

The Law and the Discipline of Geography: A Parallel Universe

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The Law Society of Upper Canada has worked aggressively to implement policies that address the systemic barriers to women's and other equity-seeking groups' advancement within the profession. In this article, I suggest there are a number of parallels between the profession of law and the discipline of geography and outline ways in which the approach taken by the Law Society could be applied to academia.

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Graduate studies are both a prerequisite and a proving ground for an academic career. The required course work and thesis research as well as our daily interaction with “fellow” students and faculty are designed to inculcate us with the internalized norms, values and ideologies of academia. For the most part, the process is relatively painless, often enjoyable, intellectually stimulating and intriguing.

Yet lying just underneath the day-to-day, nose-to-the-grindstone work of completing our studies – the courses, the papers, the teaching, the dissertation – is a constant nagging assessment of whether we will make the grade as faculty, whether we will publish enough, write enough, obtain sufficient funding, attract interesting students, survive teaching evaluations and the haughty assessment of more senior faculty. And for some of us, namely some of the women in graduate school, there is an additional nagging, just-at-the-edges concern that the profession we are about to enter is vaguely foreign, somehow operating with a slightly skewed set of values, a profession in which a different language is being spoken and a distinctive set of rules is being applied.

In 1993, I left a successful 10-year legal career in private practice to return to graduate school at Queen's University, first completing a master's in Urban and Regional Planning in 1995, and now, finishing a doctorate in social/cultural geography. As I stand at the brink of a second career trajectory, I cannot help but compare my experience as a female lawyer with that of my experience as a female graduate student and faculty-in-waiting. What is disconcertingly

clear is that the sense of being an “outsider” in an institution not of my own making is as strongly felt in academia as it was during my years at the bar.

Law and Geography: Tackling Gender Issues

Both the legal profession and the discipline of geography have had to come to terms with the impact of women entering their respective professions in ever-increasing numbers. As the number of women in both professions reached a critical mass, statistics revealed that women fall behind their male counterparts across a range of indicators. In law, substantial gender differentials exist in income, and promotion, admission into partnership and supervisory positions (Hagan 1990; Kay and Brockman 2000). In the discipline of geography, women experience similar discrepancies in income, tenure, teaching evaluations and administrative responsibilities (Bell and Gordon 1999; Winkler 2000).¹

What is of particular interest to me is the distinctive ways in which the legal profession in Ontario and discipline of geography in Canada have come to grips with gender equity issues. I would argue that Ontario’s legal profession has framed the problem as a *systemic* one, that is, it has concluded that the difficulties experienced by minority or equity-seeking groups arise from structures deeply embedded in the institutions, norms and values underpinning the legal profession. The solution to the problem, posed in this fashion, is to highlight and dismantle these institutional conventions supporting the systemic barriers. To buttress this approach, the legal profession conducted in-depth corroborative research and embarked on an ambitious course of policy directives designed to address the systemic, institutionalized barriers to women’s (and other’s) advancement in the profession (LSUC 2001, 1999a, 1999b, 1997, 1996, 1991).

By contrast, the discipline of geography, and perhaps academia in general, has resisted measures designed to dismantle systemic barriers despite the institution of equity policies and a seemingly genuine concern for change. In fact, it could be argued that equity matters are now rarely framed as systemic issues, effectively eliminating the transformative potential of that

argument. This would explain, in part, the discipline’s failure to significantly change the composition of both faculty and students.

I do not intend to imply that the legal profession has managed to emerge triumphant in the battle for diversity and equitable treatment within its ranks. On the contrary, it remains to be seen through ongoing monitoring and analysis whether the profession’s policies and guidelines are “playing out” as intended in the day-to-day lives of practitioners. What I do intend to convey is a sense that the profession has more directly and aggressively dealt with the equity issues within its membership than has academia. And while gender issues are the main focus of this paper, it is expressly acknowledged that these questions are intimately tied to the circumstances of other equity-seeking groups and that many of the observations and solutions posed here are more broadly applicable.

In this paper, I compare the approach taken by the legal profession in Ontario and the approach taken in the discipline of geography (in the North American, but more specifically the Canadian, context) in confronting gender equity concerns. In the first section, I briefly examine how equity issues have been dealt with in Canadian geography. In the next section, I highlight the similarities between training for admission into the legal profession and the discipline of geography, which make a comparison between the two worthwhile despite the tendency to see academia as separate from the “real” world. Third, I discuss the approach taken by the Law Society of Upper Canada (LSUC), the legal profession’s governing body in Ontario, in addressing gender equity issues and, finally, I consider the usefulness and applicability of the “legal” approach in the context of the discipline of geography in Canada.

Gender Equity Issues in Geography

Over the last two decades, women in North America gained admission to many of the traditionally male-dominated professions such as law, medicine, business, industry, government and academia (Marshal 1987; Reskin and Roos 1990). In academia, a substantial body of research in both the United States and Canada indicates that, despite these gains, a clearly discernible and persistent gender gap remains between men and women (Winkler 2000).

When examining Canadian geography, the tale is much the same. The 1996 *Equity Issues Report* by the Canadian Association of Geographers (CAG 1996) found that only 14.4% of full-time faculty were women. Although this number represents a substantial improvement over the 1988-89 statistics, there has been little change since the 1996 findings. In 2000, the level of full-time women faculty in geography remained at 14%, a figure considerably lower than across the Social Sciences in general (White 2000). This gap is particularly hard to fathom given that the increases in the number of women enrolled in the undergraduate, master's and doctoral levels ensured that, by 1994, the number of female faculty across all disciplines in Canada had increased to 25% (CAUT 1998; see also Murphy and Hall, this issue).

Many reasons have been advanced to explain why the discipline continues to have trouble attracting and retaining women. As early as 1980, Momsen bluntly stated (1980, 182) that, contrary to the popular belief that there was simply a shortage of qualified women in graduate programs, the failure to attract women as students and faculty was "based on the attitudes of departments and their male decision-makers." Women in geography reported experiencing the friction familiar to women across academia – derogatory comments about one's teaching style, amusement over one's choice of research topics and methods, inexplicable barriers to promotion and advancement and, in some cases, outright harassment (Bell and Gordon 1999; Mackenzie 1989; McDowell 1992; Rose 1993; Winkler 2000).

Several decades of analysis grounded in feminist theory demonstrated and soundly critiqued the systemic barriers to women's full participation in the discipline. This included critiques of the discipline's masculinist ways of knowing and knowledge production, its traditional selection of research topics and methods, and the shoring up of social structures and practices that validated and perpetuated masculinist norms and values (Johnson 1987; Pratt 1993; Rose 1993). For many women in the discipline, it is this body of research that first articulates and explains their sense of unease and displacement with the traditional geographical project.

These theoretical critiques as well as empirical work demonstrated the inequities women faced within academia in

general. The employment equity policies implemented at most Canadian universities in the mid-1980s and early 1990s were an attempt to address these concerns. Although gains have been made, recent work has demonstrated how tenacious these foundations are despite our best efforts to deal with them (Bell and Gordon 1999; Saegar 2000). Further, not only has the number of women faculty failed to increase, but women have not caught up to their male colleagues in such areas as promotion, salary, tenure, rates of publication, and participation in policy and decision-making (Bell and Gordon 1999; Lee 1990; Winkler 2000).

The answer to why this might be leads us back to a consideration of the systemic, institutional foundations of the discipline. Hanson (2000), for example, argues that a temporal shift has occurred from more to less overt forms of sexism (in Falconer Al-Hindi 2000). Simply put, while the more obvious and now more-easily contested forms of discrimination have been eliminated, a retrenchment has occurred whereby the barriers which hinder women's progress have "gone underground," making them considerably more difficult to detect and eradicate. Women have hit the "glass ceiling" created by internal, systemic barriers to advancement. These barriers remain the most significant hurdle to overcome.

This raises the question: "where do women in geography go from here in addressing this concern?" I argue that, given the similarities in the institutional or structural foundations of law and geography, many of the avenues pursued and solutions implemented by the LSUC, the governing body of the legal profession in Ontario, are worth considering within the discipline of geography.

The "Real World" and the "Ivory Tower"

Despite the perception that academia stands remote and untouched from "real" world concerns, the discipline of geography and the legal profession are remarkably similar in their approach to the education and training of individuals in the skills, values and expectations of their respective professions. In geography, graduate school tutors students on the values, expectations and requirements of being "faculty." It teaches the

skills needed to undertake funding applications, academic research and, to a lesser extent, teaching, student interaction and supervision. In a similar vein, the process of obtaining a law degree ensures that candidates not only have the appropriate intellectual training, but also have absorbed the historical normative ideals and ethics of the profession.

The articling experience, a period of apprenticeship, in many ways parallels graduate school, as well, in its goal of providing the articling student with “actual” practice experience while under the close supervision of a member of the bar. Similarly, graduate students gain classroom experience through teaching assistant and instructor positions. Entry into the legal profession, at least into private practice, closely mirrors the experience of junior faculty. Both the associate lawyer and junior faculty are required to compile a suitable list of professional accomplishments in order to be accepted into the next level – either acceptance into the partnership or as tenured faculty, respectively. Failure to “make partner” or to be granted tenure is an equally devastating blow to a career.

The major and fundamental distinction between academia and the legal profession is in the manner of its regulation. Unlike universities, the legal profession is self-governing in that management, regulation, training and discipline of the profession is delegated by legislation to the LSUC. Decisions regarding the profession are made by Convocation, an elected body of lawyers, representing various districts in Ontario. This self-regulation assures complete independence from external interference and is a hallmark of the profession. Control over its own funding, disciplinary proceedings and training places lawyers beyond the reach of the province except by legislative amendment – a course of action likely to be aggressively challenged unless made with the consent of the LSUC. Despite this major difference, I would argue that the experience of the LSUC in addressing gender issues in Ontario provides valuable lessons for the discipline of geography.

LSUC Gender Issues Research: Finding the Facts

In the 1980s, the LSUC was pressured to deal with an increasing number of complaints from women and other equity-seeking

groups who found discriminatory and biased attitudes operating in both law schools and the practice of law itself. In 1986, Dr. Shelia McIntyre released a memo describing in graphic and shocking detail the gender bias and overt discrimination she had experienced as contract faculty at Queen’s University law school. The “McIntyre” memo made national headlines and served as an impetus for substantive change in faculty hiring and promotion as well as a re-evaluation of internal attitudes at Queen’s (Chilly Collective, 1995). In order to evaluate the nature and characteristics of equity issues within the profession, the LSUC amassed a substantial amount of research, both academic and “in-house,” which provided the foundation of the LSUC’s approach to equity issues.

The LSUC began the collection of longitudinal data on the changing composition of the legal profession in the mid-1980s. The first internal report, issued in May, 1991, was entitled *Transitions in the Ontario Legal Profession, A Survey of Lawyers Called to the Bar Between 1975 and 1990* (LSUC 1991). Its mandate was to “identify transitions across areas of law, including entries to and exits from private practice, changes across and within various work settings and motives for leaving the practice of law” (LSUC 1991, iv). At this time, women represented 20% of practicing lawyers in Ontario.

The results of the *Transitions*, 1991 study were hardly surprising from today’s perspective. The Report documented widespread dissatisfaction with the practice of law, a dissatisfaction felt more strongly by women than men primarily because women bore the bulk of childcare and household responsibilities. Women respondents also indicated they held an overall perception that “their work environment was one of unequal opportunity” (iv). This was evidenced in the Report by the substantial earnings differences between men and women and women’s underrepresentation in higher income categories. Finally, almost 70% of the women respondents reported experiencing some form of sexism or overt discrimination.

By 1996, women represented almost 30% of practicing lawyers in Ontario. In that same year, the LSUC conducted a follow-up study entitled *Barriers and Opportunities within Law: Women in a Changing Legal Profession* (LSUC 1996) which concluded that women continued to “confront major barriers in their advancement.” While finding some improvement, the report

revealed a continuing gender gap in the areas of partnership attainment, earnings, authority/supervisory roles and policymaking powers. Women continued to carry the primary share of household and childcare responsibility and continued to leave law in proportionally greater numbers than their male colleagues (LSUC 1996; See also LSUC 1997).

In addition to *Transitions*, 1991 and *Barriers*, 1996, a considerable amount of academic research based on the data gathered by the LSUC, as well as research undertaken in other Canadian and American jurisdictions, lent credence to the claims that women experienced difficulties at all career levels (Brockman 1992b; Hagan and Kay 1996). Research indicated that women were less likely than their male colleagues to obtain their first choice in articling positions in either location or area of practice (Adam and Baer 1984; Brockman 1992a and 1992b; Hagan and Kay 1995). Women were, and continued to be, underrepresented in the higher ranks of the profession including partnership (Kay and Hagan 1999). Substantial gender differentials in income remained despite the narrowing of the gap in recent years and this gap was amplified with the climb up the career ladder (Adam and Baer 1984; Foot and Stager 1989; Hagan and Kay 1995). Women also found themselves proportionally less involved than their male colleagues in firm policymaking and had less autonomy and supervisory responsibilities (Brockman 1991; Hagan and Kay 1996; Kay 1997). Not surprisingly, women experienced lower overall job satisfaction than men, with higher rates of attrition (Brockman 1991; 1996).

Although empirical data evidencing women's reduced status across so many facets of practice is important, the more interesting work concerns *why* this might be so. Earlier research explained women's reduced status as the result of women being less qualified, graduating from less prestigious educational institutions and having different life priorities. In addition, women, with their distinctive commitment to home and family, *voluntarily* reduced their investment in education, training and time at work, making them less productive (Becker 1985, 1991).

Subsequent research found these factors insufficient to explain the gender differentials in a number of areas. Kay and Hagan (1995), in examining the earning differentials emerging in the early years of women's entry into the Ontario profession, found that the discrepancy in earnings remained even "after one

takes into account credentials, positions and organizations." As women moved into the upper ranks, there was actually "an *amplification* of earning differentials" (304).

In considering the factors at play in admission to partnership, Kay and Hagan (1999) found that women's failure to rise to partnership status depended less on the formal, quantifiable measures (hours billed, accounts receivable, fees collected) applied to their male colleagues and more on informal, unquantifiable and more subjective factors operating surreptitiously within law firm structures. These included gendered assumptions about women's commitment to their work, their desire to spend time with their family/children, their ability to cope with the increased demands of promotion and their ability to "mix" (i.e. attend hockey and baseball games) with more high profile (read: male) clients. Kay and Hagan's (1999) work also indicated that women's disproportionate responsibility for household and childcare reduced their opportunities to work longer hours, mingle with clients and senior partners and maintain that "after-hours" profile evidencing one's dedication to the firm (Kay and Hagan 1999).

The research concluded that, far from resulting from *merely* discriminatory practices, women's inequity stemmed from what appeared to be deeply embedded systemic ideas and attitudes about women in professional positions – the so-called "glass ceiling." Given law's traditional structure that assumes the lawyer as male with a spouse at home to attend to household and childcare responsibilities, existing work environments perpetuate *systemic barriers* that maintain and promote women's reduced status (Canadian Bar Association 1993; Hagan and Kay 1995).

LSUC Response to Gender Inequity: Responsibility for Change

A decade of empirical data ably documented unequal and gendered differences across the legal profession. Detailed academic research clearly demonstrated that, once adjustments were made for such things as year of call, education, hours worked, billed and collected, the gap between men and women remained unexplained except on the grounds of deep-seated

gendered assumptions and systemic barriers. If women were to have any chance at “fairly and equitably” practicing law, the very structures and foundations of the legal profession would have to change.

Having demonstrated the existence of gender inequity and its structured, systemic nature, the LSUC employed several different strategies. Convocation passed several motions stating its support for and the necessity of addressing equity issues. These included a commitment to updated data collection and analysis, the institution of outreach and education programs to members and the dedication of appropriate human and financial resources to meet goals. It amended its Rules of Professional Conduct to prohibit discriminatory conduct and to establish a “safe” council to receive and deal with complaints against the Profession.

Most importantly perhaps, the LSUC published several model policies designed to dismantle inherent structural problems within private practice. These included models for implementing flexible work arrangements, parental leave and workplace equity policies. The LSUC also adopted policies pertaining to accommodation within firms of differences in creed and religious beliefs, gender differences and persons with disabilities. These include a *Guide to Developing a Policy Regarding Flexible Work Arrangements* (LSUC 1999a), *A Guide to Developing Policy Regarding Workplace Equity in Law Firms* (LSUC 1999b), and *Accommodation Policies and Procedures* (LSUC 2001). How, and the extent to which, these guidelines have been implemented by private firms remains to be seen. The LSUC has, through its disciplinary process, a way to monitor and ensure some form of compliance and to field complaints.

Suggestions for Geography: Lessons from the Law

How could the LSUC’s experience be applied to the discipline of geography? First, the LSUC’s research made it abundantly clear that, despite all of the reasons put forward for women’s failure to advance in the legal profession (reduced commitment, fewer billable hours, fewer social networks), a substantial portion of the inequity is only attributable to differential social relations between genders. The LSUC’s ability to take an unequivocal position emphasizes the importance of having longitudinal,

statistical data documenting inequalities. Geography can certainly document that inequity exists across a number of factors, but needs further empirical work to bring into the foreground the underlying institutional barriers. Demonstrating that the reasons for women’s failure to advance are embedded in the constitution of geography as an academic discipline buttresses a more vigorous analysis aimed at dismantling these institutional presumptions.

Second, one of the strengths of the legal profession in forging ahead with equity policies is its centralized structure. The LSUC is the umbrella organization governing all aspects of the profession including discipline, membership and policy development and implementation. This is admittedly not the case with the discipline of geography where departments operate within particular institutional frameworks that can vary across universities and provinces.

The LSUC experience suggests, however, that at the very least, geography needs a strong representative organization to lobby for and implement change. This organization must be convinced of and committed to addressing equity issues. The Canadian Association of Geographers (CAG) is the obvious organization for this task, but seems somewhat limited in its ability to promote aggressive change. Pointed self-examination and critique as to why this is the case seems to be in order.

Commitments by individual departments to a broadly-supported equity plan would strengthen the position of a national organization such as the CAG. A national organization with a clear and unequivocal commitment to address equity issues supports and encourages member groups to deal with these issues internally. Departments also need to make a greater commitment to making equity issues part of graduate student education. Each year, a new crop of graduate students joins the department and for many of the upper year female graduate students, a whole new cycle of training and teaching begins.

Third, women in geography need to consider alliances with other university organizations such as the Council of Ontario Universities Committee on the Status of Women and/or the Canadian Association of University Teachers. Both these groups represent a considerable constituency and have a wealth of empirical data. They have the political knowledge and experience as lobby groups to suggest strategies for promoting change. Both

of these groups also perceive the need for structural changes that alter the fundamental way in which we “practice” being professors and students, including more liberal parental leave and more flexible part time study options.

Finally, if we are to frame the problem as a systemic one, we must be careful how we as faculty-in-training work both within and through the institution. As Kay and Hagan (1999) note, dominant systems have the ability seemingly to agree with equity principles while employing alternative strategies to maintain the dominant power structure. As women in the discipline of geography, we must make a conscious decision about which strategies to employ in the fight against inequity in the discipline. The question may be put as follows: If gender inequalities exist (and they do) and if they represent systemic barriers in which masculinist notions of the “professor” and “academia” are embedded (which they do), do female geographers want to work within a feminist analysis which strives to dismantle systemic inequalities or is their task simply to help women learn how to negotiate, understand and operate within the existing system? In other words, should women change the academy or change *for* the academy?

This is a particularly pertinent question for women graduate students in geography on two fronts. In the first instance, women students need to think and speak about gender inequity, at a time when it is becoming increasingly difficult to do so, by closely examining their individual departments and faculty – the gender mix, the ideologies of faculty, attitudes and/or support of feminist perceptions and basic sensitivity to equity issues. Second, we must consider whether we will fit into faculty positions as “honorary men” (adopting masculinist values, norms and approaches) or will we consciously try to identify and rework systemic, institutional barriers?

Recent literature suggests an uncertainty now exists concerning how women should proceed to effect change and what that change should be. Some writers recommend, for example, both networking and mentoring strategies to assist women in navigating academic cultures (i.e. Hanson 2000; Moss et al. 1998; see also Mahtani, this issue). While effective to a point, these are strategies that emulate (and therefore perpetuate) an existing way of doing business that is reinforcing rather than challenging. It also establishes systems that tend to isolate women

in lower status networks and with marginalized, less powerful (read: effective) mentors (Hagan and Kay 1996; Hanson 2000). In other cases, one senses a hint of “feminist fatigue.” For example, Domosh (2000) seems to recommend women comply with the expectations of certain institutions in terms of appearance and presentation – “portraying ourselves in a less objectionable manner is often not that difficult” (707).

We have to keep in mind the ability of dominant systems to absorb and deflect substantive change. Perhaps we need to ask what it is about current academic institutions that wears away more radical and concrete feminist challenges. Have we decided to change the academy or has the academy remade us?

Endnotes

¹ Although these comments may be useful in considering how other disciplines approach equity issues, I am only dealing with the discipline of geography here because it is the one with which I am most familiar.

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