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Session 3 – Historically Outside the Law: The Legal History of Social Justice

Summary

Simply Catching Up? The “Feminization” of Law Schools in Quebec Since the 1960s

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In Canadian history, Quebec has often been singled out for lagging behind the rest of the country socially (and economically) until the Quiet Revolution of the 1960s. In addition to being denied the provincial franchise (until 1940), married women in Quebec had an inferior legal status akin to minors by virtue of the Civil Code. The legal profession and clerical conservative leaders in Quebec frequently used these two incapacities to justify the refusal to admit women to the practice of law until 1941. With this resistance from the legal community and the French-Canadian elites concerned with women abandoning motherhood should an alternative professional path become available to them, few francophone women enrolled in law schools before the 1960s.

By 1980, the situation in francophone law schools in Quebec had changed considerably. That year women attained numerical parity in law at the University of Montreal, representing 50.6 percent of the student body. Other law schools across Canada reached this milestone five or even ten years later. Therefore, Quebec did not simply “catch up” with the rest of the country: it actually surpassed it.

How can we explain not only the rapid growth in the number of female law students in Quebec, but also their jump ahead since the 1960s? I suggest there are six main factors that converged, some unique to Quebec, others also occurring across the country, to push Quebec (francophone) women ahead of their counterparts in other law schools.

1) Education reform and the democratization of post-secondary education in Quebec in the 1960s

Opportunities for young Quebec women to pursue an education beyond elementary school were limited before the reforms of the 1960s. In a society where the Roman Catholic Church controlled the education system and the traditional elite believed that higher education was a luxury for girls who were to become wives and mothers, institutions of higher learning designed especially for them were rare and their programs did not prepare them for the liberal professions. The feminization of the student body (in university in general and in professional faculties in particular) was a result of the democratization of post-secondary education in Quebec with the creation of *cégeps* in 1967, a province-wide network of mixed and free colleges offering general and professional education in preparation for university. It had the immediate effect of allowing women to form a noticeable minority in law schools in the 1970s.

2) Changes stemming from social upheaval (i.e. the Quiet Revolution)

It has been argued that women “come out” in periods of social and political upheaval and tend to experiment with new roles, which eventually leads to social transformations. The Quiet Revolution is one such period of intense change. One way this phenomenon manifested itself is in the arrival of more women in the professions made possible by a political will to reform the education system. The rejection of political ultra-conservatism in the 1960 election paved the way for a nationalist/separatist/social-democratic government some fifteen years later. This political upheaval reflected important social changes, including the secularization of Quebec society that practically eliminated the influence of the Catholic Church in the realm of education with the creation of a government department whose slogan was “Qui s’instruit s’enrichit.”

3) Longstanding tradition of “feminism” starting with female religious orders

Considering nuns’ social and economic contribution to Quebec society since the time of New France, it has been argued that religious vocation could have represented a form of feminism for Quebec women. By their overwhelming presence through their charitable work, social services, healthcare and schools, female religious orders have channelled aspirations that elsewhere led to the first women’s movements. Until the mid-twentieth century, religious vocations provided women with a socially acceptable alternative to marriage, motherhood and spinsterhood, and access to positions of authority rarely available in the secular world. It could be argued that with the secularization of the 1960s, law (and perhaps other male-dominated professions) became other avenues of advancement for women, an alternative to taking the veil. In that sense, female law students and lawyers of the 1960s and after were pursuing a longstanding tradition of women seeking and achieving advancement in the public domain.

4) The women’s movement in Canada, with a particular emphasis on education in Quebec

Since the beginning of the twentieth century, the women’s movement in Quebec has banked on education, and it remained at the heart of the movement’s collective demands in the 1960s and 1970s. Some researchers point to a feminism experienced on a daily basis and the importance of the “mother-daughter axis” in the Quebec context to explain the perseverance and academic accomplishments of daughters. Mothers perceived education as a tool for women’s emancipation and a way to access intellectual and economic independence and autonomy as adults, and then transmitted this idea to their daughters. It is possible that female law students of the 1980s and after heard this message from their mothers. But this message was not limited to the “private sphere”: female teachers, women in the civil service and those in the main unions’ women’s committees all agreed to use education as a tool to reach equality. This collaboration resulted in programs to fight against sexist stereotypes in schools and teachers unions, and especially within the leadership. Possibly in Quebec more than elsewhere, feminism’s contributions to education and those of education to women’s emancipation are central and were combined with the political will to make higher education a means of social promotion leading to equal opportunities.

4) Law as the means “par excellence” to change the system and reach gender equality

This increased interest in legal education represents a shift rather than a breaking point. The arrival of women in francophone law schools was in preparation long before the admission of women to the Quebec bar in 1941. In the early twentieth century, there were already activists calling into question Quebec women's legal and political inferiority. The link between gender equality and legal changes was amplified in the 1970s and 1980s with the Royal Commission on the Status of Women (whose recommendations reinforced the idea that women's liberation would occur through changes of a legal nature) and the adoption of the Canadian Charter of Rights and Freedoms (especially the article on equality). These two developments stimulated the women's movement and could help explain women's breakthrough in law in the 1980s. Law was then put at the forefront of equality analyses, making it the means "par excellence" for a generation of female university students in the 1960s and 1970s who wished to reach a status superior to that of their mothers and to enjoy legal, social and financial independence.

5) Increase in the demand for legal expertise and transformations in the legal profession in Canada

After the Second World War, there was a marked increase in the total number of students enrolled in law schools. The profession gained popularity because of a greater need for legal expertise. With the war effort and reconstruction, the Canadian state became increasingly engaged in the life of citizens with an expanding government bureaucracy and the introduction of more regulations, resulting in a need for more lawyers to help prevent or resolve conflicts. This expansion of the civil service was also visible at the provincial level starting in the 1960s. In fact, one of the main aspects of the Quiet Revolution was a more interventionist Quebec state. Combined with this demand, the end of the 1960s marked the arrival of the first baby-boomers in university. In the middle of this demographic pressure, the legal profession appeared to offer a range of possibilities, especially in a period of economic instability like the 1970s. Legal training was then perceived as a good investment, offering more certainty than graduate school.

But in Quebec as elsewhere in North America, the massive arrival of women in a traditionally masculine profession was also accompanied by the departure of men. Law schools underwent a process of feminization in the 1970s as male students showed less interest in the field. It is true for many traditionally masculine professions: women access it in greater numbers when practices are more diversified, the work becomes more specialized and the job market is segmented into prestigious, autonomous, well-paid positions where there are opportunities for advancement, and positions that are less prestigious, salaried and involve routine and repetitive work where chances of promotion are limited. Because women more often occupy positions falling under the latter category, an important distinction remains between statistical "feminization" (or numerical gender parity) and qualitative "feminization."

Obstacles that blocked women in Quebec from attending law school or entering the profession have been eliminated, but there are still indications that their presence is socially tolerated if they fulfill the needs of their families first (husband, children, aging parents) because they are still considered primarily responsible for family obligations. Thus, there remains a significant gap between law school and the legal profession. Legal training has become more democratic and egalitarian, but the profession's deep-seated gendered assumptions about its practice and the larger society in which it is evolving are only starting to change.