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Citations:

Bluebook 21st ed.  
Women in Law, 97 HARV. L. REV 2001 (1984).

ALWD 7th ed.  
, Women in Law, 97 Harv. L. Rev 2001 (1984).

APA 7th ed.  
(1984). Women in Law. Harvard Law Review, 97(8), 2001-2004.

Chicago 17th ed.  
"Women in Law," Harvard Law Review 97, no. 8 (June 1984): 2001-2004

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"Women in Law" (1984) 97:8 Harv L Rev 2001.

AGLC 4th ed.  
'Women in Law' (1984) 97 Harvard Law Review 2001.

MLA 8th ed.  
"Women in Law." Harvard Law Review, vol. 97, no. 8, June 1984, p. 2001-2004.  
HeinOnline.

OSCOLA 4th ed.  
'Women in Law' (1984) 97 Harv L Rev 2001

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## BOOK NOTE

WOMEN IN LAW. By Cynthia Fuchs Epstein.<sup>1</sup> Garden City, New York: Anchor Press/Doubleday. 2d ed. 1983. Pp. xiii, 438. \$18.50.

It is unfortunate that the title of Cynthia Fuchs Epstein's book, *Women in Law*, may dissuade some people, particularly men, from reading it. For although her study focuses on the particular difficulties that women face within the legal profession in the United States, *Women in Law* also provides a revealing look at the profession as a whole — the rules, rituals, and folkways of an occupational culture in which, according to Dr. Epstein, hierarchy and exclusion operate in remarkably subtle and complex ways.

Much of Dr. Epstein's comprehensive study is historical — a chronicle of women's progress in eliminating some of the more overt, formal barriers to their participation in the legal profession. Her account is enlivened by facts and anecdotes that attest to this progress and provide a jarring reminder of how much has changed even in the last few decades. For example, when Supreme Court Justice Sandra Day O'Connor graduated from Stanford Law School in 1953 — third in her class<sup>2</sup> and a law review editor — she received only one job offer: a position as a legal secretary (p. 84). Dr. Epstein also reports that women were physically segregated in the classrooms of Brooklyn Law School (p. 61) and recounts the astonishing remark made to Chief Justice Susie Sharp of the North Carolina Supreme Court by a male attorney appearing in her trial court: "Honey, I don't think you understand my case very well" (p. 244).<sup>3</sup>

Dr. Epstein concludes that, although much has changed, women's assimilation into the profession is by no means complete.<sup>4</sup> Her book describes a paradoxical combination "of radical changes and the prevalence of old patterns" (p. 381), a combination that she effectively illustrates with statistics about the profession. The percentage of lawyers who are women, for example, has jumped from about three percent in 1960 to twelve percent in 1980; observers predict that women will constitute a third of the legal profession by the year 2000 (pp. 4, 381). Nevertheless, women continue to be disproportionately clustered in specialties such as "family and government law, public interest and defender work," in which both pay and prestige are lower

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<sup>1</sup> Professor of Sociology, Queens College. Columbia University, Ph.D., 1968.

<sup>2</sup> See Bodine, *Sandra Day O'Connor*, 69 A.B.A. J. 1394, 1396 (1983).

<sup>3</sup> The reverse of this situation has perhaps been more typical, as when a Texas judge asked a woman lawyer to turn and face the courtroom and said, "Ladies and gentlemen, can you believe that this pretty little thing is an assistant attorney general?" Stan, *Can Justice Survive Bias on the Bench?*, Ms., Feb. 1984, at 19, 19.

For a general discussion of the sexual harassment of women, see C. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN* (1979).

<sup>4</sup> To her credit, Dr. Epstein recognizes and discusses the unique difficulties that black women have faced (pp. 87-89).

than in such fields as corporate law (p. 381).<sup>5</sup> Similarly, although the number of women law professors has increased, they are proportionally underrepresented at the "top ten" schools,<sup>6</sup> they receive promotions less readily than their male counterparts do (p. 224), and the rate of improvement in their hiring situation appears to be leveling off (p. 222 n.\*). To be sure, the appearance of women on the bench marked a "major breakthrough" (p. 244); yet nearly half the states still had no women appellate judges as of 1980 (p. 243).

Although the facts, anecdotes, and statistics provide a useful perspective on the struggles of women to overcome overt forms of discrimination in the profession, the most instructive aspect of Dr. Epstein's account is its analysis of the subtle cultural and institutional barriers that remain. Her analysis focuses on two types of barriers that operate to exclude women from complete participation: our cultural views about the nature of men and women, and the structure of the profession (p. 265).

Cultural stereotypes operate to exclude women because the qualities that are seen as typically male are those that are also associated with good lawyering. Women, for example, are seen as nonassertive and hence are dismissed as lacking the aggressive personality necessary for practicing law. Of course, if they are assertive, women are chided for being too "ballsy" (p. 280).<sup>7</sup> These views are part of the "male culture" of the profession (pp. 283-302). The subtle manifestations<sup>8</sup> of this culture often surface when women try to learn the "informal dimensions" (p. 288) of the professional role — a role generally defined by an oscillation between "cool, detached, and emotionless" behavior (p. 281) and joking, back-slapping chumminess (pp. 281-82). As one partner at a large firm observed, the legal profession is "still a man's world" (p. 281);<sup>9</sup> yet women lawyers often must learn to navigate this

<sup>5</sup> Recent studies have also shown that women attorneys' incomes are lower and increase at a slower rate than men's, see Smith, *A Profile of Lawyer Lifestyles*, A.B.A. J., Feb. 1984, at 50, 51 table 3, and that a much lower percentage of women "make partner," see Stewart, *Are Women Lawyers Discriminated Against at Large Law Firms?*, Wall St. J., Dec. 20, 1983, at 1, col. 1.

<sup>6</sup> The number of tenure-track women law teachers grew from 2.2% in 1970 to 10.5% in 1979 (p. 219), but in 1979-1980 an average of only 6.24% of the faculty at the "top ten" schools were women (p. 223).

<sup>7</sup> Women find themselves in a double bind in other respects as well. For example, a woman attorney's professional success may depend at least in part on her physical attractiveness (pp. 309-12), yet she must be wary of too much success because her achievements may make her less desirable socially. Dr. Epstein found that in many cases "even emancipated women wanted their husbands to be more outstanding than themselves" (p. 348).

<sup>8</sup> Dr. Epstein also details some of the more obvious manifestations of male culture in the profession — for example, in such auxiliary institutions as athletic clubs and bar associations (pp. 248-49, 283-86). The author points out that some of these organizations, which provide their members opportunities for professional mobility and employment, continue to exclude women entirely; others admit women but relegate them to subordinate roles (pp. 248-49, 285).

<sup>9</sup> "Since they can't go into the locker room, or in some cases the lunch clubs that are limited to male membership, women have difficulty learning how to pick up the nuances of informal

world without mentors or role models to guide them (p. 288). Thus, many women still find law firms "inhospitable" (p. 214) despite the climate of formal nondiscrimination.<sup>10</sup>

The structure of work and opportunity in the legal profession poses another set of obstacles for women — obstacles that are related, at least in part, to the unequal division of domestic labor in our society.<sup>11</sup> Women attorneys who wish to have families often face both exacting professional obligations and the ultimate responsibility for childrearing (p. 373) and housekeeping (p. 350). Both the family and the legal profession are "greedy institutions" that demand total commitment (pp. 206-07, 318), and it is generally the wife rather than the husband who curtails her career because of children (p. 374).<sup>12</sup> When faced with such competing commitments, many women opt for a pattern of "discontinuous participation in professional life" (p. 252). Yet this solution is hardly satisfactory; law firms generally do not welcome part-time employment arrangements (p. 364), and in many firms work interruptions will mean losing a chance for partnership.<sup>13</sup>

Although Dr. Epstein devotes considerable attention to this conflict between work and family roles, her treatment of the issue is perhaps the most disappointing aspect of an otherwise highly insightful book. Dr. Epstein acknowledges that "the profession has been structured to mesh with the lives of men and the norms of society which encourage men's commitment to work" (p. 8). Yet she fails to explore whether such intense commitment is necessary, and her analysis lends itself

behavior" (p. 282). It is worth noting, however, that to the extent that exclusion is a class-related phenomenon, some women will find it less difficult than others: "The woman who's grown up in Greenwich, Connecticut, played tennis at the right tennis club . . . goes to Harvard Law School and then to a Wall Street firm will be very comfortable . . . [S]he will know exactly what to say to the client, and she will know what he's talking about . . ." (p. 300) (quoting an "experienced woman lawyer").

<sup>10</sup> The author quotes a Sullivan & Cromwell partner's description of a female associate in the firm as having "the build and ferocity of a song sparrow," and the remark of a woman who left Sullivan & Cromwell that the firm "wants no sparrows — only eagles" (p. 287). The quotes are taken from Margolick, *Wall Street's Sexist Wall*, NAT'L L.J., Aug. 4, 1980, at 1, col. 1, 58, col. 2.

<sup>11</sup> See, e.g., J. AREEN, *CASES AND MATERIALS ON FAMILY LAW 150* (1978) (noting study that showed that "middle class fathers spent an average of only 15 to 20 minutes per day interacting with their one year old infants" and another study that showed a total time spent of only 37.3 seconds). Interestingly, "[t]he lower middle class, the category with the shortest actual working hours, also has the most egalitarian 'companionate' marriages . . ." R. KANTER, *WORK AND FAMILY IN THE UNITED STATES 32* (1977).

<sup>12</sup> One solution to the competing demands of work and family has been the delegation of family duties to domestic employees. According to Dr. Epstein, a majority of women partners on Wall Street with children have full-time, live-in help (p. 368). Of course, this is no solution at all for most practitioners, whose incomes could not support such an arrangement even if they desired it. Moreover, even if such wholesale delegation of family responsibilities were possible, this approach makes women's full acceptance into the profession contingent on their conforming to the pattern established by men.

<sup>13</sup> See Gould, *Esq.*, *STUDENT LAW.*, Nov. 1983, at 47, 48.

too easily to the conclusion that the conflict between work and family must be resolved through adaptations made by individual women.

To adapt, to "play by men's rules" (p. 212), and to succeed in the legal profession is of course what the women Dr. Epstein describes have done. They have often done so, however, at the cost of accepting the male definition of success — a definition that, in the legal profession, generally boils down to a single word: work. Dr. Epstein details the obsessive patterns of work and overwork that are typical in much of the profession and observes that women receive little support from family and friends for these exertions,<sup>14</sup> whereas men do get such support, if not from their families, then from their peers and more generally from cultural norms (pp. 318, 320). Thus, the difference between men's and women's willingness to commit themselves to exceedingly long hours at work<sup>15</sup> is related to the different meanings that work and career success have for women and men in our society. Yet the social meaning of work is shaped, at least in part, by the expectations of employers, such as law firms, that have made success depend on conformity to a standard that not only favors overwork, but often demands it.

Suprisingly, Dr. Epstein hardly questions the need for such long hours.<sup>16</sup> Of course, the existing arrangement of legal work is neither natural nor inevitable; it has evolved to meet the cultural norms and business needs of those who run the profession and who in turn justify these arrangements by reference to the "demands" of litigation or corporate practice (pp. 197, 210). The profession itself creates the urgency of these demands by organizing legal work in such a way that schedules are often unpredictable and time frames short. Thus, the profession has the opportunity, and perhaps the duty, to restructure its work norms to ensure that practitioners who choose to have — and to enjoy — a family are not penalized for that choice.<sup>17</sup> This restructuring, like the elimination of cultural stereotypes in the profession, cannot be accomplished wholly through the adaptations of individual women. These are problems for which the profession as a whole — law firms, practitioners, judges, law schools, and even law reviews — must take ultimate responsibility.

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<sup>14</sup> This lack of support is particularly evident in the situations in which women's commitments to work and family are in conflict.

<sup>15</sup> Dr. Epstein's figures show that a substantial number of men in almost every occupational category spend more than 40 hours a week at work. Even in the so-called "feminine" occupational categories — nurse, librarian, secretary, schoolteacher, and social worker — and in most of the typically male occupations, twice the percentage of men as women work over 40 hours a week (pp. 316–17).

<sup>16</sup> Although she appears to harbor some doubts (pp. 210–11), Dr. Epstein concludes that "intensive work is . . . both an expectation and a need" of the legal profession (p. 319).

<sup>17</sup> For an excellent discussion of possible legislation that would require work to be organized in a way that accommodates employees' family commitments, see M.J. Frug, *Securing Job Equality for Women: Labor Market Hostility to Working Mothers*, 59 B.U.L. REV. 55, 95–102 (1979).