter from Laura LeValley to the Equity Club (Apr. 20, 1888) (reproduced in *The Equity Club Annual*, 1888, at 31) (available in the Dillon Collection).

66. Letter from Ada Bittenbender to the Equity Club (Apr. 27, 1888) (reproduced in *The Equity Club Annual*, 1888, at 16) (available in the Dillon Collection).

strength, and self-confidence, the perceived characteristics of nineteenth-century manhood. At the same time, the office tasks the wife typically undertook, including legal research, the preparation of wills, real estate closings, case preparations, stenography, typing, and office management, mirrored her domestic role and demanded the same attention to detail and managerial skills as her housekeeping duties. This arrangement moderated the tension between marriage and career for women lawyers who were in practice with their husbands. The wife was the True Woman transposed into the safety of her husband's office, working modestly and unobtrusively behind the scenes while he worked aggressively in the public eye.

The success of marriages in which husband and wife were both lawyers depended in large part on whom a woman married, a fact the Equity Club members well understood. They particularly appreciated the support they received from their husbands. Kepley explained to the Equity Club how important her husband's support was in encouraging her law career. "I was willing enough and desired to help mankind and the world, but like many others, the usages and customs of sex so bound me that I needed an impelling force, and I gratefully record this as due my 'partner' in law and life."⁶⁷ Robinson also appreciated her husband's encouragement: "My husband is proud of my professional ambition and does everything that a husband can do to encourage and sustain me in it. His wedding present was a fine roll-top desk for my office and he does not fret very much when it is discovered that every pair of his socks is in need of mending."⁶⁸

Not all women fared so well. The experience of Mary McHenry reveals how destructive an unsupportive husband could be to an aspiring woman lawyer. McHenry graduated in 1882 from Hastings College of Law in San Francisco, was immediately admitted to the bar and opened a successful law practice. Her marriage, however, abruptly ended her career. She moved with her husband to Berkeley and gave up her practice. When she wrote to Lelia Robinson, she explained that while she hoped to resume her practice some day "her husband laughingly says, '[n]ot much you will.'"⁶⁹

Marriage could do more than enhance or destroy a woman lawyer's professional career; it could ruin her health as well. The absence of reliable methods of birth control meant that marriage brought with

67. Letter from Ada Kepley to the Equity Club (July 3, 1888) (reproduced in *The Equity Club Annual*, 1888, at 29) (available in the Dillon Collection).

68. Letter from Lelia Robinson Sawtelle to the Equity Club (Sept. 18, 1890) (available in the Dillon Collection).

69. Robinson, *supra* note 61, at 26.

it the possibility of repeated pregnancies that could also destroy a woman's health. But, health was a matter of serious concern for single women lawyers as well. In fact, the question of women's health was a highly controversial issue in late nineteenth-century America and one the Equity Club took very seriously. More than any other issue, the matter of women's health and sexuality reveals how deeply the problem of balancing their dual roles as women and as lawyers penetrated women lawyers' private lives. Prevailing medical wisdom defined women as physiologically unsuited to undertake rigorous mental work after the onset of puberty. The physician responsible for popularizing this view, Edward H. Clarke, was a well-respected doctor at the center of the elite medical community in Boston and a professor at Harvard Medical College. In 1873, he published *Sex in Education: or, A Fair Chance for the Girls*, which explained the supposed weaknesses of female physiology to the general reader. Wrapped in the banner of medical authority, *Sex in Education* was an assault on the new phenomenon of coeducation. Clarke warned that women's reproductive physiology made it unsafe for them to undertake any intellectual activity with the same rigor as men. Excessive study, he explained, diverted energy from the female reproductive organs to the brain, causing a breakdown in women's health and threatening the health of future generations.⁷⁰

Sex in Education was widely read, going through seventeen editions in thirteen years. Its success placed advocates of education for women on the defensive. Clarke's dire warnings about the deterioration of women's health aroused concern among even the most ardent supporters of women's education. In the years immediately following the book's publication, the president of Smith College anxiously defended the school against Clarke's arguments in his annual report to the board of trustees.⁷¹ M. Carey Thomas, the first female president of Bryn Mawr College, acknowledged that she did not know when Bryn Mawr first opened "whether woman's health could stand the strain of education. We were haunted in those days by the clanging chains of that gloomy little specter, Dr. Edward H. Clarke's *Sex in Education*."⁷²

70. E. CLARKE, *SEX IN EDUCATION; OR, A FAIR CHANCE FOR THE GIRLS* (1873).

71. Annual Report of Smith College, 1877, at 3.

72. Walsh, *supra* note 31, at 124 (quoting Thomas, *Present Tendencies in Women's Colleges and University Education*, 25 *EDUC. REV.* 68 (1908)). In 1874, the year after *Sex in Education* was originally published, four books challenging Clarke appeared: G. COMFORT & A. COMFORT, *WOMAN'S EDUCATION AND WOMAN'S HEALTH: CHIEFLY IN REPLY TO "SEX IN EDUCATION"* (1874); E. DUFFEY, *NO SEX IN EDUCATION; OR AN EQUAL CHANCE FOR BOTH BOYS AND GIRLS* (1874); *THE EDUCATION OF AMERICAN GIRLS CONSIDERED IN A SERIES OF ESSAYS* (A. Brakett ed. 1874) and *SEX AND EDUCATION: A REPLY TO DR. E.H. CLARKE'S "SEX*

Sex in Education reached beyond the boundaries of the elite women's colleges in the northeast to large public universities such as the University of Michigan. The local bookseller in Ann Arbor sold over 200 copies of the book in a single day. Olive San Louie Anderson, one of the early female students at Michigan, reminisced about the impact of the book on the University community. "Dr. Clarke's book was discussed by more than the girls in Clinton Street. The boys read it and delivered their opinion at length among themselves. The president and the faculty read it, and shook their heads doubtfully about the 'experiment in coeducation.'"⁷³ In 1886, Charles C. Moore, a lawyer in Litchfield, Connecticut, and a frequent contributor to law journals such as *Law Notes, Case and Comment*, and *The Green Bag*, applied Clarke's theories about women's health specifically to women in law. In a short story entitled *The Woman Lawyer*, Moore told the tale of a young woman lawyer, Mary Padelford, who moved to Claremont, Connecticut, a fictitious town modeled on Litchfield, Connecticut, to set up a law practice on her own. Single and alone, Padelford's vulnerability was accentuated all the more by the fact that "her health had never been exceedingly rugged." Over the course of her first year in Claremont, Padelford's health steadily deteriorated as she struggled to build her law practice. Her acquaintances worried that she was overworking and a close friend and colleague, Walter Perry, begged her to slow down. By the spring, Padelford finally acknowledged that she needed a rest and planned a summer vacation "to recruit her failing strength." But Padelford collapsed long before the summer. During an appearance in court, she became so weak and tired that she fainted in her chair. The doctor announced that she was "seriously ill" and diagnosed her condition as "brain fever." After four weeks of rest, Padelford finally recovered, and prepared to leave Claremont and renounce court practice. But at the last moment, she married Walter Perry and entered into a law partnership with him. It was clear to the reader that the new Mrs. Perry, under the protective eye of her loving husband, would stay out of the courtroom and no longer exhaust herself in her office practice.⁷⁴

IN EDUCATION" (J. Howe ed. 1874). The outrage of many nineteenth-century women at *Sex in Education* has been echoed by contemporary historians, who have interpreted Clarke's book as a dangerous threat to women's rights. See M. WALSH, *supra* note 31, at 132-33.

73. O. ANDERSON, AN AMERICAN GIRL AND HER FOUR YEARS IN A BOYS' COLLEGE 102 (1878). Ironically, while men and women alike debated the question of women's health at the University of Michigan, the only incidents of students leaving the law school because of failing health from Apr. 1894 through June 1895 involved four young men. See Minutes of Faculty Meetings of Law Department, University of Michigan, Apr. 27, 1894 to June 21, 1895 (available in the Bentley Historical Library, University of Michigan).

74. Moore, *The Woman Lawyer*, 26 GREEN BAG 525-31 (1914); see also Weisberg, *Barred*

Stories such as *The Woman Lawyer* popularized Clarke's arguments about the limitations of women's health. The women lawyers of the Equity Club understood all too well that Clarke's dire warnings threatened their professional careers. But, within the privacy of the Equity Club, where they could openly discuss their concerns about health, Equity Club members were not unanimous in their rejection of Clarke. Ellen Martin brought the issue into the open in 1888 when she warned her fellow club members about the delicacy of the female reproductive system. Echoing Clarke's view, she wrote: "I refer to the close relation between the brain and the organs peculiar to women," she wrote, "and to the fact that any trouble with those organs (and a celebrated anatomist says they seem made to get out of order) seriously affects the brain and the nervous system." Martin particularly warned her fellow club members against the dangers of doing trial work, which she claimed was far more taxing than office work. "The peculiarity I have mentioned makes women liable to suffer more from this nervous strain than men."⁷⁵

As Secretary of the Equity Club, Martha Pearce invited other members of the Club to respond to Martin's views on women's delicate nature. "I am not sorry that she wrote it down," explained Pearce, "for when there is any evil abroad it is better to talk about it and find out why it exists, and how it can be overcome, than to leave it alone."⁷⁶ The Equity Club members responded enthusiastically to Pearce's call to debate the question of women's health. From their letters, it was clear that Martin was in a distinct minority. Only Emma Gillett acknowledged that she had a weak constitution and limited her practice to office work because of her delicate health. "I have never gone into jury cases and have done very little court work, but I deliberately chose this course at the beginning as I knew by experience that my nervous organism would break under the strain." But Gillett was quick to point out that her weak constitution was unique to her, not a natural condition of womanhood. "This lack of nervous endurance I do not count as a feminine failing," she wrote. Nor did she believe that her weak constitution was unchangeable. Instead, she explained that she had improved her health and strengthened her body

from the Bar: Women and Legal Education in the United States, 1870-1890, 28 J. LEGAL EDUC. 485 (1977).

75. Letter from Ellen Martin to the Equity Club (May 25, 1888) (reproduced in *The Equity Club Annual*, 1888, at 34-35) (available in the Dillon Collection).

76. Pearce, Report of the Corresponding Secretary (reproduced in *The Equity Club Annual*, 1888, at 10-11) (available in the Dillon Collection).

through a steady regimen of exercise and diet.⁷⁷

The Equity Club members overwhelmingly agreed with Gillett that it was the material conditions of women's lives, rather than a weakness inherent to women's reproductive physiology, which was responsible for their physical problems. In particular, they pointed to three components of women's style of life that were crucial to women's health: a daily regimen of diet and exercise, meaningful work, and respectful sexual relations between husband and wife. While Clarke's *Sex in Education* carried the weight of medical theory, the opinions of the Equity Club members grew out of their personal experiences. Practical reality rather than ideology shaped their responses to Martin's letter.

Catharine Waugh McCulloch, then a young unmarried lawyer in Rockford, Illinois, explained that she believed the key to health for women was exercise, diet, and sensible clothing. Echoing the wisdom of the health reformers in the antebellum period, she shared her personal health habits with her fellow club members. "My creed includes no corsets, broad, low-heeled shoes, reform under garments, dresses in one piece hanging from the shoulders, no tea, little coffee or pork, few pies and cakes, much sleep, a little hoeing in the flower beds and a day in bed when occasion demands"⁷⁸ As an aside, McCulloch contended that law was a particularly suitable profession for women because the work schedule could be flexible. "[W]e can be sick in comfort easier than in any other profession for the cases can be postponed till next week or next term while the doctor could not so easily shove aside a case of fever or a minister a marriage ceremony."⁷⁹

While Clarke warned women about the dangerous consequences of mental activity, Michigan graduate Letitia Burlingame learned from her personal experience that meaningful work enhanced her physical and mental well-being. Burlingame had been sickly ever since childhood. As a teacher, her health continued to deteriorate. After suffering ill-health during twelve years of teaching, she took up the study of law at the University of Michigan. Burlingame's friends feared that her health would decline even further. But she became stronger and healthier in law school. "[M]y health has steadily improved, so that I am now stronger than ever before," she wrote to the Equity Club.⁸⁰

77. Letter from Emma Gillett to the Equity Club (Apr. 27, 1889) (available in the Dillon Collection).

78. Letter from Catharine G. Waugh to the Equity Club (Apr. 26, 1889) (available in the Dillon Collection).

79. *Id.*

80. Letter from Lettie L. Burlingame to the Equity Club (Apr. 23, 1887) (available in the Dillon Collection).

Two years later, at the end of her first year of practice, Burlingame brought up the topic of her health once again. Referring directly to Martin's concerns about women's "delicate organization," Burlingame explained that her health had continued to thrive during the first year of her active law practice. "I am now stronger and able to endure more than at any other period of my life. Indeed, I stand courtroom work better than many of the men," she wrote proudly.⁸¹ While Burlingame's active legal career may have strengthened and invigorated her, it could not overcome a lifetime of weakness and poor health, and she died only a year and a half later from influenza.

Other Equity Club members focused particularly on the importance of respectful sexual relations between husband and wife in preserving a woman's health. While Clarke described the female reproductive system as naturally delicate and prone to illness, the women of the Equity Club defined female reproductive physiology as naturally healthy but prone to abuse. Once again, they argued that it was not the universal condition of female physiology but the material conditions of women's lives which determined their health. In an era when the only reliable method of birth control was abstinence, the women of the Equity Club embraced the prevalent medical wisdom that frequent sexual relations in marriage endangered the wife's health. To protect the wife's health, nineteenth-century physicians strongly urged married couples to refrain from sexual intercourse except when they wanted to reproduce. While doctors viewed the question of sexual relations between husband and wife as a matter of health, many women in the second half of the nineteenth century understood that it was also an important political issue between husband and wife. In an attempt to establish autonomy for the wife in marriage, they argued that, not only should sexual relations occur solely for the purpose of procreation, but it was the wife's right alone to determine when sexual relations should occur.⁸²

It was within the context of these contemporary views of sexual relations in marriage that several of the Equity Club members responded to Martin's letter. Again, they disputed the notion that the female reproductive organs were inherently delicate. Rather they insisted that it was the history of abuse of those organs that caused women so much suffering. "Let us . . . put the blame for woman's

81. Letter from Lettie L. Burlingame to the Equity Club (Apr. 22, 1889) (available in the Dillon Collection).

82. See generally L. GORDON, *WOMAN'S BODY, WOMAN'S RIGHT: A SOCIAL HISTORY OF BIRTH CONTROL IN AMERICA* (1976); J. REED, *FROM PRIVATE VICE TO PUBLIC VIRTUE: THE BIRTH CONTROL MOVEMENT AND AMERICAN SOCIETY SINCE 1830* (1978).

diseases where it belongs — on the blind errors of our ancestors who in ages past abused the powers that nature designed for the holiest uses,” wrote Pearce. “The results have been visited upon their daughters in weaknesses that have no parallel throughout the animal kingdom.”⁸³ While Pearce spoke in general terms, another Equity Club member provided specific proof of the harmful affects of marital excess. The writer, who chose to remain anonymous, graduated with high standing from law school and had a promising legal career before she married. Her husband’s sexual demands, however, ruined her health and destroyed her chances for a professional life. Her friends believed that she had fallen victim to too much mental work. “[T]he few who know of me would wisely nod their heads and quote the old story of ‘over study,’” she wrote. For a long time she listened quietly as they attributed her ills “to any cause but the true one.” But the Equity Club gave her the support she needed finally to expose the truth. Confessing the real source of her private torment, she lamented that “with all my study, I did not study woman in the marriage relation.”⁸⁴

Greatly moved by the woman “who unburdened her heart,” Ada Bittenbender shared with the Equity Club the intimacies of her own marital relationship. Unlike this anonymous writer who suffered silently from her husband’s sexual demands, Ada Bittenbender explained that she openly discussed the issue with her husband. “I talked the matter over frankly with my husband as I do all other interests in life, and since have received his hearty consideration in this as in all efforts I make.” To solve the problem, Bittenbender recommended that married couples sleep apart. “I would recommend the occupying of separate beds, and also of bed-chambers when convenient, by married people.”⁸⁵

The willingness of Bittenbender and others in the Equity Club to discuss marriage and sex so openly is testimony to the trust they placed in each other and in the organization they built together. Moreover, it reveals the fact that the Equity Club members were keenly aware that they simply could not discuss their professional lives apart from their private lives. At every turn, they found that professional matters overlapped the boundaries of their personal lives.

Viewed from the perspective of the history of the modern legal profession in America, the Equity Club, a small, nearly forgotten

83. Pearce, *supra* note 76, at 11.

84. *Id.*

85. Letter from Ada M. Bittenbender to the Equity Club (May 10, 1889) (available in the Dillon Collection).

group of women lawyers of the late nineteenth century, articulated the enduring concerns of women lawyers as the modern American legal profession took shape. These concerns ranged from professional matters such as what to wear in court and how to deal with nonpaying clients to private matters such as how to balance marriage and career. As the Equity Club members opened their hearts and minds to each other on these issues, they began to outline the contours of professional identity for this first generation of women lawyers in American history. Yet, embedded within their budding professional identity lay the early signs of a deep and enduring tension between their traditional roles as women and their new roles as lawyers. Diverse in their views but united in their commitment to advancing women in law, the women of the Equity Club struggled to resolve that tension. Their dialogue on the question marked the beginning of a debate that persisted well beyond the short life of the Equity Club and continues today over how women in succeeding generations would seek to balance their roles as women with the professional demands of the legal profession.