

The Emotional Toll and Exhilaration of Human Rights Activism: Gender and Legal Work at The Hague International Criminal Tribunal

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Women lawyers still face more obstacles to advancement, more pressure in balancing work with family life, and lower pay than their male counterparts. Paradoxically, however, earlier studies have found that they report similar levels of job satisfaction. In this paper, the authors seek to explain that paradox by assessing feelings of depression, as well as job satisfaction, in two legal settings: Toronto law firms and the Office of the Prosecutor at The Hague International Criminal Tribunal.

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Through an analysis of data from surveys and interviews with women lawyers in these settings, the authors find that gender has a direct link to depression, with women more likely than men to feel depressed in both locations. However, the authors conclude that these feelings have different causes and outcomes in the two settings. Among women lawyers in Toronto, they appear to be caused by acquiescence in a demanding and unaccommodating organizational culture, where frustrations are internalized and a sense of powerlessness may ensue. At the International Criminal Tribunal, in contrast, feelings of depression stem from the often shocking content of the work, rather than from the work environment. The authors' findings indicate that emotions such as depression can motivate productive career moves into less conventional forms of legal work, including human rights activism. The exhilaration and all-consuming side of Tribunal work may make it just as burdensome in terms of time and responsibility, but these burdens can be seen as the result of choice rather than constraint.

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Introduction

Women are graduating from law schools in unprecedented numbers and yet they continue to experience obstacles to success upon entering the profession. Recent scholarship has documented glass ceilings that slow or stunt women's progress toward partnership in corporate law firms¹ and a sizeable gender gap in the salaries of lawyers across work

1. See Elizabeth H Gorman & Julie A Kmec, "Hierarchical Rank and Women's Organizational Mobility: Glass Ceilings in Corporate Law Firms" (2009) 114:5 *American Journal of Sociology* 1428; Elizabeth Chambliss & Christopher Uggen, "Men and Women of Elite Law Firms: Reevaluating Kanter's Legacy" (2000) 25:1 *Law & Soc Inquiry* 41; Cynthia Fuchs Epstein, "Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors" (2001) 49:4 *Kan L Rev* 733; Cynthia Fuchs Epstein et al, "Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession" (1995) 64:2 *Fordham L Rev* 291; John Hagan &

settings.² Research also reveals that women receive fewer opportunities to work on important files³ and that even when years of experience are taken into account, they tend to occupy positions of lower authority in firms and other employment settings.⁴ In addition, there is still

Fiona Kay, *Gender in Practice: A Study of Lawyers' Lives* (Oxford: Oxford University Press, 1995) [Hagan & Kay, *Gender in Practice*]; Kathleen E Hull & Robert L Nelson, "Assimilation, Choice, or Constraint? Testing Theories of Gender Differences in the Careers of Lawyers" (2000) 79:1 *Social Forces* 229; John Hagan & Fiona Kay, "Raising the Bar: The Gender Stratification of Law-Firm Capital" (1998) 63:5 *American Sociological Review* 728 [Hagan & Kay, "Gender Stratification"]; Nancy J Reichman & Joyce S Sterling, "Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers" (2004) 14:1 *Tex J Women & L* 27.

2. See Ronit Dinovitzer, Nancy Reichman & Joyce Sterling, "The Differential Valuation of Women's Work: A New Look at the Gender Gap in Lawyers' Incomes" (2009) 88:2 *Social Forces* 819; Karen Robson & Jean E Wallace, "Gendered Inequalities in Earnings: A Study of Canadian Lawyers" (2001) 38:1 *Canadian Review of Sociology* 75; Charlotte Chiu & Kevin T Leicht, "When Does Feminization Increase Equality? The Case of Lawyers" (1999) 33:3 *Law & Soc'y Rev* 557; Mary C Noonan et al, "Pay Differences Among the Highly Trained: Cohort Differences in the Sex Gap in Lawyers' Earnings" (2005) 84:2 *Social Forces* 853; Victoria Wass & Robert McNabb, "Pay, Promotion and Parenthood Amongst Women Solicitors" (2006) 20:2 *Work, Employment and Society* 289.

3. See Fiona Kay & Elizabeth Gorman, "Women in the Legal Profession" (2008) 4:1 *Annual Review of Law and Social Sciences* 299 at 306; Maria Pabón López, "The Future of Women in the Legal Profession: Recognizing Challenges Ahead by Reviewing Current Trends" (2008) 19:1 *Hastings Women's LJ* 53 at 90; David Podmore & Anne Spencer, "Women Lawyers in England: The Experience of Inequality" (1982) 9:3 *Work & Occupations* 337 at 346.

4. See Eli Wald, "Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms" (2010) 78:5 *Fordham L Rev* 2245; Kenneth G Dau-Schmidt et al, "Men and Women of the Bar: The Impact of Gender on Legal Careers" (2009) 16:1 *Mich J Gender & L* 49; Elizabeth H Gorman, "Moving Away from 'Up or Out': Determinants of Permanent Employment in Law Firms" (1999) 33:3 *Law & Soc'y Rev* 637; Gorman & Kmec, *supra* note 1; Mary C Noonan, Mary E Corcoran & Paul N Courant, "Is the Partnership Gap Closing for Women? Cohort Differences in the Sex Gap in Partnership Chances" (2008) 37:1 *Social Science Research* 156; Rebecca L Sandefur, "Staying Power: The Persistence of Social Inequality in Shaping Lawyer Stratification and Lawyer's Persistence in the Profession" (2007) 36:3 *Sw UL Rev* 539; Cynthia Fuchs Epstein, "Great Divides: The Cultural, Cognitive, and Social Bases of the Global Subordination of Women" (2007) 72:1

considerable organizational resistance to workplace policies designed to better accommodate lawyers with parenting responsibilities.⁵ As a result of these obstacles, women are more likely than men to opt out of the legal profession.⁶

While such obstacles to traditional career success have been well documented, little research has explored the nature of women lawyers' broader goals for themselves, for the profession, and whether these goals are being realized among recent cohorts entering law. Carrie Menkel-Meadow provocatively raised this topic over twenty years ago when she wrote: "Whether a feminist critique of the legal profession will emerge and transform the profession or structural obstacles will silence feminist concerns or force assimilation is a question that must be answered empirically and theoretically".⁷ It appears that while the profession has granted women access to a range of settings where lawyers routinely work, the profession has some distance to go yet in terms of addressing women's broader concerns, especially about issues of human rights and social justice.⁸ This scenario might be expected to leave women lawyers dissatisfied and depressed, but the evidence is surprisingly mixed.

American Sociological Review 1; Mary C Noonan & Mary E Corcoran, "The Mommy Track and Partnership: Temporary Delay or Dead End?" (2004) 59:1 *Annals of the American Academy of Political & Social Sciences* 130; Mary F Radford, "Sex Stereotyping and the Promotion of Women to Positions of Power" (1990) 41:3 *Hastings LJ* 471.

5. See Jean McKenzie Leiper, *Bar Codes: Women in the Legal Profession* (Vancouver: UBC Press, 2006) at 5; Nancy J Reichman & Joyce S Sterling, "Recasting the Brass Ring: Deconstructing and Reconstructing Workplace Opportunities for Women Lawyers" (2002) 29:4 *Capital UL Rev* 923 [Reichman & Sterling, "Recasting"].

6. See Joan Brockman, "Leaving the Practice of Law: The Wherefores and the Whys" (1994) 32:1 *Alta L Rev* 116; Fiona Kay, "Flight from Law: A Competing Risks Model of Departures from Law Firms" (1997) 31:2 *Law & Soc'y Rev* 301; Paula Patton, "Women Lawyers, Their Status, Influence, and Retention in the Legal Profession" (2005) 11:2 *Wm & Mary J Women & L* 173.

7. See Carrie Menkel-Meadow, "Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change" (1989) 14:2 *Law & Social Inquiry* 289.

8. Carrie Menkel-Meadow, "Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification and Organization of Lawyering" (1994) 44:2 *Case W Res L Rev* 621.

As persistent and disturbing as the preceding findings are about gender inequality in pay, partnership, opportunities and departures from law firms, a remarkably large body of research shows that women and men lawyers respond to surveys by reporting they are relatively satisfied with their work.⁹ Also, it is not the case that women are any less satisfied than men.¹⁰ The bulk of empirical studies reveal that women and men are similar in their reported levels of job satisfaction.¹¹ Differences emerge only with reference to specific aspects of work, rather than overall job satisfaction. For example, while Kathleen Hull found no significant gender differences in satisfaction with work *content* (for example control over the amount of work, level of responsibility and working relationships with colleagues), she found that women

9. See David L Chambers, "Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family" (1989) 14:2 *Law & Soc Inquiry* 251; John P Heinz, Kathleen E Hull & Ava A Harter, "Lawyers and their Discontents: Findings from a Survey of the Chicago Bar" (1999) 74:2 *Ind LJ* 735; John P Heinz et al, *Urban Lawyers: The New Social Structure of the Bar* (Chicago: University of Chicago Press, 2005) [Heinz et al, *Urban Lawyers*]; Kathleen E Hull, "The Paradox of the Contented Female Lawyer" (1999) 33:1 *Law & Soc'y Rev* 687 at 687 [Hull, "Paradox"]; Paul W Mattessich & Cheryl W Heilman, "The Career Paths of Minnesota Law School Graduates: Does Gender Make a Difference?" (1990) 9:1 *Law & Inequality* 59; Ronit Dinovitzer & Bryant G Garth, "Lawyer Satisfaction in the Process of Structuring Legal Careers" (2007) 41:1 *Law & Soc'y Rev* 1.

10. Only a handful of studies show that women have lower job satisfaction than men in the practice of law. See Charlotte Chiu, "Do Professional Women Have Lower Job Satisfaction Than Professional Men? Lawyers as a Case Study" (1998) 38:7-8 *Sex Roles* 521; Kenneth G Dau-Schmidt & Kaushik Mukhopadhyaya, "The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Across the Legal Profession" (1999) 49:3 *J Legal Educ* 342; Donna L Hall, "Job Satisfaction among Male and Female Public Defense Attorneys" (1995) 18:2 *The Just Syst J* 121; Roland L Hirsch, *National Survey of Lawyers' Career Satisfaction, Wave I, 1984 and Wave II, 1990* (Ann Arbor: Inter-university Consortium for Political and Social Research, 1993).

11. See John Hagan & Fiona Kay, "Even Lawyers Get the Blues: Gender, Depression, and Job Satisfaction in Legal Practice" (2007) 41:1 *Law & Soc'y Rev* 51 [Hagan & Kay, "Blues"]; Heinz, Hull & Harter, *supra* note 9; Heinz et al, *Urban Lawyers*, *supra* note 9; Hull, "Paradox", *supra* note 9; Charles W Mueller & Jean E Wallace, "Justice and the Paradox of the Contented Female Worker" (1996) 59:4 *Social Psychology Quarterly* 338.

lawyers are less satisfied than men lawyers with the features of work context (for example pay, promotions and recognition).¹²

In an earlier paper, we explored this paradox in job satisfaction among a sample of Toronto lawyers, with close attention to the intervening role of depressed or despondent feelings.¹³ Our results highlighted three causal pathways through which gender is indirectly connected to job dissatisfaction and feelings of despondency. These pathways operate through workplace authority, perceived powerlessness and concerns about the career consequences of having children. In this paper, we argue that analyzing the difference in negative affect, or depressed feelings, can yield new insight into the changing orientations of women to the legal profession and increase our understanding of the unique and important role of women lawyers in human rights activism. We support this point by examining gender differences in women lawyers' indications of depression in two purposefully different contexts: in legal practice environments of Toronto and at the International Criminal Tribunal in The Hague. Similar questions incorporated in surveys and interviews across these settings allow for instructive comparisons.

We suggest that the movement of women lawyers to work in human rights venues may be an ironic benefit of the disappointment women experience in the legal profession more generally. Feelings of depression and discouragement can play an important role in motivating them to embark on human rights work, which offers unique challenges that are potentially more rewarding than conventional models of legal work in law firms, in-house counsel positions and government settings. Further, human rights work, while not without a significant emotional toll of its own, may offer tremendous gratification for women in the legal profession.

12. Hull, "Paradox" *supra* note 9 at 694. See also Ronit Dinovitzer et al, *After the JD: First Results of a National Study of Legal Careers* (Chicago: The NALP Foundation for Law Career Research and Education and the American Bar Foundation, 2004) at 58 (a study finding that women were less satisfied than men with job setting (e.g. control over work and job security), "social index" of work (e.g. workplace diversity and pro bono service), and "power track" (e.g. promotions and salaries)); Dinovitzer & Garth, *supra* note 9.

13. Hagan & Kay, "Blues", *supra* note 11 at 51.

The paper is set out in four parts. In Part I, we review the literature on the emotional lives of lawyers, with attention to the paradox of supposedly contented women lawyers and the role of depression. In Part II, we outline findings from our Toronto lawyer study to provide a baseline of comparison for the central focus of our inquiry: emotional aspects of international human rights legal work abroad. The Toronto lawyer study provides compelling evidence of disappointment and depression among women lawyers working in positions of reduced power and authority. In Part III, we explore emotional responses to legal work among women in positions of power and authority in the context of international human rights and justice. We assess these dynamics through surveys and in-person interviews with legal professionals at the Office of the Prosecutor at The Hague International Criminal Tribunal for the former Yugoslavia. In Part IV, we develop our main conclusions about how a lack of power contributes to depression among urban women lawyers and how feelings of despair permeate even positions of power at the Tribunal. Yet the meanings and contexts of these emotions are different than in Toronto because at the Tribunal they are bound up with positions involving power and authority, and despair at human suffering. Finally, we outline directions for future research on emotional well-being among lawyers in diverse practice settings.

I. Emotional Lives of Lawyers

We believe that a part of the paradox that men and women lawyers report similar levels of job satisfaction can be explained by the link between depression and job satisfaction.¹⁴ It is important to note that the feelings of depression described in our surveys might more accurately be referred to as indications of dysthymia than despair or depression.¹⁵ The

14. *Ibid.*

15. Dysthymia is a term given formal clinical recognition in the 1980 Diagnostic Manual of the American Psychiatric Association. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed, Text Revision (Washington, DC: The American Psychiatric Association, 2000).

core features of dysthymia include some or all of the following conditions which parallel those asked about in our survey: insomnia or oversleeping, fatigue or low energy, low self-esteem and hopelessness. Dysthymic individuals tend to be self-deprecating, brooding, irritable and sometimes withdrawn. Often they are also described as experiencing mild chronic depression, situational depression or intermittent depression. These indicators of despondent or depressed feelings merit the attention which we have given to them.

One key to understanding the gendered job satisfaction paradox may be that the depression of women lawyers in conventional practice settings reflects internalized negative feelings rather than externalized expressions of objections to conditions of work. Shifting attention beyond work satisfaction, to the role of affect or depression, opens up new possibilities in understanding the subjective orientation of women lawyers to their work. Unlike the literature on work satisfaction, research on emotional affect consistently indicates that women report more signs of depression and anxiety than men.¹⁶ This research has also stimulated interesting and largely unexplored questions about the meanings and consequences of feelings of depression in a range of occupational settings.¹⁷ Law firm lawyers are well known as being in

16. See Marrie HJ Bekker & Janneke van Mens-Verhulst, "Anxiety Disorders: Sex Differences in Prevalence, Degree, and Background, but Gender-Neutral Treatment" (2007) 4 Suppl B Gender Medicine S178; Judy Chew, "Not Just the Moody Blues: Understanding Women's Depression", Book Review of *Women and Depression: A Handbook for the Social, Behavioral, and Biomedical Sciences* by Corey LM Keyes & Sherryl H Goodman, eds, (2007) 31:2 Psychology of Women Quarterly 223; Uriel Halbreich & Linda S Kahn, "Atypical Depression, Somatic Depression and Anxious Depression in Women: Are They Gender-Preferred Phenotypes?" (2007) 102:1-3 Journal of Affective Disorders 245; Corey LM Keyes & Sherryl H Goodman, eds, *Women and Depression: A Handbook for the Social, Behavioral, and Biomedical Sciences* (New York: Cambridge University Press, 2006); Wendy K Silverman & Rona Carter, "Anxiety Disturbance in Girls and Women" in Judith Worell & Carol D Goodheart, eds, *Handbook of Girls' and Women's Psychological Health* (New York: Oxford University Press, 2006); John Mirowsky & Catherine E Ross, *Social Causes of Psychological Distress* (Hawthorne, NY: Aldine de Gruyter, 1989) [Mirowsky & Ross, *Social Causes*].

17. See William W Eaton et al, "Occupations and the Prevalence of Major Depressive Disorder" (1990) 32:11 Journal of Occupational Medicine 1079; Cynthia Fuchs Epstein,

highly demanding work settings that are associated with significant mental strain.¹⁸ Several studies document this strain and burnout associated with law practice and related struggles with depression.¹⁹ Women lawyers may experience even more strain as a result of discrimination, unwanted sexual attention and gender incivility.²⁰

Several studies observe that men are prone to externalize frustrations through expressions of anger and aggression,²¹ behaviours which can lead to control and power over others within organizations. In contrast, women tend to internalize problems,²² responding with guilt and hurt. These behaviours often result in withdrawal and acquiescence to the

“The Protean Woman: Anxiety and Opportunity” in Charles B Strozier & Michael Flynn, eds, *Trauma and Self* (Lanham, Md: Rowman & Littlefield Publishers, 1996) 159.

18. Allan D Joudrey & Jean E Wallace, “Leisure as a Coping Resource: A Test of the Job Demand-Control-Support Model” (2009) 62:2 *Human Relations* 195; Jean E Wallace, “Job Stress, Depression and Work-to-Family Conflict: A Test of the Strain and Buffer Hypotheses” (2005) 60:3 *Industrial Relations* 510.

19. See Hagan & Kay, “Blues”, *supra* note 11; Siw Tone Innstrand et al, “Positive and Negative Work—Family Interaction and Burnout: A Longitudinal Study of Reciprocal Relations” (2008) 22:1 *Work & Stress* 1; Lim Geok-choo, Chan Kwok-bun & Ko Yiu-chung, “Work Stress and Coping amongst Lawyers in Singapore” (2008) 36:5 *Asian Journal of Social Science* 703; Mueller & Wallace, *supra* note 11.

20. See Lila M Cortina et al, “What’s Gender Got to Do with It? Incivility in the Federal Courts” (2002) 27:2 *Law & Soc Inquiry* 235.

21. See Jennifer Jun-Li Chen, “Gender Differences in Externalising Problems Among Preschool Children: Implications for Early Childhood Educators” (2010) 180:4 *Early Childhood Development and Care* 463; Naomi R Marmorstein, “Relationships Between Anxiety and Externalizing Disorders in Youth: The Influences of Age and Gender” (2007) 21:3 *Journal of Anxiety Disorders* 420; Deniz Albayrak-Kaymak, “Internalizing or Externalizing: Screening for Both Problem Youth” (1999) 21:2 *International Journal for the Advancement of Counselling* 125; John D Coie & Kenneth A Dodge, “Aggression and Antisocial Behavior” in William Damon & Nancy Eisenberg, eds, *Handbook of Child Psychology*, 5th ed (New York: John Wiley & Sons, 1998) vol 3 at 789.

22. See Elizabeth Cauffman et al, “Heterogeneity in the Association Between Social-Emotional Adjustment Profiles and Deviant Behavior Among Male and Female Serious Juvenile Offenders” (2004) 48:2 *Int’l J Off Ther & Comp Crim* 235; Susan Nolen-Hoeksema, “An Interactive Model for the Emergence of Gender Differences in Depression in Adolescence” (1994) 4:4 *Journal of Research on Adolescence* 519 at 521–22.

demands of others.²³ These gendered patterns are not essential personality traits endemic to men and women; rather, an established literature suggests that *context* constrains women's behavioural expressions. Context embodies both gender socialization and organizational culture. Socialization plays a role in discouraging women from expressing anger,²⁴ and organizational cultures penalize women who externalize their frustration with anger and verbal aggression.²⁵ The internalized frustration on the part of women can lead to depression or despondency.²⁶ This emotional pathway disadvantages women in professional settings that are already intensely hierarchical.²⁷ In our earlier work, we argued that the legal profession widened the doorway to allow women's large-scale entry to law to facilitate an expansion of its clientele base.²⁸ Women were perceived as talented, hard-working lawyers while also acquiescent in the hierarchical structures of law firms that often paid them less and offered reduced prospects of partnership

23. See Robbin S Ogle, Daniel Maier-Katkin & Thomas J Bernard, "A Theory of Homicidal Behavior among Women" (1995) 33:2 *Criminol* 173 at 185–86.

24. See Teresa Bernardez-Bonesatti, "Women and Anger: Conflicts with Aggression in Contemporary Women" (1978) 33:5 *Journal of American Medical Women's Association* 215; Harriet E Lerner, "Internal Prohibitions against Female Anger" (1980) 40:2 *The American Journal of Psychoanalysis* 137; Robert Agnew, "Foundation for a Generalism Strain Theory of Crime and Delinquency" (1992) 30:1 *Criminol* 47.

25. See Joan Brockman, *Gender in the Legal Profession: Fitting in or Breaking the Mould* (Vancouver: UBC Press, 2001); Hilary Sommerlad & Peter Sanderson, *Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (Aldershot: Ashgate Publishing Limited, 1998); Jennifer L Pierce, *Gender Trials: Emotional Lives in Contemporary Law Firms* (Berkeley: University of California Press, 1995) [Pierce, *Gender Trials*]; Cliff Cheng, ed, *Masculinities in Organizations* (London: SAGE Publications, 1996); Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Melbourne: Oxford University Press, 1996).

26. See Tracey Peter & Lance W Roberts, "'Bad' Boys and 'Sad' Girls? Examining Internalizing and Externalizing Effects on Parasuicides Among Youth" (2010) 39:5 *Journal of Youth Adolescence* 495 at 496.

27. Margaret Thornton notes this resistance to women's presence and economic pressure to allow women's entry to the practice of law. She argues that "[d]espite the resistance to the feminine, economic growth has necessitated that the talents of women and differentiated others be captured and appropriated". Thornton, *supra* note 25 at 88.

28. Hagan & Kay, "Gender Stratification", *supra* note 1.

compared to their male counterparts. Thus, the frustrations with professional lives experienced by women lawyers are typically expressed as internalized symptoms of depression, rather than outward protests about blocked opportunities.²⁹

The idea of gendered emotional labour in the practice of law is not entirely novel. In an ethnographic study of two large law firms—a private firm and the legal department of a corporation in the late 1980s—Jennifer Pierce analyzed various types of gender segregation that occur within law firms. She described how the work itself was gendered, especially in terms of emotional labour: “A masculine style of emotional labour emphasizes difference and self-assertion through mechanisms such as politeness, contempt for niceness, and surface acting, which distance men from the feminine aspects of the job”.³⁰ Pierce also described how male trial lawyers participated in shaping an idiom of sex-typing, referring to their battles in the courtroom and with opposing counsel as “macho”, “something men get into”, and “a male thing”.³¹ She argued that the practice of law was further defined as exclusively male through the treatment of women lawyers as outsiders and their exclusion from professional networks.³² Pierce’s study highlighted how outward displays of aggression in adversarial disputes constitute “masculine forms of emotional labor” and—also provocatively—how “in the case of trial lawyers, the requirements of the profession deem it appropriate to dominate women as well as other men”.³³

29. See Hagan & Kay, “Blues”, *supra* note 11 at 58; Denise D Bielby & William T Bielby, “Family Ties: Balancing Commitments to Work and Family in Dual Earner Households” (1989) 54:5 *American Sociological Review* 776; Pierce, *Gender Trials*, *supra* note 25.

30. Jennifer L Pierce, “Emotional Labor Among Paralegals” (1999) 561:1 *Annals of the American Academy of Political and Social Science* 127 at 138–39 [Pierce, “Emotional Labor”].

31. Jennifer Pierce, “Rambo Litigators: Emotional Labor in a Male-Dominated Occupation” in Cheng, *supra* note 25 at 8.

32. *Ibid.*

33. *Ibid* at 3.

In a study of 4 608 lawyers practicing in the US Eighth Circuit, Cortina and colleagues³⁴ documented the nature and interplay of general incivility, gender-related incivility and unwanted sexual attention. They found that 75 percent of female lawyers had experienced some form of misconduct compared to 50 percent of male lawyers.³⁵ Women lawyers were also more likely to experience interpersonal mistreatment from their male counterparts. In contrast, male lawyers were less likely to experience mistreatment from female colleagues, but more likely to encounter this behaviour from (predominantly male) judges.³⁶ Cortina and colleagues observe that these patterns of mistreatment reinforce social and occupational structures that place women below men and lawyers below judges. “This seemingly trivial incivility” they note, “can thus perpetuate the relegation of women to the margins of professional society”.³⁷ These experiences of marginalization and misconduct often lead to feelings of discouragement and distrust.³⁸

Numerous studies of lawyers have reported that women act on their expressions of discouragement and depression by leaving conventional legal practice settings.³⁹ We suggest that expressions of depression may assume a different role. Mild depression, in particular, may encourage introspection and self-examination that can lead to career and life changes including moves to less conventional legal settings such as those involving legal activism. Andrew Solomon writes that “among the primary functions of depression is changing nonproductive behaviors” and that “depression can be a motivator” to find more productive and

34. *Supra* note 20.

35. *Ibid* at 244.

36. *Ibid* at 255.

37. *Ibid* at 256.

38. Hagan & Kay, “Blues”, *supra* note 11; Fiona M Kay & John Hagan, “Building Trust: Social Capital, Distributive Justice, and Loyalty to the Firm” (2003) 28:2 *Law & Soc Inquiry* 483.

39. See Brockman, *supra* note 6; Cortina et al, *supra* note 20 at 205; Hagan & Kay, “Gender Stratification”, *supra* note 1; Hagan & Kay, *Gender in Practice*, *supra* note 1; Reichman & Sterling, “Recasting”, *supra* note 5; Stephen J Spurr & Glenn T Sueyoshi, “Turnover and Promotion of Lawyers: An Inquiry into Gender Differences” (1994) 29:3 *The Journal of Human Resources* 813.

rewarding roles.⁴⁰ This second line of thought sees depression not as leading to passive compliance but as a potential source of productive change. As in the case of anger and aggression, this change may not put an end to these emotions. However, it may give them different, more complex and proactive meanings that vary within, as well as between, gender and work settings. While these adaptive, activist implications of depression are occasionally suggested in scholarly⁴¹ and journalistic⁴² writing, there is little systematic research that examines these possibilities. In this paper our interest is in how disappointment with conventional legal work may lead women to productive careers in human rights activism.

Our analyses focus on two groups of lawyers: first, those practicing in a diverse range of settings in Toronto and second, those employed in the Office of the Prosecutor at The Hague International Criminal Tribunal for the former Yugoslavia. In each group we explore gender contrasts in job satisfaction, feelings of despair and despondency, and catalysts for change in legal work. As imperfectly defined and diverse in composition as gender social groups are, the provisional use of these categories helps our focus on systematic comparisons involving large sample sizes.⁴³ We acknowledge a body of literature on intersectional theory,⁴⁴ mapping the “intersections of gender and sex, subjectivity and

40. Andrew Solomon, *The Noonday Demon: An Atlas of Depression* (New York: Scribner, 2001) at 410.

41. See Randolph M Nesse, “Evolutionary Explanations of Emotions” (1990) 1:3 *Human Nature* 261; Randolph M Nesse, “Is Depression an Adaptation?” (2000) 57:1 *Archives of General Psychiatry* 14.

42. See Erica Goode, “Viewing Depression As a Tool for Survival”, *The New York Times* (1 February 2000) F7.

43. See generally Leslie McCall, “The Complexity of Intersectionality” (2005) 30:3 *Signs: Journal of Women in Culture and Society* 1771.

44. See generally A Flintoff, H Fitzgerald & S Scraton, “The Challenges of Intersectionality: Researching Difference in Physical Education” (2008) 18:2 *International Studies in Sociology of Education* 73; Analía Inés Meo, Book Review of *Feminist Studies: A Guide to Intersectional Theory, Methodology and Writing* by Nina Lykke, (2011) 18:1 *European Journal of Women’s Studies* 101; David F Warner & Tyson H Brown, “Understanding How Race/Ethnicity and Gender Define Age-Trajectories of Disability: An Intersectionality Approach” (2011) 72:8 *Social Science and Medicine* 1236; Alison E

embodiment, discourse and materiality”.⁴⁵ Much of that work rejects categorization in any form, placing priority on personal narratives and rich ethnographic descriptions of single groups. Yet, these studies typically try to manage complexity by analyzing a single location at the intersection of select categories, not all possible, multiple categories.⁴⁶ A middle-range approach also exists, one that McCall terms “intra-categorical”.⁴⁷ This approach, which acknowledges “partial crystallization of social relations”,⁴⁸ does target a particular social group. However, rather than examining differences through systematic comparisons, an intra-categorical approach explores complexity in terms of *differences within categories*, including categories based on class, ethnic, religious and national backgrounds.⁴⁹ Our approach rests closest to the strategy that makes provisional use of gender social groups. This is perhaps by necessity given the contrasting geographic locales and large sample sizes in our study. However, we endeavour to explore the complexity that arises when analyses encompass multiple dimensions of social life⁵⁰ by including biographies of diverse lived experiences.

II. Law Practices in Toronto

The Toronto Lawyers Survey, which was initiated in 1985, lays the groundwork for what we know about the dynamics between sources of satisfaction and despair among lawyers. That study also serves as a

Woodward, “Too Late for Gender Mainstreaming? Taking Stock in Brussels” (2008) 18:3 *Journal of European Social Policy* 289.

45. Nina Lykke, *Feminist Studies: A Guide to Intersectional Theory, Methodology and Writing* (New York: Routledge, 2010).

46. See e.g. Ayala Emmett, *Our Sisters’ Promised Land: Women, Politics, and Israeli-Palestinian Coexistence* (Ann Arbor: University of Michigan Press, 1996); Nadera Shalhoub-Kevorkian, “Racism, Militarisation and Policing: Police Reactions to Violence Against Palestinian Women in Israel” (2004) 10:2 *Social Identities* 171.

47. Amalia Sa’ar, Dalia Sachs & Sarai Aharoni, “Between a Gender and a Feminist Analysis: The Case of Security Studies in Israel” (2011) 26:1 *International Sociology* 50 at 58.

48. *Ibid.*

49. *Ibid.*

50. See generally McCall, *supra* note 43 at 1773.

baseline for comparison with our later study of Tribunal lawyers. In the following pages we describe the Toronto survey design and sample and its key findings as they relate to urban lawyers' emotional lives.

About one quarter of Canada's lawyers practice in Toronto,⁵¹ the nation's leading financial and legal center. Toronto lawyers have experienced most, if not all, of the changes that have transformed legal work in American metropolitan centers.⁵² In particular, these changes have involved the centralization and concentration of legal work in large firms.⁵³ Law practice in Toronto is very similar to the practice of law in other large cities across North America. For example, Toronto lawyers play essential roles in major corporate transactions and in trade relations between the United States and Canada, each of which is the largest trading partner of the other.⁵⁴ The nature of urban legal work also extends beyond corporate transactions and trade relations—the core of large corporate law firms—to a broad array of legal fields, including real estate, family and divorce, labour, criminal, human rights, environmental, immigration and refugee, social welfare and poverty law, and legal aid work.⁵⁵ Toronto is also host to a vast diversity of practice settings. While a large number of lawyers work in the biggest law firms, often referred to as the “Seven Sisters”, many others work in a range of smaller firms, boutique firms, solo practices, legal clinics, government

51. See HW Arthurs, R Weisman & FH Zemans, “The Canadian Legal Profession” (1986) 11:3 Am Bar Found Res J 447 at 459.

52. For a study of the transformation of American law firms, see generally Marc Galanter & Thomas Palay, *Tournament of Lawyers: The Transformation of the Big Law Firm* (Chicago: University of Chicago Press, 1991). It remains the case that, as Galanter & Palay observed twenty years ago, “the attraction of this style of lawyering is not confined to the United States. In recent years, the American big firm became a model for firms in Canada, Australia and England” (*ibid* at 18–19).

53. See Marc Galanter, “Mega-Law and Mega-Lawyering in the Contemporary United States” in Robert Dingwall & Phillip Simon Cole Lewis, eds, *The Sociology of Professions: Lawyers, Doctors and Others* (New York: St. Martin's Press, 1983) 152.

54. The Toronto legal profession as of the mid-1990s is described in detail by Hagan & Kay, “Gender Stratification”, *supra* note 1.

55. For a discussion of emerging specialization and breadth of fields of law, see generally John P Heinz et al, “The Changing Character of Lawyers' Work: Chicago in 1975 and 1995” (1998) 32:4 Law & Soc'y Rev 751.

offices, as in-house counsel within corporations, and in various institutions such as unions and associations.

Our Toronto study involved a longitudinal panel of 1 051 lawyers who were surveyed in 1985, 1991 and 1995. Mail surveys were conducted with a sample stratified by gender and type of practice to include an equal number of women and men working in large law firms (26 or more lawyers) or small law firms (up to 25 lawyers), and in non-law firm settings (such as those working in government offices). In 1985, firms were significantly smaller than they are today, and it was necessary to include nearly all of the women in the medium- and larger-sized Toronto firms in order to have adequate numbers for comparison with the men. This made it possible to construct a stratified sample that equally included men and women lawyers in medium- to large-firms and small-firms, as well as non-firm settings.

When the survey was first conducted in 1985 many of the Toronto lawyers were in their early years of practice. Ten years later, in the third wave of the longitudinal study, these lawyers were further along in their careers and many were at key turning points in their professional lives, having advanced to partnership, made major job transitions to other firms, or moved into innovative practice settings and emerging areas of law. The 1985 survey included questions about job satisfaction, occupational power, symptoms of depression, and detailed work and life histories. Many wrote extensive comments on the surveys. We also conducted follow-up personal interviews with fifty lawyers.

We will now consider the results of our statistical analysis of the survey data. Then we elaborate on the qualitative data yielded by our study.

A. Toronto Statistical Models

A linear structural relations equation (LISREL) model is presented in Table 1.⁵⁶ LISREL, or covariance structure models, allow the researcher to specify and test measurement and structural equation models

56. See Appendix, Table 1.

simultaneously.⁵⁷ This means that the researcher can specify the measurement of latent constructs (for example depression, feelings of powerlessness and overall job satisfaction) using a set of self-reported behaviours. This is referred to as a measurement or factor analytic model, common in psychometrics. The technique also allows us to test causal relations, for example between job satisfaction and feelings of powerlessness or between job satisfaction and depression. This is referred to as a structural equation model, most commonly associated with econometrics. Table 1 presents the measures together with means and standard deviations.⁵⁸

This model of depression among Toronto lawyers indicates that gender influences feelings of depression both directly and indirectly.⁵⁹ Women lawyers in Toronto have less occupational power and are more likely to feel powerless in their work, which in turn reduces work

57. See Kenneth A Bollen, *Structural Equations with Latent Variables* (New York: John Wiley & Sons, 1989).

58. In our Toronto study, we used three latent constructs. The first is a social psychological measure of perceived powerlessness, adapted from Mirowsky and Ross's studies of gender and depression. John Mirowsky & Catharine E Ross, *Education, Social Status, and Health* (New York: Aldine De Gruyter, 2003) at 60–61. Respondents were asked to agree or disagree with eight separate statements (see Table 1 for measures). Depression is measured in our study using the Center for Epidemiologic Depression scale or CES-D. Lenore Sawyer Radloff, "The CES-D Scale: A Self-Report Depression Scale for Research in the General Population" (1977) 1:3 *Applied Psychological Measurement* 385 at 387. The original scale has twenty items, each using a scale reflecting the number of days the respondent reported experiencing the particular aspect of mood during the prior seven days. A smaller subset is frequently used in psychological research and shows strong reliability. See e.g. David Dooley & JoAnne Prause, "Mental Health and Welfare Transitions: Depression and Alcohol Abuse in AFDC Women" (2002) 30:6 *American Journal of Community Psychology* 787 at 794. We employ a sub-scale of five items to measure feelings of depression among Toronto lawyers. Finally, three standard measures of job satisfaction are included in this analysis. Respondents were asked to rate on a scale of 1 to 5 their overall job satisfaction, inclination to recommend the job to a friend, and the likelihood of choosing the same job again.

59. Efforts to determine the tendency of women across settings and studies to express more symptoms of depression than men have not revealed any artifactual measurement source of this pattern. See generally Catharine E Ross & John Mirowsky, "Sex Differences in Distress: Real or Artifact?" (1995) 60:3 *American Sociological Review* 449.

satisfaction. As well, among Toronto lawyers the effect of work satisfaction strongly reduces feelings of depression. Age and private practice also increase occupational power,⁶⁰ which reduces feelings of powerlessness. Job satisfaction increases as powerlessness declines and this increasing job satisfaction reduces depression. Private practice has a particularly noticeable positive effect on work satisfaction, and therefore an indirect effect in reducing feelings of depression. Since women are also more likely than men to be in private practice, this also has some beneficial effect for women lawyers in Toronto.

Nonetheless, with the above measures of power and practice all taken into account, gender still has a significant direct and indirect effect on depression, with women lawyers in Toronto more likely to feel depressed than men lawyers. Since all of the women in this sample are working as lawyers in Toronto, this finding seems consistent with the argument that depression among women in these conventional legal settings reflects an internalization of frustration and despair, combined with a compliant acceptance of, and acquiescence in, prevailing working conditions.

B. Elaborations from Toronto Lawyers

Because the Toronto practice community is dispersed across a large number of firm and non-firm settings, our discussion of comments offered by lawyers in the sample will take an anonymous and generic form. Although uncommon, our mixed-method approach of blending sophisticated statistical analyses of survey data with a narrative analysis of interview data is highly productive.⁶¹ While statistical models allow us to test theory-derived hypotheses and to specify causal mechanisms, narrative analyses offer an interpretive contextual understanding of

60. The effect of private practice on occupational power is significant at $p < .05$ level, one-tailed test.

61. See Mark A Alise & Charles Teddlie, "A Continuation of the Paradigm Wars? Prevalence Rates of Methodological Approaches Across the Social/Behavioral Sciences" (2010) 4:2 *Journal of Mixed Methods Research* 103.

individual biographies.⁶² Life narratives are particularly important in presenting daily experiences that give rise to personal understanding and highlighting individual differences and the social and contextual factors that influence the understanding of one's experience of legal work. We examine the language and meaning of the narrators' interpretations by tracing the connections they make as they weave their stories into a larger collective construction of meaning.⁶³ We analyzed the interview data initially using a longitudinal narrative threads framework constructed through the analysis of storylines from legal professionals in both the Toronto and Tribunal samples. This was followed by a closer

62. A rich body of sociological literature on narrative research methods documents the strengths, weaknesses and range of strategies associated with this approach to the analysis of semi-structured and unstructured research interviews. For classic texts and overviews see generally Paul Atkinson & Sara Delamont, eds, *Narrative Methods* (London, UK: SAGE Publications, 2006); Thomas J Csordas et al, "Ways of Asking, Ways of Telling: A Methodological Comparison of Ethnographic and Research Diagnostic Interviews" (2010) 34:1 *Culture, Medicine & Psychiatry* 29; Norman K Denzin, "The Reflexive Interview and a Performative Social Science" (2001) 1:1 *Qualitative Research* 23; Jane Elliott, *Using Narrative in Social Research: Qualitative and Quantitative Approaches* (London, UK: SAGE Publications, 2005); Jaber F Gubrium & James A Holstein, eds, *Handbook of Interview Research: Context & Method* (London, UK: SAGE Publications, 2001); David Herman, Manfred Jahn & Marie-Laure Ryan, eds, *Routledge Encyclopedia of Narrative Theory* (Oxfordshire: Routledge, 2005); Linn Egeberg Holmgren, "Cofielding in Qualitative Interviews: Gender, Knowledge, and Interaction in a Study of (Pro)Feminist Men" (2011) 17:4 *Qualitative Inquiry* 364; Sam Larsson & Yvonne Sjöblom, "Perspectives on Narrative Methods in Social Work Research" (2010) 19:3 *International Journal of Social Welfare* 272; Catherine Kohler Riessman, *Narrative Methods for the Human Sciences* (Los Angeles, California: SAGE Publications, 2008); Clive Seale et al, eds, *Qualitative Research Practice* (London, UK: SAGE Publications, 2004); David Silverman, *Interpreting Qualitative Data: Methods for Analyzing Talk, Text and Interaction*, 3d ed (London, UK: SAGE Publications, 2006).

63. For a useful discussion of the multiple levels of reading text and conducting thematic analysis, see Lee Ann Fujii, "Shades of Truth and Lies: Interpreting Testimonies of War and Violence" (2010) 47:2 *Journal of Peace Research* 231; Michal Krumer-Nevo, "Reading a Poor Woman's Life: Issues and Dilemmas" (2005) 20:1 *Affilia: The Journal of Women and Social Work* 87; Marya R Sosulski, Nicole T Buchanan & Chandra M Donnell, "Life History and Narrative Analysis: Feminist Methodologies Contextualizing Black Women's Experiences with Severe Mental Illness" (2010) 37:3 *Journal of Sociology and Social Welfare* 29.

interpretive examination of the full range of narrative threads found across cases and aggregated to reveal trends and variation.⁶⁴

The women in the Toronto sample frequently commented that the amount of time they invested in their work was damaging to their emotional well-being. One woman who decided to leave firm practice made this comment:

I believe there is a fairly pervasive element of dissatisfaction and unhappiness, largely related to hours of work and degree of pressure. I think there is a real need to broaden our ideas of what makes a good lawyer and allow people to select different levels of intensities of practice. So much of our definition of an outstanding lawyer seems to focus on the ability to endure a staggering workload and constant demands for faster turnover without flinching, and without responding to the deprivation which occurs in other areas of our lives, which for many of us are just as crucial as career to our sense of work and well-being.

Another woman, who remained in a large corporate firm in downtown Toronto, remarked on both the pressures and emotional strain of the work environment:

I find that in a large firm commercial environment pressures have increased dramatically to bring in work and respond instantly at all times. There is less focus on quality of work and less personal interaction. I would not choose a commercial law career had I to do it over again. It is challenging and tense and financially rewarding. But it is emotionally deadly and I can't see that it is overall very helpful to anyone but the high-powered clients we serve. I wanted to prove that women could operate in this environment just as well as men. I think it was a mistake. But it is hard to actually leave given financial commitments and my overall investment of time and energy.

Another lawyer appreciated her high pay but resented the fact that her work lacked any redeeming social value:

64. For a detailed account of this interpretive strategy, see Elliott G Mishler, *Storylines: Craftartists' Narratives of Identity* (Cambridge: Harvard University Press, 1999); Scott Sonenshein, "We're Changing—Or Are We? Untangling the Role of Progressive, Regressive, and Stability Narratives During Strategic Change Implementation" (2010) 53:3 *Academy of Management Journal* 477; Carol Thomas, "Negotiating the Contested Terrain of Narrative Methods in Illness Contexts" (2010) 32:4 *Sociology of Health & Illness* 647.

The remuneration is very good. I can't think of another job at which I could earn more money. . . . Unfortunately, I don't feel that I am furthering any "social good" or ensuring justice is done with my job. I am a hired gun fighting for and about money. Community is not encouraged at my firm, and given that I am expected to docket about 1 900 hours a year, that doesn't leave much time for extracurricular activities. What I hate most about my job is the stress-pressure from my clients, opponents and superiors.

Failing to meet time-at-work expectations, perhaps viewed by partners as a marker of commitment to the firm, was seen as damaging. One woman who left her job in a firm said:

Periodically, I was reminded that I should appear at work every evening and on weekends while other married male employees consistently left the office promptly at 5:00 and did not return at night. Ultimately, I was told that I was not investing enough time and effort into my work. I was told I was never going to be made partner, so I could look for another job. I could take as long as I wanted so no one would realize I had been "asked" to leave, and I could simply depart when other employment was secured. I refused to comply with this request and left immediately.

For many women in firms, a constant emphasis on billings diminished their enthusiasm for their work. One remarked, "[i]t's a total grind. It is intellectually dead and highly competitive in the worst way. Money is all that matters to most lawyers I know".

Several women lawyers in the Toronto sample recounted stories that graphically illustrated their sense of being trapped in draining, time-consuming work. For example:

In my case, I was the only solicitor who used the computers extensively and on a daily basis. When my secretary resigned, no replacement was engaged on the ground that it was not cost-effective. Promises made by the partners and other associates to "share" staff were not kept. As a result, I became responsible for all of my own typing, document preparation, municipal searches, and other tasks formerly performed by my secretary. In a predominantly real estate practice, the preparation of documents can be very time-consuming. I worked six-day, seventy-hour weeks for months at a time, with adverse effects on my health and job satisfaction. I do not believe that a male lawyer in the firm would have been required to work under these conditions. Needless to say, my typing skills improved immensely. Useful perhaps, but hardly a career goal.

The preoccupation with a visible investment of time at the office and an emphasis on billable hours to the point of obsessive accounting might seem gender-neutral, but the implications for women lawyers with

childcare responsibilities are particularly burdensome. For instance, one woman explained why she simultaneously reported high satisfaction in her practice and distress at home, a distress that was at least in part caused by the time demands and constraints of her work away from home:

I was struck by how my high job satisfaction contrasted with stress created by my home life situation. . . . I use an institutional daycare, so hours are rigid. I must shoehorn my practice into 8:30 to 5:30, with almost no exception. This means work is not allowed to encroach on home life, but it means I must always be “working” either in childcare or law. I am only “off duty” on the fifteen minute drive twice a day. No wonder I drive at the speed limit to prolong the time.

Some women in the Toronto sample opted to leave private practice as a result of the overwhelming time demands that coincided with early career-building stages and child-bearing years. There were also women who avoided the “time crunch” of private practice through an early departure to other employment settings. As one woman who had left a law firm reported:

From July 1986, (i.e. one year after your original survey), I was not in a practice setting. The enormous focus on billable hours began around the time of my departure, although this was not the reason for it. My children were eight and two. Had I remained in a law firm, I expect I would have struggled as many women have with baby-related competing demands. I have been very fortunate in my personal life to have been in the right place at the right time and with the right people. I have a strong commitment to keeping women in the profession but I do not think that I am a good example of a successful survivor. I think I am a “departure”—although ironically this allowed me to progress and succeed. I do not think this would have occurred if I had remained in a law firm with increasing time demands as a measure of productivity and success, as we have seen in the last twenty years. Other measures need to be found so long as women continue to also be primary caregivers to the family and managers of family life.

The shifting culture of law firms, characterized by escalating billable hour requirements, appears to have taken hold and has shown little sign of accommodating growing diversity in the profession. One woman lawyer lamented on this fact:

My personal life has very much influenced decisions about my career. Many (if not most) legal positions are not compatible with parenting because of the hours of work involved.

This is not something inherent in legal practice—it has to do with social and cultural decisions about how legal services are delivered. It also seems to be strikingly slow to change, in part, I suppose, because requiring workaholicism is financially rewarding. While many firms and workplaces have grudgingly allowed part-time or alternative career paths, these tend to have a devaluing effect on the occupants (they aren't "really committed"). Looking over the past twenty-seven years, it seems remarkable that so little change has happened in this respect, despite the entry of large numbers of women to the profession. I suppose this is partly because those who find it incompatible leave. Still, when I look at my female students who are already worried about whether they will be able to combine child-rearing and work, it seems unfortunate that the profession is depriving itself of all this talent. I don't regret taking positions because they were more amenable to parenting obligations—on the contrary, I've been lucky to have some wonderful jobs. But shouldn't new lawyers have the choice?

Another theme that resonated across many interviews was an incipient momentum for change. Some women described this in terms of being "ready for a change", while others spoke of "stirring dissatisfaction" and "a desire for meaningful work" where they might "make a real difference". We will set out the comments of women who expressed this sentiment in different contexts. The first had left a mid-sized firm to work as a policy analyst in government and later as a judge:

After about fifteen years or so, I was ready for a change. An opportunity arose to change cities as a result of a job change for my husband. I came willingly—seeing this as an opportunity for myself, as well, to take on new challenges. I obtained a job with [a] federal government [department] . . . becoming their legal policy analyst. Because it was such a small department, I had frequent access to the minister and a real chance to influence policy direction. From there, I was appointed to the [court]. This has been a wonderful job with a surprising amount of scope. I'm involved in judicial education, community outreach, court development, etc. Altogether, it has been a very satisfying career.

The second woman lawyer became dissatisfied with her work, doubted its social value, and considered leaving for work that would allow her to take charge, make decisions and build a new organization from the ground up. However with some regrets, she remained in her job:

I went through a period in my late 40s and early 50s when I really questioned whether I was happy practicing law because I wasn't sure it was very meaningful or that I was building anything. I have, I think, become happier with it again, largely because of the

independence and freedom. It's better than many of the alternatives. But if I had my life to live again, and I thought I could earn a good living at it, I might choose something more creative—musician, writer, etc.—or, if it were in business, something entrepreneurial, where you're building something. As compared to the corporate world, law is better than every job except C.E.O., which would be better because you're actually making decisions instead of advising on them.

The third woman lawyer related a conversation she had with a friend who was a judge on why women leave firms and the significance of the search to be instrumental in building something:

When I went to law school, I had many female friends. Very few are still practicing law in downtown firms. It's really interesting. I had a chat with a good friend who is now a judge. Women can succeed, advance in firms, recruit clients, but something about women changes. The ones who are still there are mostly there because they need to be, maybe they are the main breadwinner. Maybe it's ten or twenty years in, many leave the firms. One went to in-house counsel, one went two days a week, one set up her own firm, and one went to government. All of these were women partners in firms. Something changes. I think the system that is set up downtown is the result of downtown real estate and male tradition. I think women work differently. I think it is about being in a system that you were not a part of creating. I have one friend who has an incredible career and she's been able to take the system and make it her own. I think for women, at a certain point, it all adds up, and ten or fifteen years later, they are getting over the hump or move out.

Such accounts raise the question of *where* the women who find themselves unable or unwilling to accept firm demands ultimately go. Sometimes they take up positions in public interest, activist and humanitarian settings like the International Criminal Tribunal. We move on now to discuss the experiences of the women in our Tribunal sample, and their role in the evolution of this institution.

III. Practicing Law in The Hague International Criminal Tribunal

In this part of the paper we analyze survey and interview data from a sample of employees in the Office of the Prosecutor (OTP) at The Hague International Criminal Tribunal for the former Yugoslavia (ICTY). Most of that sample was lawyers, but the inclusion of some other legal workers allowed for a fuller understanding of international

human rights work at the Tribunal.⁶⁵ Although the Toronto setting discussed above, and the Tribunal setting were intended to be quite different, they are connected by at least one well-known person: the second Chief Prosecutor of the ICTY, Louise Arbour, who moved to that role from her previous position in Toronto as a judge at the Ontario Court of Appeal.⁶⁶

For both settings our research reported below involved surveys and interviews that included questions about job satisfaction, occupational power and symptoms of depression. The cross-sectional survey at the Tribunal conducted in 1999/2000 is comparable to the third wave (1995) of the Toronto study in terms of lawyers' years in practice and the era of data collection. Another similarity is that almost all Tribunal employees had worked in more conventional settings prior to coming to the Netherlands.

The Toronto and the Tribunal settings are different in some obvious and not so obvious ways. Compared with the Toronto large firm setting, the ICTY was decidedly unconventional. It was a novel and formally ad hoc legal institution mandated by a UN Security Council resolution in 1994 to prosecute and punish war crimes for as long as this was required to establish a sense of justice in the former Yugoslavia.⁶⁷ This mandate transformed a social movement that was strongly supported by humanitarian and women's groups into a new legal institution.⁶⁸ It began with no sustaining funds and no one in custody,

65. See Pierce, *Gender Trials*, *supra* note 25. Pierce examines not only female litigators but also women employed as paralegals and legal secretaries. Pierce's research suggests that the inclusion of other legal workers, beyond lawyers, can provide a more informed analysis of organizational culture and individual power dynamics.

66. At the Tribunal, Arbour became the first prosecutor to indict a sitting head of state for crimes against humanity.

67. See Gary Jonathan Bass, *Stay the Hand of Vengeance: The Politics of War Crimes Tribunals* (Princeton: Princeton University Press, 2000); M Cherif Bassiouni, "The Commission of Experts Established Pursuant to Security Council Resolution 780: Investigating Violations of International Humanitarian Law in the Former Yugoslavia" (1994) 5:2-3 *Criminal LF* 279.

68. See Theodor Meron, *War Crimes Law Comes of Age* (New York: Oxford University Press, 1998); Aryeh Neier, *War Crimes: Brutality, Genocide, Terror, and the Struggle for Justice* (New York: Times Books, 1998) at 178-79.

grew from a small number of temporary employees sharing space in a few offices, to an established court of international criminal law, with a budget of more than 100 million dollars a year and over 1 000 employees.⁶⁹

Lawyers and investigators, many of whom were also legally trained, worked at the Tribunal on two-year contracts, spending most of their time in trials in The Hague or in the field “on mission” investigating cases in the Balkans. Given the short-term nature⁷⁰ of work at emerging tribunals on new cases of human rights violations (for example the contemporary International Criminal Tribunal for Rwanda), working at these tribunals is an unconventional career choice that offers little job security. However, it offers the prospect of contributing to the increasingly important field of international humanitarian and criminal law.

A. Tribunal Statistical Models

The Tribunal study involved a survey of 109 respondents who represent one-third of OTP employees, followed by more than 100 personal interviews. The descriptive statistics presented in Table 1 give a preliminary sense of the similarities and differences between the Toronto and Tribunal settings. Although not all of the measures included in the Toronto panel study are used in the Tribunal survey, the most important ones are.⁷¹ The stratification of the Toronto sample

69. See John Hagan, *Justice in the Balkans: Prosecuting War Crimes in The Hague Tribunal* (Chicago: University of Chicago Press, 2003).

70. The ICTY is now scheduled to complete ongoing trials by the end of 2012 and appeals by 2015, with the probable exceptions of the important trials of Radovan Karadžić, Ratko Mladić and Goran Hadžić.

71. See Appendix, Table 1. Occupational power is measured with responses ranging from non-participation in decisions to direct participation in most decisions. Investigators and other workers are included in The Hague sample, and as a group the Toronto lawyers therefore have a higher mean level of occupational power. A “dummy” variable to distinguish lawyers is included in the analyses of the Tribunal data. Powerlessness and control are two salient themes in sociological research on depression. See Mirowsky & Ross, *Social Causes*, *supra* note 16. A series of measures of feeling powerless are available only in the Toronto sample, which also includes more measures of work satisfaction and

results in an equal representation of women and men lawyers, while about 38 percent of the Tribunal respondents are women. More than one-third of the Toronto lawyers are in private practice. The lawyers in Toronto are slightly older, but the mean age in both groups is in the early to mid-forties.⁷²

Overall, the Tribunal sample is more satisfied with its work and reports fewer days (per week) with symptoms of depression. This is consistent with the expectation that respondents working at the Tribunal are more likely to have chosen that context as an alternative to more conventional legal work. It is also consistent with the idea that depression is the emotional price paid for acquiescence to the inequities of conventional practice and the idea that depression motivates decisions to pursue human rights activism.

We turn our attention next to Ordinary Least Squares (OLS) regression models involving depression at the ICTY. These OLS regression models are a simpler form of path (namely, causal) analysis than the LISREL models employed with the Toronto study. This makes them more suitable for the smaller sample size at the ICTY. The first of the ICTY models in Table 2 reveals that at the Tribunal, as in Toronto, women are more likely than men to report feelings of depression.⁷³ This is true regardless of whether the respondent is a lawyer and apart from age, job satisfaction and occupational power, none of which now have statistically significant effects. A possible implication is that rather than issues of powerlessness, the source of depressed feelings at the Tribunal may be the content of the work as well as context of the work dealing with the atrocities of war crimes.

The second model in Table 2 indicates that as in Toronto, women at the ICTY occupy positions of less occupational power. This is not

depression. However, the latter measures are more central to our interests and are sufficiently well represented in The Hague survey.

72. It is significant that the lawyers in these two studies are approximately equal in age, since prior research across occupational groups reveals that satisfaction with work and in other areas of life increases with age. See Duane F Alwin & Jon A Krosnick, "Aging, Cohorts, and the Stability of Sociopolitical Orientations over the Life Span" (1991) 97:1 *American Journal of Sociology* 169.

73. See Appendix, Table 2.

surprising since our sample from the OTP includes interpreters and other clerical workers who are more often women. Also as expected, occupational power significantly increases with age. Most interesting is the fact that the interaction term, stated as “gender × depression” in Tables 2 and 3 indicate that women who report feelings of depression are significantly more likely to be in positions of occupational power at the ICTY. This interaction effect is consistent with the second line of thought about the influence of depression identified above, that is, the suggestion that feelings of depression can be effective sources of redirection and motivation in occupational careers. Because these are cross-sectional data, we cannot be certain whether feelings of depression among women respondents are a cause or a consequence of being in positions of occupational power. However, the positive effect is striking in either case: women who succeed in attaining positions of power at the ICTY are more likely to report feelings of depression. As mentioned above, these feelings could be expected to result from taking daily responsibility for investigating, prosecuting and punishing wartime criminal atrocities.

We further pursued the motivational aspect of the interaction of gender and depression in Table 3 by focusing on reports of total hours worked at the ICTY.⁷⁴ Respondents were asked to report separately the average number of hours they worked on weekdays, at night, and on weekends in the OTP. The first model estimated in Table 3 indicates that women overall worked fewer hours at the Tribunal. This again is likely a result of including clerical workers in the sample. Meanwhile, the “gender × depression” interaction term is again significant, indicating that women with depressed feelings work longer hours than others in the OTP. The second equation in this table introduces a dummy variable for lawyers and a “gender × lawyer” interaction term. Lawyers in general work longer hours, and the interaction term indicates that women lawyers in particular work longer hours. Controlling for the “gender × lawyer” interaction also reduces the “gender × depression” interaction below statistical significance, indicating that it is the women lawyers who report feelings of

74. See Appendix, Table 3.

depression who are working the longest hours in the OTP. Equations 3 and 4 in Table 3 introduce occupational power and age, respectively, into the analysis. Both increase total hours worked and reduce the “gender × lawyer” interaction term below statistical significance. This sequence of equations indicates that it is older women lawyers in positions of power, working longer hours, who report feelings of depression. Regardless of whether this work and responsibility brings on feelings of depression, or is motivated by them, these data seem to suggest that feelings of depression can have quite different meanings in conventional and unconventional legal settings.

The effect of time worked at the Tribunal and in Toronto law practice is clearly quite different. This is reflected by the fact that in contrast to the Tribunal, in Toronto we found no interaction effects of gender and feelings of depression along dimensions of time. Of course a more salient reason for the different meanings of time in these settings is the attention given to tracking billable and non-billable hours in firms.⁷⁵ The investment of time in work is a consistently compensated commodity in Toronto firms, while it is an unmonitored and unremunerated choice at the Tribunal. Especially for the women who are now well into their professional careers in both of our samples, the investment of time in legal work has very different emotional implications in Toronto and at the Tribunal. This is the main point we will develop next with qualitative interview data.

B. Elaborations from Tribunal Legal Professionals

Our discussion of the qualitative data from the Tribunal is institutionally specific and focuses on public figures interviewed for this research, including the Tribunal’s first three chief prosecutors. These chief prosecutors were interviewed several times each for this study,

75. See e.g. Cynthia Fuchs Epstein & Carroll Seron, “The Symbolic Meanings of Professional Time” in Jerry Van Hoy, ed, *Legal Professions: Work, Structure and Organization* (Bingley: Emerald Group Publishing, 2001) 79; Deborah K Holmes, “Structural Causes of Dissatisfaction among Large-Firm Attorneys: A Feminist Perspective” (Spring, 1990) 12:1 *Women’s Rts L Rep* 9.

along with many of their employees. The Tribunal lawyers, who are public figures and were quoted in the media, are referred to by name.⁷⁶ In the analysis of Toronto interview data, we explored a tapestry of views on women's experiences in law practice, on areas of discontent and on motivations for thinking about change. In the context of work at the ICTY, lawyers shared a common mission and workplace, and often knew each other well through their involvement in various assignments, including visits to mass graves, interviewing victims and putting in long hours of court preparation. We therefore try to bring out a coherent larger narrative of the roles of these lawyers and the connections between those roles, while emphasizing their diverse professional origins and complex emotional reactions to the demanding and rewarding work at the ICTY. In so doing, we highlight the lives of eight women lawyers, with deliberate attention to the narrative of Louise Arbour in her role as Chief Prosecutor.

From the outset, the ICTY was especially welcoming of women. Women's groups had joined forces with humanitarian organizations to press the United Nations, specifically the member states of the Security Council to establish the Tribunal.⁷⁷ South African Justice Richard Goldstone, who was appointed as the first Chief Prosecutor of the ICTY in 1994, reported: "soon after I arrived in The Hague, I was besieged by thousands of letters and petitions signed by people, mostly women, from many countries, urging me to give adequate attention to gender-related war crimes".⁷⁸ The systematic mass rapes reported by the media in Bosnia stimulated these letters.⁷⁹ Goldstone realized that human rights and women's groups formed a constituency that was watching the Tribunal's work. He sought the input of those groups, which in his

76. The interview participants provided informed consent to the release of their names in the Tribunal study.

77. See Iain Guest, *On Trial: The United Nations, War Crimes and the Former Yugoslavia* (Washington, DC: Refugee Policy Group, 1995).

78. Richard J Goldstone, *For Humanity: Reflections of a War Crimes Investigator* (New Haven: Yale University Press, 2000) at 85.

79. See Roy Gutman, *A Witness to Genocide: The 1993 Pulitzer Prize-Winning Dispatches on the "Ethnic Cleansing" of Bosnia* (New York: Macmillan, 1993); Ed Vulliamy, *Seasons of Hell: Understanding Bosnia's War* (New York: St. Martin's Press, 1994).

words “led, among other things, to my appointing Patricia Sellers, a thoughtful international lawyer from the United States, as my special adviser on gender, both in our office and in relation to our investigations and indictment”.⁸⁰

Sellers came to the Tribunal in July 1994 from Philadelphia, where she prosecuted sexual assaults. An American corporate lawyer, Minna Schrag, reported:

I was in my law firm office one day in November 1993, talking over an approach to a particularly complex . . . corporate settlement negotiation, when . . . [a] legal adviser at the State Department called to ask if I would be willing to have the United States nominate me to a senior position at the Yugoslav War Crimes Tribunal. . . . That call changed my life.

At The Hague, Sellers and Schrag inherited a file of evidence that had already been collected by a preceding Commission of Experts, headed by Cherif Bassiouni, for the purpose of investigating war crimes in the Balkans.⁸¹ Another American woman, Nancy Paterson, who joined the OTP at this time, had led a team of investigators for the Commission on Sexual Assault in the Prijedor region of Bosnia. Sellers recalled that “in the spring and summer of 1995, I was working with Nancy Paterson and we were trying to get together what our investigation strategy and legal strategy should be, given our resources”. It was clear from the work of the Commission that rape and sexual assault were a key part of ethnic cleansing in Bosnia. They made the decision to prosecute a specific offender, Dusko Tadić, who was already in detention in Germany.⁸² Brenda Hollis, a seconded US Air Force lawyer, joined the investigation team as a legal advisor and became the lead prosecutor in this case.

The investigation required repeated field missions to war-torn Bosnia.⁸³ Hollis recalled that:

80. Goldstone, *supra* note 78 at 85.

81. Bassiouni, *supra* note 67 at 31.

82. See Geoffrey Robertson, *Crimes Against Humanity: The Struggle for Global Justice* (London: Penguin Books, 2006) (the wisdom of beginning the Tribunal’s trial history with this particular case is reviewed).

83. See WJ Fenrick, “In the Field with the UNCOE: Investigating Atrocities in the Territory of Former Yugoslavia” (1995) 34:1 *Military Law & Law of War Review* 33.

It was quite harsh to be in Bosnia because a lot of the infrastructure was gone. Food was still in short supply. . . . The hotels and places that we stayed would have electricity and water intermittently, i[f] at all . . . The vehicles were broken down because . . . of the bureaucratic in-fighting about resources.

The teams worked from dawn to dusk, relying extensively on local interpreters whom they had trouble getting paid in a timely way by the UN. The interviews about sexual assaults and rape were drawn-out, detailed, and particularly difficult both for the interpreters (who had to process the accounts first-hand) and for the lawyers and investigators who had to press the interviewees for the detailed descriptions and identifications that would be necessary in court. Hollis emphasized the raw and traumatic quality of much that she heard. In her words, “[m]any of the people still had not had any sort of distance between what had happened to them, and they hadn’t received any sort of treatment. And so it was pretty raw stuff for the first eight to ten months we were going into the country”.

Although much evidence about rape and sexual assault was brought into the Tadić trial—the first case to be heard by the Tribunal’s judges—the rape charge was eventually dropped.⁸⁴ Nancy Paterson, who pursued many of these cases in Bosnia, described the disappointment and difficulties involved in a case of this kind:

At the end of the day you just have to walk away. We tried, she tried, nobody to blame, can’t help it, you just have to move on. I mean this happened in the middle of the . . . trial. We had to drop the rape counts because one witness was unwilling to testify. I’m sorry, again, at the end of the day that was the woman’s right, and I was the one that spoke to her, and tried to talk her into testifying, and she agonized over this. She desperately wanted to do the right thing, and all of her reasons for not testifying were perfectly legitimate. And I would have made the same decision had I been her. In fact, I would have kicked me out long before she did. You know, finally, I had to say, “Okay, . . . look it’s your decision to make and we will respect that.” We went out for a

84. The loss of the rape charge contributed to a growing sense that the Tadić trial was a less important case than originally suggested by the media. For a sense of the false expectations raised by this trial, see William W Horne, “The Real Trial of the Century” (1995) 5 *The American Lawyer* 7. Nonetheless, the trial was a beginning and an opportunity for the Tribunal to take its first steps in court.

long walk for an hour, we went for a coffee, we came back and she said, “[s]orry, I just can’t do it”.

Everyone involved was heavily invested in this case, but Paterson added that in many cases, even if the witnesses had been able to testify, they would have been “ripped apart by the defence”. Eventually, successful cases were brought—cases in which rape victims testified at the Tribunal, including those who contributed to the convictions in the Foča case, which held for the first time in Europe that sexual enslavement and rape were war crimes and crimes against humanity.⁸⁵

Nancy Paterson went on to work on many cases at the Tribunal, and ultimately was one of the two senior trial attorneys who drafted the indictment of Slobodan Milošević, which was signed and executed by Louise Arbour as Chief Prosecutor. Paterson and Arbour, among many other women interviewed at the OTP, emphasized that a mixture of emotions characterized their work at the Tribunal. Paterson explained the sustaining force of her field experiences, over and above the emotional toll they imposed, by describing a small party that marked the end of a mission near Tuzla in Bosnia:

I think my fondest memory . . . will be the summer of 1996 . . . after Dayton when we could actually go in with escort troops, and actually go in to Republika Srpska and do crime scenes. We took a three-week mission, it was a very intense mission, and at the end of the mission our Bosnian friends threw a party for us in the garden of one of the people. It was basically a cook out, nothing particularly fancy, but we were all there and invited a few other people we knew from the U.N. To this day, we all swear it was the best party that any of us have gone to in our lives. The timing was perfect; the company was perfect. It had been a long hard mission but everybody felt satisfied with what we had accomplished. It was so nice to have the party thrown for us by the Bosnians—that they were considerate enough to do that. It was very special.

The field mission that Paterson described in Tuzla was exhausting and intense, but the investment of time and energy had a much different quality than that described by lawyers practicing in Toronto firms.

85. See Marlise Simons, “3 Serbs Convicted in Wartime Rapes”, *The New York Times* (23 February 2001) A1 (for an overview of the Foča case and its verdict).

Women and men at the Tribunal both emphasized that there was a definite return on the investment of effort in getting cases to the Tribunal, perhaps especially the sexual assault cases. Tejshere Thapa, a legally trained Nepalese investigator who worked and testified in the Foča case, described the gratification in seeing the victims in that case give their testimony at the Tribunal:

These are people whose lives were deeply affected by what happened and their relief and the strength they got from coming forward and testifying was tremendous. That was very, very gratifying to me that it made a difference to their lives. And that was quite unexpected for me. I didn't know that people would feel so restored, not that it can make them better or make anything go away . . . but they felt . . . good . . . it's very important to see them through this prism.

Yet it is important to emphasize that Thapa also saw a darker side to the work of women at the Tribunal. She noted that the time, effort and unconventional context took its toll: "a lot of women have been very committed and have burnt themselves out and run themselves ragged". Thapa added that working among male investigators could add to the problem. As for the emotional side of their work, she remarked that women at the Tribunal "can't show [depression] in the ways that they might otherwise show it if they were not in a culture of cops. . . . It takes a toll".

Thapa arrived at the Tribunal in the spring of 1995, on the same day as Hildegard Retzlaff Hertz, a senior German trial lawyer who became the lead prosecutor on the Foča case and was part of the prosecution team for the Milošević case. Thapa and Retzlaff Hertz worked together for more than five years on the Foča case, from the start of the investigation through to the conviction and its confirmation on appeal. Retzlaff Hertz further described the suppression of affect that is often necessary in this work environment:

You cannot sit with the witnesses and cry all the time. You have to just look at the facts, and you have to distinguish your emotional level from what you are doing. . . . I always fear that one day you will do it so good that you will have no emotions anymore.

She added that "we have a word in German that doesn't exist in English; we say 'versteinern', which means 'to become like a stone', and

this is something which I always fear and I always watch closely that it doesn't happen to me".

Louise Arbour admitted that when she moved from being a judge in Toronto to being the second Chief Prosecutor at the ICTY, she had no sense of what the experience would be like. At the time, she said, "[i]t may be an aspect I don't want to think about, because that's the one thing that might make you want to stay away from it".⁸⁶ Minna Schrag elaborated on this point by noting:

None of us at ICTY received any serious training with trauma victims, let alone about the effect on ourselves of working so closely with people who had suffered greatly. I suppose most of us, if we thought about it at all, thought that our professional experience would serve as a kind of armor to shield us from our own reactions to the unthinkable terror of the events in Bosnia.

Schrag went on to say, "[m]y work at the Tribunal was the most challenging, and frustrating, of my life," and that "as for The Hague changing my life, it gave me haunting dreams and memories of people and their stories that will always be with me".⁸⁷

Louise Arbour threw herself into the field work and office work of the OTP, going on missions with her staff and visiting exhumation projects in Croatia, Bosnia and Kosovo. When Carla Del Ponte followed Arbour as the third Chief Prosecutor, she made an early point of meeting many of the women who had survived the Srebrenica massacre⁸⁸ and of travelling widely throughout the region. Like almost all those interviewed for this research, Arbour found the experience on mission and on return to the Tribunal more complicated and contradictory than anticipated. She remarked that ambivalence, exhilaration and guilt were three unexpected features of the field experience:

86. Sylvie Halpern, "Madame Justice Louise Arbour: Justice for All" (1998) 58 *EnRoute* 63.

87. This quote is taken from a contribution by Minna Schrag to an unpublished collection of biographical statements prepared by the Radcliffe College graduating class of 1961.

88. See Carol J Williams, "Prosecutor is Fired up for Trial of Milošević", *Los Angeles Times* (3 July 2001) A1. A further account of this meeting was provided to the first author in an interview with Del Ponte at The Hague Tribunal.

Even though people don't always verbalize it in this way, I think you almost feel guilty, and I hate to put it so crudely, but you feel guilty that it's so much fun, because people say to you all the time, "we admire so much what you do, it must have been so depressing and so hard," and in fact, you have so much ambivalence, because you understand that's the way you should feel, although very often on a day-to-day basis the excitement of being out there and feeling very alive and that you're making a difference, and the excitement, it's a bit dangerous, not always in a typical sense, but it's risky, you're putting the project at risk, it's risky, it's a war zone, less so now, but at times, so all that, in fact, very often makes you oblivious to the human suffering that you're dealing with and it is replaced with this kind of exhilaration of action. But I think that the minute you pause, you feel guilty for feeling that way, or inappropriate, so I think there is a kind of ambivalence in the fieldwork.

Although the phrase "exhilaration of action" is unique to Arbour's account, the energizing quality of the field contacts with victims and other workers was commonly noted in the interviews.

Equally, if not more important, is Arbour's description of the more sombre feelings that accompanied return from the field to the somewhat more conventional Tribunal setting:

When you're in The Hague it's not that exhilarating, it's more you're conscious that you're part of something pretty sullen and serious, but I think in the field when you jump into your 4-by-4, you mingle with all these other "groupies of catastrophes", as I call them, otherwise known as humanitarian workers, I think it creates this ambivalence and the other thing is that I think when you come back it's a real downer, because in part the work is very confidential and because it's very intense and action-oriented. There's a sort of closing of ranks, people talk inside, but you see some alienation of family life, and so on, because of all that. So it creates a lot of different emotions that people from the outside don't perceive.

Arbour went on to explain in greater detail why the return to a more conventional setting and family members is often disconcerting:

The only people you can really talk to for lots of reasons [are your colleagues], in part because it's confidential, and frankly in another part, because others who ask, at the end of the day, don't really care. They don't want to hear the full story, which is not that different from coming home from a trip, and friends say, "how was Thailand?", but basically they don't want to see your slides, they just want to carry on. In the same way, you come back from a three week mission, in a place where your spouse cannot remember the names of the people and the geography, so your spouse and your outside friends, there's a lot of stuff you can't tell them, and what you can tell them, it quickly gets too complicated. You'd have to tell the story always with a map and with pictures.

So you pretty quickly realize that at work you have people who like you are addicted to the story and never get enough of it, and outside, you have people who pretend to care, but in fact they don't. They don't want to hear it.

In the end, Arbour notes that the field experience becomes a disturbing but also captivating "alternate reality" to life "back home":

The flip side is . . . this . . . field work, which is full of adrenaline and action, and also in our case it's very confidential work, so when you come back, when you come out of the field, you have nobody to talk to except the gang that was there. You don't want to talk about anything else, because everything else seems so uninteresting, it's not trivial and insignificant, and I think it creates inevitably a lot of friction with families, for instance, many of whom have been transferred to The Hague, which is not exactly a hotbed of excitement at the best of times, and they're not getting this kind of "high" from the field. They're getting only very second-hand waves of it, so it reinforces, from a positive side the teamwork, the group action, but it also cuts you off more and more from reality. . . . You start to think that your real life and the rest of what used to be your life is pretty boring and kind of uninteresting. . . .

Arbour was concerned about the emotional effects of the field experiences because she was responsible for controlling the terms of this work for herself and others. Her solution was to curb the temptation of the workers to stay in the field too long:

And to a certain extent I think it was good we didn't keep the teams in the field for very long, and they'd have to come back after a few weeks. . . . Otherwise, and some I think become, many people who work in these kinds of U.N. missions, they become kind of groupies of disasters, and suffering and action, because that's the thing: it's like nothing you have in any other job. It's just so alive, but it has all these paradoxes. . . . You feel very alive, but you're dealing with death and suffering, and you try to persuade yourself, in a sense you have to immunize yourself, or distance yourself from the situation, but in a sense it's not hard, because you're just so taken by small things, making sure you have a vehicle and fuel and that things work. It's another one of the realities which I think also generate, with a little bit of distance, a lot of ambivalence and a lot of guilt because you don't feel really the way people assume you would. They assume you're going to be there in tears most of the time, devastated by what you see, when in fact, I think you feel quite guilty most of the time, not quite feeling the way the world expects you to feel. And that kind of sentiment, of being kind of energized by it, is I think difficult to manage, because it doesn't seem natural.

When asked in a subsequent interview to elaborate on the above quote, Arbour remarked that:

In a sense, you feel guilty, not guilty, but you have difficulty understanding how you could have been so blind to the real context . . . and then, of course, with distance, it very often makes you oblivious to the human suffering that you're dealing with and is replaced by this kind of exhilaration of action. And then, of course, with distance you're ashamed for having felt that way, as though you had forgotten your mission in all the excitement of getting it done.

References to the exhilaration of action, to feelings of guilt and to an enlarged awareness of human suffering, make it possible to understand how the field experience can simultaneously lead to feelings of depression and to a willingness to take on heavy responsibilities and invest a great deal of time, energy, effort and emotion.

Conclusion

Conventional and unconventional forms of legal work clearly have their satisfactions, but this paper has argued that focusing on satisfaction alone misses important dimensions of the emotional lives of lawyers. Although our attention has been concentrated on women, men obviously respond to distress as well, and recent research on gender and emotions emphasizes this, especially with anger and alcohol use.⁸⁹ It is commonly noted that (male) anger is an emotion that can be channelled in constructive as well as destructive ways, but this point is less often made about (female) depression. The findings of our research suggest that the constructive redirection of depressed feelings can be a significant reason for the choice women lawyers often make to seek work in activist settings like the ICTY. While we found no other studies that

89. See Ryan S Trim, Marc A Schuckit & Tom L Smith, "Predicting Drinking Onset with Discrete-Time Survival Analysis in Offspring from the San Diego Prospective Study" (2010) 107:2-3 *Drug & Alcohol Dependence* 215; Carole S Aneshensel, Carolyn M Rutter & Peter A Lachenbruch, "Social Structure, Stress, and Mental Health: Competing Conceptual and Analytic Models" (1991) 56:2 *American Sociological Review* 166.

explore this upside to emotional disappointment with mainstream practice areas, numerous studies report that women lawyers do more pro bono service than their male colleagues,⁹⁰ are more highly represented in legal aid work⁹¹ and are more actively engaged in “cause lawyering”.⁹² These studies document women’s presence in unconventional legal work, but often overlook the motivations behind their involvement.

It is important to emphasize that the depressed feelings reported in this research will usually not reach levels that would be classified as clinical depression. Furthermore, it would be cause for comment if individuals working on cases involving war crimes did not sometimes report signs of depression, such as lost and troubled sleep. The interesting point is that at the Tribunal, as elsewhere, women are more likely than men to report such feelings. The preliminary quantitative survey results reported in this paper tell us something about how women lawyers in different contexts share some of these kinds of depressed feelings or dysthymia, but with varying meanings and consequences. Our data suggest that dysthymia might be appropriately found in more women than men lawyers in Toronto as well as at the Tribunal. Yet there is no evidence that this condition reduces the productivity of women lawyers in Toronto, and we have presented evidence that it actually makes them more productive at the Tribunal. Beyond this, however, describing the women lawyers both in Toronto and at the Tribunal as dysthymic may gloss over significant findings of this study about the differences in the two settings.

90. See Ronit Dinovitzer & Bryant G Garth, “Pro Bono as an Elite Strategy in Early Lawyers Careers” in Robert Granfield & Lynn Mather, eds, *Private Lawyers and the Public Interest: The Evolving Role of Pro Bono in the Legal Profession* (Oxford: Oxford University Press, 2009) 115 at 122.

91. See Richard L Abel, “State, Market, Philanthropy, and Self-Help as Legal Services Delivery Mechanisms” in Robert Granfield & Lynn Mather, *ibid*, 295 at 304.

92. See Felice Batlan, “The Ladies’ Health Protective Association: Lay Lawyers and Urban Cause Lawyering” (2008) 41:3 *Akron L Rev* 701 at 704.

When we move beyond the preliminary survey results and pursue the multivariate meaning of our data, we begin to learn more about some of those important differences. The feelings of despair on the part of women lawyers in Toronto often seem to be the result of acquiescence in a set of power relationships and demanding work conditions that are unaccommodating of family responsibilities. The resulting frustrations tend to be directed inward and to be expressed in feelings of powerlessness and depression. In contrast, the feelings of despair at the Tribunal seem more bound up with positions of power and responsibility that are less available to women in conventional practice. Working at the Tribunal appears to be no less burdensome and demanding than working in Toronto when it comes to putting in extra hours. Yet, at the Tribunal this commitment to work seems much more a matter of choice and less a matter of constraint.

The qualitative interviews add a dimension to our comparison that Kathleen Hull emphasizes as essential to understanding subjective responses to work in law.⁹³ While these data add clarity, they also add a layer of complexity, especially with regard to the Tribunal. Work at the Tribunal may be more rewarding in terms of feelings of making an important difference in the lives of others, but this is offset to a degree by its impact on the ability to share other aspects of everyday life with family and friends outside the Tribunal. A further irony and sense of contradiction lies in the finding that this humanitarian legal work in its most intense form is not experienced by our respondents in the single-mindedly depressing way that others often imagine and expect. The field work and court work can actually be exhilarating and all consuming. Managing the emotional roller coaster of this kind of work imposes stresses that may well outlast the short-term requirements of the official obligations of Tribunal work.

Finally, we must acknowledge the limitations of our study and point to directions for future work. The Toronto study provided an instructive point of comparison for the experiences of lawyers working at the Tribunal, but it is important to note that the Toronto legal profession is tremendously diverse both in the settings in which lawyers

93. Hull, "Paradox", *supra* note 9 at 698.

work and in the fields in which they practice. Many of our qualitative insights were drawn from lawyers working in downtown large-firm corporate practice—a setting that is not typical of the workplaces where many Toronto lawyers make their living. Moreover, there is a fluidity of careers within the profession, and it is likely that many lawyers in our longitudinal Toronto study have, over time, made significant career moves both within and out of the practice of law. Some have undoubtedly left more “conventional” practice settings to pursue other challenging and productive opportunities, such as union-side labour work, class action litigation on behalf of clients who were abused in residential schools, representation of parents whose children were removed by the Children’s Aid Societies, and legal aid clinics serving refugee claimants and the poor. The ICTY represents but one unconventional site of legal practice. Research is needed to explore career flows into diverse and innovative practice settings where lawyers engage in human rights activism and “cause” lawyering in Toronto as well as internationally.⁹⁴ Research that tracks job transitions over time and includes measures of motivations and work conditions will be especially useful in determining why people move between these practice settings.

Future research also needs to expand the study of legal work to include paralegals and other non-lawyers who play a role in law practice settings, including law firms,⁹⁵ sole practices, and international organizations. International practice might also be considered more broadly to include human rights activism with non-governmental organizations, and lawyer and non-lawyer work with such international

94. For recent explorations of cause lawyering, see e.g. Paul J Kaplan, “Forgetting the Future: Cause Lawyering and the Work of California Capital Trial Defenders” (2010) 14:2 *Theoretical Criminology* 211; Austin Sarat & Stuart A Scheingold, eds, *Cause Lawyering: Political Commitments and Professional Responsibilities* (New York: Oxford University Press, 1998); Austin Sarat & Stuart A Scheingold, eds, *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice* (Stanford: Stanford University Press, 2005).

95. Jennifer L Pierce’s research offers an innovative foray into the study of emotional dimensions to practicing law, exploring interactions between paralegals and lawyers in the context of law firms. See Pierce, “Emotional Labor”, *supra* note 30.

bodies as the World Trade Organization and World Health Organization.

Our research suggests that the emotional lives of lawyers have been insufficiently studied and are more complex than commonly thought. As the range of settings of legal work continues to expand and increasingly includes areas such as human rights activism, we have both the opportunity and the need to learn how lawyers respond emotionally to diverse occupational environments. The findings reported here suggest that such research should incorporate both quantitative and qualitative research designs, that it should be wide-ranging in scope and that it should be done with a watchful eye to the constructive as well as destructive roles that emotions can play for both women and men in doing their work as lawyers.

Appendix

Table 1—Descriptive Statistics, Toronto and Tribunal Samples

Variable	Description	Toronto Sample		Tribunal Sample	
		Mean	Standard Deviation	Mean	Standard Deviation
SEX	Gender	.51	.50	.38	.49
AGE95	Age of respondent in 1995	46.05	7.05	41.04	7.57
PRIVPRAC	Private practice of law	.38	.49	—	—
OCCUPOW	Occupational power	3.84	1.30	2.28	1.19
Perceived Powerlessness					
OWNSUC3	I am responsible for my own successes	1.60	.65	—	—
MINDSET3	I can do just about anything I really set my mind to	2.11	.89	—	—
MISFORT3	My misfortunes are the result of mistakes I have made	2.52	.89	—	—
FAIL3	I am responsible for my failures	2.17	.73	—	—
LUCK3	The really good things that happen to me are mostly luck	2.31	.73	—	—
NOPLAN3	There's no sense planning a lot—if something good is going to happen it will	2.00	.73	—	—
BDBRK3	Most of my problems are due to bad breaks	2.03	.69	—	—
NOCONT3	I am responsible for my own failures	2.32	.89	—	—
Depression					
BLUES3	Felt you couldn't shake the blues	.64	1.36	—	—
LONELY3	Felt lonely	.68	1.38	—	—
EFFORT3	Felt that everything was an effort	1.08	1.82	.83	1.61
SAD3	Felt sad	1.11	1.72	.55	1.35
NOGO3	Felt you just couldn't get going	.64	1.19	.30	.71
Job Satisfaction					
JOBSAT3	Overall satisfaction with job	3.91	1.04	4.50	.62
RECJOB3	Would recommend job to a friend	3.68	1.05	—	—
TAKJOB3	Given choice, would take same job again	3.97	1.07	—	—

Table 2—OLS Equations for Depression and Occupational Power at the Tribunal Office of the Prosecutor (N=109)

Variables	Depression			Occupational Power		
	Eq. 1			Eq. 1		
	b	(SE)	β	b	(SE)	β
Gender	1.84	(.90)	.20*	-.64	(.30)	-.26*
Lawyer	.95	(1.14)	.08	.20	(.25)	.06
Age	-.10	(.06)	-.17	.00	(.02)	.18*
Job Satisfaction	-.82	(.72)	.11	.23	(.19)	.12
Occupational Power	.53	(.38)	.14	—	—	—
Depression	—	—	—	-.00	(.04)	.08
Gender x Depression	—	—	—	.10	(.05)	.34*
Intercept	4.08	(3.70)**		-53.60	(29.26)*	
Adjusted R ²		.06			.14	

* < .05, one-tailed.

** < .01, one-tailed.

Table 3—OLS Structural and Reduced Form Equations for Total Hours Worked at Tribunal (OTP) (N= 109)

Variable	Eq. (1)			Eq. (2)			Eq. (3)			Eq. (4)		
	b	(SE)	β	b	(SE)	β	b	(SE)	β	b	(SE)	β
Gender	-8.86	(2.41)	-.43***	-8.58	(2.23)	-.42***	-6.36	(2.29)	-.31**	-5.63	(2.30)	-.28*
Lawyer	—	—	—	5.75	(2.72)	.22*	5.64	(.26)	.22*	5.66	(2.54)	.22*
Age	—	—	—	—	—	—	—	—	—	.25	(.11)	.19*
Occupational Power	—	—	—	—	—	—	2.54	(.71)	.30***	2.21	(.72)	.26*
Job Satisfaction	—	—	—	—	—	—	—	—	—	.47	(1.38)	.03
Depression	-.23	(.30)	-.11	-.19	(.28)	-.09	-.07	(.26)	.03	.04	(.28)	.02
Gender x Lawyer	—	—	—	9.61	(4.88)	.22*	7.72	(4.65)	.18†	6.26	(4.65)	.14
Gender x Depression	1.05	(.41)	.42**	.72	(.39)	.29†	.43	(.38)	.17	.40	(.38)	.16
Intercept	53.23	(1.40)***		52.01	(1.42)***		45.65	(2.23)***		33.59	(7.58)***	
Adjusted R ²	.10			.22			.30			.33		

† .10, one-tailed

* .05, one-tailed

** .01, one-tailed

*** .001, one-tailed

