

1997

Margaret Thornton, dissonance and distrust: women in the legal profession

E. Cowdery

Follow this and additional works at: <https://ro.uow.edu.au/ltc>

Recommended Citation

Cowdery, E., Margaret Thornton, dissonance and distrust: women in the legal profession, *Law Text Culture*, 3, 1997, 243-246.

Available at: <https://ro.uow.edu.au/ltc/vol3/iss1/17>

Margaret Thornton, dissonance and distrust: women in the legal profession

Abstract

In *Dissonance and Distrust: Women in the Legal Profession*, Margaret Thornton provides a compelling theoretical account of the continuing resistance to the participation of women as legal professionals, despite their increased presence in law schools and in some areas of legal practice. She suggests that women are still 'fringe-dwellers in the jurisprudential community' (Thornton 1996: 3-4) and will remain so until it is recognised that the issue is not simply one of women being 'let in' to the profession in equal numbers to men, but also involves posing fundamental questions about the character and constitution of law as it is taught and practised.

Margaret Thornton, *Dissonance and Distrust*:

WOMEN IN THE LEGAL PROFESSION

Edwina Cowdery

In *Dissonance and Distrust: Women in the Legal Profession*, Margaret Thornton provides a compelling theoretical account of the continuing resistance to the participation of women as legal professionals, despite their increased presence in law schools and in some areas of legal practice. She suggests that women are still 'fringe-dwellers in the jurisprudential community' (Thornton 1996: 3-4) and will remain so until it is recognised that the issue is not simply one of women being 'let in' to the profession in equal numbers to men, but also involves posing fundamental questions about the character and constitution of law as it is taught and practised.

Thornton draws upon the work of feminist scholars in politics and philosophy to show how the social script of law, as with other Enlightenment discourses, is isomorphic to Western notions of 'the masculine' and its associated characteristics - culture, the mind, reason, and rationality, at the expense of its opposite - 'the feminine,' 'defined in terms of its closeness to nature, the body, emotion, and irrationality.' Thornton argues that it is the ongoing (re)presentation of polarised images of men and women which engender the 'dissonance and distrust' alluded to in her title. She focuses particularly on how constructions of the feminine in male discourses - or as she calls it, the 'fictive feminine' - operate to deny women legitimacy in public sphere life, and authority as agents of legality.

Having established her theoretical framework, Thornton documents the early history of women in law in each of the Australian jurisdictions. She points out, for example, that the first woman to enrol in law at the University of Sydney was admitted only by chance: the dean of the Law

School was opposed to the entry of women but was on sabbatical at the time. Thornton also describes how in a number of jurisdictions women had the vote but, having attained law degrees, were ineligible to practice as they did not fall within the definition of 'person' in the statutes governing admission. She sees this early resistance to women in law as a clear manifestation of male concerns about the threat posed to the liberal state - the site of liberty (for men), equality (of men) and fraternity - by the feminine's corporeal, non-rational and erotic elements. Her reclaiming of the narratives of the 'maiden bachelors of law' is at once a reminder of past exclusions as well as a recognition of the significant changes that have been made to the profession to allow women to be 'let in' at all.

One of the major aims of *Dissonance and Distrust* is to provide an account of the experiences of those contemporary women who, as a result of the struggles of women earlier in the century, have been 'let in' to legal practice. To this end, the book includes excerpts from interviews with over one hundred women, including law students, academics, solicitors, barristers, magistrates, and members of the judiciary. Thornton aims to create a space within which these women can give voice to their own encounters with and in law. However, as she also acknowledges, her role in selecting and interpreting excerpts for inclusion is not a neutral task, but is part of her involvement in constituting legal knowledge about women and law.

While not wishing to homogenise women's experiences of law, Thornton uses the comments of the women interviewed, and her own experiences and expertise as a feminist academic, to piece together a picture of the systemic, albeit localised, discrimination which operates in all echelons of the legal profession. For Thornton, discrimination against women in the profession - including the 'micro-iniquities,' 'such as sexist jokes or comments on a woman's appearance, to which women are subjected on a daily basis - is an inevitable consequence of the fraternal bonds which have always sustained relations within the jurisprudential community. It is only members of the metaphysical legal 'club,' 'who are ultimately suitable to obtain 'club goods': partnerships in law firms, success at the Bar, or appointment to the judiciary.

A related theme of the book is that women are only afforded acceptance as authoritative legal knowers insofar as they conform to the standard of the 'benchmark man,' 'who, as Thornton explains, is 'invariably white, heterosexual, able-bodied, politically conservative, and middle class' (Thornton 1996: 2). Women are expected to show docility and deference while being as competent as men; by committing themselves to masculin-

ist work practices, and by comporting themselves in accordance with masculinist dress codes and standards of behaviour. As soon as a woman 'deviates' from the accepted norm, whether it be because of her polka-dotted dress in the courtroom, her feminist approach to legal theory, or her desire to work part-time for family reasons, she is cast as 'Other' and her authority as a legal subject is undermined.

Thornton also demonstrates that legal pedagogy, as well as legal practice, is 'technocentric'. She defines technocentrism as 'the centripetal pull of legal rules [which] operates to deflect away from other forms of knowledge' (Thornton 1996: 269). The law school constitutes a particular 'disciplinary regime' in which legal educators teach a series of discrete, finite subjects, containing uncontested legal truths and, in return, expect 'intellectual docility' from their students. Students, anxious to be admitted into the legal hierarchy, often comply and thereby play their role in perpetuating an uncritical view of the discursive positioning of legal knowledge. Legal practice also requires docility and a search for applications of the law which match commercial imperatives. 'Hard' law (taxation, commercial law, equity) is accorded greater prestige than 'feminised' areas of study and practice (anti-discrimination law, family law, welfare law) where social justice issues are an ongoing concern.

One of the most interesting aspects of *Dissonance and Distrust* is Thornton's engagement with issues of the body in law. The operation of Enlightenment discourses effected the disappearance of the body as an active agent in the constitution of identity, relegating it to the subordinate position in dualistic thinking. It has been the goal of a number of feminist scholars working in the humanities to reject the claims to neutrality and disembodiment professed by these discourses, and, at the same time, to reclaim the body as an integral element of identity. Thornton's work touches on a number of these themes. She highlights, for example, how modern discourses of femininity focus on the capacity for disorder inherent in women's bodies which, if 'unleashed' (in the form of pregnant bodies, lactating bodies, lesbian bodies) will contaminate and corrupt the body politic, including the body of the law. It is also interesting to note that Thornton's work comes at time where there is intense interest, amongst legal theorists and those working in humanities alike, in the relationship between 'the body of the law' (in legislation, case law, the practices of the courtroom) and 'the lawfulness of bodies'.¹

Margaret Thornton's book makes an invaluable contribution to the already substantial body of work and confluence of texts surrounding the issue of

'gender bias' in the legal profession.² Where she makes a difference is in her critical commentary on the ideology of law, the constitution of legal knowledge, and the time-honoured practices of legal practitioners. Her work not only documents the historical and continuing bias against women in the legal profession; it also offers a number of theorised starting points from which to explain that bias in its different manifestations. Her project presents a challenge to the stability of the rational legal subject and to the technocentric operation of law. Although law has proven itself to be particularly resistant to critical theory, *Dissonance and Distrust* demonstrates that the social script of law can be interrogated and rewritten. Women have the capacity, in Thornton's words, 'to exercise a discursive power in resisting attempts at marginalisation and creating new images of what it means to be a lawyer' (Thornton 1996: 286).

NOTES

1 See, for example, the recent publication, Pheng Cheah, David Fraser and Judith Grbich eds 1996 *Thinking Through the Body of the Law*, [Publication details].

2 In New South Wales, for example, Keys Young Consultants released a report in March 1995 entitled *Research on Gender Bias and Women Working in the Legal System*. As this review was being compiled, the NSW Government released the first report of the Implementation Committee set up to address the issues from the Keys Young report. The report is entitled *Gender bias and the law: Women working in the legal profession* and it deals with government practices in relation to women legal practitioners, possible statutory reforms, and attitudes to women in legal education.