

DISSONANCE AND DISTRUST: WOMEN IN THE LEGAL PROFESSION by Margaret Thornton, Melbourne, Oxford University Press, 1996, ISBN 0 195 536614.

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Margaret Thornton's book "Dissonance and Distrust: Women in the Legal Profession" examines the position of and perceptions of women in the various arms of the profession, from the legal academy as students and academics, to all potential areas of employment. The text is particularly valuable because its broad scope in terms of consideration of these areas is combined with detailed analysis of the actual processes (in thought and in practice) involved in the treatment of women, and with the personal experiences of women in the law. Thus the book constitutes a development from Thornton's earlier work in *The Liberal Promise*, not only through its focus on one particular area of discrimination, but also by its presentation of the true subtext wherein social and consequently legal professional structures, both formal and informal, are controlled and bolstered by men who wish to retain their power.

The structure of the book is particularly interesting in that it mirrors the nature of the opposition which women find within all facets of the legal profession, moving from opposition in terms of the theoretical construction of the feminine to practical difficulties such as pregnancy and childcare. In this way, the author reinforces a major theme: simply admitting more women to the academy and thence to the profession will generate no substantive change as long as the culture of the profession and legal education, as well as the societal structures, preferences and biases remain the same.

Seven chapters address the primary elements of discrimination against women in the legal profession. The book's first chapter entitled *The Fictive Feminine* examines society's construction of women and the "feminine". The female evokes corporeality, emotion, and affectivity while the male represents logic, reason and neutrality. This means that it is not possible for women to be identified as "knowers". In the context of the legal profession, therefore, the participation of women is perceived as incongruous. That is, as the masculine is rational and connected with thought rather than impulse, with logic rather than emotion, its supposed neutrality lends it the quality of the universal. Furthermore, women represent disorder and chaos and thus have no place in a regime which is based on legal concepts such as *stare decisis* and the rule of law, presumptions which suggest that there is a correct decision, a rational and universal solution which will be applied to elicit a predictable result.

Legal decision making takes place within the public sphere, traditionally identified with the masculine. Again, the concept of the feminine being disorderly arises here. Such chaos is deemed inappropriate to a sphere which is based upon images of order and reason. It is therefore essential that women be confined to the private sphere, so as to maintain a regime assembled by and for the masculine. Such opinions assemble the framework for examination of discrimination. Of course, male neutrality is exposed as a myth which allows male controlled systems to function without scrutiny and which enhances judicial mystique.

Chapter 2, *The Maiden Bachelor of Law*, examines the historical position of women wishing to gain admission to law school and to practice. Traditional opinion considered women who wished to enter law school not to be real

women. Discussion of female intellectual capacity adopted the now familiar patterns (which, as Thornton points out, occur whenever the "other" poses a threat to the established order) of evaluation as inferior. The author charts the legislation and practical occurrences, including wartime underemployment, which enabled women to enter the academy and subsequently to find a place in the profession. Entry, however, is demonstrated to be only an introductory step towards equality, as its inevitable consequence was either criticism (especially for taking jobs away from men who had families to support), marginalisation, or treatment as a novelty.

This chapter has an interesting connection with the books' final chapter, *Body Politics*. The fear of the intrusion of female sexuality and the natural into the calm and masculine profession could only be countermanded either by moving in the one direction, to oppose the presence of women, hence attempting to excise them either literally or psychologically, or by the opposite tactic, treating their role as merely decorative. Sexual harassment and the failure to address pregnancy and child related issues in the employment context are current examples of these early opinions and behaviour patterns. The stories which Thornton recounts in this section have a common theme whereby the pregnant woman becomes sexualised, and thus somehow offensive to her colleagues. She is exposed to questions about her marital status and family life to which a male whose partner is expecting a child is not. Indeed the unwillingness of women to identify their marital status, or failure to use a married name is considered a sign of separation from the masculine, and opposition to all that it represents. Choice of dress also intersects with sexuality. Thus women must attempt to disguise their femaleness, as, because of their identification as the erotic, they pose a threat to order.

In the current economic climate, Chapter 3, *Education for Corporatisation*, is of particular interest. Thornton finds that law schools, rather than modernising their perspectives and curricula, are attempting to win favour for their graduates, and thus to obtain more or better enrolments, by functioning as conservatively and conventionally as possible, thus appealing to "the market". In this way, a mutual reinforcement occurs between the profession and legal education, and as explored in a discussion on Foucault, power and knowledge are interconnected. The training in law school limits the perception of students, thus equipping them for the limited scope of practice. "Thinking like lawyers", they become primarily occupied with the need to satisfy a myriad of rules with suspect and diverse aetiologies, while neglecting to analyse the result in terms of its contribution to justice.

Thornton details the alienation and loss of confidence women law students experience, and links this to issues of race and class, which are, like the issue of gender, often absent from the curriculum, especially in the "hard" or corporate subjects, as opposed to the "soft" subjects. Students from lower socio-economic backgrounds are forced to face their lack of assumed "knowledge". It is also important to note that the enforcement of "otherness" in the context of legal education is identified by Thornton as being performed by students as well as academics. That is, those who profit from the maintenance of the system adopt early a role in safeguarding its boundaries.

*Academic Affairs* examines the connection between the bureaucracy of organisational structures and masculine modes of operation. This chapter analyses the opposition to female and feminist scholars in terms of their perceived disruption

of the academy. Such opposition may stem not only from men, but from other women who perceive successful females as competition for their tenuous connection with authority in a structure where authority is designated as male. Chapter five, *The Neutral Woman of Law*, examines the role of the female solicitor within the firm. Organisationally speaking, operations are heterosexualised, in that it is normal for males in authority to be assisted by women, in this situation being typists, receptionists and secretaries. This complicates the relationship between female solicitors and their non-legal female subordinates. The two groupings are not differentiated by male solicitors, while female solicitors are hesitant to exercise authority over subordinates by giving directions rather than making requests.

The difficulty which women face in obtaining articles is compared with the practical legal training courses, which the author believes are effective in breaking a link between privilege (in terms of class, gender, sexuality or race) and entry to the profession. Given the cost of practical legal training, however, it would seem that some barriers still remain. Similarly, disillusionment with the profit imperative of the law firm is discussed as a factor in female choices to leave the profession. On the other hand, Thornton correctly describes the situation where junior solicitors are overworked and under-remunerated because of the oversupply of labour and non-unionisation: there are many ready to take the place of a dissatisfied solicitor. The consequent predominance of women in public sector legal work is presented as an interesting reversal of the traditional public/private distinction mentioned earlier. The result is a devaluation of private sector work and a reinforcement of the masculine nature and thus greater value of the private legal organisation.

Thornton believes that quotas are ineffective because they impose a change in numbers without a change in thought. This leads her to the suggestion that those women who do manage to enter the profession face difficult choices. Women can opt to remove themselves from the profession altogether or to accept the inequities and a more difficult career path. For example, child-care responsibilities will not be accommodated in a work situation. If these responsibilities are prioritised by women, however, they will doubtless promote an image of not being a "team player", which will affect professional success. Women who choose can try to fit into the male scene, thus becoming "honorary men". But as Thornton points out in Chapter 6, *Contingent Authority*, this strategy can be effective only to a point.

The chapter deals with the concept of male camaraderie and the connection between law firms, team sports and male clubs. It addresses the relationships between professionals and between lawyers and clients which occur at a non-professional or semi-social level. The reason why modification of behaviour, expectations and preferences will not be sufficient to allow a woman to fit into the profession without being identified as woman and therefore "other" is because of the broader context of which the profession is a part. There still exist a number of clubs which women are not eligible to join. Thus women often find themselves excluded from drinks after work, or from firm lunches. Firm sports teams are another way in which the masculine culture of the firm is maintained. This is not to suggest that women have less facility in sports (although they may well not have learnt how to play many of them). Rather, the men tend to feel that it is not appropriate for women to join them, or women legal professionals cannot make playing team sports with work-

mates a priority due to insufficient time, for instance due to family responsibilities. The sexual connotation of social interaction is also addressed. For a woman to take a client to lunch or to join a male colleague or partner for lunch inevitably leads to suspicion about the real nature of the encounter. Thus once again, women are sexualised.

In addition to the exclusion which occurs in the abovementioned transactions, the issue of business power and success arises. Valuable information is more often exchanged in a social context. Professional gossip and opportunities, networking and the making of contacts and forging of alliances with potential clients are all more likely to occur at the bar, in the club or locker room or at the football than at work, in office time. This is especially significant given current commercial values, where legal practitioners who are "rainmakers" and bring in business may be more highly regarded than experienced and competent performers. However, as the author demonstrates, it is no solution for women to take part in as many of these activities as are open to them. One of the more fascinating anecdotes in the book concerns a female solicitor who had been socially acquainted for a number of years with a man who operated a large and successful business enterprise. On one occasion, he happened to meet a young solicitor and play sport with him; he then offered on the spot to bring his legal business to him in future.

A superficial analysis might identify as a possible criticism of the book the fact that the initial premises of the book have been raised in many other writings. However, Thornton's work is a particularly important contribution because it draws together the complex network of connections which constrain the position of women within the profession. Not only does Thornton use structure to reflect the nexus between theoretical presentation of women and their isolation from the legal system which is constructed around the masculinist neutrality myth, but she assembles and identifies a valuable collection of female experiences. Issues of legal education, corporate society, the legal fraternity, pregnancy, childcare, sexuality and sexual harassment, are all interwoven and mutually influential.

The qualitative analysis, consisting of excerpts from the many interviews carried out by the author with legal practitioners, academics, judges, associates, public servants and law students, is a fine addition to the book's theoretical content and the delineation of the actual position and practical problems of women in the workforce, specifically women lawyers. As stated in Thornton's consideration of society's view of women, personal experience is devalued in both the legal and academic spheres. Thus, the use of such excerpts here is interesting in that they add an emotional, experiential dimension to the book. The use of this tactic presents what appears as a paradox. While recognising the way in which the feminine is constructed as "fictive", Thornton nevertheless adopts an academic style which incorporates this delineation. This is certainly valid, however, as the author wishes to address the myth that personal experience and the emotive play no part in the thought or action of rational benchmark man, rather than the functioning of women.

Naturally, the nature of the book's subject matter does point to the concern of essentialism. However, Thornton addresses this at the outset, making it clear that a significant factor in the construction of the feminine is the failure to consider women in terms such as working class, queer or of Non-English Speaking Background. She points out that while the consideration of women as a

homogenous group has been a self-reinforcing behaviour of the legal system and its benchmark man, a focus on difference can also prove paralysing for feminists in this situation. That is, it may be necessary to examine the situation as it applies to all women before it is possible to delve into the complexity of intersectionality and to consider the complex interplay of characteristics which composes a single woman.

Thornton's work is a valuable reminder of the "ideological role of law", whereby the masculine becomes the universal, and legal rules become the only necessary consideration for justice. While increasing numbers of female legal practitioners will not alter this situation, some hope is still held out for change in the long term by action in a variety of areas, in particular by female academics. In the meantime, women legal practitioners continue to face harassment and insulting behaviour, restriction to the softer areas of law, and exclusion; but most importantly, their presence in the profession demonstrates their daily dilemma of compromise.

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