A CONFERENCE ON
COMPARABLE WORTH

Equal Pay for UNequal Work

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WASHINGTON, D.C., OCTOBER 17-18, 1983

Equal Pay for UNequal Work

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A Conference on Comparable Worth

Edited by

Phyllis Schlafly

Sponsored by

Eagle Forum Education & Legal Defense Fund

with 19 speakers

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Introduction to the Comparable Worth Conference

by Phyllis Schlafly

Phyllis Schlafly is the president of the Eagle Forum Education and Legal Defense Fund, the sponsor of this Conference on Equal Pay for Comparable Worth. A member of the Illinois Bar, she has an M.A. from Harvard University in political science and a J.D. from Washington University Law School. The author of nine books, she has given more than a thousand national network television or radio commentaries, testified before more than fifty Congressional or state legislative committees, and lectured on more than a hundred university campuses.

National newsmagazines and legal journals have been running a public service ad. In big black letters, the ad is headlined: "It pays to be a man." The copy below states: "The statistics bear it out. For every dollar a man makes, a woman earns only 59¢. Yet we have already observed the 20th anniversary of the Equal Pay Act. . . . Today, a secretary is usually paid less than a truck driver. A teacher less than a liquor store clerk. And a nurse less than a pharmacist. Law or no law, it still pays to be a man. Isn't it time we made it pay just to do a good job?"

The ad doesn't mention the slogan "Equal Pay for Comparable Worth," but the ad is obviously designed to build public sentiment for that new concept.

Note that the ad does *not* compare the wages of male nurses with female nurses, or male truck drivers with female truck drivers, or male pharmacists with female pharmacists. The crux of the Comparable Worth concept is the comparing of wages paid for

different job categories in which either males or females predominate—but who do different work, in different occupations, in different labor markets.

For example, in one highly-publicized lawsuit testing the Comparable Worth theory, the comparison was between nurses and tree-trimmers in Denver. The Federal judge who dismissed that case said the Comparable Worth theory is "pregnant with the possibility of disrupting the entire economic system" of the United States.

This Conference is designed to explore the issue of Comparable Worth—what it is, how to define it, whether it should or should not be a social or economic or legal goal of our society, and what it would cost—to individuals, to business, and to society.

Much of the language of Comparable Worth is attractive. Who could be opposed to paying equal pay for work of Comparable Worth or comparable value? An attractive synonym often used for Comparable Worth is "pay equity." Isn't everybody for equitable pay? Who doesn't think he is worth more than he is being paid? Most everyone I know thinks he or she deserves a raise or a promotion.

But what is the best means of bringing about pay equity? Some believe that government regulation of labor markets is the best and perhaps the only way; others believe that private enterprise and free labor markets produce the best results.

We will examine the assumptions of the Comparable Worth doctrine. Are differences in the average wages of all men and all women the result of sex discrimination? Or are there other causes? Does the wage gap reflect the influence of a bias against women, or differences in productivity between men and women? We all share the goal of nondiscrimination in employment—and of equal pay for equal work. That is a very noncontroversial issue.

This Conference has been designed to raise the level of public debate on this issue by discussing the concerns raised by proposals for implementing Comparable Worth controls. An examination of the literature on this subject shows that the debate so far has been very one-sided. Very few groups have come forward to present criticisms of the Comparable Worth goal. The 1982 Congressional hearings produced 1,829 pages of testimony, nearly all in favor of Comparable Worth. Perhaps this is because there are organized lobbying groups working to bring about Comparable Worth.

Senators Edward Kennedy and Alan Cranston are sponsors of

the Senate bill on Comparable Worth. Eleanor Holmes Norton, former chair of the Equal Employment Opportunity Commission, has stated that this is the civil rights issue of the 1980s. Comparable Worth is a stated national goal of the American Federation of State, County and Municipal Employees. This union has already won one Comparable Worth lawsuit in the state of Washington (which is estimated to cost the state one billion dollars) and successfully negotiated a Comparable Worth contract in Minnesota.

There has been considerable activity to pass Comparable Worth legislation in various states and to implement the legislation that has already been passed in several states. None of these statutes defines any method for ascertaining Comparable Worth or the value of dissimilar jobs. It appears that some of this legislation was passed without adequate understanding or consideration of the issue and of its short-range costs and long-range economic consequences.

Many local governments and businesses, whose cost structures would be dramatically affected by Comparable Worth, do not seem to understand that Comparable Worth is radically different from Equal Pay for Equal Work.

We are indebted to Judith Finn, coordinator for this conference on Comparable Worth, for assembling a unique group of speakers to address this issue from their different perspectives, utilizing their different types of professional expertise. Mrs. Finn has done a brilliant job of bringing together knowledgeable and articulate spokesmen who can dissect the issue of Comparable Worth for the public to understand, as well as bring into focus this concept and its consequences.

Overview of the Conference Debate

by Judith Finn

Judith Finn served as conference coordinator of this Conference on Equal Pay for Comparable Worth and is chairman of Eagle Forum's Task Force on Comparable Worth. A public policy specialist, she has her M.A. in political science from Michigan State University. She has testified before committees of both Houses of Congress on her many areas of expertise including equal pay and sex discrimination in employment, the causes of the earnings gap, and Social Security. Her book, "The Treatment of Women Under Social Security," is the best source in print of reliable information on that subject.

The Conference on Comparable Worth, which presented the views of 19 persons with various kinds of expertise on this subject, articulated significant areas of agreement and of disagreement. We summarize these points here for the convenience of readers.

The areas of agreement between advocates and opponents of Comparable Worth include:

1. *Definition of Comparable Worth.* Although it is often said that there is no generally accepted definition of Comparable Worth, an operational definition which is widely accepted can be inferred from the debate. Comparable Worth is generally understood to mean a system of wage-setting whereby the employer determines how much to pay workers doing different work in different occupations by measuring the value or worth of each job. This is in contrast to a system which makes explicit use of market wages (*i.e.*, the prevailing wages paid by other employers in the same area for a particular occupation).

Comparable Worth is usually implemented by means of a "job evaluation system" which assigns numerical points to each job on the basis of that job's requirements for such factors as knowledge and skills, mental demands, accountability, and working conditions. However, an employer currently using such a system is not necessarily using the Comparable Worth concept. Most employers who now use a job evaluation system simply use it as a means of replicating market wages within the firm, in other words, to test the firm's wage scale against prevailing wages paid in the area by other employers.

"Pay equity" is frequently used as a synonym for Comparable Worth by its advocates. However, "pay equity" can mean whatever anyone wants it to mean, and does not necessarily mean a system of "comparing" the "worth" of "men's jobs" and "women's jobs." Comparable Worth advocate Dr. Barrett uses it to mean society's "social justice" obligation to pay wages adequate to support a family, at least at the minimum poverty level; and she argues for Comparable Worth as an alternative method of increasing the income of poor women who would otherwise be on welfare. Many Comparable Worth advocates shift back and forth between the two lines of argument. (Prior to the present generation, "pay equity" generally meant giving the job preference to the husband/father supporting a family.)

2. *Current legal status of Comparable Worth.* At present, employers are *not* required to set wages according to Comparable Worth. No Federal statute or regulation requires Comparable Worth. Neither the U.S. Supreme Court nor any Federal appeals court has held that Comparable Worth is required by Federal law. In 1983 a Federal district court in Washington State ruled in favor of Comparable Worth in a case involving Washington State employees, and that case is now on appeal.

A few states have recently passed legislation requiring that state employees' wages be set according to Comparable Worth criteria, but these laws do not require private employers to follow Comparable Worth. A number of states have Comparable Worth bills pending and/or have mandated studies on this subject. Only in Pennsylvania does pending legislation apply Comparable Worth to private employers. However, there seems to be general agreement that extension to the private sector is the next logical step and the ultimate goal of Comparable Worth advocates.

3. *No controversy about equal pay for equal work.* This has been Federal law since passage of the Equal Pay Act in 1963. Better enforcement of this Act will not eliminate or even reduce the earnings gap between men and women in the labor force. Equal pay for equal work is already nearly universal and the enforcement mechanism is functioning well.

The earnings gap between all men and all women is defined as the difference between the average wage paid to all women versus the average wage paid to all men. Both advocates and opponents agree that this gap exists, and that it is due in large part to the fact that women and men tend to work in different kinds of occupations.

The areas of disagreement between advocates and opponents of Comparable Worth include:

1. *The cause of the earnings gap between men and women.* Advocates of Comparable Worth argue that the earnings gap between men and women is caused by two factors, which they call "sex discrimination." First, women tend to be "crowded" into traditionally female jobs (such as clerical workers, nurses, teachers, and librarians) where the oversupply tends to depress wages. They argue that this crowding is due in large part to the exclusion of women from the higher-paying, traditionally male occupations. Secondly, advocates argue that "women's jobs" are systematically undervalued and thus paid less than they are really worth.

Opponents of Comparable Worth point out that this discrimination hypothesis has never been proven. The studies cited by the advocates do not directly measure discrimination. In addition, these studies have many shortcomings, the most obvious of which is that the studies leave out some factors which could explain all of the earnings gap.

Opponents point out that the advocates usually ignore the dramatic effect which marriage has on labor force earnings of men versus women. Opponents cite studies which explain virtually all the earnings gap between unmarried men and women. These data lead opponents to argue that the unexplained differences in earnings between married men versus married women are probably due to the fact that marriage leads to specialization whereby women

pursue paid employment less aggressively (because of home responsibilities), whereas men pursue paid employment more aggressively (because they are expected to be breadwinners and they have wives as helpers).

Opponents also reject the charge that women crowd into "women's jobs" because of widespread exclusion elsewhere. They say that the alleged exclusion is not documented, and furthermore is hard to believe in view of the progress women have made over the past decade in many professions including medicine, law, engineering, and real estate. Finally, opponents argue that the forces of competition tend to wipe out discrimination, so it is unscholarly to assume that the wage gap is due to discrimination unless it is clearly documented.

2. *The costs of implementing Comparable Worth.* Advocates argue that the cost to employers will not be excessive and, anyway, "there should be no price tag on discrimination." Advocates point out that costs have not been excessive in the few states which have recently legislated Comparable Worth for state employees. In Minnesota, for example, they say the cost is estimated to be $24 million over two years.

Opponents do not agree that Comparable Worth is a just or equitable system and, furthermore, they are more concerned about costs—to taxpayers, consumers, and employers. Opponents cite estimates that the 1983 Comparable Worth court decision in Washington State will cost the taxpayers at least $500 million (and later estimates are in the $1 billion range).

Opponents argue that there are also indirect costs which may be even more important, though difficult to measure. These indirect costs are expected because Comparable Worth is implemented with a job evaluation system which is relatively rigid and inflexible compared with the way wages are set now. This means, opponents say, that incentives will be distorted by Comparable Worth procedures. Merit and individual effort will count for less, whereas paper credentials will count for more. Productivity will suffer if good workers cannot be rewarded and if all workers are induced to take actions to get their jobs reclassified as more complex rather than trying to simplify their jobs.

Another cost concern is that Comparable Worth may be the wrong solution, even if job segregation is due to "crowding," that is, even if "women's jobs," such as clerical and nursing, are paid

low wages because women are blocked from entering other jobs. Opponents reject the "crowding" hypothesis, and they point out that, if "crowding" were the cause of low wages and low productivity in women's job's, raising wages would cause even more persons to seek work in these already overcrowded jobs, thereby lowering productivity further. In such a situation the Comparable Worth remedy would not only be costly but would exacerbate the alleged problem. It would be better to reduce the barriers excluding women from non-traditional jobs. This would raise the average level of labor productivity in the economy, permitting a rise in women's wages without a corresponding rise in unit labor costs.

3. *The effect of Comparable Worth on women.* Advocates argue that Comparable Worth will have a significant impact on women's wages, especially those in traditionally female jobs (*e.g.*, clerical) which are now undervalued by employers. Advocates point out that job evaluation studies in state governments consistently find that the jobs staffed predominantly by women are almost always paid less than would be indicated by the "points" which are assigned by the job evaluation for skill, effort, responsibility and working conditions.

Opponents doubt that women would be better off under Comparable Worth. First, they reiterate that total wages would be less if productivity is hurt by the procedures used to implement Comparable Worth. Secondly, they point out that raising the wages in "women's jobs" would have positive effects only for those workers who keep their jobs. They maintain that Comparable Worth, like minimum wage laws, would increase unemployment among the very group it is intended to help. For example, if Comparable Worth raises secretaries' wages in a given firm from $5.00 to $6.00 per hour, it is like setting a $6.00 minimum wage for secretaries. Most employers can and do find ways to get by with fewer such workers if the cost goes up.

Some employers might contract out work to avoid the higher costs associated with Comparable Worth. For example, a manufacturer might be required by Comparable Worth to increase the wages of his secretaries. However, he could avoid this increased cost by contracting with a secretarial service firm which could continue to pay the lower wages indicated by supply and demand in the marketplace because it hires only secretaries and therefore would not be affected by Comparable Worth job evaluations

within its firm.

Finally, opponents argue that Comparable Worth would be especially harmful to married men (and their wives) with average or below average educational credentials because these men hold most of the high-paid blue-collar jobs. Actually, this is the target group which the Comparable Worth advocates believe are overpaid when the job evaluation study *compares* men's wages to the *worth* of "women's jobs." Opponents argue that, if Comparable Worth is presented as a system of "pay equity," it is necessary to consider the women who will be harmed by Comparable Worth because they will lose their jobs altogether, or because their husbands' wages will be reduced.

4. *Can intrinsic job worth be measured?* Comparable Worth advocates say that they know enough to proceed with job evaluation procedures. They admit they aren't perfect, but claim they are in wide use now and can be improved. They assert that employers measure job worth every day. Some advocates argue that it is not even necessary to give up on the marketplace as a source of information about job worth because a National Academy of Sciences study suggests that scientists may soon be able to perfect procedures which identify what market wages would be in the absence of discrimination.

Opponents say that, once market wages are rejected as a measure of job worth, there is no scientific or objective way to identify job worth. The notion that one should even try to pay according to a job's intrinsic value implies that there is some intrinsic value of labor which is independent of the effects of supply and demand. They say this is simply incorrect, and is widely recognized as incorrect by economists and others who understand the operation of labor markets.

Indeed, it is no coincidence that the few economists who advocate Comparable Worth do not purport to be able to measure intrinsic job worth. Rather, they support Comparable Worth because they think (1) that there are imperfections in the labor market, and (2) that they *can* develop ways to identify the wage structure which would exist in a free market. Opponents disagree that economists have the ability to improve on the marketplace, but this disagreement is not about intrinsic job worth.

5. *The usefulness of job evaluation studies.* Comparable Worth advocates admit that job evaluation studies are not perfect, but

argue that they can be a key tool in establishing Comparable Worth. Advocates assert that job evaluation studies have been used to justify the status quo in the past and argue that, if they are reformed to eliminate what they think is sex bias, then they can be used to determine job worth. Advocates argue that one of the ways such job evaluation studies have been biased in the past is that they have given too much weight to factors on which the male jobs score high, such as heavy lifting and dangerous working conditions.

Opponents argue that job evaluation studies are useful to help find out what the market wage would be for jobs which are specialized to a particular firm, but that even for this purpose job evaluation studies are of limited value. These studies are not scientific, involve subjective judgments, and often produce different results depending upon who conducts the studies. Once the market is rejected as a guide to the job evaluation studies, there is no way to decide what weights should be given to the different compensable factors. Ultimately, courts would have to decide.

Some opponents even reject the notion that underlies the job evaluation studies, namely, that the employer should determine wages for a job without regard to the productivity of the particular incumbent. By rating jobs rather than people, job evaluations are said to dilute the incentive to be a productive worker and instead to encourage the accumulation of factors which look important on the job evaluation itself. While merit pay is not inconsistent with increased reliance on job evaluations, a conflict is obvious.

Most small companies and many large employers do not use job evaluation procedures at the present time. Presumably these firms find that informal methods work better. Actions to establish the Comparable Worth doctrine might end up forcing these firms to develop job evaluation procedures, and thus a more bureaucratic method of determining compensation in the firm.

PART I

THE CASE FOR COMPARABLE WORTH

Chapter 1

Equal Pay Through Comparable Worth

by Joy Ann Grune

An advocate of Comparable Worth argues for increasing wages for "women's jobs" in order to eliminate the pay gap which she calls the most persistent symptom of inequality between men and women.

Joy Ann Grune is the Executive Director of the National Committee on Pay Equity, a coalition of 170 organizations and individuals working exclusively to achieve Comparable Worth. Ms. Grune, who has her master's degree in sociology, is a former instructor of sociology and women's studies at the University of Pittsburgh. A leading advocate of Comparable Worth, Ms. Grune has testified before Congressional committees on this subject and has edited a manual on pay equity.

I want to thank you for the opportunity to present a point of view that is being shared by a growing number of people. As Mrs. Schlafly indicated, the terms "pay equity," "equal pay for work of comparable value" and "Comparable Worth" are often used interchangeably and I will use them so today. My comments fall into four sections.

Section I is a description of the issue or the principle of pay equity in an attempt to locate it in context. Section II is a description of the configuration of problems out of which pay equity has emerged as an economic policy. Section III highlights recent pay equity initiatives around the United States and some lessons we have drawn from those experiences.

There is a conceptual richness associated with pay equity that I think is often mistaken for complexity or confusion. In fact, the principle of pay equity is a fairly simple, direct, and straightforward one. Basically, pay equity requires that bias or discrimination be eliminated from a wage structure. That bias may occur among jobs which are equal, or it may occur among jobs which are not equal but comparable in their worth to the employer.

Our goal, the goal of pay equity advocates, is to raise wages for women's work—occupations such as clerical work, nursing, and library work, where the majority of the occupants are female. We believe that the policy of pay equity is uniquely suited to reach deeply-rooted patterns of structural discrimination in which entire occupations have had their wage rates reduced because of the race or sex of a majority of the occupants in that particular job. As you probably know, the U.S. Supreme Court ruled in June, 1981, in *Gunther v. County of Washington, Oregon*, that the Civil Rights Act of 1964 is broad enough to reach discrimination involving jobs within a place of employment that are not equal but which are comparable. This was an extremely important victory for us because, up until that point, our opposition's main argument against pay equity was that the Civil Rights Act did not require pay equity since the Act was no broader than the Equal Pay Act. Fortunately, the Supreme Court decided in our favor.

An important point in question here is—what are the sources of bias or discrimination in wage structures? We would certainly welcome more case studies of the wage-setting process so that we might have a better understanding of how bias and discrimination structurally become part of the wage-setting process. But we do think we've had enough experience to identify some of those sources. Generally, the sources may be external to a particular firm or work place, located in the environment, or, they may be internal and appear within the work place itself.

For example, subjective, negative and stereotypic attitudes and judgments about women as workers may enter the wage-setting process and result in lower wages for predominantly female jobs. This can certainly happen in the absence of a formal job evaluation system or some formal wage-setting mechanism. But it can also happen in the presence of a formal wage-setting system where formal findings are ignored and wages for predominantly female jobs were reduced anyway. This happened, for example, in the

Westinghouse case which was won by the International Union of Electrical Workers.

A second example deals with job evaluation systems. We have found that many systems in their theoretical design, as well as in their application, have systematic bias against features or qualities which tend to be concentrated in predominantly female jobs. Factors may be left out entirely, or they may be underrated, undervalued, and underweighted.

A third example concerns the market, and we are beginning to think that employers may differentially rely on market forces depending on the sex composition of the job for which they are setting wages. For instance, we've recently received phone calls about a large employer in the state of West Virginia. When the employer does a prevailing wage survey to determine wage rates for predominantly male jobs, there is a systematic tendency to survey higher paying firms. When the wage survey is conducted to set wage rates for predominantly female jobs, there is a bias toward surveying lower paying firms.

Another example pertains to how an employer can respond to supply and demand. We are beginning to think that when there is a shortage of engineers or a shortage of plumbers, employers will be much more likely to raise wages faster as a response to that shortage than they would, for example, when there is a shortage of nurses (which many cities have experienced in the last five years).

Finally, the fifth example in terms of sources of bias is when employers rely directly on prevailing wage rates to set internal wage structures. And the problem here, which has been described and talked about a great deal, is that prior discrimination becomes incorporated or duplicated into the internal wage structure in a firm.

I give these examples because there are several points I'd like to make:

(1) I think that conceptualizing pay equity or equal pay for work of comparable value as a necessary substitute for, or as an alternative to market-based wage determination, is a partial and inaccurate way of characterizing that issue.

(2) Structural wage discrimination has many sources, and not all of those sources reside in the market.

(3) We are not saying that market-based wage-setting has to be eliminated, but rather that discrimination and bias must be eliminated regardless of their sources.

Section II. What I want to do here is briefly paint the broad statistical picture that defines the context out of which pay equity has grown. There are five facts on which I want to focus.

First, the wage gap between full-time, year-round male and female workers in this country is one of the oldest and most persistent symptoms of inequality between men and women. The wage gap today is about 61¢. The wage gap has been roughly the same for at least the last 30 years. In 1980, within state and local governments, the wage gap for full-time, year-round workers was 71¢. For Federal employees the gap was 63¢, and in the private sector it was 56¢. I think it is useful to talk about the wage gap on this general macro level, but we also have to remember that the wage gap and the proportion of that gap due to discrimination varies, workplace by workplace by workplace. That is why there have been so many pay equity/job evaluation studies done in the last four or five years; people can focus on a particular workplace, the problems, and their severity.

The second fact is that women are, and have been, concentrated in a narrow range of occupations for a long time. Over 50% of women workers are concentrated in only 20 out of a total of 427 occupations.

The third fact is that the Equal Pay Act and Affirmative Action laws have been major accomplishments without which women's economic status today would be much worse than it is. However, we also know that equal pay for equal work and Affirmative Action are *not* enough because, in spite of these victories and accomplishments, the wage gap is the same today as it was 20 years ago. The primary reason for this is that, over the last two decades, more and more women were entering the work force in great numbers through traditionally female occupations where wages are very low. So at the same time that progress was made in achieving equal pay for equal work, and moving women up or over into predominantly male jobs, many more women entered the work force via lower paying jobs.

The fourth fact is that although factors such as education, labor force experience, labor force commitment and other such human capital variables explain a small part of the wage gap, they do not account for very much of it. On the average, about a quarter of the wage gap between year-round, full-time male and female workers can be explained through factors such as these.

The fifth fact is that virtually every non-biased job evaluation study done in the United States in the last four or five years has come up with the same finding—that predominantly female jobs are *systematically underpaid* relative to male jobs of Comparable Worth. For example, in Washington state, women were paid an average of 20% less, although we saw instances ranging from 5 to 40%. To give you two examples from Washington state, let's compare a licensed practical nurse (a predominantly female job) and a correctional officer (a predominantly male job). Both received the same number of valuation points, 173, yet the wage structure differed: a nurse received $1,030 a month while a correctional officer received $1,436 a month.

Section III. I would like to highlight some of the recent pay equity activities. There has been a surprisingly large number of pay equity initiatives going on around the country. From our point of view, we want to see more implementation, and we expect to see it in the next several years. The range, depth, excitement, and broad-based support that pay equity initiatives have received make us feel determined and optimistic about the future. In addition to education and research, pay equity initiatives have occurred in three main areas which I will briefly review.

(1) *Litigation*. The problem of sex-based wage discrimination among comparable jobs is covered by the Civil Rights Act as was made clear in the *Gunther* decision. This Supreme Court decision was certainly important. Most recently, on September 16, 1983, Judge Tanner ruled that the state of Washington had systematically, deliberately, and intentionally discriminated against thousands of women workers in the state. The state of Washington was the first state we know of which did a pay equity job evaluation study. That evaluation was done in 1974, and it has been updated several times. Each study revealed a major problem, yet the state refused to adopt an implementation plan until two months before the trial when the legislature passed two pieces of legislation, which committed the state to achieving pay equity by 1993, and allocated $1.5 million as a first step toward achieving pay equity. If the state of Washington had voluntarily complied much sooner, the dollar figure of a billion dollars awarded to workers for back-pay and wage adjustments would be much lower now.

(2) *Organizing and Collective Bargaining*. Labor unions, professional associations, and working women's groups are respond-

ing to demands from their members (mostly, but not only females), to raise and achieve pay equity in the workplace. These organizations have passed official resolutions in support of pay equity. When appropriate, they have collectively bargained or lobbied. Generally, labor unions have taken two types of actions. They have negotiated joint labor management job evaluation studies as a way of assessing where the problem is and how much it is going to cost to correct it. Secondly, labor unions are winning wage equity increases for their members. This has occurred primarily, but not exclusively, in the public sector of state and local government.

(3) *State and Local Government Actions.* This is the most productive area right now for pay equity. We estimate that there are about 150 state and local government initiatives taking place; these initiatives are occurring through executive order, legislative action, and some through collective bargaining. There is a tremendous amount of interest, primarily favorable interest, in pay equity on the part of elected officials at Federal, state, municipal, county, and school board levels. For example, the state of Minnesota did a job evaluation study, passed a pay equity law, and then started implementing pay equity this year. They discovered that it would cost 4% of the state payroll budget in the state of Minnesota to achieve equal pay for work of comparable value for state employees. Through budget analysis and economic forecasting, they also determined that the state could afford to implement this 4% at the rate of 1% per year for each of four years. So, that is how the package was sold and accepted. They recently allocated $21.8 million for a two-year period as the first step in achieving Comparable Worth for Minnesota state employees. Two months ago, Oregon also passed a major job evaluation bill. This calls for the second most expensive study I know of—New York being the first at $500,000—and the state passed the bill unanimously.

There is a fourth tactic, which has not been used very much yet, but in which there is certainly growing interest. That tactic is voluntary compliance. Long, lengthy, expensive and difficult court proceedings are necessary *only* when voluntary compliance fails. We certainly don't want to see such court battles, and we are starting to talk directly with employers, or with representatives of employers, to encourage voluntary programs. We are more than glad to assist companies in this effort.

Here are some lessons we have drawn from these recent vic-

tories and experiences. First of all, pay equity is feasible, and it can receive broad-based support from men and women in different quarters. Secondly, the cost of achieving pay equity is often exaggerated and used as a scare tactic. When employers comply voluntarily, it is possible to develop a phased implementation plan which is fiscally responsible. We feel that, the more we can deal with the cost question on the basis of facts rather than ideology, the better position we are going to be in. So, we are just embarking on a survey of those employers who have done job evaluation studies and adopted implementation plans in order that cost discussions can now occur on the basis of facts and figures. Furthermore, our level of technical knowledge, especially as it concerns job evaluation systems, is sufficiently mature and developed to permit us to dramatically reduce bias in the wage-setting process today. We certainly welcome more research and development, but we do know enough now to really begin challenging the wage gap. The fourth lesson we draw from this is that the implementation of pay equity does not require economic dislocation, nor does it require massive Federal or governmental intervention in the wage-setting process.

Conclusion. We have spent time trying to understand the quality or nature of pay equity that gives it such fantastic potential as a popular issue. We have concluded that this quality has two sources which are very much related. The appeal of pay equity is an economic appeal and the appeal of pay equity is a personal or a cultural appeal. I have already described the economic roots and importance of equal pay for work of comparable value, and I want to say a few things about pay equity as a cultural issue.

As a cultural issue, equal pay for work of comparable value has a deep, personal meaning for women's self-esteem and personal development. This is because people greet pay equity as a reaffirmation of certain values often considered traditionally female that are embedded in many, though probably not all, predominantly female jobs. These are the values of service, nurturing, and human relationship.

I want to be clear about two things. We are not saying that a dollar value should be attached to these qualities so that they may become commodities in a marketplace; nor are we saying that work performed by a woman inside a home should have a dollar value attached to it. Rather, we are stating strongly that women workers and the men who work along side of them in predomi-

Chapter 2

The Case for Comparable Worth

by Heidi I. Hartmann

An economist explains the National Academy of Sciences findings and argues that Comparable Worth should be adopted in order to raise women's wages.

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The Comparable Worth strategy can be seen as an attempt to bring wages of female-dominated jobs up to the going market wage rates for similar type work that is not female dominated. Wages for female-dominated jobs are seen to be artificially depressed by discrimination. In this view it is not Comparable Worth that interferes with a free market, but discrimination. Given that there is discrimination in the labor market, which depresses the wages of women's jobs, intervention is necessary to remove discrimination and its effects. It is therefore unnecessary to have an alternative to market wages; it is necessary only to adjust them. A variety of mechanisms, particularly job evaluation systems, exist that can be

used to adjust wages to remove the effects of discrimination.

These assertions, though not stated so succinctly, are supported by the work of the National Academy of Sciences committee that reported on Comparable Worth in *Women, Work, and Wages: Equal Pay for Jobs of Equal Value.*[1] The key elements in such an argument—that Comparable Worth is a reasonable strategy for realigning wage rates of women's and men's jobs to correct for discrimination—are: (1) that substantial job segregation by sex in the labor market exists (and that it is not entirely due to the choice of the participants), and (2) that discrimination is widespread enough in the labor market to affect wage rates. These key elements are supported by the Academy report. Despite the existence of equal employment opportunity legislation and some enforcement efforts, discrimination is still pervasive and job segregation is so substantial that there do indeed today exist "women's jobs" and "men's jobs," and the women's jobs are systematically underpaid.

The Committee on Occupational Classification and Analysis of the National Research Council (the operating arm of the National Academy of Sciences) was formed in 1978, at the request of the Equal Employment Opportunity Commission, to undertake a study of the issues involved in measuring the comparability of jobs. What bases—skill, effort, responsibility, working conditions, etc.—exist for comparing jobs? Can they be adequately measured? Are these appropriate criteria for allocating jobs to pay classes? Can procedures be found for deciding in any particular instance whether and to what extent pay differences between jobs involve discriminatory elements? These issues are clearly matters that involve judgment. The Committee's judgment is not infallible, of course, but the Committee was carefully composed in accordance with NAS procedures designed to insure the requisite expertise, breadth of experience, and balance of perspectives. It consisted of experts from the fields of sociology, psychology, economics, statistics, law, labor relations, and personnel management. Most of the committee members were affiliated with academic institutions, several were from private business or industry, and some academic members had extensive experience consulting in the private sector on personnel placement and job measurement and classification issues.

At the time of the Academy study, there was little scholarly literature directly on Comparable Worth. To address the above

issues, the Committee reviewed a vast amount of literature that it deemed to be related to Comparable Worth claims, such as that on wage differentials between men and women workers, the extent and causes of job segregation by sex, the operation of labor markets and pay setting practices, alternative theories of discrimination, job evaluation methods, and so on. What follows is my own perspective on the Committee's report, offered by one who, having worked on the report as the Committee's staff, is sympathetic to its general thrust and conclusions.

The Committee viewed evidence concerning the extent of sex-based wage differentials and sex segregation, as well as various explanations for the existence and persistence of such phenomena. The earnings gap has remained at approximately 40% for practically as long as statistics have been kept; that is, women who work full time, year round, earn on average 60% of what full-time, year-round male workers earn. The Committee also noted that in 1978, among full-time, year-round workers, black and white women with college educations earned less than white men with eighth grade educations. Clearly some part of the wage differentials observed between women and men results from legitimate factors, *e.g.*, productivity related characteristics of workers or the characteristics of their jobs, such as complexity or responsibility.

Economists and sociologists have developed the human capital model of earnings to study wage differentials. In this model, it is assumed that people are paid for their productivity and that, if people with the same productivity are paid differently, the difference can be taken as a measure of discrimination. Typically, the model expresses earnings as a function of variables thought to be related to productivity. Despite a number of difficulties with the model, the results of studies utilizing the model have been remarkably consistent over the past 25 years. These studies generally explain about one-fourth of the gross earnings differential of 40 percent, and never more than one-half. Consequently, the remaining gap in earnings of 20% or more is often attributed to the presence of discrimination of one form or another.

A second set of studies—which expand the basic model to incorporate information (such as complexity, working conditions, and authority) about the jobs that people hold, and attempt to use characteristics of jobs in addition to characteristics of people—generally explain more of the earnings gap, leaving a smaller

residual to be considered as the result of discrimination, but a substantial residual nonetheless. These studies taken together indicate that productivity differences simply do not account for all of the observed earnings gap, suggesting that discrimination is likely an important factor.

With respect to sex segregation in the labor market, the Committee cited evidence that it is substantial and has not changed much over time. The index of segregation,[2] an overall measure, indicates that almost two-thirds of women or men would have to change occupations in order for women to have the same occupational distribution as men across the detailed occupations of the Census classification. This has been the case since at least 1900. The Committee also noted that the more an occupation is dominated by women, the less it pays. In 1970 (the latest year for which comprehensive data were available), those occupations that were performed solely by women on the average paid less than half as much as those occupations that were performed solely by men. Overall, 35-40% of the wage gap between men and women can be attributed to the fact that women are segregated in the lower paying occupations.

It is the existence of low paid, predominantly female jobs that causes the issue of Comparable Worth to arise. If a job's pay level is linked to the sex composition of its incumbents, the pay level itself is viewed as discriminatory in the Committee's report. Are these jobs poorly paid because they are held by women? Would they pay more if men held them? The Committee considered these questions and generally concluded that although choice plays a role in the occupational distributions of male and female workers,[3] exclusionary behavior on the part of employers and others certainly contributes to the extreme segregation observed. The Committee's report cites several studies that show that men and women who have similar qualifications are assigned differentially to first jobs when they are hired (Malkiel and Malkiel, 1973; Halaby, 1979; and Tablert and Bose, 1977). For example, among high school graduates who have taken similar courses, young women are often hired as secretaries while young men are hired as sales or management trainees by the same firm. And among equally highly skilled scientists, women may be assigned jobs with less responsibility and lower salaries than men. Such differing initial assignments have implications for one's entire career.

Common knowledge also points to large influxes of women into occupations such as law, medicine, engineering, and coal mining when barriers to women's entry have been successfully challenged. Some first year law and medical school classes are now 30 to 40% female, as are some freshmen engineering classes. Only a few years ago, these percentages were very much lower. Such a rapid change suggests that something other than women's preferences was the cause of their previous absence.

The exclusion of women from some occupations can be seen to result, in a straightforward manner, in lower pay to women in occupations in which they do work than would obtain in the absence of such exclusion. According to the overcrowding explanation, women—because of exclusion—are in oversupply to those occupations open to them, thus driving down their wage rates (Bergmann, 1974). In this model, equal access to all jobs would result in a realignment of wage rates—wages of formerly women's jobs would increase (because the supply of women to these jobs would decrease as new opportunities opened to women), while those of formerly men's jobs would decrease (because the supply to these jobs would increase as women enter them). In short, a restoration of the free market would raise women's wages, both because the wage rates of women's jobs would increase and because women could earn better wages in the formerly male jobs they enter.

The Committee rejected this explanation as the *total* cause of the low payment of women's jobs, however. In its view, not all wage depression is the result of market based discrimination. In addition, some part of the underpayment could be due to what we might call direct wage discrimination, above and beyond that resulting from overcrowding, because it is *women* who do the job in question. That is, if women's jobs were instead done by men (and there were just as many men available to do it), the suspicion is that it would be paid more. Many women have come to believe that their work is undervalued *because* it is typically women's work; they believe that such features of jobs as caring, nurturing, being polite and friendly are underpaid, reflecting the low monetary value society places on them.[4]

The Committee reviewed evidence from studies that suggests that jobs that are comparable in level of skill required, complexity, responsibility and so on, taken together (as measured by job evaluation plans), pay less when they are held by women than when

they are held by men. For example, one such study in the state of Washington was conducted at the request of women's groups in the state's civil service system and their state's AFSCME-affiliated union. A job evaluation consultant, Norman Willis and Associates of Seattle, was brought in specifically to investigate the claim that men's and women's jobs of Comparable Worth were paid differently. A total of 121 positions in which at least 70% of the incumbents were of the same sex was chosen for evaluation. Fifty-nine were men's jobs and 62 were women's jobs. The study found that the pay rates for jobs held mainly by women averaged about 80% of the pay rates for jobs held mainly by men that attained the same scores in the job evaluation. This and other evidence led the Committee to conclude that the wage rates of jobs held traditionally by women are depressed relative to what they would be in the absence of all forms of discrimination. More research is needed on the question of how much the wages of women's jobs are depressed because of discrimination, but there is reason to believe that the use of job evaluation can help arrive at good approximations.

Job evaluation plans have been widely used in U.S. industry since the 1930s. These plans are used to order jobs hierarchically on the basis of judgments regarding their relative skill, effort, responsibility, working conditions, etc., and on this basis to group them into pay classes. Since these plans reflect what employers value in jobs, they have obvious potential as a standard for determining whether jobs are paid what they are worth to their employer. In its report, the Committee stresses that there is no strictly scientific basis for determining the standards of job worth. What a job should be worth is not a scientific question. Rather, once that question has been answered by a process that elicits value decisions, social science measurement techniques can be used to measure the extent to which various jobs incorporate the characteristics valued.

I want to stress that what is being considered in the NAS report is the use, by a single employer, of a job evaluation plan of his or her own choosing, reflecting the company's own values and applied fairly and in an unbiased manner, to determine job worth for the purpose of realigning wage rates. A national job evaluation plan, applied to all jobs in the U.S. economy, bureaucratically imposed by Washington, is *not* under consideration. Rather a careful, slow employer-by-employer approach is envisioned in which each company might review its pay setting practices and

develop (or revise) a job evaluation plan that reflects its own values. Comparable Worth requires only that these values then be measured equally well in all jobs, without regard to the sex of the incumbents. A long-valued feature of job evaluation systems is precisely their ability to bring consistency to wage structures within firms.

In large firms many jobs are filled from within and, for these jobs, there are no analogous market wage rates. Job evaluation can be used to help assign wage rates to such jobs, as well as to bring consistency and order to the wage rates of the large variety of jobs typically found. Many of the job evaluation systems in use today were developed by using a firm's existing pay structure to determine statistically which attributes of jobs best predict their pay rates. In this approach, a set of factors that is thought likely to be related to existing pay differences among jobs is identified—factors representing differences in skill, effort, responsibility, and working conditions. Each job is scored on each of the factors. These factors are then used to predict existing pay rates (usually via the statistical technique of multiple regression analysis), and those factors contributing substantially to the prediction are included in the job evaluation plan, with weights proportional to their contribution. The factors and factor weights can then be used to assign pay rates to new jobs and to adjust the pay rates of existing jobs that are overpaid or underpaid relative to the predictions of the formula. This method provides an empirically derived underlying structure with which the pay rates of all jobs in a firm can be brought into conformity. This is sometimes called a "policy-capturing" approach —the implicit policy underlying the existing pay system is made explicit. Job evaluation plans developed in this way necessarily produce hierarchies of job worth that are closely related to existing job hierarchies: this is what they are designed to do.

The difficulty is that this method of choosing and weighting factors to be included in the job evaluation plan necessarily reflects any inequities in the pay rates prevailing at the time the job evaluation plan was developed. Because, as we have seen, current wage rates often embody discrimination, existing job evaluation plans will tend to replicate existing discriminatory pay hierarchies. They cannot be used without modification as independent standards for assessing whether jobs are paid according to their worth.

The Committee's report suggests several ways in which job evaluation plans can be improved—by removing the biases built

into them by reliance on market wage rates for determining factor weights and by suggesting various other changes in job measurement techniques.

One of the problems with job evaluation plans as they are often implemented is that the variables used to measure a valued job feature are too narrowly constructed. If responsibility, a valued aspect of jobs, is measured by the job factor "number of people supervised," and if the available ratings are: one or two people, 10 points; three to five people, 20 points; over five, 30 points, such a range may not fully represent all the variation in job feature. Might there not be significant differences between supervising 6, 20, or 200 people? Moreover, the measured factor may not fully reflect the underlying criterion of value. To continue the same example, the number of people supervised may not be the only indicator of responsibility; to be comprehensive, other features of responsibility would need to be identified as well, such as coordinating and scheduling meetings, managing time, etc. Insofar as women's jobs involve coordinating and scheduling while otherwise comparable men's jobs involve supervision, the use of supervision rather than coordination and scheduling as a measure of responsibility would tend to undervalue women's jobs. Similarly, many nurses argue their responsibility for life and death often goes unrecognized.

In addition, the way that particular jobs are evaluated with respect to particular features may reflect pervasive cultural stereotypes regarding the nature of men's work versus women's work. For example, in one job evaluation plan, "length of time to become fully trained" was used as a measure of skill requirement. In this plan the judgment was made that it takes two months to become fully trained as a typist and 12 months to become fully trained as a truck driver, a judgment that many women (and probably many men as well) would challenge.

Problems such as these can be remedied by paying careful attention to the design and implementation of job evaluation plans. Does the plan identify all the job factors that contribute to the job feature that is being measured? Does the range of values on the factor available in the plan fully reflect the range of variation in the factor actually exhibited in the firm's jobs? Are the factors measured as objectively as possible? Are the weights assigned free from bias?

In addition to recommending close scrutiny of job evaluation

plans to determine whether they appear to treat jobs held mainly by men and jobs held mainly by women in an equitable manner, the Committee's report offers several suggestions for statistically adjusting these plans to remove any discriminatory effects that are designed into them by their initial reliance on existing pay rates as a criterion for the selection and weighting of compensable job factors. The typical job evaluation plan utilizes a formula of the following sort:

$$\text{Job Worth} = \sum J_i^* = \sum b_i J_i \qquad (1)$$

where J_i^* are the scores on the measured job factors used in the developed plan, the J_i are the scores on the job factors as initially measured when developing the plan, and the b_i are the weights for each factor. The weights typically are derived by estimating a multiple regression equation of the form

$$\hat{Y} = a + \sum b_i J_i \qquad (2)$$

where Y is the actual pay rate for each job (or the midpoint of a range of pay rates); the J_i are as above; the b_i are the net regression (slope) coefficients indicating the weight to be accorded each job factor to maximize predictability of the actual pay rates; and *a* is the intercept, the predicted pay rate for a job with zero points on all of the job factors. One way to correct for bias in the weights resulting from the fact that men's jobs tend to be paid more than women's jobs is to reestimate the weights, adding to the estimation equation an additional variable, percent female in each occupation. That is, an existing job evaluation plan could be corrected for bias by estimating a multiple regression equation of the form

$$\hat{Y} = a' + \sum b_i' J_i^* + cF \qquad (3)$$

where Y is the actual pay rate for each job in the firm; the J_i^* are the scores for each job on each of the factors in the job evaluation system currently in use; F is the percent female among incumbents in each job; a' is the intercept; the b_i' are the reestimated weights for

the job factors, and c is the weight for percent female.

Such an equation can be used in two ways. First, if the coefficient, c, is different from zero, it can be inferred that there is pay discrimination on the basis of gender. Specifically, a negative coefficient, c, would indicate that holding constant all of the other job factors, the higher the percentage of women among incumbents, the less a job pays. Jobs that are identical in all other respects but that differ by one point in their percentage female would be expected to differ by c dollars in their pay rates in this firm. For example, suppose Y is the annual salary and c = 20. Then if two jobs in a firm had identical job characteristics but 90 percent of the incumbents of one job were men and 50 percent of the incumbents of the other job were women, the two jobs would be expected to differ by \$800 (= 20 × [90-50]) in annual salaries. It would then be possible to adjust pay rates for jobs in such a way as to eliminate the effect of gender composition on pay rates net of the effect of the other, legitimate, job factors. For example, by adding −cF dollars to the pay rate for each job, all pay rates could be brought up to the level of jobs with comparable scores on the other job factors but which are performed only by males. Other adjustments are, of course, possible as well.

The second use of such an equation would be to produce bias-free weights for the job factors, since the b_i' estimated by Eq. (3) indicate the effect of each job factor holding constant the sex composition of the jobs. That is, two jobs with the same percentage female and the same scores on all the job factors but one, say the first one, would be expected to differ by b_i' dollars. Thus, a new unbiased, job evaluation formula could be created:

$$\text{Job Worth} = \sum b_i' J_i^* \qquad (4)$$

If such a formula were used to assign jobs to pay classes, there would be no net effect of gender composition on pay rates. The new weights could be said to be unbiased. Use of the unbiased weights would lead to fairer evaluation of women's jobs.

Let me close with an illustration of why and how job evaluation can be seen to help approach more closely market wage levels that would obtain if there were no discrimination. This illustration is from Barbara Bergmann's recent paper, "Why Wage Realign-

ment Under the Rubric of 'Comparable Worth' Makes Economic Sense." She suggests that we consider what would happen if all women were suddenly removed from the labor force. Employers would be forced to find men to do the jobs formerly done by women. It would be logical to look for men whose present occupations display some of the same characteristics in terms of skills required as the vacant formerly female jobs. But it would be necessary to pay the men at least what they were earning in those jobs, many of which would undoubtedly be more highly paid. For example, to find men with the written and spoken language skills, typing and bookkeeping skills, and management skills necessary for many administrative secretary jobs might require looking in the ranks of lower and middle management. Setting appropriate wage levels for the newly vacated jobs might be facilitated by use of job evaluation plans which would rank the requirements of, for example, the secretarial job relative to others.[5]

The higher wages that would likely result from the application of job evaluation plans in this situation show what might result from their use to eliminate the effects of discrimination in the labor market. The Comparable Worth strategy seeks to adjust market wages, via job evaluation, to where they would be in the absence of discrimination.

NOTES

The author is the Associate Executive Director of the Commission on Behavioral and Social Sciences at the National Academy of Sciences/National Research Council. The opinions expressed herein are those of the author and not necessarily those of the National Academy of Sciences. Portions of this paper are adapted from "Notes on the NAS Study of Equal Pay for Jobs of Equal Value," by Heidi I. Hartmann and Donald J. Treiman, in Milton Rock (Ed.), *Handbook of Wage and Salary Administration* (New York: McGraw-Hill, 1983).

1. The report is available from the National Academy Press, 2101 Constitution Avenue, N.W., Washington, D.C. 20418, for $9.95.

2. The index of segregation, or index of dissimilarity, is given as

$$I = \sum \frac{|x_i - y_i|}{2}$$

where x_i is the percentage of one population (*e.g.*, men) in the *i*th category of a classification, and y_i is the percentage of the other population (*e.g.*, women) in the *i*th category. *I* is then the percentage of either population that would have to shift categories to make its distribution exactly equal to that of the other population.

3. It is difficult to know how much of a role choice (also called tastes and preferences by economists) plays in the existence of the extreme amount of job segregation evident in our society. Although Mincer and Polachek (1974) and Polachek (1976, 1979) argue that women choose certain occupations because their wages are least affected by work interruptions (moving in and out of the labor force for childrearing), empirical support for this hypothesis has been limited (Corcoran, Duncan, and Ponza, 1982; England, 1982). Of course, women do in some sense choose women's occupations, but they do so in the face of constraints of various kinds, in a context of sex stereotyping of work, and in a climate of discrimination against women in the labor market.

4. Because the women workers making this argument are often highly educated women, for example, in nursing or teaching—which are among the most highly paid women's occupations, it is sometimes said that only these women will benefit from Comparable Worth strategies (which could be expected to make credentials more important in wage-setting). Actually other women with lesser credentials also stand to benefit. Clerical workers, for example, typically have the lowest salaries in their firms. In 1976, 12 out of 26 clerical occupations in manufacturing industries were found to be paid less than janitorial jobs (Ward 1980).

5. It is also true, of course, that job evaluation plans can be used to compare and rank vastly different jobs (typists and truck drivers, nurses and plumbers), but its more intuitively appealing, and more fruitful, use may well be to point up the vast differences in pay among largely similar jobs when they are done by different sexes.

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Chapter 3

Poverty, Welfare, and Comparable Worth

by Nancy Barrett

A professor of economics argues for Comparable Worth as a "social justice" method of paying wages to poor women who are single heads of households and would otherwise be on welfare.

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So many issues have been raised in the papers presented at this conference that I had to give quite a bit of thought to how I wanted to use my time. Several of the conference papers addressed the issues of (1) whether or not the relatively low pay received by women is the outcome of market forces reflecting in some sense socialization, biology, or other factors contributing to productivity differentials between women and men; and (2) whether or not these outcomes are "fair" in the sense of some generally recognized criterion of social justice. This is a debate that has been going on for a very long time, particularly since the passage of the Equal

Pay Act, Title VII and the other equal employment opportunity legislation of the early 1960s.

So I decided to concentrate my remarks on Comparable Worth, which is an issue that is of somewhat more recent vintage, and which I would like to discuss from my viewpoint as both an economist and a person who has been interested in questions of women's economic status.

It seems to me that the fundamental issue in Comparable Worth today is not whether or not women's pay ought to be higher or lower than it is, but rather, *if* one wants to raise women's pay, what is the best way to do it. Is it better to have Comparable Worth wage scales so that women's wages can rise without forcing women out of their traditional occupations? Is it better to try to integrate occupations by forcing women (through affirmative action or quotas or whatever) into men's jobs, and men into women's jobs? Is it better to do other things?

However, I guess I can't get out of saying something about the question of pay equity for women. So at the risk of being in a somewhat slightly hostile environment, I will go ahead and take that risk. When I talk about pay equity, I want to make it clear that I am not talking about equality necessarily, although some people might think that pay equity means equality. I am going to use pay equity in a very special way which has nothing to do with its legal terminology. It is just a definition that I am going to make right now so that we all know what we are talking about—or at least so I will know what I am talking about.

The "pay equity" I am going to talk about is whether or not what somebody makes is adequate to support a family, at least at the minimum poverty level. That is, if somebody works full time in paid employment, is that pay enough to support the family? We have heard a lot about the fact that families are really cooperative arrangements between men and women, but the fact of the matter is that all families aren't that way and that, in fact, we have a growing number of families which are headed by women. I know you expected me to say this, but just bear with me for a minute.

Twenty-seven percent of all divorced and separated women are on welfare. Half of all black babies in some urban areas, more than half of all black babies, are born out of wedlock. You may say, "Oh, but we aren't really talking about those people." But the problem is we have got this monster out there which is the welfare

system, and I know that George Gilder, who spoke at yesterday's sessions, is very concerned about this. In fact, he and I are in agreement on the issue of welfare in many respects. About one-third of all female-headed families are on welfare. It is costing us billions of dollars, and the way the welfare system is set up probably discourages marriage among the poor, which makes matters even worse.

One solution, of course, is to abolish the welfare system, which politically isn't very feasible; even if we did, what are we going to do with all those folks out there who have to eat? The social problems associated with cutting welfare, or at least cutting it substantially, are really very problematic. The fact that program costs continue to grow, even though the Reagan Administration has cut programs (not, I would say, substantially, but as much as was politically feasible), suggests that the more you cut welfare, somehow the more people come on to it. It is really a complicated issue.

The problem, of course, in the welfare system is that most of these poor women can't get jobs that pay enough to support their families, and welfare is really a better deal financially for them. The problem is that, if you work 40 hours a week at the minimum wage, you get $140 a week, which isn't a whole lot to live on, even if you have food stamps and other things like that. So, you have millions of people out there who find that welfare is the better alternative to work. Then, you ask that question, "Why is it, then, these jobs pay so little? Why is it that, for so many millions of women, the best that they can do is to find a job at the minimum wage?" This gets back to the question of pay equity, I think.

As Michael Finn pointed out, "Wages and a job depend upon productivity." But productivity in a job depends not only on individual skills but, in fact, on the technology of the job. I am a short person and I have a lot of trouble changing light bulbs without a ladder, but if I have a ladder I can change a light bulb. The productivity of somebody in a job depends a lot on the tools which that person gets and the organization of the work. Let's forget about middle-class job holders and instead talk about people without skills, because these are the folks I am talking about who are in the welfare system. Their wages depend a lot on the organization of the job and the technology of the job that they get. I think that job assignments for low-skill, low-income people depend a lot on

employers' perceptions of pay equity. What does that worker need in order to support his or her family? The idea that you would give an adult male a job at the minimum wage is just inconsistent with basic notions of pay equity. An adult male cannot support a family on the minimum wage. Very, very few adult males work at minimum wage jobs, and the reason they don't is that they can't support a family on a minimum wage job. It doesn't even occur to an employer to give an adult male a minimum wage job. Now, if you think that an adult female has a husband to support her, or could go on welfare, or could get food stamps, or has these other sources of income, then it doesn't occur to you that you shouldn't give this female a minimum wage job.

Female-dominated jobs are in the pink collar ghettos, and I am talking about jobs that are even below the pink collar ghettos such as domestic service. These jobs were structured under the principle of pay equity which assumed that working women were basically either singles who need to support only themselves, or else were married to men who could support them. I am not even talking about social justice here. I am just talking about the general notion that, somehow, people either have to have a living wage, or we are going to be stuck with a system where the government has to subsidize broad categories of people where the labor market isn't paying them enough to get themselves out of poverty.

It's like the farm support program. We subsidize farmers when markets don't produce adequate farm incomes, adequate by some sort of measure of pay equity. (In this case we use the concept of parity with earlier real farm incomes.) I am not trying here to put forward a complete theory of wages or anything else. I just want you to think about the fact that the way the jobs are organized, and the kind of equipment that people get, will determine to some extent the productivity of the person in that job and the pay that that kind of job would receive. I might hire a teenage male or female to babysit my children for $2.00 an hour. I wouldn't think of hiring an adult male to do that because I know that he couldn't live on $2 an hour. If I wanted to hire an adult male, I would reorganize the job so that I could afford to pay him more. The question of subsistence needs is a fundamental principle of pay equity.

The second point which I think is important to take seriously is that our concept of social justice can't be taken as an absolute. Let

me see if I can explain what I mean by that. More and more women, for whatever reasons (reasons that I could talk about at length but I don't have time), have been seeking paid employment outside the home and finding that, when they do that, all of this equal opportunity that they hear so much about doesn't seem to be there. There is a growing perception that the system is somehow unfair. Now individuals might reject this idea, but there are a substantial number of people out there who perceive that the system is unfair to women.

These public perceptions of social justice change over time as lifestyles change. The changes in the lifestyles may themselves depend upon economic conditions and historical factors and other things. Nevertheless, as these changes in lifestyles occur, the standards for social justice have to change. Certainly our legal system recognizes that social justice is something of a moving target. People in our society will always disagree on what is just and what is fair, and what is not fair; but at least I think that the general public perceives social justice in different ways at different periods and times.

Let me give you an example of this, taking a very classical sort of straw man in the Comparable Worth controversy. That is the question of whether or not nurses are to be paid more than tree trimmers. I don't know whether this ever actually was a true experience, but one example always cited in the Comparable Worth controversy is a case of a hospital that paid the nurses less than it paid the tree trimmers. The nurses were required to have more education, they had more responsibility, they had less convenient working hours; but somehow the male tree trimmers were getting paid more than the nurses. Does this make any sense in the context of contemporary views about social justice?

I can think about a time, not very long ago, maybe a generation or two ago, when most people would have probably thought that discrepancy was fair because, after all, these men have families to support and they were probably long-time tree trimmers. They had been trimming trees for a long time, whereas these nurses were young girls or spinsters or people who really didn't have any other responsibilities. Why should they get paid as much as these men who had families to support? This is the rationale that many people might have accepted at some time.

I'm saying that people who a generation or two ago might have

accepted that rationale may no longer accept it. They now say, "Wait a minute, our concept of social justice has changed; there are other considerations. For example, some of these women may actually be supporting families, women may have needs they didn't have before, women are staying in jobs longer, they are having full-time careers, all these things." Some still might think paying the nurses less than the tree trimmers is just, but all I am saying is that the consensus of public perceptions and standards of social justice may have changed, now that we are in a period where lots of women are in the work force. Having said all this, let me get back to what I said I was going to say, and that is talk about Comparable Worth.

What I have tried to say now, or directly prior to this, is that the problem isn't just Comparable Worth. The problem is how to provide the subsistence needs for a whole lot of families out there that are depending on women's wages. None of the solutions to that problem may be nice. You might not like any of the solutions. The solution we have right now is the welfare system. The question is, are there any other solutions that might be less objectionable than that? It is a nasty problem having all of these children out there depending only on their mothers. Some people have suggested that we outlaw families with only one parent. There are all sorts of things you could do. It is a nasty problem, we don't like it—nobody likes it. But we have to deal with it and the question is, what is the least objectionable solution? So what I want to do is talk about some options.

The first option is the welfare system. We all hate that. The second option, which has been proposed by such eminent economists as Nobel Laureate Milton Friedman, is the idea of a negative income tax. Essentially, this would give everybody an income subsidy regardless of whether they work or not. This has certain advantages over the welfare system in the sense that it doesn't penalize marriage the way the welfare system does. In the welfare system, you must meet certain eligibility standards. If you designed the negative income tax properly, you wouldn't have a work disincentive. There would be some work disincentive, but not as strong a work disincentive as the welfare system.

The third option is what I mentioned before—affirmative action in job quotas. That is, you simply say that we have to give women higher ladders. We have to put women into those jobs that

men do, we have to give them the tools that men use, and if we do that, then they, too, will become productive and raise their pay. This has certainly been one strategy—but not very popular, not very successful.

The fourth option is Comparable Worth, and I just want to say a couple of things about how the market might react to it. There is a belief that, if we legislate higher pay in women's jobs, this would be terribly uneconomic and firms would lose a lot of money. Of course, it is possible that could happen, but there is another possibility, certainly a longer run possibility, and that is that these jobs might actually be restructured. There is nothing to suggest that women can't operate high technology. They are doing it right now in offices. We can make women's work a lot more productive than it has been. Some of women's jobs are terribly inefficient in their use of labor because of the fact that women's pay has been quite low, and it hasn't made a whole lot of sense to economize on that labor. We could have a tremendous sort of technological revolution in traditional women's jobs if, in fact, we begin to recognize that pay equity requires that women's pay in these jobs be increased. The market can adjust. The market is terribly resilient. It can adjust to a whole lot of things.

We've heard about unions—these horrible monsters—but, in fact, in union firms productivity is much higher. Why? Not because of the union. Because firms are forced to economize on labor and they do it by getting more capital equipment and organizing work more efficiently. If women's pay went up in secretarial areas and child care, etc., we might, in fact, find that the market adjusted to that by utilizing that labor more efficiently. Meeting the goals of pay equity would mean a productivity gain—wage increases without price increases—because of the fact that women's work in female-dominated occupations would become more productive.

There can be many market outcomes depending on the initial conditions. The market doesn't condition the outcome; rather the initial conditions working with the market do. So, all I can suggest is that, of all the strategies that you can think of to deal with pay equity for women, the Comparable Worth one does seem to have in it the possibilities for technological change and productivity growth which might allow pay equity without penalizing firms. I would suggest that we give very serious consideration to the idea

that firms that do raise pay for "disadvantaged occupations" get special tax incentives or tax credits for capital equipment that will raise the productivity of these workers. We can't expect firms to swallow these losses; that's crazy. That's exactly what Michael Levin was talking about. They would become uncompetitive and go out of business. Rather, what we need to do, as a matter of social justice, is to change the initial conditions to which the market will then adjust. We've got to compensate firms that will lose by raising the pay in jobs traditionally held by women, and compensating the firms in a way that will be progressive in the sense of encouraging technological change in the very productivity growth that can allow pay equity.

PART II

THE CURRENT LEGAL AND LEGISLATIVE STATUS

Chapter 4

Equal Opportunity Through Non-Discrimination

by Eliza Paschall

An EEOC official explains the history and rationale of current Federal laws and policies of non-discrimination and urges women to make full use of their equal employment opportunities.

Eliza Paschall supervises a compliance unit for the Atlanta district and regional office of the Equal Employment Opportunity Commission. She is the author of a handbook on sex discrimination in employment. Mrs. Paschall is a Phi Beta Kappa graduate of Agnes Scott College and has done graduate work in sociology and public administration. She has testified at Congressional committees on sex discrimination and sexual harassment, is a frequent newspaper columnist, and in March, 1984 will be launching a new career as a consultant and lecturer on equal employment issues.

I am delighted to have a part in this program. I want to make it clear that I am here as a private citizen, on annual leave from my job with the Equal Employment Opportunity Commission, speaking only for myself and in no way speaking for the Commission.

What the Law Is

What is public policy with regard to discrimination in employment because of sex, against women or men? It is hard to remember that 21 years ago, while there were few laws that re-

quired different pay scales for men and women, there were few if any laws that prohibited such sex discrimination.

Twenty years ago, *before* the present "women's movement" got under way, Congress amended the Fair Labor Standards Act with the Equal Pay Act of 1963, prohibiting the paying of different wages to men and women performing not only the same work but work of equal skill, effort and responsibility. This was the first law passed against discrimination in employment, and it applied, and still does apply, only to sex discrimination.

The following year during the floor debate on the Civil Rights Act of 1964, sex discrimination was included in Title VII along with race, religion, color, and national origin, as a prohibited basis for discrimination. Again, this was the only Title of that law which included sex discrimination. This did not come about as a result of any concerted effort by women or women's organizations. Betty Friedan's book *The Feminine Mystique* had just been published and N.O.W. was not yet organized.

During the past 20 years, the Equal Pay Act has been extended to cover public as well as private employers. Title VII has also been extended to cover employers of as few as 15 employees, public and private. Both laws now cover all kinds of employees, including executive, professional and administrative personnel. And sex discrimination by law and judicial interpretation has come to include discrimination because of marital status, discrimination because of pregnancy and/or maternity, and sexual harassment. There are a few exceptions to the Equal Pay Act, but for all practical purposes all employers, even of one person, are covered by the law.

In short, the law of the land is that in all matters relating to employment, and especially with regard to wages, sex is held to be irrelevant.

Title VII provides for third party charges, but generally speaking the identity of the charging party is revealed. It is difficult to remedy unlawful discharge, for example, without identifying the person who was discharged.

An EPA complaint, however, can be anonymous. As a matter of fact the agency procedure is not to identify the complainant to the employer. A complaint need not be in writing, and anyone who has any reason to believe that a certain employer is paying a woman less than a man for the same or equal work (or a man less than a woman) may report that to the Equal Employment Oppor-

tunity Commission, and the government may direct an investigation of the workforce without identifying anyone.

The Equal Pay Act was first enforced by the Wage and Hour Division of the U.S. Department of Labor, but in 1979 it was transferred by Executive Order of President Carter to the EEOC (Equal Employment Opportunity Commission). Both laws, Title VII and EPA, are now enforced by the EEOC, which has field offices throughout the country. You do not have to have a lawyer to file a charge or complaint with the EEOC. It does not cost you any money. The law protects you against retaliation. The agency will make its own objective investigation. It will use any information which the person making the complaint has, and it also has authority to examine records which would not be available to an employee or an applicant such as payrolls and applications.

The remedy for an Equal Pay violation is to bring the lower wages up to the higher ones, which usually means to raise the women's wages up to the men's wages and to pay the women any back-pay to which they are entitled, back two years. The remedy for a Title VII violation is to make the charging party "whole," that is, to put the person where he/she would have been but for the unlawful discrimination; back wages can also be paid back to two years.

An Equal Pay investigation is not limited to the person who complains or in whose behalf someone complains. It attempts to uncover all equal pay violations and effect remedies for all the persons involved. For example, one person may complain and the investigation may identify 20 persons who are being paid less than the law requires. Without any action on the part of the 20, the agency would investigate all the facts and, if all 20 are entitled to remedy, would attempt to secure remedy for all.

The law is not limited to identical work. It applies to work of equal effort, skill, and/or responsibility. How do you prove that your work is of equal skill, effort, or responsibility? Let me assure you that EEOC does not take the employer's word that a woman does not perform work that is equal or substantially equal, nor do we take at face value a woman's word that she does. The following legal standards have been established, beginning with the *Wheaton Glass Company* decision in 1970.

1. Equal work means substantially equal, not identical. Small differences do not make jobs unequal.

2. The fact that some but not all the men, for example, perform significant extra duties in their jobs does not justify giving all the men higher wages. Only those doing the extra work should get the extra pay.

3. The fact that most men may be able to perform some heavy lifting, etc., is not a basis for higher pay to all the men. The employer claiming that defense must have offered the extra duties to women on the same terms as men and must prove that the alleged advantage, of physical strength for example, is worth specific dollars and cents.

4. An employer's classifications and job descriptions are totally irrelevant unless they reflect actual job content.

5. The *Corning Glass* decision of the Supreme Court in 1974 held that Corning could not pay male inspectors more, simply because they worked the night shift instead of the day shift. It held that "working conditions," as used in the Equal Pay Act and in industrial parlance, did not refer to time of day the work was performed, and also that Corning could comply with the law only by raising the women's pay.

6. Mental as well as physical effort must be taken into account in establishing equality of effort; *e.g.*, in comparing men whose jobs required great physical effort with women whose jobs ran the risk of injury from fast and complex machines, it was held that the two jobs were equal.

7. Possession of skills not needed on the job does not justify a pay differential. But what if the women are given the same pay as the men for the same or equal work, but most of them are in the lower paying jobs and are not given a chance to go into the higher paying jobs held by the men? Sex segregated jobs violate Title VII, and so does denial of promotion to a woman because of her sex.

Between these two laws, a woman has the legal right to try for any job for which she is qualified and to be considered without regard to sex and, if she gets a job that is equal or substantially equal to a job being performed by a man, she is entitled to the same pay. Suppose she is the only person doing her job but a man held it before she did and he was paid more than she is being paid. That would be a violation of the law. Suppose she quit and a man is hired to replace her at a higher salary to do the same work. That would be a violation of the law, and she would be entitled to back wages for two years equal to the man's wages.

EEOC several years ago had a backlog of uninvestigated charges. Today there is no backlog. There is no long wait for a charge to be processed.

There is no excuse for any woman who believes she is being paid less than a man for the same or equal work because of her sex not to take action under the EPA and Title VII. There is no excuse for anyone who has any reason to believe that any employer is paying sex-based wages not to report that to the EEOC so that it can be investigated. There is no excuse for any woman, who believes she is being denied the opportunity to do a job done primarily by men because of her sex, not to file a charge against that employer with the EEOC.

What the Law is Not

The EEOC will accept Comparable Worth allegations. The Chairman of the EEOC, Clarence Thomas, however, testified at the Pay Equity Hearings on September 30, 1982 that "although the Commission has engaged in an ongoing study of the issue of job segregation and wage discrimination, it has not yet issued a formal policy statement outlining the position it plans to take in the area of Comparable Worth" (p. 376, Vol. I of the Hearings transcript). He reported that there are 226 charges filed with the Commission, 215 of which are against two respondents. Of the 226, 218 are against municipal governments. Mr. Thomas reported that the agency in 1977 commissioned a study by the National Academy of Sciences (published in 1980) ". . . for the purpose of examining the extent of the problem of depressed wages of jobs held by minorities and women. . . . All complaints filed with the Commission raising this issue [of Comparable Worth] are currently investigated in our field offices, then the case files are sent to headquarters, where they remain, pending a Commission resolution of the issue" (p. 376).

Chairman Thomas further testified, "The primary Comparable Worth issue is not discrimination against women in a particular place of business but rather the maldistribution of women throughout the economy. . . . The current state of the law clearly holds that pay differentiations which are primarily reflective of the prevailing rates of pay within a given community or profession as opposed to the discrimination of an individual employer constitute a marketplace phenomenon which Title VII was not designed to

reach" (p. 356, Vol. I of the Hearings).

The former vice-chairman and former acting chairman of the EEOC, Daniel Leach, testified that "No court to date has ruled that under Title VII a showing of mere wage disparity between predominantly male and female jobs is conclusive proof of discrimination. Comparing the value or worth of such different jobs as a method of proving discrimination simply has not yet entered the stream of case law under Title VII. In writing for the Majority in *Gunther*, Justice Brennan pointed out, 'Respondent's claim is *not* based on the controversial concept of "comparable worth" under which plaintiff might claim increased compensation on the basis of comparison of instrinsic worth or difficulty of their jobs with that of other jobs in the same organization or community,' 452 US at 166" (p. 298, Vol. I of the Hearings).

Former Undersecretary of Labor Donald Elisburg in the April 1978 issue of the *Labor Law Journal* wrote on "Equal Pay in the United States: The Development and Implementation of the Equal Pay Act of 1963." Mr. Elisburg reported that, "During 1962 the House and the Senate passed differing versions of equal pay legislation but did not agree on a final bill. In 1962 the Kennedy administration version of the legislation had used a standard of comparable work and an amendment was offered to narrow the scope of the equal pay requirement to equal work. In adopting the equal work standard in 1963, the Congress rejected the broad 'comparable work' test, but it also did not require that jobs be identical to warrant application of the equal pay requirements. During the legislative process, clarification of what was to be considered 'equal work' focused first on equal skill and then on equal effort and responsibility and similar working conditions" (p. 199).

History of the Law

As has been noted earlier, the Equal Pay Act and sex prohibitions in Title VII did not grow out of any mass women's movement. Let's look first at the Equal Pay Act. How did it come about?

Mr. Elisburg in the article cited above reminds us that the two World Wars brought about a shortage of male workers resulting in the wide entry of women into the labor force. During the first World War, 1917 and 1918, "in response to the presence of women in the industrial workforce the War Department and the War Labor

Conference Board called for equal pay without regard to sex." The War Department applied the principle to its government contracts and the Conference Board applied the principle in more than 50 industrial disputes during the war years. The Classification Act of 1923 eliminated sex differentiated salary grades for Federal employees.

In 1918 the Labor Department became involved in the equal pay principle, and in 1920 the Women's Bureau was organized to deal primarily with women in the labor force. In the 1930s the National Recovery Administration established codes, including wage rates for industry, approximately three-fourths of which did not differentiate on the basis of sex. In 1934 the NRA ordered that, in those industries still not codified, "female workers performing substantially the same work as male employees shall receive the same rate of pay as male employees." The Fair Labor Standards Act, better known as the Wage and Hour Law, passed in 1938, set Federal minimum wage rates without differentiation on the basis of sex. "Passage of the Equal Pay Act of 1963," wrote Secretary Elisburg, "was a result of the legislative ferment after the second World War on both the state and federal level." By the early 1960s more than 20 states had such laws.

In 1961 President Kennedy appointed the President's Commission on the Status of Women, with Mrs. Eleanor Roosevelt as chairman. At its first meeting in February 1962 the Commission unanimously endorsed the principle of equal pay. The hearings on equal pay in the Congress called attention to the increasing number of women entering the work force and the fact that women were serious wage earners, not working "for pin money," and also to the fact that despite the state laws, there was still wage discrimination on the basis of sex.

In 1940 about one-fourth of the work force was female. By 1945, at the end of the war, women were more than a third of the work force, showing a greater increase than over the preceding 70 years. During the war, more and more Federal agencies had adopted the equal pay principle. In 1942 the National War Labor Board issued orders calling for equalization of pay rates for men and women doing equal work.

The legislative history of Title VII includes little discussion of sex discrimination. The Supreme Court in the *Gunther* decision states that, "Just two days before voting on Title VII, the House of

Representatives amended the bill to proscribe sex discrimination. . . . The Senate took up consideration of the House version of the Civil Rights bill without any reference to any committee." EEOC Chairman Thomas in his testimony before a Congressional committee (September 1982), reported that "Comparable Worth has its own history . . . predating the current interest. . . . Members of the War Labor Board were able to resolve disputes over wage inequities by determining the worth of certain jobs in comparison with other jobs. . . . Even after the Board ceased to exist, the concept of Comparable Worth was not forgotten. In fact, an equal pay bill embodying that concept was introduced in every Congress following 1945. . . . It was not until 1962 that the word "comparable" was changed to "equal" in proposed legislation.

Sex Wage Differentials

We are all familiar with the statistic that, if you average up all the earnings of all women in the work force and you average up all the earnings of all the men in the work force, the average earnings of women are less than the average earnings of men. The more important statistic, and the one most often quoted but mislabeled, is the difference between the *median* earnings of women and men. The median is "the point at which half the individuals in a series are on one side of it and half on the other" (Webster's Unabridged, 1944 edition).

Let's take an example. Five women have wages respectively $3, $4, $5, $7 and $11. The average wage (*i.e.*, the total divided by 5) is $6; the median wage is $5. Let's add 5 more women, all at the lowest wage level. The average becomes $4.50, but the median is $3. But suppose instead of 5 workers at the lowest entry level, you add one female astronaut at $50 an hour.The average for the 6 workers is $13.50 but the median is only $6. According to Janet Norwood, Commissioner of Labor Statistics, in her testimony before the Congressional Hearings on Pay Equity, ". . . the statistics for 1981, the latest figures, show women's earnings at 59 percent of the median for men." That is a different fact from the statement by the president of the National Organization for Women in its membership appeal letter of last spring in which she wrote, "The plain, frightening fact is that women are paid just over half as much as men for the same work." If Ms. Goldsmith has knowledge of employers who are doing that, has she identified them to the

EEOC for investigation?

If anybody told you that the people in his/her office who were paid the lowest wages were the newcomers to the staff, you would not be very surprised. One generally known fact is that women are entering and reentering the labor force at unprecedented rates. Many women who have delayed "getting a job" are now looking for one, usually at the entry level. Others who interrupted careers for personal reasons are reentering the labor force, obviously at lower rates of pay than their male counterparts who stayed in the labor force continuously. Back in 1976 the Bureau of Labor Statistics reported that "unemployment rates are generally higher for women than for men. . . . Unemployed women are much less likely than unemployed men to have lost their job; they are more likely to be reentering or entering the labor force." From 1950 to 1970, reports the BLS, the participation of women in the labor force "rose sharply" whereas the labor force participation of men "moved downward."

Senator Gary Hart in his statement at the Pay Equity Hearings said, "Study after study shows there is a wide disparity between the earnings of men and women despite the massive entry of women in the work force and the development of antidiscrimination laws." Gary Hart might better have said that there is a wide disparity *because of* the massive entry of women into the work force. Former EEOC Chairman Eleanor Holmes Norton in her testimony noted that six out of every ten new workers during the past three decades have been women.

While it is generally accepted that most women who work do so because they need the income, many women have entered or reentered the work force because of the success of the anti-discrimination laws. New fields are open to them. They are encouraged by every known means to enter the labor force, particularly in "non-traditional" jobs. And the demographic changes in American society have resulted in more women entering the labor force. Again in 1970 and again in 1980, the census shows six million more females than males. Women still outlive men by seven years. Women retire early from their full-time jobs of wife and mother and seek a second career in the marketplace, just as many who retire from the marketplace seek second careers in volunteer work. Fewer children have freed women earlier from child-rearing responsibilities. "As a group," the BLS reports, "divorced women

are more likely to be in the labor force than women of any other marital status;" a rising divorce rate has sent more women into the labor force. (And while one sympathizes with anyone, male or female, whose income by whatever measure is "inadequate," common sense lets us know that many women who are entering the work force at low earnings are not completely dependent upon their earnings. It would seem that women far more than men would receive income other than earnings in the form of Social Security or other benefits and/or alimony. A more realistic comparison might be male and female incomes, not just earnings.)

The BLS reports other features which tend to result in lower earnings of women than men. Women tend to work less overtime than men. Women tend to work part-time more than men. Women tend to work away from metropolitan areas in neighborhood businesses more than men; neighborhood businesses tend to pay lower wages than "downtown" businesses.

Another factor that can skew statistics is a successful upward mobility program. Take the Atlanta District Office of the EEOC, where I work. When I went to work for EEOC in December 1968 there were about three women on the professional staff, *i.e.*, women who were not clerk/typists. Today of the 67 professionals in the office, 40, or 59%, are women. The 40 women include 16 who were hired into the agency as clerks and have benefited from the upward mobility program to enter professional positions at the lowest rating. I would expect the average salary of the men to be higher than the average salary of the women because none of the men entered as clerks and worked his way up through the clerical ladder into the professional ladder. Of the 17 first line supervisors, or those with supervisory ratings, only four are females and that is unlikely to change until the men retire. These statistics are likely to remain for the foreseeable future. Even if there were some unforeseen expansion of the agency, many of the men in non-supervisory professional positions would outrank the women who may have been with the agency longer but have not been on the professional ladder as long as the men. The top five positions in the office are held by men, all with long seniority with the agency; there is no reason for them to be passed over for promotion in favor of a female.

Comparable Worth

My only contact with the Comparable Worth issue was through a friend who is a county supervisor in California and my reading of the transcript of the Pay Equity Hearings in September and December, 1982.

My friend moved from Atlanta to California and, being a good active southern politician type, she promptly got herself elected to the county Board of Supervisors, the first woman to hold the position. She told me that the women in the county came to her to complain about the fact that the county paid secretaries less than truck drivers, although secretaries were required to have a high school diploma, whereas truck drivers were only required to have a truck driving license. She asked them why they did not apply for truck driving jobs and they said they didn't want to drive trucks, they didn't want to go out in the cold away from the office, etc. It had not seemed to occur to them that perhaps one reason for the higher pay for truck driving was its unpleasant features; offering more money to do the job was one way the county, as an employer, had of overcoming these negative features.

I have read the two volumes of the Hearings, and over and over again witnesses testified that women are paid less than men for the same work or that women have lower incomes than men, neither of which is a Comparable Worth issue.

For example, Senator Hart said, "Women continue to earn less than men for performing the same work" (p. 15). That's not Comparable Worth, that's a violation of the Equal Pay Act. However, there is no evidence that Senator Hart has reported any suspected violations to the EEOC for investigation.

Former Vice President Walter Mondale said, "Nearly half of all poor families are headed by a woman." The obvious other part of that statement is that half of all poor families are headed by a man! What has that got to do with Comparable Worth or the value which society places upon women? And is Walter Mondale going to measure his concern for disadvantaged children by the sex of heads of households?

Senator John Glenn reports that the BLS says it takes $24,407 a year to maintain a family of four at an "intermediate" standard of living, and that in 1980 the average AFDC payment for a family of four was under $4800, which has nothing to do with wages for

work performed. It has to do with adequate income, which is an entirely different issue, as is the issue of an "intermediate" standard of living and who is entitled to same.

Senator Glenn also notes wage differences among women of different races. White women earned 59¢ per $1 earned by men, black women earned 54¢ and Hispanic women earned 49¢. Do these differences represent deep-seated societal race prejudice? If they do, what is Senator Glenn going to do about that? Would he provide for "pay equity" between white and black women, black and Hispanic women, and what about black men and white men, and Jewish men and Oriental men? Chairman Thomas of the EEOC in his statement filed with the Congressional Committee said, "It should be noted, however, that although Comparable Worth is generally spoken of with respect to women, it is equally applicable in an analysis of job segregation by race, ethnicity or other criteria" (p. 359).

One of the witnesses at the Hearings was Donald J. Devine, Director of the Federal Office of Personnel Management. In introducing him, Congresswoman Schroeder noted that "the Federal government is the largest single employer in the country, with 2.8 million workers." Dr. Devine commented that, "As the two staff members of the National Academy of Sciences testified to this committee, there is still the question of relative worth.

"As they reported, relative worth is a matter of values, and it is a difficult problem to measure values and worth. The only known means by which to do this is to refer to the value choices which exist in the market. But this brings us full circle, since it is often these values which are objected to by proponents of Comparable Worth.

"Given present knowledge regarding the setting of the worth of a job, I do not see any alternative to having the final touchstone for setting worth be the market. Fair job evaluation can go only so far.

"We should continue refining our classification system but, unless new ideas are developed, we cannot go much further without being arbitrary.

"At the second day of hearings, Congresswoman Ferraro really asked the central question. She asked, how could one determine worth if neither market forces nor job evaluation techniques could do it?

"The state of current knowledge does not tell us how to imple-

ment [Comparable Worth] without being arbitrary" (p. 473, Vol. I).

The necessity of being arbitrary does not bother one of the witnesses at the Hearing. Indeed he cites that as a strength. His statement was sent to me by Congresswoman Schroeder in response to my letter asking, "How one could increase the salary on the basis that they are predominantly female occupations?"

Mr. Richard E. Zickefoose, Director of the Personnel Department for the City of Colorado Springs, Colorado stated that he does believe that women have been discriminated against in compensation for jobs of equal or Comparable Worth, and that he believes that there exists an obligation to correct such discrimination.

"I hasten to add," says Mr. Zickefoose, "that I totally support the laws of supply and demand as determined by the open employment market, provided that the data received from such markets is natural and incorporates no bias based on sex, race, etc. . . . Alternative methods must be found and put in place. . . . Our Comparable Worth plan was simple: to phase in over a four-year period the increase in salary of employees in our female-dominated classifications to equal 80 percent of the differences between the maintenance/operations salary line and the clerical/secretarial lines.

"I do not believe that the difference between these salary lines is totally attributable to sex discrimination. Further, I don't believe that that portion that is attributed to sex discrimination can be quantified. Therefore, believing that sex discrimination is a major part of the difference, I selected 80 percent as the Comparable Worth objective. *Granted, it is arbitrary, however it cannot be proven nor can it be disproven. Therein lies its strength*" (emphasis added).

(One cannot help wondering why Mr. Zickefoose did not select 100% as his Comparable Worth objective? Is he proving that sex bias lives in every man, even an "equal worth advocate"?)

Conclusions

In response to a letter which I wrote to Congresswoman Schroeder, she wrote on December 2, 1982, "I do not have plans to introduce pay equity legislation. Witness after witness testified that what is needed is for the Federal Government to fully enforce both Title VII and Executive Order 11246"—and one would presume also the Equal Pay Act.

In the EEOC 1980 Hearings on Comparable Worth, Lynda

Johnson Robb, then chairperson of President Carter's Advisory Committee for Women, took the position that any effort to increase wages in female (or minority) dominated jobs by regulation would lead to "disastrous consequences" and would increase the race and sex segregation of the workforce. She spoke of the need to "redirect the female labor force toward those occupations that are higher paying and traditionally male dominated . . . to encourage and prepare young women to enter non-traditional fields."

I have just completed a year as supervisor of the Intake unit of the Atlanta EEOC office. (I have been with the compliance staff of the Atlanta office since December 1968.) During that year as supervisor of Intake, where all inquiries about charges are received and all charges/complaints are processed into the system, I did not receive a single inquiry from any civil rights, civil liberties, women's rights, or labor organization about the provisions of the law, how they might help, how they might report a suspected violation, or any other indication of the slightest interest in or knowledge of the subject of equal pay for equal work, equal pay for work of Comparable Worth or any other form of sex discrimination!

The whole subject reminds me of the complaint of a visitor to Georgia who complained that at the end of her stay she had never gotten a chance to eat a biscuit. Everytime she picked one up to take a bite, her hostess would pass her another one with the admonition that she should "have a hot one; that one has gotten all cold." So, let's make use of what we have before we ask for more.

When you think of the *men* in the Congress who passed the laws, and the *men* in the courts who have liberally interpreted them, and the *men* more than women in the EEOC who have enforced the laws, it seems that men have been more energetic in safeguarding our rights than women have been in taking advantage of them.

Let's make use of what we already have. And let's stop confusing the issue of equal *income* with the issue of equal *employment* opportunity, including equal pay for equal work.

REFERENCES

U.S. Congress. House Committee on Post Office and Civil Service, Subcomittees on Human Resources, Civil Service and

Compensation and Employee Benefits. Joint hearings on September 16, 21, & 30 and December 2, 1982, Vol. I & II.

EDITOR'S NOTE

Since Mrs. Paschall presented this paper, the Reagan Administration included this analysis of Comparable Worth in the Budget for Fiscal Year 1985. The following is excerpted from ***Special Analyses, Budget of the United States Government, 1985,*** *Special Analysis J, "Civil Rights Activities," U.S. Government Printing Office, Washington, D.C., 1984, J-15 and 16.*

"This Administration is strongly committed to enforcing the Equal Pay Act's guarantee of equal pay for equal work—and to maintaining the freedom employees now enjoy to decide which jobs should be paid more, and which less (to resolve questions of 'comparable worth') through bargaining with their employers. As strongly, this Administration believes that it would be fundamentally unfair for the Federal Government to dictate those decisions.

"And not least because the identity of those who would be doing the dictating is clear—and the standards they would be expected to apply are not. A recent and important article in the *Washington Monthly* states the problem squarely:

> " 'When it comes to larger problems of inequality faced by women and society at large, (federally dictated) comparable worth is a principle that will ultimately prove not merely inadequate, but destructive. Its greatest asset is that it affords politicians a way to demonstrate their solidarity in the battle for sexual equality, while leaving all the necessary little details that the "comparable worth" standard implies . . . to someone else. And it isn't hard to figure out who that "someone else" is going to be. When (a recent Federal court decision mandating a standard of comparable worth) was handed down, lawyers and consultants everywhere no doubt experienced something akin to the thrill felt by Cortez when he first gazed upon the shimmering Aztec temples of Tenochtitlan.'[1]

1. Cowley, Geoffrey, Comparable Worth: Another Terrible Idea. *Washington Monthly*, January, 1984, 53-57.

"And in the absence of commonly agreed upon standards for evaluating the 'worth' of jobs, their biases would govern. Under one 'job evaluation' system, for example:

> " 'A beginning licensed practical nurse scores 158 comparable worth points, while an "Information Specialist III"—an experienced PR Flack—scores 324. Or look at a janitor, who scores 101, while an "Advisory Sanitarian II"—someone who doesn't actually clean anything himself, but makes sure local hospitals and nursing homes do—scores 395. Why on earth should our society value people who issue press releases more than people who save lives and do the dirty work?'[2]

"The primary impact of such 'point systems' could thus be to elevate the 'worth' of characteristics held by the authors of those systems—and to depress the 'worth' of other characteristics, particularly those associated with mechanical skills and physical labor.

"In addition to its impact on collective bargaining and the private sector's ability to use market standards, a broad Federal power to define the 'worth' of jobs would also undermine principles of federalism, substituting the courts and Federal regulations for the judgments of State and local civil service commissions.

"Through 1985, the Administration will therefore continue to vigorously enforce equal pay for equal work—and to assure that both women and men have an equal opportunity to perform the work of their choice."

2. *Ibid.*

Chapter 5

The Legal Status of Comparable Worth After *Gunther*

by Frank C. Morris, Jr.

A lawyer summarizes the legal background of Comparable Worth and its current status in the courts as a result of several major cases.

Frank C. Morris, Jr., Esq., is a partner in the law firm of Epstein Becker Borsody & Green, P.C., and is actively engaged in the practice of equal employment, labor, and information access and privacy law on behalf of both public and private sector management. He has litigated personnel and employment benefit issues in Federal and State courts, and is a skilled arbitrator and negotiator. Mr. Morris graduated with distinction from the University of Virginia Law School and started his career with the National Labor Relations Board, during which time his litigation work twice earned him superior performance awards. He taught fair employment law at Catholic University School of Law, is a faculty member of Cornell University's School of Industrial and Labor Relations EEO Studies Program, and is the author of numerous articles and publications on litigation and labor law.

Introduction

The United States Supreme Court's decision in *County of Washington v. Gunther*,[1] although expected to clarify the so-called Comparable Worth issue, has only served to muddy the waters. Clearly, the Equal Pay Act[2] (EPA) provides no statutory basis for Comparable Worth claims where an attempt is made to compare

dissimilar jobs and assert that they should be equally paid. And even after *Gunther*, it is more than unsettled whether they can be maintained under Title VII of the Civil Rights Act of 1964 [3] (Title VII).

Two questions of importance thus face us. First, is Comparable Worth cognizable under current statutory law? Second, if it is not, can its proponents secure legislative support for the doctrine or secure its widespread adoption through collective bargaining? Comparable Worth advocates and opponents will attempt to resolve these issues in the 1980s. Their resolution could have dramatic effects on the United States economy.

Comparable Worth and the Equal Pay Act

Comparable Worth undertakes to compare the intrinsic value or difficulty of different jobs within one employer's workforce or within the industry or market area—without regard to the value of the job in the particular labor market. It poses the abstract question, "What is a particular occupation worth to an employer?" To some extent the doctrine involves an analysis of the content of the job, but it primarily examines the value an employer places on particular skills and jobs. For example, a city's female library director may seek to be compared with the male police or fire chief, alleging that these department head jobs are of equal worth or value to the employer and should therefore be paid at the same rate.

In contrast, the Equal Pay Act prohibits sex-based pay differentials where four conditions are met. It applies only when men and women do "equal work on jobs, the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions . . ."[4] Ostensibly, the EPA was designed to equalize the treatment of similarly situated men and women in the workforce. But given the EPA's coverage, particularly the "equal work" requirement, there are discrimination claims being made which are outside its reach.

The theory of Comparable Worth, according to its supporters, remedies a more invidious form of discrimination. Proponents of the theory argue that there exists substantial structural wage discrimination against women. The discrimination, they contend, is evidenced by the fact that median weekly earnings for full-time wage and salary workers were $370 for men and $240 for women.[5] The disparity, they claim, is caused by a concentration of women

in certain jobs which are then devalued by employers and unfairly compensated. For example, women clerical workers (who earn $236 a week as compared to $337 a week for men) tend to be concentrated in lower paying occupations such as clerks, typists and secretaries. Indeed, it is true that entire groups of jobs "traditionally" held predominantly by women tend to be lower paid, although there are many possible nondiscriminatory explanations for this fact.[6]

Judicial Developments and Their Impact

Generally, courts have applied a narrow definition of "substantially equal," the standard used to compare jobs under the EPA. For example, in *Horner v. Mary Institute*,[7] there was no Equal Pay Act violation where a male physical education teacher was paid a higher wage than a female physical education teacher. Applying a standard which requires work to be "substantially equal in terms of skill, effort, and responsibility," the court found that the male teacher's job was significantly different from that of the female teacher, justifying the wage differential.[8]

Similarly, in *Taylor v. Weaver Oil & Gas Corp.*,[9] the court found that the work performed by a male draftsman who was paid higher wages than his female predecessor was not substantially equal to her work, even though he had less experience than she. The court observed that the male performed certain extra duties that required extra effort and time and which the employer valued. There was thus no EPA violation. The courts in *Taylor* and *Horner* limited the scope of their inquiry to a close comparison of the actual work performed and nothing more.

Comparable Worth advocates posit that the equal work standard does not remedy the alleged structural wage discrimination against women; rather it merely analyzes the content of a job and not the intrinsic value an employer is said to place on a particular job. The *Gunther* case involved claims under both Title VII and EPA by female jail guards who alleged that the pay differential for male jail guards was attributable to intentional sex discrimination. The facts of the case showed that the County of Washington had ignored its own job evaluation which indicated the female guards should receive about 90% of the male guards' pay rate. Instead, it paid the female guards at about only 70% of the male guards' rate. Addressing the EPA claims first, the lower court found the male

guards had responsibility for more prisoners and greater physical contact. The jobs were not substantially equal and, therefore, there was no EPA violation. The critical issue reaching the Supreme Court was whether, in the absence of an EPA violation, there could be a violation of Title VII based on sex discrimination in compensation.

This issue arose because of the so-called Bennett Amendment to Title VII which states that Title VII is not violated if a wage differential is authorized under the EPA. The County argued that this meant that no Title VII violation could be found as the EPA had not been violated. The female guards argued that this provision merely incorporated into Title VII the EPA's four affirmative defenses to allegations that pay differentials violated Title VII. These affirmative defenses are found where pay differentials are based on (1) seniority systems, (2) merit systems, (3) quantity or quality of production, and (4) any factor other than sex. The Supreme Court accepted this argument, thereby sanctioning cases of sex discrimination in compensation under Title VII. The Court majority, however, pointedly noted that the controversial concept of Comparable Worth was *not* an issue in *Gunther.* It expressly did *not* endorse the Comparable Worth theory as a valid basis for claims under Title VII.

Given the narrowness of the holding in *Gunther,* it has only one clear effect. By not reaching the Comparable Worth issue, it assures that that issue will continue to be pursued in lower court litigation. Most post-*Gunther* courts have recognized that it does *not* stand for the proposition that Comparable Worth claims are actionable under Title VII, per se. Courts, however, are permitting plaintiffs to bring pseudo-Comparable Worth claims for they recognize that, although a claim may not satisfy the "equal work" standard, it may still be cognizable under Title VII.

The Vitality of Comparable Worth After Gunther

The post-*Gunther* courts have been unwilling to accept Comparable Worth claims per se despite their willingness to recognize non-"equal work" claims. Nonetheless, in the 1980s employers may perceive themselves to be in a quandary. Advocates of Comparable Worth claim that employers should not be permitted to rely upon the marketplace value of certain jobs which are predominantly held by females. This, they argue, merely perpetuates discrimina-

tory wage patterns.[10] Most courts have been reluctant to accept this point of view. In *Briggs v. City of Madison,*[11] the employer successfully pointed to market conditions and the difficulty of attracting qualified employees in explaining why male public health sanitarians were paid more than female public health nurses. The court stated that nothing in Title VII "indicates that the employer's liability extends to conditions of the marketplace which it did not create."[12]

More importantly, Comparable Worth's proponents were dealt a setback under current law by the Ninth Circuit Court of Appeals decision in *Kouba v. Allstate Insurance Co.*[13] The district court's decision in *Kouba* had found that, because of alleged societal wage discrimination against women, a new employer's reliance on a woman's prior salary as a factor in setting compensation was discriminatory unless the new employer could prove that the previous employer's wages were not sex discriminatory.

The appeals court rejected this societal discrimination theory. It noted that *Gunther* held that Title VII's Bennett Amendment only incorporated the four affirmative defenses of the EPA into Title VII. But it also noted that neither the EPA nor Title VII prohibit the use of prior salary as a "factor other than sex" (an affirmative defense) when setting pay even if a wage differential results, as long as an employer uses the factor reasonably in light of a legitimate business purpose.[14]

In *Boyd v. Madison County Mutual Insurance Co.*, the Seventh Circuit Court of Appeals held that a male supervisory employee, who was ineligible for pay bonuses intended for female clerical employees, could challenge the policy under Title VII without proving that he was performing a job substantially equal to that held by the women.[15] The employer ultimately prevailed, however, demonstrating that its bonus program had the legitimate business purpose of attempting to stop excessive clerical absenteeism.

In another noteworthy decision, *Oaks v. City of Fairhope*, the female director of the public library alleged that, although her position might not be substantially similar to that of the other city department heads, it was of comparable value, thus making the existing pay differential impermissible. The court found the librarian's position was not comparable to that of the city department heads who oversaw the distribution of essential services in the

city. Even though it found for the defendant, the court did not question the propriety of bringing such a claim under Title VII.[16] In both of these cases, the courts permitted plaintiffs to file suit based on some comparison of the intrinsic worth of different jobs, claims clearly not maintainable under the EPA.

In short, the *Gunther* decision simply did not resolve the formal legal status of Comparable Worth claims. Until the Supreme Court tackles that issue, employers undoubtedly will face such claims in the courts. Moreover, the Comparable Worth doctrine, albeit in judicial limbo, will encourage some employers in the 1980s —particularly in the public sector—to implement internal job evaluation procedures so as to attempt to measure the worth of occupations to achieve so-called "pay equity."

Legislative and Administrative Developments

The less-than-definitive current judicial disposition of the Comparable Worth theory is pushing the question of its status to the legislative branch. In 1981, the California legislature passed a law setting salaries of female-dominated state occupations in reference to Comparable Worth. Laws relating to Comparable Worth in the public sector also exist in Idaho, Minnesota and Washington. Comparable Worth legislation is pending in approximately seven other states including Illinois, Missouri, Nebraska, New Jersey, Ohio, Oregon and Pennsylvania. The Hawaiian legislature passed resolutions encouraging all employers to commit themselves to Comparable Worth.[17] As noted in testimony before the Congressional committee considering amendments to the EPA, several states including Connecticut, Illinois, Maine, Michigan, Nevada and Wisconsin have funded job evaluation studies to identify the extent of alleged wage depression in female-dominated jobs.

At the Federal level, Senator Edward Kennedy has indicated his support for legislation to amend the EPA to cover Comparable Worth claims. He has also asked Congress to pressure the Equal Employment Opportunity Commission (EEOC) to carry out its supposed mandate under Title VII and issue Comparable Worth guidelines to force employers to meet the requirements of the laws —which Senator Kennedy believes already encompass Comparable Worth.[18] Senator Cranston has introduced legislation (S. 1900)

to compel the EEOC and the Department of Labor's Office of Federal Contract Compliance Programs, which regulates employment practices of companies that do business with the Federal Government, to issue regulations requiring employers to follow the Comparable Worth doctrine.

In fact, the EEOC has not slated for publication in the near future any formal guidelines on Comparable Worth. It has issued only a memorandum to its field offices instructing its compliance officers on how to handle so-called "*Gunther* claims." It reiterates that, after *Gunther*, Title VII is applicable to claims of sex-based wage disparity without the necessity of establishing the equality of the job in question. The memorandum purports to open the door for a woman to allege she is being paid less than a male doing the same job for a totally separate employer.[19]

EEOC Chairman Clarence Thomas told a Congressional committee that, given the unclear state of the law, it is extremely difficult for the EEOC to handle Comparable Worth claims. The EEOC, he said, was not sure whether it has authority under Title VII or the EPA to handle the claims.[20]

Collective Bargaining and Other Efforts by Comparable Worth Advocates

Organized labor has not been content to wait for the courts, the Congress and state legislatures to address the Comparable Worth question. By exercising "self-help," labor and other groups are trying to implement Comparable Worth now. AFL-CIO Secretary-Treasurer Thomas Donahue called narrowing the wage gap between the sexes "the bedrock principle of the labor movement."[21] Of course, he did not address the fact that previous union bargaining demands are frequently a principal cause of any wage gaps and current wage relationships among various jobs.

District 1199 of the New England Health Care Employees' Unions recently negotiated so-called wage equity increases for predominantly-female health care workers in Connecticut. A pay equity fund equal to 1% of the workers' payroll was established to help implement the settlement. Local 101 of the American Federation of State, County and Municipal Employees won a pay equity raise of 5-10% for San Jose municipal employees in predominantly female jobs.[22]

The organization "9 to 5: National Association of Working

Women" organized a publicity campaign claiming that the John Hancock Insurance Company had a low wage structure for predominantly-female jobs. They claim that this led to a 10% wage increase for Hancock's clerical workers in 1981.[23]

Finally, the Communication Workers of America and American Telephone and Telegraph agreed to form a joint committee to develop a new job evaluation system, incorporating Comparable Worth as a goal, for non-managerial employees. It is being field-tested for final revisions and implementation.[24]

These voluntary, extra-governmental efforts may alter the national wage structure, thereby remedying the supposed wage inequities until or instead of any governmental action. But organized labor has also met resistance from within its own ranks. A recent appraisal conducted by the United Food and Commercial Workers (UFCW) of its own efforts to close the wage gap revealed several difficulties. For example, there have been rank and file protests over negotiating the same wages for different jobs. The fear is that if a portion of the total wage package is used to boost female wages, there will be no money left for wage increases for other employees. There is also resistance to changes in market-based wage differentials between various jobs.[25]

Conclusion

Clearly then, the push will continue throughout the 1980s for a remedy for the type of alleged discrimination which the Comparable Worth advocates believe exists. The courts, without further guidance from the legislatures, will still have difficulties resolving the issue of whether true Comparable Worth claims—the comparison of dissimilar jobs on the basis of their supposed worth to the employer—may be brought under Title VII. In the meantime, unions and other groups will try to alter the present wage structure, and if successful, could render judicial and legislative action moot, with important consequences for the American economy and all employers as well as society as a whole.

NOTES

1. 452 U.S. 161 (1981). The *Gunther* court "emphasize[d] at the outset the narrowness of the question before us in this case," stating that it was not called upon to rule on "the controversial concept of 'comparable worth,' under which plaintiffs might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their job with that of other jobs in the same organization or community." *Id.* at 2246.

2. 29 U.S.C. § 206(d).

3. 42 U.S.C. § 2000e *et seq.*

4. 29 U.S.C. § 206(d). The EPA sets forth four "affirmative defenses" for the failure to pay equal wages. Wage differentials are permitted if they result from (a) a bona fide seniority system; (b) a bona fide merit system; (c) a system which properly measures earnings by quantity or quality of production; or (d) any factor other than sex.

5. Statements on Pay Equity before House Subcommittee on Compensation and Employee Benefits, Statement of Bureau of Labor Statistics Commissioner Janet Norwood, [1982] Daily Lab. Rep. (BNA) No. 180 at E-2 (September 16, 1982).

6. *Id.*

7. 613 F.2d 706 (8th Cir. 1980).

8. *Id.* at 715.

9. 18 Fair Empl. Prac. Cas. (BNA) 23 (S.D. Tex. 1978).

10. Statement of National Committee on Pay Equity, [1982] Daily Lab. Rep. (BNA) No. 180 at E-10 (September 16, 1982).

11. 28 Fair Emp. Prac. Cas. 739 (W.D. Wis. 1982).

12. *Id.* at 750.

13. 691 F.2d 873 (9th Cir. 1982).

14. *Id.*

15. 653 F. 2d 1173 (7th Cir. 1981), *cert. denied*, 102 S. Ct. 1008 (1982).

16. *Oaks v. City of Fairhope*, 515 F. Supp. 1004 (S.D. Ala 1981). (The court also noted *Gunther* did not replace equal pay with a Comparable Worth standard.)

17. Statement of National Committee on Pay Equity, [1982] Daily Lab. Rep. (BNA) No. 180 at E-9 (September 16, 1982).

18. Kennedy Tells Panel Studying Pay Equity He Will Introduce

Comparable Worth Bill [1982] Daily Lab. Rep. (BNA) No. 180 A-8, at A-9 (September 16, 1982).

19. EEOC Advises Field Offices on Methods for Handling Wage Bias Claims Post-*Gunther*, [1981] Daily Lab. Rep. (BNA) No. 178 at D-1 (September 15, 1981).

20. EEOC Chairman Thomas Says Comparable Worth Issue Hard to Address Because Law 'Unclear', [1982] Daily Lab. Rep. (BNA) No. 191 at A-10 (October 1, 1982).

21. Labor's Comparable Worth Push Encounters Internal Roadblocks, 4 Employment Relations Report 1 (September 30, 1982).

22. *See* note 17.

23. *See* note 17.

24. *See* note 17.

25. *See* note 21.

EDITOR'S NOTE

Mr. Morris' address was written prior to the release of the opinion in *American Federation of State, County, and Municipal Employees v. State of Washington* on December 14, 1983, which is the first decision to adopt the Comparable Worth concept. For an analysis of this case, see Appendix VII.

Chapter 6

The Comparable Worth Issue at State Capitols

by Judith Finn

A public policy specialist gives an overview of Comparable Worth legislation, pending legislation, data collection, and other initiatives by the various state legislatures.

Judith Finn is an economist and political scientist with extensive public policy research experience at Michigan State University and the University of Wisconsin. She has also taught political science at Kenyon College and conducted research on John Locke's philosophy of education. Mrs. Finn served as conference coordinator of Eagle Forum's Conference on Comparable Worth.

Participants at this conference have undoubtedly heard that the state of Washington has a new Comparable Worth law and that in the fall of 1983 that state lost a court case in U.S. District Court brought by the American Federation of State, County, and Municipal Employees charging discrimination against women employees of the state. You have probably also seen it cited or heard it asserted by proponents of Comparable Worth such as Senator Kennedy that some fourteen states around the country have already provided leadership and direction by amending their Equal Pay Acts to make Comparable Worth a part of that statute.

In a way, this inaccurate statement overstates the number of Comparable Worth states and at the same time really understates the actual amount of activity on Comparable Worth occurring at the state level.

The goal of this panel is, first, briefly to give you an overview

of what is really happening in the state legislatures on the issue of Comparable Worth. Then, each of our next two speakers will discuss the Comparable Worth situation in his state in order to give us greater insight into the politics, *i.e.*, who the protagonists are, what they are trying to accomplish, what are the issues being debated, the differing approaches, and the impact of the legislation.

We have the highly unusual situation that Comparable Worth advocates are attempting to achieve this quite radical reform at the state and local level, our most conservative level of government. There are several explanations of why this has happened. First, because the Reagan EEOC and OFCCP have a philosophy of equal opportunity, the efforts of these agencies to make Comparable Worth the law and policy of this country by enforcing it administratively without Congressional direction have now ceased. Thus the Comparable Worth advocates have turned to the states.

Second, it is easier to achieve Comparable Worth in a regulated situation like state government because state governments are not subject to competition and will not go out of business if they are inefficient and pay non-competitive wages to their employees. Thus the state bureaucracy provides an excellent "laboratory" for such radical schemes. Third, there has been no opposition whatever to Comparable Worth being sold as "pay equity" for women in state employment. The groups that would be most affected by such legislation, and would be relied upon to raise questions, have not come forward to oppose pay equity for women. It would even be fair to say that this is a conditioned response after having dealt with the EEOC and feminists in general.

For all of these reasons, then, there is a great deal of effort and pressure for Comparable Worth being applied at the state level and also to a considerable degree at the municipal level. These efforts are usually directed by the Commissions on the Status of Women or by the unions of state and municipal employees.

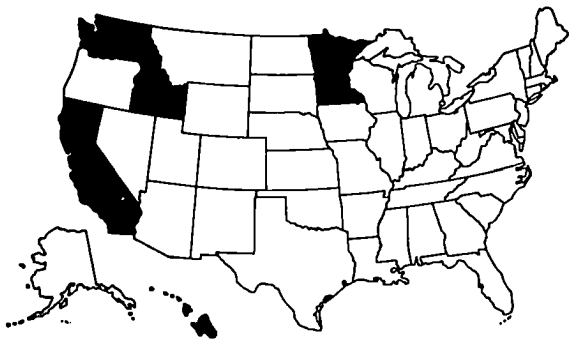
Let me summarize the activities in the states before turning to our panelists for their reports on particular states. Basically there are four types of activities: 1) legislation; 2) data collection and job evaluation studies; 3) litigation; and 4) collective bargaining and administrative enforcement.

1. Legislation

Five states have passed Comparable Worth legislation. These laws are all relatively recent and all except Hawaii apply only to

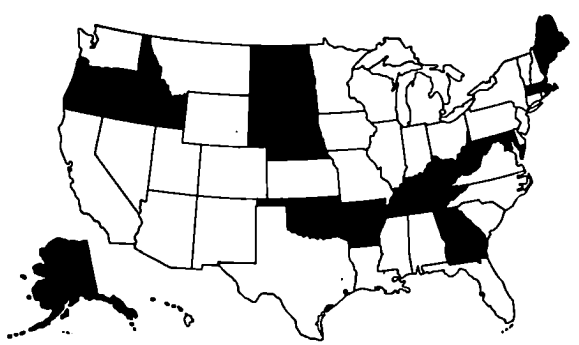
state employment. Hawaii's law requests the private sector to adopt the Comparable Worth concept but it has not been implemented in any way. The five Comparable Worth states are shown on Map #1.

Map #1
States with Comparable Worth Laws



There are 15 states that have comparability language in their Equal Pay Acts, passed in the 1950s and 1960s. However, none of these laws has been recently amended or interpreted to require a Comparable Worth standard. These 15 states are shown on Map #2. Indeed, the legislatures in these states would probably be surprised to find they are counted as having Comparable Worth laws because there has been no recognition of this aspect of their Equal Pay Acts either by the legislatures or the courts.

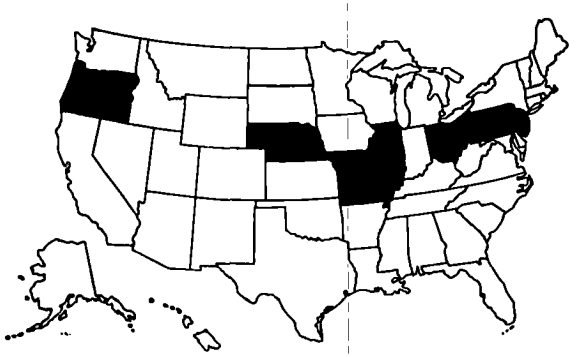
Map #2
States with Comparable Worth Language in Equal Pay Acts



There are six states where Comparable Worth legislation is pending at the present time. These states are shown on Map #3. Pending legislation is a bit difficult to pin down. For example, Michigan is not included on this map because, even though there was a Comparable Worth bill pending in the 1982 legislative session, it has not been introduced in the current session. In Ohio a bill has been introduced that would authorize a job evaluation study and then rectify any discrimination found, thus telescoping the usual procedure. Pennsylvania is the only state where a bill to impose Comparable Worth on the private sector is pending. They went from doing a job evaluation study of state employment to introducing a bill applying to private enterprise. The Missouri bill is the more usual type applying only to state employment.

However, it is absolutely clear that proponents *do* seek to achieve Comparable Worth wage-setting in the private sector throughout the country; they are simply attempting it in incremental steps. Once they establish Comparable Worth for state employees, it would be easier to require it in the private sector.

Map #3
States with Comparable Worth Legislation Pending



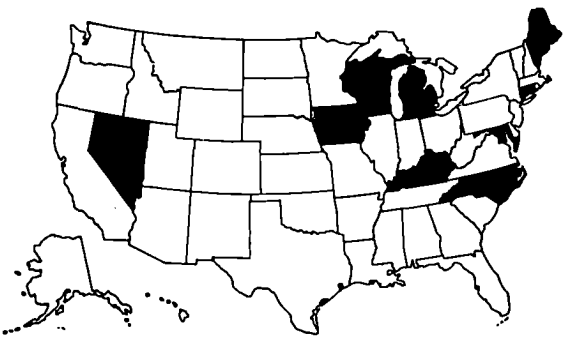
2. Data collection and job evaluation studies

Nine states have made authorizations for data collection on discrimination, the wage gap, Comparable Worth actions in other states, and/or occupational segregation or have made authorizations for job evaluation studies, usually on state employees, by management consulting firms. These nine states are shown on Map #4. All the states that have passed Comparable Worth legislation

(Map #1) or where it is currently pending in the legislature (Map #3) have completed this data collection/job evaluation phase, but they are *not* shown again on Map #4.

Connecticut really has no Comparable Worth law but, on the basis of a job evaluation study, has instituted Comparable Worth in state employment and appropriated money to implement it. The outcomes of job evaluations are affected by the make-up of the groups sponsoring and conducting the study, and by the assumptions and limits built into the studies. In particular, the designers of studies have to make important assumptions about the role to be played, if any, by market wages. Firms such as Hay Associates will attempt to construct scales of job values independent of market forces when asked to do so, and this will almost always produce results that support the contentions of proponents of Comparable Worth on grounds that market wages embody discrimination (*e.g.*, Nebraska and Wisconsin). The assertion that market wages embody discrimination is unsubstantiated, and runs contrary to the conclusions of economists such as Lindsay, Finn and others. [See Chapters 11 and 13.] What is being measured in a job evaluation study that is not keyed to market wages is *not* discrimination. It is the difference between the subjective opinion of the evaluator as to what particular jobs are worth and the wage determined objectively in the market. The use of prevailing market wages is a crucial factor in the design and outcome of these studies. It should receive more attention by state legislatures at the time that they are considering a job evaluation study.

Map #4
States with Job Evaluation Studies Completed or in Progress



3. Litigation

There is a great deal of litigation against states and municipalities brought mostly by employee unions such as the lawsuit brought by AFSCME against the state of Washington. This union has brought suit against the cities of Los Angeles, Philadelphia, and Chicago, and against the states of Connecticut, Louisiana, Wisconsin, and Illinois. Suits have been brought under the Equal Pay Act, Title VII of the Civil Rights Act, and state Fair Employment Practices Acts.

4. Collective bargaining and administrative enforcement

Comparable Worth has also been implemented through collective bargaining, mediation and arbitration, and also by administrative decision. The cities of Colorado Springs and San Jose adopted Comparable Worth in this manner. Labor unions in New York have received financing for studies on how to achieve Comparable Worth through collective bargaining. This is, of course, more compatible with a free market than the other types of Comparable Worth.

During the Carter Administration, when Eleanor Holmes Norton was the chairman of the EEOC and Ray Marshall was Secretary of Labor, both the EEOC and OFCCP were actively engaged in preparing strategies for implementing Comparable Worth by administrative enforcement. These attempts to enforce Comparable Worth administratively have ceased under the Reagan Administration.

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Chapter 7

Minnesota's Experience With Comparable Worth

by Daniel Foth

A labor relations consultant gives a first-hand report on who wins and who loses when legislators, lawyers, bureaucrats, and unions play tug-of-war with Comparable Worth.

Daniel Foth, Esq., had extensive experience with Comparable Worth as the labor relations consultant for the League of Minnesota Cities. In that capacity, he represented Minnesota Public Employers in bargaining, contract administration, EEOC, and Minnesota Human Rights claims. An attorney, Mr. Foth is currently the executive director of the Minnesota Chapter, Associated Builders and Contractors. He is the author of numerous articles and is a frequent speaker on Minnesota's public sector labor law.

I'm here to tell you what's happened in my state of Minnesota. All the things that Judy Finn and the other speakers have talked about have already happened in Minnesota. We passed a Comparable Worth law, which currently applies only to state employees. I thought it might be helpful to give you some history of the passage of this Comparable Worth law.

In 1975, AFSCME, the American Federation of State, County, and Municipal Employees, bargained in agreement with the state of Minnesota to require the state to conduct a study of jobs and salaries in clerical versus nonclerical classes of employees. The state didn't fund the study, so it never happened. In 1976, the state did

fund a Council on the Economic Status of Women, which was established as a legislative advisory committee.

The Council was charged by the legislature to study all matters relating to the economic status of women in Minnesota and make appropriate recommendations to the legislature. In three consecutive years (1976, 1977, 1978), the Council made various studies, none of which appear to have had much effect in Minnesota. In 1978 and 1979, the state did a comprehensive evaluation of the state personnel system with regard to the state salary and benefit practices, including a study by the Hay Associates. That evaluation was published in 1979. It drew a lot of comments but, again, nothing much happened with it. The study did show clearly that men as a median were paid a higher wage than women as a median—an approximate difference per year of $4,900.

Then, in June of 1981, the *County of Washington v. Gunther* decision came out. The Council on the Economic Status of Women in October established a task force on pay equity to study and examine the salary differences found in the public employment study and the Hay Associates study. The Council prepared a study called "Pay Equity in Public Employment" which showed that, despite an improvement in the presence of women among higher paid jobs, the majority of women were still heavily concentrated in lower paid clerical and service work. This concentration, the Council reasoned, was based on historical discrimination against women that had occurred within the state.

This Pay Equity study made a number of recommendations. The first was establishment of the Comparable Worth policy. "Comparable Worth" would be measured by skill, effort, responsibility, and working conditions, and the policy required the state to establish a "pay equity set-aside" for the targeted comparable job classes with discomparable wages. Interestingly, the job classes provided that those predominantly female classes have 70% female employees, and predominantly male classes have 80% male employees, on the theory there were more male employees, so the female classes of employees needed a lower percentage to make it fair. The study also suggested that the state should continue its strong Affirmative Action policy, and continue refining the job process.

We haven't had a lot of discussion about the Hay Associates, but the Comparable Worth advocates are no happier with the Hay

Associates on their side of the table than we practitioners are on the other side of the table. In fact, they think the Hay Associates are too conservative and really don't go far enough in terms of establishing historical discrimination bias in job evaluations. As a result of the Pay Equity study, the Council felt that the estimated cost to bring the salary for each female class up to the lowest salary for male jobs with the same number of Hay points (or the next male job if there were no similar Hay points) would be about $20 million. In order to do the whole job, the estimated cost would be $40 million.

In May of 1982, the legislature passed a Comparable Worth bill with unusual speed. I was at the hearing on the Comparable Worth bill. AFSCME and a number of women's groups testified—all in favor of the bill. The State Commissioner of Employment stood up and said, "It's a great idea, but it needs more study." The bill passed out of committee, and the legislature passed it the next day; the Governor signed it shortly after that.

The Minnesota bill provides that comparability will be measured by skill, effort, responsibility and working conditions normally required in performance of the work. This takes a market job evaluation totally out of the personnel system, and empowers the Commissioner of Employee Relations to set amounts for the comparability adjustments by bargaining unit, or in her Commission's plan for nonunion employees. The bill was not funded the first year to allow the Commissioner of Employee Relations time to put together these numbers.

The other most interesting thing about the bill was that the distribution of the money was not going to be handled with respect to classes which had been discriminated against historically. They were going to give the money to the bargaining units and let the union and the Commissioner's office decide how to distribute the money through their normal collective bargaining process. That seems a curious policy if the aim is to establish pay equity.

In 1983, about $21,760,000 was appropriated for the two-year budget period in Minnesota. This was broken down to about $12 million for the first year in 1983 and about $9 million in 1984.

There have been other developments in Minnesota in relation to Comparable Worth. In 1981, we experienced the hottest Comparable Worth debate in the state involving a Minnesota public employer. Anoka School District agreed with the Service Employ-

ees International Union to make some partial pay equity adjustments for some of the clerical workers based on the assumption that those job classes were of the same comparable value to the school district as the custodial workers. In addition to making some of these partial pay equity adjustments, the district agreed to do a pay study. Their study showed what you might expect it to show—that the clerical workers were still paid at a rate below the custodial workers even though they have the same number of evaluation points according to the Hay Associates' study in terms of the job value to the employer. As a result, the clerical workers are either on strike currently, or they are threatening to strike. They are demanding that the study results be fully implemented this year; they will not settle for partial implementation.

In addition, the state university system, which was not covered by the state Comparable Worth law, has had a number of studies done for both faculty and nonfaculty positions. The university system has made a number of adjustments through the years. Currently, they are basically red-lining or holding salary increases down for those people at the upper end of the bracket until the lower classes come up and meet a median level.

I have personal knowledge of a case in Washington County, which is a county on the eastern border of Minnesota. As a result of the state Comparable Worth study that had just come out, AFSCME came in and demanded that, since the study must be true for the state, it must be true for Washington County. Therefore, they should bring all the clerical workers' job class wages up to custodian worker job class wages. This was done, but the clerical wage rate was raised by 4% and the custodians' wage rate was decreased by 22%.

The only other area where I have been involved in public sector bargaining regarding Comparable Worth is in a little city called Babbitt, Minnesota, which has five or six public employees. In Babbitt, everybody is paid the same wage.

As far as Minnesota is concerned, I think that AFSCME and MEA (Minnesota Education Association) will certainly be pushing to extend Comparable Worth to cities, counties, and school districts. Furthermore, I suspect that the Teamsters and independent police unions are going to pursue the Comparable Worth issue if for no other reason than to get the same increases in wages for their members that AFSCME is attempting to get for the clerical

workers. In all of AFSCME's literature, this is their big issue, and I think they will continue to push it hard in Minnesota. Moreover, I expect that the state law will apply to other public sector employers, cities, counties and school boards within two years because AFSCME obviously intends to use the state system to show how non-economically disruptive it was. According to AFSCME, if Comparable Worth was good for the state, it ought to be good for the rest of the public employers.

I might add that the state raised the taxes this year by $1 billion. In 1982 we had a deficit of $500 million; now in 1983-84 we have a surplus of $600 million. It will be argued that this justifies spending $20 million on Comparable Worth.

In Minnesota, political subdivision public employers—unlike the state—who get into Comparable Worth issues will probably adjust wages upward and downward. In other words, if they see some type of discrimination bias, they will do what was done on a limited basis in Washington County; they will bring some job class wages down and other job class wages up.

Chapter 8

How Legislators Can be Conned by Comparable Worth

by Representative Penny Pullen

A member of the Illinois Legislature explains the problems legislators have in dealing with this issue, and how voting funds for an "evaluation" means opening a Pandora's box of trouble.

Representative Penny Pullen has served in the Illinois General Assembly since 1976. Presently serving as the House Minority Whip, she is a member of the Finance and Tax Committee. Representative Pullen has been the recipient of numerous awards as one of the country's prominent young state legislators. She was named the American Legislative Exchange Council's Leader of the Year in 1980. She is listed as one of the Outstanding Young Women of America. Illinois business and health care associations have repeatedly honored her as Outstanding Legislator of the Year. Representative Pullen is also a member of the National Council on Educational Research by virtue of a Presidential appointment with Senate confirmation.

I am a reluctant member of the Conference of Women Legislators in Illinois. Someone made a comment to me earlier this year that women legislators will be treated as something different, as perhaps a little bit second-class, as long as they think they need their own caucus. I agree, and I think that this applies across the board in society to women, *i.e.*, that women will be treated as second-class citizens as long as they think they need special treatment. This doesn't mean that the majority of women *think* that,

but they are being represented as though they do.

No one is suggesting that employers should not be concerned about pay equity. It is in the self-interest of employers, in fact, to be concerned about staff morale through fair treatment. What we are talking about is a sex-consciousness. I think that sex-consciousness is as inappropriate a form of discrimination in public policy as any other kind of sex discrimination which has been discussed over the years or as part of public policy. In fact, I think sex-consciousness, along with Affirmative Action and Comparable Worth and all those tinkerings, are real forms of sex discrimination much more than anything else which inadvertently existed in prior times which was *not* based on public policy.

The key to understanding Comparable Worth as far as the private sector is concerned is that employers and their employees should be *free*; that is the key to the converse of Comparable Worth. Employers and employees should be free to make decisions on wages together under their own arrangements. They should be free *not* to have such decisions imposed upon them. However, Comparable Worth as a public policy would impose wage scales and all sorts of wage decisions on employers.

Make no mistake about it. Even if most of the laws that are pending now in the states, or adopted in a few states, affect public employment only, the purpose is to get at the private sector eventually. Indeed, public wages have an effect on private sector wages, just as private sector wages have an effect on public sector wages. It is rather ironic that organized labor, which has been pushing "prevailing wage" for so many years, and has a way of setting government wages to reflect the highest of private wages, is now trying to do the converse. I think that the plumber in private industry, who finds that suddenly those jobs which are a little bit less manual than his own are going to be considered as *comparable* to his own job, will be rather disturbed if he finds that his salary is reduced as the result of union tinkering with Comparable Worth.

Two important facts should be remembered in approaching Comparable Worth in the legislative arena, the political sphere if you will. First of all, it should not be assumed that any legislators will understand the ramifications of the issue without extensive informational lobbying. People who know something about an issue assume that legislators know everything about everything. Legislators are usually generalists who know a little bit about a lot

of things. Each legislator usually specializes in one or two areas and learns a lot about those areas, but you cannot expect that any given legislator will be a specialist in this sphere. So, if you are concerned about legislation at the state level, or the Congressional level, or even the city council level, you must not assume that the legislators you are approaching have even heard the term. That doesn't mean they are stupid; they have a lot to do, and they have many concerns. If you are concerned about the issue, it is your job to bring it to the legislator's attention and educate him on it—in a polite way. Do not make any assumptions about what they already know.

It should not be assumed that all legislators will approach the issue with any regard for its effect on society, rather than its effect on themselves. A great many legislators are concerned about public policy in terms of its effect on society. In fact, I think legislators generally get hit with the bum rap that they are looking out only for themselves. I don't think that is true in a vast majority of cases, but there are some things that motivate some legislators, while different things motivate others. There are quite a few legislators, I believe, who look out for self-interest in the general sphere and who will go beyond self-interest with a few issues that they really care about. You can't bet that Comparable Worth will be one of those issues for any given legislator. So, don't assume that the legislators are going to immediately look at the logic of it and say, "Oh, my goodness, you're right. I will certainly vote with you." They may have reticence because of the possible political effect.

This issue is being presented in the states in the wake of the recently deceased Equal Rights Amendment, which was one of the most disruptive political issues of the decade. As an Illinois legislator, I can tell you that, in places where ERA continued to be voted on over and over and over for the last ten years, it was *the* issue of the decade; in many other states it disappeared after being ratified, or after the proponents went elsewhere because it was so obvious that it was not going to be ratified. Quite frankly, they went to Illinois.

But I can tell you that Comparable Worth can have an effect on legislators who have even stood firm against the Equal Rights Amendment in terms of their image as they perceive it, and what they have to do about that image. Bills passed in Illinois in the

early days of the Equal Rights Amendment battle repealed many laws which actually protected women. They were introduced by ERA foes in order to clean up their image with the feminists. That tactic did not work because the feminists had one thing they wanted and one thing only.

Let's consider the law that repealed voluntary overtime—it repealed the law that said women could not be forced to work overtime. Women could be required to work eight hours on a job, but their employer could not require them to stay overtime unless they wanted to. That law was repealed by a bill sponsored by ERA opponents, not proponents. The bill that repealed the law to protect women against too-heavy weightlifting—the weightlifting restriction law—was repealed by a bill that was sponsored by ERA opponents who wanted to throw a bone to the ERA proponents in their district to show them, "See, I'm not against women, I'm not against equality, I'm not against women's rights." So, protections for women fell by the wayside from the actions of ERA-conscious legislators.

This can happen in the Comparable Worth sphere, too, because it is perceived as a sex-equity issue. It is also coming immediately in the wake of the Equal Rights Amendment when that is still a sensitive issue in terms of elections. So, don't take a look at the ERA roll-call and assume that everybody who voted NO is going to recognize automatically that Comparable Worth is as mischievous an issue as ERA and should be opposed for the same reasons.

In Illinois, the feminists persuaded the legislature to imply endorsement of Comparable Worth legislation without considering the issue. They did this by getting an appropriation of $10,000 to study state employee wage comparability in 1982 and 1983. This was a specific add-on item to the appropriation for the Commission on the Status of Women, a commission which manages to get more funds every year. Somehow the commission's appropriation manages to become even larger than requested; funds for this Comparable Worth study were approved during the legislature's waning hours without any real discussion on the House floor about what the impact would be, or what the study was designed to accomplish.*

* This $10,000 state-financed study was used as the basis of a complaint filed with the EEOC in December, 1983 against the state of Illinois by nurses who accused the state of paying them $4,392 per year less than accountants although the "job evaluation" rated nurses higher in terms of required skills. *Editor's note.*

A few months later, the Governor created something called the Gannon-Proctor Commission. It is his executive commission on women, and it was interpreted by the realists in Illinois as a tactic to get the Governor re-elected. Unfortunately, he decided to follow through and set up this commission after the election. So, now Illinois has two commissions. Moreover, because we have two commissions, they are competing with each other. You can imagine the dynamic that this creates—*and* they are competing with each other on the Comparable Worth issue.

The Commission on the Status of Women, the long-standing legislative commission, is supposed to be looking only at public sector concerns, so the Gannon-Proctor Commission is looking at private sector concerns. Every time the Conference of Women Legislators meets, it gets into a big quarrel over what the Governor is doing with his Gannon-Proctor Commission because it seems to be seeping into the public sector. The whole thing is a hen fight, and it is ridiculous. Nevertheless, public policy *is* going to come out of this without sufficient conscious debate as a result of competition between the two commissions.

So, the Gannon-Proctor Commission commissioned the Hay Associates to do the private sector study, and the Commission on the Status of Women commissioned the Hay Associates to do the public sector study. The Gannon-Proctor Commission has sent out a questionnaire to all the private employers that they could reach, and they sent it on the Governor's office letterhead without bothering to mention, "Oh, by the way, this is completely voluntary." Those letters were rather intimidating to employers, so the commission is now collecting all kinds of information about the way employers view their employees, what their wage scales are, and that sort of thing. This can really be very mischievous. Hearings are being held on a couple of bills which will become the new litmus test as to whether or not you care about women if you are a legislator; and the public really does not understand.

As I mentioned before, I don't think that the plumbers are going to enjoy their pay cut. After all, it is not an unlimited pie out there. The economic resources of the private enterprise system are unlimited if you take productivity into account. But, if you put something into the system that moves wages up without enhancing productivity, the money has to come from somewhere; so, where it comes from is the guys at the top level being pulled down. Other-

wise, there is going to be a great crunch somewhere along the line, and there will not be enough money to pay the increased pay scales.

So, the guys at the top—the tradesmen primarily—are going to be losing out a little bit, and they are not going to be happy about it. It is going to be public unions versus private unions. I believe that the business community is thus far intimidated by the idea of having to go up against the feminists. They fear having women against them and ruining their image; they have as much problem as the politicians in understanding that real women do not necessarily think the way Betty Friedan says they do. Legislators are, frankly, bone tired of the feminist agenda, and they could give in easily in weariness if no resistance is shown by either the public or the business community. Labor is playing with fire, and it doesn't know it because labor never has recognized that there is a limit to the pie unless we factor in productivity.

Interestingly, one of our legislators at the Comparable Worth hearings last month in Illinois had the chance to question the representatives of AFSCME (the American Federation of State, County, and Municipal Employees). He asked them what their pay proposal was for the state, and they talked about their across-the-board pay raise which they have asked the Governor to implement for them. He responded with a very good challenge when he said, "How can you come here testifying for Comparable Worth legislation when your own pay proposal is an across-the-board pay raise *instead* of an attempt to bring about the equity that you claim to be so concerned about? If you think that there are certain levels of state employees who ought to be raised to *comparable wages* with other levels of state employees, and that, therefore, we need Comparable Worth legislation, why don't you propose that in your own pay package? Why are you going instead for an across-the-board pay raise?"

Well, it was a rather embarrassing question, and he didn't get a very satisfactory answer, as you might imagine. So, I think that the unions haven't even really thought through their support of this concept. This fact is one of the things that makes Comparable Worth a threat in Illinois. We have managed to hold off the chain gang, the hunger strikers and the people who poured blood on the floor and flags of the State Capitol, but when it comes to holding off the labor unions, it might be a little bit different.

Comparable Worth is truly a revolution. A Federal judge in Denver said in 1981 that Comparable Worth is "pregnant with the possibility of disrupting the entire economic system of the United States." That was a remarkably perceptive comment for a Federal judge.

Comparable Worth really *is* a revolution. It is not just a superficial change in pay scales in classes; the full accomplishment of Comparable Worth legislation is, indeed, a quantum leap to socialism. What else can you call government wage-setting? That's what the Comparable Worth advocates have in mind at every level. That's what they are promoting in the name of the slogan "pay equity." But pay equity ought to be established on the basis of employers' and employees' relationships and agreements with each other, not on what Teddy Kennedy or a Federal judge or any other politician tells them it should be.

PART III

EXPLANATIONS FOR THE EARNINGS GAP

Chapter 9

The Relationship of Women to Wealth and Poverty

by George Gilder

The economist-author of the best-seller *Wealth and Poverty* gives his scholarly/common-sense views on the economic value of women's traditional role and how it is an essential element in family wealth creation.

George Gilder is one of only a handful of authors in history who wrote a best-seller on economics. His Wealth and Poverty *has received national acclaim for providing a philosophical and moral affirmation of the American capitalist system. Mr. Gilder has sparked serious debate and rethinking about one of the most critical challenges society faces today—how to increase wealth and curtail poverty. He shows the essential role which the traditional family—because of its vision of the future through its children—plays in wealth creation. Mr. Gilder's other books are* Sexual Suicide *and* The Visible Man. *He serves as program director of the International Center for Economic Policy Studies and as chairman of the Economic Roundtable at the Lehrman Institute.*

My last meeting with Phyllis Schlafly was at the "Over The Rainbow" celebration of the defeat of the Equal Rights Amendment. That was a wonderful tribute to the power of one very positive woman whom, that night, I called "America's most effective political leader." It can't be said often enough that what she did in stopping the Equal Rights Amendment was virtually unique in our history. She stopped a constitutional amendment which had the

unanimous support of virtually every established institution in American life, as well as supposed overwhelming support in the public opinion polls. It was, in fact, the kind of impossible achievement that I associate with entrepreneurship which is what my new book, *Spirit of Enterprise,* is about. She accomplished a really great achievement of enterprise.

I hope that the Reagan Administration will take some encouragement from this kind of entrepreneurial activity in politics, because what I fear most is that the Administration will follow the public opinion polls rather than lead the public. To the extent that Administration succumbs to public opinion polls, those fleeting wisps of phantom sentiment, the Reagan Administration will become undignified and in the end look silly the way the Carter Administration looked silly. Jimmy Carter spent the whole last year of his Presidency following edicts of Pat Caddell, which changed from day to day as the polls shifted. When you follow the public like that, in the end the public responds with contempt. I think that America needs more leadership like Phyllis has given it, and I hope President Reagan can take inspiration from her.

The feminists' adoption of a campaign for Comparable Worth (as they call it) in essence means a confession of defeat and failure. They are declaring that, for the last several decades, they have been wrong in maintaining that, if discrimination were eliminated, men and women would perform in the work force in the same way, would gravitate to the same jobs, and would earn the same amounts of money. So, the feminists have given up on freedom and are now turning to force; they are bringing in all the male lawyers from the Justice Department and all the judges from across the country to try to achieve what they couldn't achieve on their own.

The use of government force is necessary because women have always resolutely refused to behave as the feminists want and as their theories dictate. Women know that there are things more important than pursuing their jobs to the utmost. Most women understand that there are more valuable roles in life than pursuing what even the feminists have often depicted as a "rat race." Because they know that there are more important things in life, they fail to win the "rat race."

This is very important because women understand that the effect of committing themselves first to the "rat race" is to sacrifice

their chidren on the altar of their own job and career commitments. Women understand that, if they do commit themselves primarily to jobs, the cost of this pursuit will be inflicted on society at large, which will then have to care for the children and respond to the social disorders which result from the mothers' obsessive pursuit of their own careers. So, for very good reasons, women have not followed the feminist prescription.

As a matter of fact, women have followed what I call the Bob Dole principle of job choice. He first explained this to me when I was writing speeches for him in his Vice Presidential campaign. He said he wanted to be Vice President because it would provide indoor work with no heavy lifting. This is precisely the first and prime demand of women in the work force—indoor work with no heavy lifting.

As a result, the women throng to those jobs which you see listed all the time as examples of jobs where comparable pay is not offered for Comparable Worth. There are teachers, nurses, clerks, and librarians—a whole array of indoor jobs which women seek in such numbers that they drive down the price. When the feminists tried to force women to leave these jobs and to compete with men in outdoor work with heavy lifting, all sorts of disasters occurred.

For example, there was the telephone pole disaster. The courts required that the telephone company make women climb poles. Women didn't want to climb poles, but the EEOC agreement required that women be made to climb poles. So the telephone company made special equipment for women at great expense and sent them out to climb poles. But they kept falling off the poles. They fell off the poles six times as often as men did, and that particular experiment reached a predictable conclusion.

The military, too, tried to overcome the propensity of men and women to perform particular roles. They tried to make women do nontraditional jobs. The quit rates of women in nontraditional jobs was between two and four times as high as the quit rates of men. The women just rebelled against this nontraditional work, would not do it, and voted with their feet against it.

The kibbutz was another example, which is interesting because it began with feminist and socialist principles that were so passionately held by its founders that the first generation to some extent followed them. But in every subsequent generation, the sex-role differentiation in the kibbutz has been more decisive until

today the sex roles in the kibbutz are more separated than in any other part of Israeli society. In every instance, it was the women who took the lead in rejecting the nontraditional work, which was originally prescribed for them, and in returning to home and family as their prime goals.

The military also had some wonderful episodes that are really worth studying because the feminists' efforts continue, as Michael Levin will tell you. He has made a specialty of exploring the absurdities that happen when the government resorts to force to create equality. This force has been exercised more in the military than elsewhere.

(Professor Levin has written a brilliant book which nobody will publish for the same reason that no one will publish a new edition of my book, *Sexual Suicide*. Even after my book, *Wealth and Poverty*, became a best-seller that sold 150,000 copies in the United States and another 150,000 around the world, Harper & Row, the publisher and beneficiary of these sales will not publish a new version of *Sexual Suicide*—even though its entire management committed themselves to me vocally and orally to publish it. A new edition may be published by a small regional publishing house in New Orleans.)

The commitment of the feminist movement to coercion rather than to freedom is once again manifested in its attempt to use government lawyers to impose feminist notions on our economy. Although the indoor-work-with-no-heavy-lifting regime has been generally accepted by women, the feminists have clanged out across the land and on the nation's airways with the notion that working nine-to-five is oppressive.

I was brought up on a farm where both my stepfather and mother worked from 5 A.M. to 9 P.M., and the other farmers around where I lived also pursued similar hours. The idea that working 9 A.M. to 5 P.M. is somehow oppressive and a source of pain and anguish seems to me rather peculiar, but it does reflect a reality about women's attitude toward the work force. This reality is entirely commendable because women *do* have more important things to do; and because they have more important things to do, they do not participate in career competition the same way that men do, and that is why women don't get paid as much.

The fact is that women prefer part-time work. Overwhelmingly in polls, they indicate they prefer part-time work to full-time work.

The latest Harris Poll on the subjct showed a 3-1 preference for part-time work, while men had a 4-1 preference for full-time work. This shows a radical difference in the attitude of men and women toward participating in the work force.

The result of this attitude is that one-third of women, as opposed to three-quarters of men in the work force, work full-time all year round. Women in their prime earning years are eleven times more likely to leave the work force voluntarily than are men. Women just do not pursue jobs in the same spirit that men do. That is the reason they don't earn as much. That explains the 59¢ slogan.

All this has been quantified in great detail by the Institute for Research on Poverty at the University of Wisconsin. This was an institute established during the so-called "war on poverty." It is manned almost entirely by liberal economists fully devoted to the proposition that discrimination explains most poverty in America and around the world. They have collected data to show how hard women work in the work force, judging from the intensity of their use of their credentials and qualifications, and the extent to which women exploit their earnings possibilities, having adjusted for the assumption of discrimination.

The results of their research show that married men work between 2⅓ and 4 times as hard—they exploit their earnings possibilities 2⅓ to 4 times as much as married women do, and 2 times as much as female family heads do, and 50% more than single men do. Moreover, the more credentials and qualifications a woman has, the less she exploits them—the more she converts them into part-time work, leisure, and time with her family. This difference showed up recently when feminists were complaining that women doctors earn less than male doctors. It turned out that they saw 40% fewer patients than male doctors. In other words, the more credentials and qualifications a woman has, the less likely she is to work hard in the work force, and the more likely she is to convert her credentials and qualifications into more leisure time and time with her family.

Men, on the other hand, respond in the opposite way. The more credentials and qualifications a man has, the more aggressively he exploits them. This difference is also manifested in that Harris Poll about preference for part-time work. The more credentials and qualifications the woman had, the more likely she

was to prefer part-time work to full-time work. As a matter of fact, it approached 5-to-1 in the top managerial ranks. If you have an overwhelming preference for part-time work, if you are eleven times more likely to leave the work force voluntarily during your prime earning years, if you exploit your earnings possibilities less and less as they increase, if you convert your greater credentials into more leisure rather than into more money, then you are not going to earn as much money as the man who makes exactly the opposite commitments.

So, the feminist demand for equal pay for Comparable Worth boils down to a desire to have women's credentials and qualifications converted into money without having to put in the assorted interludes of overtime work and the fervent commitment which most people have to make in order to earn high incomes. The essence of the Comparable Worth concept is a desire to have credentials, which women have in greater numbers than men (since women now go to college in greater number than men) converted into income without the kind of sacrifices that are ordinarily associated with reaching the top quintiles in earnings.

One group in our society, however, really suffers from the feminist campaign for Comparable Worth. In the feminist calculus, one group identifiably earns too much money. When you study their analyses of discrimination in America, you find that one large group of men seemingly benefits from "sexism." That large group of men is made up of men with high school diplomas, or less, and large families to support. In other words, they are generally lower, middle-class men who are desperately working to support their families. Their aggressiveness and commitment to the work force far exceeds the commitment of most of us. These husbands and fathers are the ones who would have to give up pay and advancement under this new proposition of Comparable Worth.

In other words, a Comparable Worth society would take money and jobs away from lower-class men with high school diplomas or less and large families to support, and give money and jobs to upper-class women with credentials and qualifications. That is the essential shift throughout the economy that is being advocated today by the Comparable Worth movement.

This would really be a disaster for our society because it would exacerbate what is already an appalling problem. What has happened in the United States is that the tax burden has been shifting

massively from families without children and from single people onto the backs of families with children. As a matter of fact, singles and child-free couples, as they call themselves, have experienced virtually no increase in average taxation since the early 1950s, while families with one child have experienced a 57% increase in average taxes, and families with four children have had a 378% increase in average taxes. These figures are from a paper by Eugene Steuerle published by the American Enterprise Institute.

The reason the burden has shifted so heavily onto families with children is the evaporation of the value of the child deduction. The child deduction would be worth approximately $6,000 today if it had risen with inflation and income since the Second World War. Families with children face a steadily increasing burden.

At the same time, the cost of raising children has steadily expanded. The Department of Labor has estimated that, after the first child is born, your income must increase by 57% in order to maintain the same standard of living and, with two children over 10 years old, your real income eventually has to double to meet the costs imposed. Children are no longer a financial asset; they cost money. At the same time that people have been wailing about the single's penalty and the penalty on two-earner-mostly-child-free couples, and Congress has responded readily to those claims, the real burden of taxation has shifted massively onto families with children while the costs of raising children have steadily expanded.

At the same time that these burdens on the lower middle-class family have increased, so have the benefits of breaking up the family increased! If the husband leaves and the family goes on welfare, it can in every case improve its income and benefits in services. In other words, the access to income and services is dramatically increased for all lower middle-class families in America when they break up and go on welfare. As a matter of fact, if you ascribe any value to leisure time, all the middle quintile American families would also benefit in terms of income and services by going on welfare. In particular, teenage girls in any American family can radically increase their access to benefits by having an illegitimate child. It is a great mystery to the sociology profession why illegitimacy has been massively expanding in the welfare culture in the United States.

I have written a couple of books about the welfare culture after interviewing hundreds of people. A teenage girl in a welfare household, where the father is gone much of the time and the mother is struggling with other children, where the boys are out on the street, lives in a tense and unhappy environment much of the time. But the government offers her a way out. It offers her a room of her own, an apartment of her own, *free*, separate from her family. It offers her several hundred dollars a month, plus free medicine and legal services, and a wide array of some 17 social programs—provided only that she has an illegitimate child. *That* is the real reason for the current problem of poverty which the press seems to blame on the Reagan Administration.

The chief source of poverty among women—the "feminization of poverty" that has recently been discovered—is divorce and separation. This is the key cause of the rising female poverty. A female-headed family with children cannot escape poverty except in the case of extraordinary efforts of extraordinary people. In general, if you have policies that expand the number of female-headed families, you increase the poverty of women; and you also increase the problems of violence and crime and suicide—the whole array of social pathologies that have been increasingly erupting in American society. The root of all this is the breakdown of the family structure, and the chief factor driving families apart is the steady expansion of welfare benefits accompanied by a steady increase of tax burden on families with children. Of course, society as a whole pays when families break down.

The essential wisdom on these problems was summed up by Ronald Reagan's caveman joke. This was widely regarded to be a degrading and outrageous statement by the President, but his essential contention—that it is women and family life which civilize and domesticate men and make them productive citizens—is increasingly evident in anthropological studies and in the work of demographic historians. E. A. Wrigley, a famous British demographic historian, has maintained that the nuclear family, which is often regarded as a product of industrial society, in fact preceded it by several hundred years in precisely those regions of Europe where the Industrial Revolution occurred. Where the nuclear family was not established, where extended families prevailed which did not impose the direct burden on the man to support his particular children, the Industrial Revolution did not occur.

In fact, the real relationship of women to wealth and poverty, which is the title of my speech, is the subordination of the short-term male sex drive to the longtime horizons of maternity and nurturing that women possess and embody. That is to say, civilization is essentially based on men subduing their short-term compulsions, their impulses to violence and fighting and short-term sexual experience, to the long-term horizons which women bear in their very wombs. The woman's very body tells her that she participates in the ongoing fabric of human life, that her life has a meaning that reaches into the future. The man doesn't learn this meaning in general, except through marriage.

Through marriage, men gain a future as significant as is embodied in women. Through the family, men get connections to specific children so that their fathers carry their horizons and ambitions beyond the short-term cycles pursued by single men and into the long-term goals of saving and wealth creation which produce a prosperous society. This proposition, which is the essence of the President's joke, is really the deepest wisdom of human society and a great truth. Feminists had conniptions on hearing it because this great truth strikes at the very core of all the fantasies and superstitions which they celebrate as "realities" of human society.

The family is *the* central institution of civilized society. To the extent that we adopt programs of Comparable Worth which involve ever greater government involvement in the society, and promote the steady usurpation by government of the man's role in the family, we will find increasingly erupting the same kinds of problems that government has already created so massively and tragically in America's inner cities.

The country which has most completely adopted the entire feminist agenda, including abortions and sex education and family planning and the whole leftwing agenda, is Sweden. And Sweden now has an illegitimacy rate of 40%. Sweden is one of the richest countries in the entire world—middle-class and white—and it has now attained an illegitimacy rate of 40%. *That* is the ultimate destination of the kinds of programs which the leftwing is continuing to present, and I hope that you will resist these current demands as doggedly as Phyllis has been doing for so many years.

Chapter 10

Discrimination, Productivity, and Marriage

by Walter Williams

One of the country's most articulate advocates of the free market explains the hokum of much of the debate on "discrimination" and shows how marriage affects women's labor-force productivity.

Dr. Walter Williams is the John M. Olin Distinguished Professor of Economics at George Mason University. He is one of the country's leading authorities on such subjects as market entry restrictions, wage discrimination, and the regulation of labor markets. Dr. Williams writes a nationally syndicated column, has given testimony before committees of both Houses of Congress, and is the recipient of numerous awards. His most recent book, The State Against Blacks, *has been made into a TV documentary under that title. Dr. Williams is one of America's most articulate and persuasive advocates—on the college campus, the lecture platform, and television—of the moral superiority of economic freedom. He has his Ph.D. in economics from UCLA and is the author of more than 30 books and journal articles in his many areas of expertise.*

It's a bit difficult to speak on the same panel with my colleague, Matt Lindsay, without repeating some things. He has covered the field very well, and so what I will do is try not to be too repetitious and maybe fill in a gap or two here and there.

First of all, I think that discussions of sex discrimination, just

like discussions of racial discrimination, succumb to the temptation to look for evil spirits and conspiracies to explain everything. Much of the literature, both popular and scholarly, about sex discrimination is guilty of this. Furthermore, much of it contains sloppy analysis, nonoperational words, and meaningless statistics. A lot of statistics you read in the field of sex discrimination are based on meaningless statistics, just like those in the racial discrimination literature.

Despite the enactment of the Equal Pay Act of 1963 and the Civil Rights Act of 1964, the wage differential between women and men, at least the measured one that we talk about a lot, has not decreased. According to the frequently stated lament, the median income of women is roughly 60% that of male income. Armed with this finding, women's rights groups and their supporters have called for a new remedy, and that is what we are talking about today—Equal Pay for Comparable Worth.

Equal Pay for Comparable Worth has grown out of the belief that past government measures, even with all those people at EEOC working to equalize earnings between the sexes, have failed. The Equal Pay for Comparable Worth doctrine rests on the finding that certain occupations are predominantly male and certain occupations are predominantly female. Those that are predominantly male pay higher wages than those that are predominantly female. That is what we discover by reading government statistics. The Equal Pay for Comparable Worth doctrine proposes to determine the "worth" of jobs to employers, and to other people as well. In the world envisioned by the people who support Equal Pay for Comparable Worth, truck drivers and secretaries might receive the same wage because someone would decide that their jobs are worth the same.

When we talk about sex discrimination, just like when we talk about race discrimination, it is important to cut our way through some of the confusion by getting some operational definitions of the terms we use. In the sex discrimination literature, the term sex discrimination is used in a manner that may describe two, possibly three, different phenomena. If we want to be analytically robust about things, we should have consistent definitions that we all agree with. Let me try to give some operational definitions to the words that we use to see whether this will clear our discussion and our thinking.

First, I think that a word like "discrimination" is a very good word, but it is used ambiguously. A good definition for discrimination is to say that discrimination just means choice. We all have to discriminate because scarcity requires that we choose. An example is that, when I married my wife, I had to discriminate against other women, and the law requires that I continue to do so. When you chose to come to this Conference, you had to discriminate against other possible uses of your time. So, we are forced, in the honest-to-God real world, to discriminate and there are all forms of discrimination. In some activities—let me speak for myself—I discriminate in favor of men and against women, while in other activities I discriminate in favor of women and against men. I am sure that most of us engage in this and many other forms of discrimination. As a matter of fact, for most of mankind, when we choose to marry one another, we systematically discriminate against having a mate of the same sex.

When people speak of sex discrimination, they often really mean sex prejudice. "Prejudice" is another good word and useful word, but it is misused. Prejudice, in the sense of one dictionary definition, simply means a judgment or opinion formed before the facts are known. Another way to describe this kind of behavior that we call prejudicial is to say that people form stereotypes; that is, they rush to a conclusion without finding all the facts. Sex stereotypes and other kinds of stereotypes constitute a part of optimizing behavior of individuals. In a world of scarcity, we are all forced to engage in prejudicial-type decisions and to form stereotypes. I can tell by some of the looks I'm getting that you might be a bit worried about this.

Let me give you a simple case. Suppose that, as we leave this room to have our coffee break, we turn the corner and see a full-grown tiger standing there. What would most people do? Most people would endeavor to leave the area in great dispatch, wouldn't they? Or otherwise to seek safety. That's a somewhat uninteresting prediction. But suppose I ask you, *why* will you run away from a tiger? Is your decision to run or otherwise to seek safety based on any detailed information about that *particular* tiger? Or, is your decision to run based on tiger folklore, how you've seen other tigers behave, or on what your friends have told you about tigers? Probably your decision to run is based on the lat-

ter. You are prejudging that tiger. You're making a stereotype. You are saying that all you need to know is that it is a tiger.

Now, those of you who were not prejudiced would attempt to get more information. You would go up and pet the tiger on the head, stroke him underneath his chin, and only then if he behaved in a menacing fashion would you run. But most people would make a quick calculation that the expected cost of an additional unit of information is greater than the expected benefit, and they wouldn't search for additional information.

We live in a world where information costs something, so we expect people to find ways to economize on information costs. One way to economize on information cost is to use physical characteristics as proxies for some other variable that might be costly to observe. For example, sex, height, race, religion, dialect, etc.—all these can be used as proxies for some other costly-to-observe variable, such as productivity, which is what we are discussing today. Some economists refer to this phenomena which I have described as statistical discrimination. I'd like to call it just prejudging, or stereotype formulation.

Let me give you an example where this is used, though it might be challenged, given the court decisions lately. Women present fewer automobile accident claims than men. Therefore, insurance companies charge women lower premiums on the average. Since insurance companies lack prior information or knowledge about any particular individual, they must set rates according to statistically significant risk groups. Therefore, the fact that a person is a female cheaply conveys information which suggests a *lower* probability of accident claim. The fact that a person is a male under 25 years old contains information that suggests a *higher* probability of accident claims. You can hardly explain why females as a group are charged lower insurance rates than males as a group by saying that insurance companies do not like males and they are engaged in a conspiracy against males.

Similarly, in employment choice, the applicant's sex may convey information about unobserved characteristics which pertain to the applicant's expected productivity. The employer may believe that women have higher turnover rates than men. There are two good reasons why a woman's employment will be interrupted to a greater degree than a man's. Women are more likely to bear children than men, so that's one reason for absence from the labor

force; furthermore, women are more likely than men to care for the babies once they are born. Women are also more likely than men to move or change jobs to accommodate their spouse's career changes. All this means that sex can be used as a valuable proxy variable for turnover rates. Turnover rates have a lot to do with productivity.

One study that Mather Lindsay did not talk about was done by my colleague Tom Sowell. It has to do with the impact of marriage on women. Sowell points out that single women with a Ph.D. and the same number of publications and other qualifications achieve the rank of full professor more than similarly qualified male academics. But married female Ph.D.s achieve that rank less. Furthermore, the 1968-69 academic salary of full-time female academics who were never married is slightly higher than male academics who were never married. Additionally, female academics who had never married had a higher salary than their married counterparts.

Sowell points out that these differences, according to surveys, are readily understandable because (1) married academic women put more time than married academic men into the care of the home and family, and (2) geographic location of academic couples is determined by the husband's career prospects rather than the wife's, which means when a couple moves, it is normally an *upward* move for the husband and a *downward* move for the spouse. Sowell also points out that married women academics, like other women, interrupt their careers for child-rearing or other reasons more often than men and nonmarried women.

So, it turns out that marriage gives the man a helper and marriage makes the woman a helpee. Marriage is very costly to women in terms of their career prospects because there is discrimination in the household. Somehow it has become an accepted practice for women to do the dishes and change diapers while the man sits on the sofa and catches up on his professional journals. If you have a distribution of activities in the household like that, you surely are going to find that these factors are registered on the market in terms of wages.

There are some other things that explain sex differences in salaries, which Professor Lindsay commented on. Some of these factors are barriers to entry. Open markets tend to reduce discrimination associated with likes and dislikes, but in many markets in the United States there are barrier entries. There are monopolistic

practices and legal restrictions which prevent women from competing with men for economic opportunities. Closed or monopolistic markets subsidize preference-based discrimination against women. To determine whether a market is monopolistic or has closed entry, a good rule of thumb would be to ask, is there a licensing law that governs entry into the market? If there is a licensing law that governs entry into the market, such a monopolistic barrier will tend to handicap the less preferred individual, or the less tried-out individual, such as women and blacks.

Another problem, a real problem, that I believe women face, which may explain some of the differences in salary, are the various wage restrictions, laws that govern wages that we have in the United States. One legal tool which handicaps women, I believe, is legal wage minima. Equal pay for equal work laws mandated by the Equal Pay Act of 1963 and the Civil Rights Act of 1964 mandate that employers pay the same wage to all employees doing the same job. Government-imposed or union-imposed wage minima, while they have good intentions, have some other effects that we might consider not so good.

First, where there are real productivity differences by sex, a law prescribing wage minima will tend to discriminate against the employment of women. Employers adjusting the worker productivity to the mandated wage will hire fewer women, if indeed there are real productivity differences between men and women.

Second, by the employer adjusting the worker productivity to the mandated wages, there will be discrimination against the least skilled worker. When I say that employees adjust worker productivity to the mandated wages, I simply mean that, if you mandate that an employer pay $10 an hour no matter whom he hires, the employer will only hire those workers who can indeed produce $10 an hour. That's what I mean by the employer adjusting productivity to the mandated wage minima. The employer will have no economic inducement to hire a worker who is so unfortunate as to have skills that would enable the worker to produce only $5 an hour. Employers, in light of equal pay requirements on other legal minima, will raise female employment qualifications to match those of males. This means that women who are employed by the firm will receive the same wage as men, but that less skilled women will not be hired at all. Thus, equal pay laws have a tendency to discriminate against the employment of less skilled women and to

favor the more highly skilled woman and the highly educated woman.

I know of no empirical studies on the redistributive effects of equal pay for equal work, but casual observation suggests that most feminists are highly educated females. That is, you don't find a lot of support among low educated women for laws that discriminate against low educated women; and that sounds perfectly reasonable.

I might just point out that unions have been at the forefront of discrimination against women in the labor force. We have had all kinds of laws in the United States, "protective laws" that have discriminated against women. By 1970 at least 46 states and other jurisdictions had regulations governing work conditions for women such as maximum hours, rest periods, time of the day they may be employed, and weight lifting restrictions. All these laws (of course, these laws have been banned recently) raise the cost of hiring women and they lower the relative cost of hiring men. Union restriction and discrimination against women is a broad phenomenon.

Susan Anthony pointed out that, in the 19th century, male labor came to realize that they can more effectively unite to put forward a uniform demand based on their own recognized needs and so secure higher payment than a woman could customarily ask or be likely to receive. Anthony points out that the Luddite riots which came to a head in 1811 among the framework knitters of Leicester appear to have been caused by the use of new machines which enabled manufacturers to employ women in work which formerly had been done by men. Machines permitted a weaker body to do the job. As a matter of fact, one of Karl Marx's major grievances against the Industrial Revolution was that it brought in machinery and gave women the power to compete with men.

Let me conclude here. Throughout the discussion of Comparable Worth runs the old belief in the notion of the *just* wage. When people talk about Comparable Worth it is as if just wages or fair wages could have objective meaning and be defined in the real world. Just wages or fair wages have absolutely no meaning whatsoever in economic theory, even though the people might be equally qualified. Let me give you an example. Wages in open market competition, or wages in general in the economics profession, are looked at as being equal or roughly equal to the marginal

revenue product of the worker. Conceivably you could have two workers who would have identical productivity in some related task. You could have one worker who, with a little knife, carves the Lord's Prayer on a wooden nickel and another worker who can carve a circuit on a chip. Let's say these are comparable skills; however, the market values the products differently. The Lord's Prayer carved on a wooden nickel does not mean a thing to most people, but a circuit carved on a computer chip means a whole lot to many people. While workers may have "identical" productivity, their wage structure is determined by the value of their goods in the marketplace.

Take another example. Let's pretend that women tennis players could be as good as men tennis players, on the average, so they would have equal productivity so far as playing tennis is concerned. However, if the tennis watching public has a preference for watching men play tennis rather than women, then the wage structure of female tennis players would be less than that of men.

Finally, I think that the movement for Comparable Worth can be viewed as a triumph of sorts. That is, since feminists and their supporters cannot find enough everyday garden variety sex discrimination to remedy under existing law and have turned their efforts towards achieving a "just wage," this suggests that women have made tremendous gains despite the median income canard.

Chapter 11

The Earnings Gap and Economic Choices

by Michael Finn

A scholar documents the economic choices that cause the earnings gap and demonstrates that the Comparable Worth advocates have failed to prove discrimination is a cause of the earnings gap.

Dr. Michael Finn is a senior economist with the Labor and Policy Studies Program of Oak Ridge Associated Universities. His work focuses on the operation of the labor market for scientists and engineers. He is an expert on the earnings gap, that is, on the determinants of differences in earnings and unemployment rates between men and women scientists. Dr. Finn's Ph.D. is in economics from the University of Wisconsin. He was a research associate at the Center for Human Resource Research at Ohio State University prior to joining Oak Ridge Associated Universities. His recent work includes a study on the immigration of scientists and engineers to the U.S. labor market. Among Dr. Finn's many articles published in professional journals is one in the American Economic Review on understanding the unemployment of women.

Comparable Worth is an approach to reducing the pay gap between men and women in the economy at large, or within a firm. Proponents of Comparable Worth assert that there is sex discrimination in the labor market, with the result that women earn less than men. Indeed, the assertion that the difference observed in the

average earnings of men and women is due in substantial part to discrimination is a crucial starting point for Comparable Worth proposals. If women were thought to earn less because they are less productive, then the proposals to upgrade women's earnings by upgrading the pay of jobs held predominantly by women would not have a broad appeal, either in the public imagination or in the courts.

While the discrimination hypothesis is crucial to the Comparable Worth proposals, it has never been proven. One would not know this, however, from listening to the proponents. I have reviewed the evidence they advance in support of this hypothesis and find it lacking.[1] It is just as noteworthy however that, even though the arguments advanced in support of this hypothesis are replete with misrepresentations of the data and research findings, there has been virtually no serious effort to refute these arguments. They stand virtually unchallenged in the extensive Congressional record developed on this issue.

This paper is offered as a critical review of the evidence marshaled by Comparable Worth proponents in support of the discrimination hypothesis. As such, it differs somewhat from a review of the research literature. For example, I will show that some legitimate but limited research results are misinterpreted by Comparable Worth proponents. There are problems with some of the research results. There are also problems with the proponents overstating the extent to which these results provide support for their contention that the earnings gap between men and women is due to discrimination in the labor market.

Let me also state that this paper does not address all forms of sex discrimination. I am not concerned here with whether parents socialize their children to play different roles in society based on their sex. I am not addressing the issue of whether there is sex discrimination in schools. Comparable Worth, because it involves a restructuring of the labor market, is not an appropriate remedy for sex discrimination in education. Although a few proponents seem to be saying that we should have Comparable Worth legislation regardless of the existence of labor market discrimination,[2] as a practical matter I think that the acceptance of the discrimination hypothesis is a necessary condition for implementation of Comparable Worth either by a legislature or the judiciary.

It is also useful at the outset to define the kind of market dis-

crimination which is most relevant here. Clearly, we are not talking about lack of equal pay for equal work. Not only are there laws assuring this, but it is generally recognized that market discrimination of this kind is of little or no significance as a cause of the earnings gap.[3]

If equal pay for equal work is not the problem, the other kind of market discrimination which comes to mind is discrimination in access to high paying jobs. Even though sex discrimination in hiring and promotion is outlawed by Title VII of the Civil Rights Act, and considerable effort is expended annually to enforce this prohibition on sex discrimination, it could still exist and could cause an earnings gap.

However, Comparable Worth advocates assert that sex discrimination in access to jobs is a cause of the earnings gap, but not the only cause. They also argue that jobs which are performed primarily by women tend to be underpaid relative to jobs held primarily by men. This argument does not necessarily imply that "women's jobs" should be paid the same as "men's jobs," but rather that "women's jobs" need to be paid more in order to reflect their relative worth to employers, when compared to "men's jobs." Here the argument is not simply that some employers discriminate by sex, but that paying market wage rates involves sex discrimination because the effects of past discrimination are still embedded in the wage structure. For policy purposes it would be desirable to keep these two distinct kinds of discrimination in mind as we look for evidence, because better enforcement of existing laws could help remedy discrimination in access to jobs, but would be of little help if market wages could be shown to embody sex discrimination.

Measuring Discrimination

We know that, on average, women earn less than men. They earn about 60 to 65% as much as men, depending on the measure used.[4] After adjusting for hours worked, women earn about 70 to 75% as much as men[5]—leaving an earnings gap of 25 to 30%. If we were sure that women contributed just as much to firms' productivity as their men workers, then we could attribute this gap to market discrimination, *i.e.,* to firms paying women less even though they produced as much as men. Of course, we are not at all sure of this. On the contrary, we know that, with respect to several worker characteristics which enhance productivity, women are less

favorably endowed than men. For example, they have less education, training, and work experience, and what they do have is usually of a kind that is less valuable* to employers (*e.g.*, sociology or fine arts education versus engineering or business).

There is one approach to isolating discrimination that we must reject out of hand. This is exemplified by testimony in favor of Comparable Worth during the 1982 Congressional hearings. There it was asserted that women continue to earn less than men performing the same work.[6] In support of this assertion was cited an April 1982 article in the *Monthly Labor Review* which compared median earnings of men and women in fairly broad occupational groupings such as sales, college teaching, accounting, etc. In most of these "occupations," the data presented in the *Monthly Labor Review* article showed a female/male earnings ratio of 80% or less even though the data were restricted to "full-time" workers. The article contained no attempt to draw inferences about sex discrimination from these data, but many people cite these statistics as evidence of discrimination.

The mistake made by most of the people who have cited these Bureau of Labor Statistics data is to confuse jobs with occupations; they assume that being in the same "occupation" means performing the same work. On the contrary, the occupation of "accounting," for example, includes 65 different job titles covering a wide range of skill requirements, according to the classification system used for this article.[7] These include nearly a million persons ranging from experienced C.P.A.s to seasonal income-tax preparers employed by H&R Block.[8] The government statistics don't tell us much about the qualifications of the people holding these jobs, but we can get some insight from education statistics. Although women held 40% of the "accounting" jobs in 1981, women earned only 10% of the Bachelor's degrees in accounting and only 8% of the Master's degrees in accounting awarded to the Class of 1972.[9] Thus, it is quite plausible that women earn less than men in "accounting" because their education and experience, on average, only qualifies them for the less demanding, lower paying

*I am not asserting that one can identify the intrinsic value of a worker who graduated from college with a sociology degree; rather, that the number of such workers is very great compared with the number needed by employers, and this produces a lower market wage relative to workers with engineering or business degrees.

jobs in this field. There are other factors which might also explain the lower earnings of women accountants, such as hours worked, degree of career commitment, etc. I am not here trying to fully explain the gap in earnings among accountants but to illustrate that simple comparisons of median earnings for occupational groupings cannot prove the existence of sex discrimination.

Is it unfair that women are more often than men employed in the lower paying kinds of jobs? It is both unfair and illegal under existing law to discriminate on the basis of sex in hiring, promotion, or in reviewing the performance of incumbents in particular jobs. However, it is legal, and it is not sex discrimination if firms distinguish among applicants on the basis of expected performance using attributes or credentials that are predictors of performance on the job. Also, it is possible that women, more often than men, might choose a lower paying job over a higher paying one because of hours, location, or working conditions.[10]

The standard approach used by economists to try to answer this question is a statistical analysis based on human capital theory. While productivity differences are usually difficult to measure, this approach doesn't really require a measurement of productivity directly. Instead it measures the worker attributes which are thought to cause differences in productivity (education, experience, etc.). In economists' jargon, these attributes are measures of "human capital." Then, multiple regression analysis is used to estimate the relationship between workers' earnings and worker attributes. Then, estimates are made of what the earnings gap would be if men and women received the same return for each unit of "human capital," with the only difference being the amount of human capital that each brings to the job. These estimates are then used to decompose the total pay gap into two parts. One part is interpreted as being due to differences in productivity; the other part, the residual, is the measure of discrimination.[11]

Usually, economists describe the residual as "discrimination" (using quotation marks) or they describe it as a measure of "discrimination and other factors," for it is only under a set of highly restrictive assumptions that the residual could be correctly interpreted as a measure of market discrimination.

Since these assumptions are never met, one could legitimately reject this approach as a means of measuring discrimination. How-

ever, the approach is increasingly being used both in judicial proceedings and by experts who advise policy makers. For example, a committee of experts set up by the National Academy of Sciences (NAS) at the request of the Equal Employment Opportunity Commission (EEOC) concluded that at least part of the earnings gap between men and women is due to discrimination. In support of this conclusion, the NAS committee cited the kind of studies I am referring to here, saying,

> "The differentials in average pay for jobs held mainly by women and those held mainly by men persist when the characteristics of jobs thought to affect their value and the characteristics of workers thought to affect their productivity are held constant."[12]

The NAS committee also acknowledged that the necessary assumptions are "never completely satisfied," and thus that ". . . there is always a degree of doubt as to the validity of the empirical findings regarding discrimination."[13] However, they still cite these studies in support of their conclusion. More importantly, however, many others cite their conclusion without any mention of the "degree of doubt" that the NAS acknowledges.[14] So, it is not enough to reject the usual approach to estimating "discrimination" as a residual; it is, unfortunately, also necessary to understand in some detail what assumptions are being violated when it is used in this manner. These fall into the following four categories.

1. *Statistical assumptions required by multiple regression.* There are a number of technical assumptions of regression analysis. The failure to meet these assumptions may mean that the analysis is inappropriate.[15] This is not a trivial problem, but it is a common problem and requires no special discussion here.

2. *Assumptions required by the technique used to decompose the earnings gap into "productivity" and "discrimination" components.* The standard technique used to decompose the earnings gap into "productivity" and "discrimination" components requires some very restrictive assumptions about the supply of labor—which in turn make it possible to describe the "residual" as a demand phenomenon (*i.e.,* employer discrimination) rather than a supply phenomenon. Specifically, to be interpreted as a measure of market discrimination, the decomposition technique requires re-

strictive assumptions about the supply of labor of women vs. men. However, women's labor supply may be expected to be more elastic (responsive to the wage rate) than men's because women have more nonmarket opportunities than men. If so, this means that the standard procedure produces apparent "discrimination" even when employers do not treat men and women differently. Indeed there is evidence that this is so.

In a case study of earnings among teachers in South Carolina, Richard Butler found that, when an alternative procedure was substituted for the standard approach, the estimate of the portion of the earnings gap due to "discrimination" (*i.e.,* the residual) fell from 55% to only 15% of the gross earnings difference.[16] This problem was not widely recognized until Butler's work was published in 1981. Thus, though the problem he described characterizes the human capital studies the NAS cited to support its conclusion, the problem and the bias it produces were not mentioned by the NAS authors. They did mention some of the remaining problems which I discuss below, however.

3. *Measurement error must be assumed to be negligible, or at least to have a negligible effect.* However, this is never the case. Consider, for example, the study by Mary Corcoran and Greg Duncan, published in 1979 and described by the NAS as ". . . perhaps the most thorough of this genre of studies."[17] Corcoran and Duncan found that their measures of qualifications and labor force attachment "explained" only about 44% of the earnings gap between white men and white women. I agree with the NAS that this study measures qualifications better than the others, but I don't think the measurement is nearly good enough to draw the inferences that are being drawn by the NAS and others who infer discrimination from the results. For example, the only measure of education in this study (and most others) is the number of years of school completed. They found that the employed women in their sample had, on average, only about one-tenth of a year less schooling than the employed men, and they estimated that this small difference in years completed accounted for only about 2% of the earnings gap.[18] Note, however, they had no other measure of differences in education in spite of the fact it is well known that men and women study quite different subjects in school.

These differences in education are so striking it is amazing that scholars could ignore them and then say they have controlled for

differences in qualifications. I have already mentioned accounting; it is representative of all business degrees. As recently as 1972, women received only 9.7% of the Bachelor's degrees and only 4.0% of the Master's degrees in business.[19] The highest paid college graduates outside business and the professional school graduates are the graduates in engineering, computer science, and physical sciences.[20] In these fields women earned 12% of the Bachelor's degrees awarded from 1950-1980.[21] The proportion is even smaller in the highest paid of these fields, engineering, where women earned only 1% of the two million engineering degrees awarded from 1950-1980.[22] While it is true that women are earning more college degrees than in the past, and have recently begun to earn as many as men, they still tend not to be in the fields that are considered good preparation for the highest paying technical and administrative jobs.

A similar difference in the kind of education received is observed among male and female students in two-year college programs.[23] At every level of postsecondary education, there has been significant movement of women into fields that were formerly predominately studied by males, but this will only slowly change the qualifications of the *average* women worker.

Some of the other variables used in these studies are also measured imperfectly. I will not review them all but mention briefly the treatment of work effort. At best, this is controlled for by measures of hours worked. This probably overstates the work effort of women workers compared with male workers. It is hard to get direct evidence, but a number of different studies suggest this. One such study indicates that women are more reluctant than men to accept the responsibility associated with some promotions because they, more than men, have accepted responsibility for household management and child rearing.[24]

Other studies have found that women have less work commitment than men, and that women value job characteristics differently, giving greater weight to comfortable working conditions, congenial associates, and an intellectually stimulating job, but less weight than men to the opportunity to earn a high income or to advance to high administrative responsibility.[25]

Still other researchers have observed that, in our society, women usually marry men with more education and better job prospects than they themselves have, and that this leads to a

specialization of labor within the household wherein the family income is maximized by paying most attention to the husband's career development.[26] The study by Corcoran and Duncan that attributes only 44% of the earnings gap to qualifications measures chose not to control for marital status because the authors wanted direct measures of productivity-related attributes. They did have some measures of work interruptions and absences from work, but these are inadequate to fully capture the differences in work effort and career commitment which seem to be associated with the different family roles played by men and women in our society.

4. *No important variables may be omitted.* Even if the problems outlined above did not exist, we could still not attribute the "residual" or unexplained portion of the earnings gap to market discrimination unless we were confident that all of the nondiscriminatory factors which affect earnings were being controlled for. This, however, is never the case. Consider again the study cited previously by Corcoran and Duncan. It does not control for occupation or industry on the ground that it is attempting to measure personal attributes that cause earnings differences. If people in some occupations or industries are more productive because of attributes that they bring to the job, then the measurement of job attributes should cover this. On the other hand, if they are more productive because of capital or technology provided by their employer, then at least in a competitive market, they should not be paid more. This is a defensible position if they measure all the attributes which enhance the workers' productivity. (They do not, as was pointed out above.)

In addition, however, many jobs pay above-average rates of pay because of adverse working conditions, and other jobs pay less because they offer an attractive environment. This is an important consideration which is completely omitted from most of the studies of this type, including the ones cited by NAS. Unfortunately, we do not have good measures of job or occupational characteristics, how these vary by sex, and how these are compensated. Further, some of these compensating differentials may be controversial. Some proponents of Comparable Worth have indicated that they reject the notion that hard physical labor should be compensated more than psychological stress which is involved in office jobs.

The issue here, however, is not whether this should be so or not, but, given workers' willingness to do different jobs at given

wage rates and given employers' needs, how indeed does the market value these job characteristics? With respect to job characteristics such as hard, dirty work, and pressure or stress, I cannot answer that question because we don't have the necessary data. However, we do have fairly good data on one important job characteristic: job-related accidents and injuries.

There is no question that men perform more dangerous jobs than do women, on the average. Women are concentrated in occupations and industries where accidents and injuries are less common (banking, teaching) and are infrequently employed in the most dangerous industries (construction, mining). OSHA data reported by the U.S. Department of Labor indicate that the occupational injury and accident rate for women is about one-half that of men.[27]

Recent research on compensating differentials has produced estimates that firms in industries with an average level of accidents pay weekly wages 13.6% higher than the wages paid to individuals in a risk free industry.[28] Thus, if women's risk is about one-half that of men, we might expect this to account for a difference of about ½ of 13.6% or 6.8% in the average earnings of men vs. women. While this is only an approximation, such a figure might be too low because the accident and illness data collected by the U.S. Department of Labor do not include many of the serious illnesses such as cancer and black lung disease (a common illness of coal miners) which occur with a long gestation period and thus are underreported to employers. It is widely reported that workplace hazards account for 20% or more of cancer incidence.[29] Given the widespread fear of cancer and the sex distribution of employment, it seems plausible that a compensating wage differential estimated from OSHA data may underestimate the true extent to which wage differentials are due to differences in the perceived risk of job-related injury and illness.

The preceding discussion of occupational accidents and injuries does not provide a definitive estimate of the contribution that these can make to explaining the earnings gap. However, strong evidence was presented that the premium paid for dangerous jobs is not a trifling one, and may account for an earnings gap of 6 to 7%. I offer this only as a good illustration of the kind of things which are being missed in the studies cited by NAS and others in support of the discrimination hypothesis. I do not

purport to be able to measure all of the relevant variables with accuracy. My purpose here is to point out that others haven't either, and therefore what they have failed to explain should not be interpreted as discrimination.

Some Studies Producing Anomalous Results

Suppose for the moment that we were willing to overlook the problems I have outlined above, and wanted to accept the standard approach to measuring discrimination in the labor market. (I remind you that by "standard approach" I mean measuring the attributes of men and women workers, estimating the relationship between attributes and earnings for men and women, and then decomposing the earnings gap into a "productivity" component and a residual, which is interpreted as a measure of discrimination.)

If we were to accept this approach, as the NAS and the supporters of the Comparable Worth doctrine seem to, then we might be expected to explain some of the anomalous results that have been produced using this approach.

Using the standard approach of defining the unexplained residual as "discrimination," Medoff analyzed 1970 Census data and found that there was more "discrimination" in the states that ratified the Equal Rights Amendment to the U.S. Constitution than there was in the states that refused to ratify it.[30] This goes against the conventional wisdom that E.R.A. was ratified in states which are more progressive in their attitude toward women's rights.

What I have called the standard approach has also been used to study pay differentials in an historical context. Tannen and McGouldrick analyzed textile workers in 1910 and 1970. They found that the "residual in favor of men" that existed in 1970 did not exist in 1910. Why? There was no Equal Pay Act or Equal Employment Opportunity Commission in 1910. I personally don't think the residual is a good measure of sex discrimination, but if I did I would be hard pressed to explain why sex discrimination, so measured, has increased over this century.[31]

Finally, there was an interesting study recently published by Barry Chiswick which tried to explain the earnings differences between Jewish males and other white males in the United States, using data from the Census and other sources.[32] Chiswick used the same variables that are common to most of the so-called "discrimin-

ation" literature in economics, *e.g.*, years of schooling and years of experience. His study was confined to second generation Jewish immigrants for reasons of data limitations, so he compared these with other white men who were also sons of immigrants but not Jewish. In the aggregate, the non-Jews earned only 64% as much as the Jews. Of this earnings gap of 36 percentage points, 16 percentage points (nearly half) remained even after controlling for qualifications in the usual manner. Chiswick notes that the residual exists because the Jews get more earnings from a year of schooling than do the non-Jews. This is one of the many similarities with studies of the male/female earnings gap. However, Chiswick does not draw the usual conclusion and say that nearly half of the Jewish earnings advantage is due to discrimination. Common observation and scholarly studies suggest that, if discrimination affects this earnings ratio, it probably is discrimination *against* Jews. Chiswick speculates that the "unexplained differential" may be due to "cultural characteristics that enable Jews to be more productive in the labor market with the human capital embodied in them."[33]

What these studies have in common is that they produce anomalous results. I don't believe that the textile industry or the difference between Jews and non-Jews is entirely comparable to the male/female earnings gap that is the subject of this paper. However, I note that, if cultural factors are the secret to understanding the "residual" when studying Jewish/non-Jewish earnings differences, then similar cultural factors may also be important to understanding the male/female earnings gap or the black/white earnings gap. It would be nice if we could measure these directly, but I must agree with Dr. Cotton Mather Lindsay[34] that there is little prospect that this will ever occur.

Also worth mentioning is a recent study of the earnings gap between men and women physicians by Katheryn Langwell.[35] Langwell's 1982 study was a restudy of an earlier study of physicians' incomes which found an income differential between men and women which could not be explained by the available attribute measures. It stopped short of calling the residual discrimination, suggesting that before this was done the possibility that women might be less efficient practitioners than their male counterparts should be examined.[36] Using data from a major AMA survey of physicians, Langwell found an earnings gap in 1977 of 39% in an-

nual earnings. However, women physicians worked fewer hours; the gap in *hourly* earnings was only 22%. Only a small part of this 22% gap in hourly earnings could be explained by use of such variables as years of experience, or medical specialty.

Instead of simply concluding that the residual was due to discrimination, however, Langwell looked further. First, she examined the possibility that female physicians might have less demand for their services, either because consumers prefer male physicians or because some male physicians themselves will not refer patients to female physicians. If this were so, female physicians would face less demand for their services than male physicians. However, she found that the women physicians both had longer waiting times for appointments and charged higher fees for office calls compared with male physicians. Why, then, were the earnings of women lower?

In an attempt to measure productivity, Langwell compared the number of patients seen per hour in the office and found that women physicians see 38% fewer patients per hour. This is far greater than the 22% difference in hourly compensation from all aspects of practice. These statistics do not *disprove* the possibility that some part of the earnings gap may be due to market discrimination of some form. It is very difficult to prove a negative. However, these findings do suggest a very plausible alternative to the discrimination hypothesis. This is that women physicians differ from their male counterparts in that they choose to see fewer patients per hour. This may be because they try to do a more thorough job or because they prefer to work at a less hectic pace or both. Why might this be so? One explanation offered by Langwell is that male physicians are more likely to be the sole (or major) source of income in their families.[37]

Two more observations on this study seem worthwhile. First, it appeared at the same time (Spring 1982) as the *Monthly Labor Review* article which has been widely cited by Comparable Worth advocates. Nevertheless, if Comparable Worth advocates have read this study, they have chosen not to cite it. Second, this study provides evidence that contradicts the common assertion among Comparable Worth advocates that, when women enter a traditionally male occupation, the wages in that occupation fall. The studies I have cited indicate that the earnings of women physicians grew faster than men's at the same time that there was a large in-

crease in the proportion of physicians who are female.[38]

The physician study discussed above is unusual because it includes a direct measure of productivity. It showed that the usual "human capital" measures are not adequate proxies for productivity. Direct measures are not always possible, but they are used much less often than they might be. For example, studies of the earnings of college and university teachers should control for publication records, when possible. It disturbs me that a recent National Academy of Sciences study[39] on this subject failed to control for publications differences, or any other direct measure of productivity, and then was interpreted in the press as having found evidence of discrimination against women. In this particular study of the earnings of Ph.D. scientists in academia, the authors had access to data on publications but did not use them, even though women academics are known to publish less than men[40] and publications are well established as one of the determinants of income among Ph.D.s in academia.[41] *Science* magazine reported this study under the headline "Sex Discrimination Persists in Academe" and did not report the usual qualifications expressed by the authors.[42] I suppose that this kind of reporting has led many honest people into the mistaken notion that scientists have measured discrimination when in fact this is not the case.

Are Women Excluded From Good Jobs?

Most proponents of Comparable Worth argue that women are in relatively low-paying jobs not out of free choice but because they have been excluded from high-paying jobs. The NAS summarized three studies which some interpret to support this view.[43] These studies differ from the usual "human capital" studies in that they measure the particular job or job level held by each worker examined. However, to do this they usually have to confine the study to a single firm, and this means that it is difficult to generalize from studies of this type until there is a large number of them. A further limitation is that these studies use data that is as much as 10, 20, or more years old.

However, the fundamental problem in documenting exclusionary behavior by employers with the use of these studies is that they don't attempt direct measurement of exclusionary behavior. They tend to infer exclusionary behavior on the part of employers if the measured differences in jobs or job levels which exist between

men and women cannot be fully explained in terms of measured human capital variables. Since the authors don't measure all the relevant behavior of the employees and employers, it isn't possible for them to prove that it was unmeasured action on the part of employers (*i.e.,* exclusion of women) rather than unmeasured action on the part of workers which accounts for higher job level assignments of male workers.

Consider, for example, the study by Malkiel and Malkiel, who NAS says ". . . conclude that in this firm there was no unequal pay for equal work but there was discrimination in job assignment—specifically, that women were assigned to lower-level jobs than men with the same occupations."[44] How could they conclude this type of exclusionary behavior if what I have said about their methodology is correct? The fact is that Malkiel and Malkiel did not claim to have demonstrated the existence of this exclusionary behavior. Indeed, they said, "It is, of course, possible that such a pattern of job assignment does not reflect discrimination."[45] Then they went on to say that it "seemed" highly improbable that missing variables could account for the pattern of job level assignments. That is, their conclusion regarding discrimination in job level assignments was primarily a judgment call.

The evidence of exclusionary behavior in the other studies cited by NAS is similar and suffers from the same problem. The authors of these other studies agree. Halaby, for example, says of his study, "None of the evidence presented here (and this holds for other analyses of sexual inequality) actually documents the operation of discriminatory practices."[46]

The NAS does not cite any studies which provide direct evidence against the view that employers exclude women from high-paying jobs. However, research by Carl Hoffman and his associates should be mentioned.[47] Hoffman conducted detailed case studies in a number of firms and found that women were in lower-paying jobs not because of exclusion but, because of conflicting demands on their time, they turned down opportunities for promotion more frequently than men. Polachek also rejects the exclusion hypothesis using reverse regression which is a more direct method of testing the hypothesis than is the method used in the studies cited by NAS.[48] He concludes that the data indicate no obvious barriers of entry to any occupation.

Conclusion

The simple fact is that, in spite of extensive research efforts, the discrimination hypothesis is still just that, an unproven hypothesis. The fact that we have spent millions on research to test this hypothesis without resolving it definitively one way or the other clearly attests to the weakness of the research used to provide this test. I personally like the way this situation was summed up by Harriet Zellner who commented some years ago,

> "to . . . test for the existence of discrimination in the labor market by determining whether there is any wage differential left after controlling for all relevant characteristics is somewhat like trying to discover whether you left your watch in the kitchen by looking for it everywhere else first. It would be more efficient to look in the kitchen. It would be better to develop and test directly a theory of discrimination."[49]

There are some promising efforts along these lines. Three years ago Harry Roberts, a statistician at the University of Chicago, suggested an alternative to the usual residual approach.[50] It defines discrimination as the situation whereby women need to be *more* qualified than men to receive a given wage. Last year two economists at the University of North Carolina published the first economy-wide research results using this approach, attempting to measure discrimination directly, not indirectly as a residual as in past studies.[51] Their results are consistent with a conclusion of nondiscrimination. Specifically, they found that, for a given wage level, the women who earned that wage had more education but less experience and less job tenure than the men employed at the same wage, a result which they interpret as being consistent with a finding of nondiscrimination. It's too early to say that this has disposed of the discrimination hypothesis. For one thing they used the same data as was used by many of the earlier studies with all of the flaws that these data contain.

However, in my judgment data improvements will only strengthen these new results. But it may be that other researchers will be unable to replicate these results or will find methodological flaws that are not known at present. At worst, however, even if this

new research were completely discredited, we would be back where we were when Harriet Zellner made the comment I quoted earlier about looking for your watch everywhere else and then concluding that it must be in the kitchen.

This kind of support for the discrimination hypothesis is simply not enough to be convincing, and certainly not enough to warrant a fundamental and costly change such as substituting government-defined Comparable Worth for market wages.

NOTES

1. The primary source of this evidence is the 1,829-page record of the Joint Hearings before the Subcommittees on Human Resources, Civil Service, and Compensation and Employee Benefits of the Committee on Post Office and Civil Service, House of Representatives, Ninety-Seventh Congress, held September 16, 21, 30, and December 2, 1982, *Pay Equity: Equal Pay for Work of Comparable Worth*. Printed in this hearing's document are not only the testimony of the many witnesses who appeared before the Committee, but also the complete texts of several of the most important books and journal articles cited by the witnesses.

This document is hereafter referred to as "Post Office Committee Hearings on Pay Equity."

2. Eleanor Holmes Norton, Statement at Post Office Committee Hearings on Pay Equity, *op.cit.*, p. 42. Norton and a few others have argued that the free market may not produce enough nurses, teachers, etc., to meet social needs.

3. Winn Newman, "Pay Equity Emerges as a Top Issue in the 1980's," *Monthly Labor Review,* Vol. 105, No. 4, April 1982, p. 49, and Andrew I. Kohen, "Differentiation in the Labor Market," *Journal of Economic Literature,* Vol. 13, No. 3, 1975, p. 1261.

4. Nancy Rytina, "Comparing Annual and Weekly Earnings from the Current Population Survey," *Monthly Labor Review,* Vol. 106, No. 4, April 1983, pp. 32-36. This article explains the differences between the two different data series on the male/female earnings gap. The 65% figure is from the series on "usual weekly earnings" in 1982 (and has increased to 66% by the second quarter of 1983). Unlike the annual earnings series, the defiinition of usual

weekly earnings does not include earnings from second jobs or from unusual overtime pay and thus shows less earnings disparity between men and women (because women do not report as much overtime or moonlighting as men).

5. 1970 Census of Population, cited in Cynthia B. Lloyd and Beth T. Neimi, *The Economics of Sex Differentials* (New York: Columbia University Press, 1979), p. 59.

6. Gary Hart, Statement at Post Office Committee Hearings on Pay Equity, *op.cit.*, p. 16. Others also misinterpret the same data. See, for example, the testimony of the American Nurses Association at the same hearings, p. 271, where it is asserted, "Women continue to earn less than men performing the same work . . . for example . . . women accountants earn only 72% of what men earn . . ." Also, see statement of Julia Holmes, Action Director of the League of Women Voters, at the same hearings, p. 118, who asserts, "Yet, even where women work at the same jobs as men, their wages are lower. In 1981, according to the Department of Labor, female lawyers earned an average of $407 per week, male lawyers, $574."

7. Nancy F. Rytina, "Earnings of Men and Women: A Look at Specific Occupations," *Monthly Labor Review*, Vol. 105, No. 4, April 1982, pp. 25-31. The data in this article are from the Current Population Survey, which at that time used the same occupational classification as the 1970 Census. See U.S. Bureau of the Census, U.S. Department of Commerce, *1970 Census of Population Classified Index of Industries and Occupations* (Washington D.C.: U.S. Government Printing Office, 1971).

8. U.S. Bureau of the Census, *op.cit.*

9. Rytina, *op.cit.*, for employment and earnings of women in accounting. For degree awards, National Center for Education Statistics, *Earned Degrees Conferred: 1971-72* (Washington, D.C.: U.S. Government Printing Office, 1975), p. 752. It is well established that women graduates in accounting receive starting salary offers equal to those of their male cohorts. See National Center for Education Statistics, *Digest of Education Statistics, 1980* (Washington D.C.: U.S. Government Printing Office, 1981), p. 208.

10. Among highly skilled persons with high earnings potential, such as scientists and engineers, women's demonstrated preference for certain hours and locations is one of the most striking differences in the behavior and attitudes of similarly qualified men and

women. See Michael G. Finn, "Understanding the Higher Unemployment of Women Scientists and Engineers," *American Economic Review,* December 1983, and Carolyn M. Jagacinski and William K. LeBold, "A Comparison of Men and Women Undergraduate and Professional Engineers," *Engineering Education*, Vol. 72, No. 3, December 1981, pp. 218-219.

11. See, for example, Mary Corcoran and Greg J. Duncan, "Work History, Labor Force Attainment, and Earnings Differences Between the Races and Sexes," *Journal of Human Resources*, Vol. 14, No. 1, 1979, pp. 1-20. Also, Alan S. Blinder, "Wage Discrimination: Reduced Form and Structural Estimates," *Journal of Human Resources,* Vol. 8, No. 4, 1973, pp. 436-455. Also, Ronald L. Oaxaca, "Male-Female Wage Differentials in Urban Labor Markets," *International Economic Review,* Vol. 14, October 1973, pp. 693-709. Also, Steven H. Sandell and David Shapiro, "The Theory of Human Capital and the Earnings of Women: A Reexamination of the Evidence," *Journal of Human Resources*, Vol. 13, No. 1, 1978, pp. 103-117.

12. Heidi I. Hartmann and Donald J. Treiman, *Women, Work, and Wages: Equal Pay for Jobs of Equal Value* (Washington, D.C.: National Academy Press, 1981), p. 93.

13. *Ibid.*, p. 19.

14. See, for example, Ray Marshall, "Women's Employment and Affirmative Action," and Joy Ann Grune testimony, and Congresswoman Patricia Schroeder statement, in Post Office Committee Hearings on Pay Equity, *op.cit.*, pp. 943-944, p. 72, p. 615 and p. 12, respectively.

15. Franklin M. Fisher, "Multiple Regression in Legal Proceedings," *Columbia Law Review,* vol. 80, 1980, pp. 702-736.

16. Richard J. Butler, "Estimating Wage Discrimination in the Labor Market," *The Journal of Human Resources*, vol. 17, no. 4, 1982, pp. 606-620.

17. Mary Corcoran and Greg J. Duncan, *op.cit.,* cited in *Women, Work, and Wages*, . . . *op.cit.*, p. 19.

18. Corcoran and Duncan, *op.cit.,* p. 18.

19. National Center for Education Statistics, U.S. HEW, *Degree Awards to Women: An Update* (Washington, D.C.: U.S. HEW, 1979), pp. 26 and 28.

20. National Center for Education Statistics, *Digest of Education Statistics: 1980* (Washington, D.C.: U.S. Government Print-

ing Office, 1981), pp. 207-208.

21. National Science Foundation, *Science and Engineering Degrees: 1950-1980* (Washington, D.C.: U.S. Government Printing Office, 1982), pp. 23, 26, (NSF 82-307).

22. *Ibid.*, pp. 31 and 34.

23. National Center for Education Statistics, *op.cit.*, pp. 136-137.

24. Carl Hoffman and John Shelton Reed, "Sex Discrimination? The XYZ Affair," *The Public Interest,* No. 62, Winter 1981, pp. 21-39.

25. O. C. Brenner and Joseph Tomkiewicz, "Job Orientation of Males and Females: Are Sex Differences Declining?" *Personnel Psychology,* Vol. 32, No. 4, Winter 1979, pp. 741-750. See also, William B. Lacy, et al., "Job Attribute Preferences and Work Commitment of Men and Women in the United States," *Personnel Psychology,* Vol. 36, No. 2, Summer 1983, p. 324.

26. Robert H. Frank, "Why Women Earn Less: The Theory and Estimation of Differential Overqualification," *American Economic Review,* Vol. 68, no. 3, June 1978, pp. 360-373. Also, Robert J. Samuelson, "Work and Marriage," *National Journal,* July 16, 1983, p. 1506.

27. U.S. Department of Labor, *Perspectives on Working Women: A Databook* (Washington, D.C.: U.S. Government Printing Office, October 1980), (Bulletin 2080), p. 98. See also U.S. Department of Labor, *Occupational Injuries and Illnesses in the United States, 1975* (Washington, D.C.: U.S. Government Printing Office, 1978), (Bulletin 1981), Table 1. Also, U.S. Department of Labor, *Employment and Earnings* (monthly), for data on injuries and employment by industry.

28. Craig A. Olsen, "An Analysis of Wage Differentials Received by Workers on Dangerous Jobs," *The Journal of Human Resources,* Vol. 16, No. 2, Spring 1981, p. 180.

29. William R. Havender, "Science vs. Politics in Regulatory Washington," *The American Spectator,* June 1983, p. 26. Havender points out that most experts estimate that occupational exposures cause only one to five percent of cancer in the U.S., but he also documents former HEW Secretary Joseph Califano's endorsement of a government report alleging a much higher portion of cancer as due to occupational exposure and the subsequent popularization of these exaggerated estimates by such diverse

sources as the *Wall Street Journal* and Jane Fonda's exercise book. This is quite relevant because the compensating wage differential is probably related to the perceived risk of illness more than it is to the actual risk.

30. Marshall Medoff, "The Equal Rights Amendment: An Empirical Analysis of Sex Discrimination," *Economic Inquiry*, Vol. 18, No. 3, July 1980, pp. 367-379. See also Janet C. Hunt, "Discrimination in ERA States," *Economic Inquiry*, Vol. 21, No. 1, January 1983, pp. 140-145. Using a different data set, Hunt replicates Medoff's analysis and shows that his finding of greater "discrimination" in ERA states disappears if the model is expanded to control for occupational differences. However, such controls for occupation were explicitly rejected by Corcoran and Duncan (on whom the NAS relied). Corcoran and Duncan argue that this must be done because the lower occupational status of women may be the result of market discrimination. Thus, one who accepts their approach and their findings still needs an explanation of Medoff's unconventional result that "discrimination" was greater in the states where the ERA was ratified.

31. Paul McGouldrick and Michael Tannen, "The Increasing Pay Gap for Women in the Textile and Clothing Industries, 1910 to 1970," *Journal of Economic History*, Vol. 40, No. 4, December 1980, pp. 799-814.

32. Barry R. Chiswick, "The Earnings and Human Capital of American Jews," *The Journal of Human Resources*, Vol. 18, No. 3, Summer 1983, pp. 315-336.

33. *Ibid.*, p. 334.

34. Cotton Mather Lindsay, *Equal Pay for Comparable Work: An Economic Analysis of a New Antidiscrimination Doctrine* (Coral Gables, FL: University of Miami Law and Economics Center, 1980). Lindsay concludes, "The list of those factors producing differentials in productivity and therefore wages, but which can never be controlled for statistically, is far longer and potentially far more important than the short list currently entered in any computer." p. 34.

35. Katheryn Langwell, "Factors Affecting the Incomes of Men and Women Physicians: Further Explorations," *The Journal of Human Resources*, Vol. 17, No. 2, Spring 1982, pp. 261-275.

36. Barbara H. Kehrer, "Factors Affecting the Incomes of Men and Women Physicians: An Exploratory Analysis," *The Journal of*

Human Resources, Vol. 11, No. 4, Fall 1976, pp. 526-545.

37. Langwell, *op.cit.*, p. 274.

38. Langwell, *op.cit.*, p. 265, indicates that hourly earnings of female physicians increased 48% from 1972 to 1977. During the same period the hourly earnings of men physicians increased 35%. During the same period the average hourly earnings of all hourly workers in private industry increased 42%. See U.S. Department of Labor, Bureau of Labor Statistics, *Supplement to Employment and Earnings Revised Establishment Data*, August 1981, p. 316.

39. Nancy C. Ahern, *Career Outcomes in a Matched Sample of Men and Women Ph.D.s: An Analytical Report* (Washington, D.C.: National Academy Press, 1981). Other economists have expressed similar reservations about this method, saying "although it may be 'traditional'. . . to measure discrimination by the residual—after various other factors have been netted out—I think a more humble attitude is to think of the residual as a measure of our ignorance. . . ." See Jacob Mincer, "Comment," in Cynthia B. Lloyd, et al., (eds.), *Women in the Labor Market* (New York: Columbia University Press, 1979), p. 284. See also comment of Brian Chiplin *Ibid.*, p. 266-267.

40. Jonathan R. Cole, *Fair Science: Women in the Scientific Community* (New York: The Free Press, 1979), pp. 62-68. Also John T. Bruer, "Women in Science," *Science*, September 30, 1983.

41. David A. Katz, "Faculty Salaries, Promotions, and Productivity at a Large University," *American Economic Revew*, Vol. 63, June 1973, pp. 469-477.

42. "Sex Discrimination Persists in Academe," *Science*, Vol. 214, No. 20, November 20, 1981, p. 890.

43. B. G. Malkiel and J. A. Malkiel, "Male-Female Pay Differentials in Professional Employment," *American Economic Review*, Vol. 63, September, 1973, pp. 693-705; also, Joan Talbert and Christine E. Bose, "Wage Attainment Processes: the Retail Clerk Case," *American Journal of Sociology*, Vol. 33, September, 1977, pp. 403-424; and Charles N. Halaby, "Sexual Inequality in the Workplace: An Employer-Specific Analysis of Pay Differences," *Social Science Research*, March, 1979, Vol. 8, pp. 79-104.

44. Donald J. Treiman and Heidi I. Hartmann, (eds.), *Women, Work, and Wages: Equal Pay for Jobs of Equal Value* (Washington D.C.: National Academy Press, 1981), p. 55.

45. Malkiel and Malkiel, *op.cit.*, p. 704.

46. Halaby, *op.cit.*, p. 102.

47. Hoffman, *op.cit.*

48. Solomon William Polachek, "A Supply Side Approach to Occupational Segregation," paper presented at the meetings of the American Sociological Association, Toronto, Canada, August, 1981.

49. Harriet Zellner, "A Report on the Extent and the Nature of Employment Discrimination Against Women," 1976, manuscript, quoted in Cynthia Lloyd and Beth Neimi, *The Economics of Sex Differentials* (New York: Columbia University Press, 1979), p. 215.

50. Harry V. Roberts, "Statistical Biases in the Measurement of Employment Discrimination," in E. Robert Livernash, (ed.), *Comparable Worth: Issues and Alternatives* (Washington, D.C.: Equal Employment Advisory Council, 1980), pp. 175-195.

51. Richard F. Kamalich and Solomon W. Polachek, "Discrimination: Fact or Fiction? An Examination Using an Alternative Approach," *Southern Economic Journal*, Vol. 49, No. 2, October 1982, pp. 450-461.

Chapter 12

The Earnings Gap and Family Choices

by Michael Levin

A professor documents the family reasons why women make choices which result in the earnings gap and shows the adverse consequences to women and society of attempting to force contrary choices.

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We live in an age which tends to treat the most innocent phenomenon as a "problem" to be "solved" by "public policy," which means the intrusive machinery of the state. So it has proven with the "wage gap" separating men and women—it is touted by feminists as one more proof of the oppressiveness of Western society and the inequitability of the free market.

The factual basis of the feminist case is that the income of the average full-time working female is approximately 59% of that of the average full-time working male. Indeed, the gap has actually

widened slightly over the last 30 years[1] despite the passage in 1963 of the Equal Pay Act, which mandated equal pay for men and women doing the same jobs. (The failure of the Equal Pay Act to collapse the wage gap is taken by feminists to show, not that discrimination is not and never was primarily responsible for the wage gap, but that discrimination is even more insidious and subtle than they thought.)

Of course, once this is stipulated to be a "problem," the range of "solutions" becomes limited to measures for making the average wages of full-time working men and women numerically equal. What is more, a number of sub-problems arise which invite their own sub-solutions. The clear tendency for jobs to segregate by sex, for example, must be met by attempts to "integrate" women into "non-traditional" jobs. Feminists see this as critical because, they claim, the percentage of women in an occupation correlates negatively with the wages that occupation pays.[2] This claim, which in effect has the market penalizing women for being women, is based on statistical studies of jobs which agree with respect to some fixed set of variables controlling job characteristics and "human capital," but differ with respect to the proportion of women performing them—a technique which obviously ignores the possibility of unidentified variables which affect wages and correlate with sex.

However the "wage gap" is construed, it becomes a "problem," an occasion for action, only given some antecedent presumption favoring numerical equality. And, indeed, the view that numerical equality is somehow the "natural" state, with deviations therefrom requiring special justification, is very common. Its proponents characteristically describe any such deviation as "inequitable," "a failure of parity," or the like.

Yet even in these terms it would seem that there is far less to the wage gap than meets the eye fixed on slogans, for the average full-time working woman is not the economic equivalent of the average full-time working man. She works on average 35.7 hours/week, for example, while he works on average 44 hours/week.[3] There are marked differences in job tenure—a reasonable proxy for experience. In 1978 the average male had spent 4.5 years with his current employer, the average female 2.6 years.[4] June O'Neill has, in fact, assembled variables which correlate differentially with males and females, and which explain 90% of the wage gap. Since the

wage gap is not a case of equals getting unequal returns, it is absurd to describe it as an inequity: it is explainable on reasonable economic grounds not involving invidious discrimination.

Most economists I have consulted agree that the difference between male and female labor force participation is due largely (not entirely) to the fact that women see themselves as more responsible for household chores than men, for much of the male/female difference disappears when men are compared to single women.[5] In 1971, for example, the wage ratio for strictly single Canadian women to Canadian men in the age cohort 30 and up was 99.2%.[6] Women, most especially married women, are less willing to put out the energy needed to work their way up the career ladder, and tend to see their income as supplementing that of their husband, the breadwinner. As a side effect, women seem more prepared to gravitate toward jobs, such as those in the clerical area, which permit repeated entry and exit without exacting a great economic toll.

Indeed, it is simply a mistake to say that women are thereby crowded into occupations lacking prestige (and thereby suffer the economic consequences of holding unprestigious jobs), since on the average female sex-typed jobs are slightly more prestigious than male sex-typed jobs.[7] Men may go after the most prestigious jobs, but they also settle for the least prestigious, while most "female" jobs, like typist or manicurist, have middling prestige. The consequences of the different expectations men and women bring to marriage and their relation to careers are virtually limitless.

To take a final example, the oft-cited average difference in salary between male and female college instructors can be explained by assuming (a) that the husband's career preferences are determinative in a two-instructor household, and (b) that, since female instructors like females generally tend to marry up, a greater proportion of female instructors marry male instructors than vice-versa. Female instructors must thus compromise their career ambitions more often in deference to their mates than must male instructors.[8]

To say that women sacrifice market earnings to household activities is of course not to say that female energy devoted to the family is less valuable than energy spent earning wages. The manifold activities of mothers sustain society, yet these activities cannot register as high-priced market commodities because they lack exchange value. The price attached to anything, labor included, is

the measure of its capacity to secure other goods and services in barter. From an econometric point of view, mother love has the disadvantage of being fixed on a small number of unique objects, and therefore is not exchangeable. I would pay a young mother handsomely if for five mornings a week she would transfer her love of her own infant to my children. Unfortunately, she does not regard children as fungible, so the routine services she is willing and able to provide for others are worth perhaps $5/hr to a stranger like me. Mother love falls outside the GNP not because society undervalues it—only feminists undervalue mother love—but because mother love cannot figure in exchange.

If the wage gap is a product of preference, how can it be construed as discriminatory? True, when women gravitate to secretarial work they depress its wage, in the sense that secretarial wages would rise if there were fewer female secretaries and males did not take up the slack—but this is only to observe that supply and demand is at work in this situation as elsewhere. So long as nobody forces women to be secretaries, so long as what brings women to the "pink collar ghetto" are their own life choices and skills (such as the greater female knack for repetitive tasks), just where is the inequity?

I would let these rhetorical questions rest except that the feminists take them so seriously and even supply what they think is a compelling answer. Feminists occasionally speculate about actual conspiracies to "herd" women into pink-collar jobs and "keep women's wages down," but the preferred feminist explanation of the wage gap is a straightforward application of the general feminist indictment of society: sex-role conditioning has handicapped women by pursuading them that their main task in life is not wage labor but childrearing, and that the best jobs are not "for them" even should they decide to work. Thus brainwashed, women of course subordinate career aspirations to family, tend to leave work when their children are young, and so on. Unmarried women, for their part, are conditioned to see the office as a hunting ground for husbands.

In short, according to feminists, the choices women make merely perpetuate the evil of "sexism." Even an observer as shrewd as June O'Neill writes: "One could also classify as discrimination the pervasive cultural factors that have led to different roles for men and women and that shape the extent to which women are

able to devote themselves to a career outside the home."[9] In the words of Nancy Barrett,

> "Economic gender roles in the traditional family work against economic parity in several ways. First, of course, they perpetuate gender-based stereotypes and stereotypical self-images. . . . Second, women's household responsibilities compete for time and energy with labor force activities; while for men, household (financial support) responsibilities are complementary to labor force activities . . . . The relative positions of men and women in the labor force are not the outcomes of supply and demand in the conventional sense. Rather, they are the outcomes of a complicated set of traditional expectations that have to be analyzed in a model in which gender confers a set of distinct property rights on certain activities."[10]

Both citations—drawn, incidentally, from writers who so far as I know do *not* unambiguously endorse characteristic feminist policy demands—deploy the two central feminist assumptions: (a) that economic gender roles are the result of *socially induced* expectations, and (b) that action based upon such "stereotyping" is discriminatory. I will consider these assumptions presently, but I would note now that "second-stage" feminists—*arrivistes* who claim to acknowledge gender differences without abandoning feminism—tend to agree with standard feminists that present economic gender roles are discriminatory, even while admitting that these roles reflect biologically programmed preferences.

Thus Betty Friedan speaks of the female's lower testosterone level as a "handicap" and, in *The Second Stage*, elaborates plans for communal living so that women will be able to pursue careers more easily despite their need to raise children. Benjamin Barber, a self-styled third-stager, insists that the great challenge posed by innate sex differences is that of finding ways "to preserve (or create) political and economic equality in the face of different sex roles."[11] Those few progressives who have faced the evidence for innate sex differences still do not want to let these differences run their course. They do not like the social order which results from behavior motivated by innate impulses. Neofeminists see these impulses as no more than the occasion for tinkering, generally by the state.

Yet even before turning to the origin and justification of the sexual division of labor, it is worth stressing the senselessness of virtually all talk of the economic disparity of men and women, and of all comparisons between women and blacks or other isolable social groups. Despite the feminist representation of men and women as hostile camps in a war for the world's goods, the simple fact is that *men and women marry.* The battle of the sexes is distinguished chiefly by the degree of collaboration.

That the world's men and women share a common fate puts that 59¢ figure in a quite new light; since the woman making 59¢ may be married to the man making $1, she will gain nothing if some government exertion raises her income at the expense of his. Their joint income will remain the same at best and probably fall, since state intervention exacts a cost from everybody.

Note, too, that job quotas conceived as compensation for discrimination allegedly suffered by women are absurd for the same reason. Even if contemporary statistical gender disparities are the legacy of past discrimination, you cannot make up for that discrimination to today's generation of women by giving a woman of today a job over a man of today, for that simultaneously worsens the situation of another of today's women, namely the man's wife. Gender quotas harm virtually as many women as they help—more, if one includes daughters of men passed over for jobs—and thus leaves the average position of the world's contemporary women unchanged and very probably lower. This elementary point tends to be overlooked as a result of feminism's quite successful propaganda campaign to portray the sexes as competitors. This absurd model applies only to career women who do not intend to marry and see not only men, but also married women and children, as competing for resources and opportunities she desires.

But the main trouble with the feminist diagnosis of the economic division of labor is its disregard of biology. The sexual division of labor has been a permanent feature of society because it expresses innate psychological differences between the sexes. This division has been a permanent feature of society. It is sometimes suggested that the home/work division of labor, and even the "nuclear family," were created by the Industrial Revolution, but this suggestion is misleading at best. In every society of which there is any record, men and women have paired off (sometimes polygamously, to be sure) to rear children in a family unit.

Granted, fewer people live with their grandparents and aunts and uncles in industrialized urban settings than in pastoral, rural settings—which may seem like an indictment of urban society until one remembers that a staple of literature of two centuries ago was the young man who wanted nothing more than to escape the confinement of his "extended family" and make his way by himself in the big city.

Moreover, in every society of which there is any record, men have carved a distinctive niche for male activities. If women have gathered berries, then men have hunted. Women in every culture have been the ones responsible for childcare and allied domestic tasks, while men have pursued extrafamilial activities. Wage labor may be a recent invention, but not this division of responsibilities. What was introduced by the Industrial Revolution, and more particularly the railroad and later the automobile, was commuting. Never before had men daily travelled tens of miles away from their homes to do productive work. Never before had the locus of productive work been so disconnected from the home. Yet whether or not commuting has changed the psychosocial character of work, it has not changed the basic sexual division of social tasks.

Any such cultural universal as the sexual division of labor suggests a non-social, biological cause, and indeed it is as certain as anything in science can be that men and women do differ in the abilities and, more importantly, the motivations, they bring to paid labor and everything else. Neurologists are now reasonably sure that females are born with a greater capacity for fine motor coordination and tolerance for repetitive tasks.[12] These innate capacities translate in adulthood into measurable differences in skills highly prized by a highly "technical" society. According to a recent study commissioned by the Department of Defense,[13] men score considerably better than women in mechanical ability.

But much more important than any innate difference in abilities is the difference in competitiveness which men and women bring to the labor market. Men are more competitive than women, which is to say more apt to do whatever is needed to get ahead, whatever "getting ahead" happens to be under the circumstances. This disposition, called "dominance aggression" by physiologist John Money, is perhaps the determinative factor in economic sexual differentiation. Men, more willing to put out the energy required to dominate in extrafamilial pursuits—success in the world

of work is such a pursuit—tend to go further in such pursuits. Not all men are prepared to make such efforts, but most of those so prepared are men, which is why most of those who excel in the hierarchical, competitive, rationalized world of the free market are men. For better or worse, money is a symbolic measure of others' estimate of one's worth to them, so that the impulse to compete and dominate will manifest itself as an impulse to seek activities for which remuneration is highest.

What is more, the mesh of this difference in competitiveness with the Law of the Margin magnifies the difference between male and female performance in the market. The Law of the Margin, most simply put, is that small differences can make a big difference. If one salesman is 5% more highly motivated than another—which is to say that he spends 5% longer at the office and makes 5% more telephone calls—he is likely to outdo his rival by far more than 5%. That extra 5% may be spent closing deals that his rival leaves open. After all, a mousetrap only 5% better than its competition will monopolize the mousetrap market.

It would be a gross error to suppose that women are simply less competitive than men but like men in every other motivational respect. Women have their own nurturant and cooperative drives which deflect energy away from the sort of competition favored by the economic marketplace.[14] Greater female concern with nurturing one's young has an obvious adaptive advantage, since a woman can reproduce only a few dozen times at most to a man's thousands. Liberated female mammals, as heedless of their offspring as male mammals tend to be and as feminists would like human females to be, went extinct a long time ago. The care of young children puts a premium on patience and above all empathy—and, given the helplessness of human children for the first few years of their life, a complete absorption in the child to the exclusion of extrafamilial pursuits. Once again, there will be women who do not experience these impulses, but they will remain in the minority and the basic institutions of human society will continue to coalesce around the impulses felt by the majority of women.

It may seem a long step from these general motivational differences between the sexes to the particulars of "sex role stereotyping." There may be a gene for nurturance, not for washing the dishes. In fact, however, "sex roles" as we know them

are just further consequences of the underlying general sex differences, given unavoidable environmental contingencies. As Steven Goldberg has noted,[15] there is a feedback loop between biologically given sex differences and the social roles they create. People, particularly parents, notice that on the whole boys and girls act differently. This perception is frozen in the more categorical maxim "boys do one sort of thing, girls another," which maxim then informs parental expectations about boys and girls.

Since boys and girls are expected to act differently, they are socialized to act differently, and when this socialization *takes*—socialization which emphasizes the differences in gender behavior—the original maxim is confirmed, and is deployed in another round of socialization. In this way, biological sex differences are magnified. It will not do to call this process "oppressive," since people are simply exercising their perfect right to form generalizations on the basis of experience, and if the object of the feminist exercise is to prevent the formation of "stereotypes," it will once again involve massive interference with the socialization of children by parents.

Role differentiation is, in any case, a rational solution to the problems of day-to-day life that most couples adopt spontaneously. Since the mother is taking care of the children at home while the father is at work, it stands to reason—to the reason of the people actually involved, if not to the reason of feminists—that Mom be responsible for keeping the home clean and preparing the meals. Somebody must do these things, after all. As children do not dematerialize after a year or two on Earth to let Mom "return to her career and fulfill herself," this modus vivendi crystallizes over time. I would add that, in my view, it is not out of the question that some innate female nest-building drive plays a role in the development of the sexual division of labor as well.

In saying that the wage gap—if not the precise figure of 59%—is justified because it arises out of the free choices of individuals following biologically-given impulses, it is crucial that we be clear about the kind of justification this is. I am not arguing that people ought to follow their biological impulses. In themselves, biological impulses are not good or bad; they are simply there. Nor am I arguing that the sexual division of labor works better than any other. I have no idea whether this is so, although it would be amazing if nature were so inefficient as to make each sex best at what the other sex prefers to do. Nor, finally, am I arguing that

men deserve economic preeminence because they want it. Wanting something creates no title to it at all.

Rather, I see the sexual division of labor and its broad statistical contours justified not by its intrinsic character, but precisely because it is the result of uncoerced, free human choice. Left to their own devices, responding to the contingencies of the environment and the unalterable constraints of the human condition, men and women in modern technological society develop skills which tend to be exchangeable in a ratio of roughly 6:10. In other societies the ratio might be different. There is nothing intrinsically admirable about this figure. It is perfectly all right, not a "problem," because it came about in a perfectly proper way.

The wage gap does not mean a denial of "equal opportunity" in any reasonable sense that can be attached to that much abused slogan. Women certainly have opportunities equal to those of men in the sense that there are *no laws preventing* women from undertaking any activity available to men. Women certainly have opportunities equal to those of men in the sense that even private discrimination against women is now expressly forbidden by Federal law. The average woman may not have the training of some hypothetical male counterpart, but training and like advantages are *means* that one uses to exploit an opportunity, not opportunity itself. Equality of opportunity must never be confused with equality of means. Few of us have the financial means to purchase a ticket for the Concorde, yet we all have the opportunity to do so.

Nor will it do to say that women have less opportunity than men in light of their family responsibilities. A woman who sacrifices a career for her children has *chosen* one of many paths that she might take, in much the way that a man who gives up a career in sports to join the military has chosen to forgo one path open to him. In neither case has any external force foreclosed any choices.

Finally, it borders on the idiotic to say that women lack equal opportunity because they are less interested than men in pursuing careers. Only feminists are so uncomfortable with feminine impulses as to regard these impulses as alien impositions on women. I have spoken to feminist-mothers (generally in the academic world) who do profess that "society made me have children" to the detriment of their careers, and demand some sort of social recompense for their sacrifice, quite forgetting that having a child is a joint decision with one's husband. (Possibly these women were talked

into having children against their will, but most women are not that extraordinarily weak-minded.)

This strange view that children are something that happens to women out of the blue (at society's behest) usually prefaces a demand that "society" let women climb the career ladder just like men while also having children. This is not a demand for equal opportunity at all but a demand to be protected from the consequences of one's choices, in this case the effects on one's wage-earning power of devoting a crucial portion of one's life to children. This is a request for special privileges. A man who takes a few years off to follow his guru to the Himalayas does not and cannot expect society to guarantee him academic tenure upon his return.

The incessant feminist message that a career is as vital (perhaps more vital) to mental health as a family has created a generation of women ever regretting the road not taken. This message has made women who spend full time with their children think they have cheated themselves. This message has burdened women who sacrifice children for work with deeply unsatisfied biological drives. No matter which way they turn, these women feel cheated and discontented.

So, I am skeptical about "solutions" to the wage gap problem because I do not see it as a problem at all. Of course, if private parties perceive wage-gap and career problems for women, I am all for these parties attempting private solutions. More power to the firm that wants to provide a day-care center for its female employees, and—as some firms actually do—require its male executives to put in a stint at such facilities. More power to the firm which disregards the messages from the marketplace and adjusts its salaries to the "social value" of the work done by female employees. Let them try such schemes and bear the consequences when their efficiency-minded competitors fail to follow suit. If the female employees retained by provision of day-care are really so much more valuable than male employees available without comparable expenditures, the market will have declared day-care an appropriate "solution" to childbirth. But if firms can do better by retaining men costlessly, day-care is not a market "solution."

I would guess a priori that the female-employee-plus-day-care package does not confer a net advantage to employers. Therefore, the only way to protect progressive, day-care (and Comparable Worth) providing employers from the adverse consequences of

their policies is to force *all* firms to adopt identical policies. Since feminist proposals invariably put "people before profits" (*i.e.,* are too inefficient to be selected from among competitors), they must involve state coercion to be effective. This is probably why failure to provide day-care facilities, or Comparable Worth, is generally described as "perpetuating discrimination" and as in violation of the standing public policy goal of ensuring "equal opportunity."

It is, to stress the point, even more obvious that voluntary adoption of Comparable Worth pay scales would be economic suicide in a market situation. If a firm simply raised the salaries of its females while letting the salaries of its males rest at the general level dictated by the market, it would incur costs incurred by none of its competitors. If it tried to correct matters by lowering the salaries of its male employees, these male employees would promptly disappear or haul in their union.

Since there are no market "solutions" to the wage-gap "problem," irresistible pressure builds for a government "solution." There are two characteristic ways the government can step in: by subsidizing preferred behavior or by mandating it directly. Subsidizing behavior has received rather less attention than mandating behavior in the wage-gap controversy, but it should be recognized that "non-traditional vocational training programs" funded by tax revenue fall into precisely this category. It is unobjectionable for private parties to make special training provisions for girls—although this would appear to violate Title IX. But public funding of such programs is the use of tax money in a way which discriminates on the basis of sex and thereby violates what is reputed to be current policy. It is in any case not obvious that such vocational training programs, undertaken in the name of "sex equity," actually increase female participation in "non-traditional" fields to any considerable extent.[16] It is quite objectionable, moreover, for guidance counselors to be forbidden from informing males and females that certain fields are sex-typed, as it is under the regulations implementing Title IX, since many activities *are* sex-typed and it is the first obligation of an academic official to tell students the truth.

But what I for one find most disturbing about the push for "non-traditional vocational education" is the rhetoric that hedges it. This rhetoric emphasizes the need for women to master careers because men are unreliable, because divorce is on the rise, because

"statistics show" that the average woman is going to have to spend a good portion of her life depending on herself and not on any man. We have, in short, the man-hating rant of fifteen years ago revamped into acceptable, respectable catch phrases.

Direct government intervention to eliminate the wage gap takes the form of equal pay laws and, more recently, a court decision under Title VII of the Civil Rights Act which uses the Comparable Worth slogan. The widening of the pay gap in the last three decades shows not only the patent failure of the Equal Pay Act to accomplish what it was supposed to accomplish, but the general tendency of government action to exacerbate problems (or situations). Given the premise that increased government intrusion in the market and the growth of government generally in the last three decades has fueled inflation and made it harder for one wage-earner to support a family, there is a simple explanation for the small but real growth in the wage gap. Women who entered the labor force in 1955 were more likely to do so for some positive reason, whereas proportionately more women who enter the labor force today do so out of perceived economic necessity. Women who entered the labor force in 1955 were thus more inclined to drive harder bargains than their counterparts today, thereby driving wages up.

If this is so, the one public policy that will "help working women," and indirectly tend to the sort of statistical economic parity so prized by feminists, is a return to the sort of prosperity that allows a single wage to support a family. This outcome would "liberate" the woman of the house to take a paid job or not, as she saw fit, to be a bit more choosy, and to earn a better wage if she did choose to enter the labor force. I have no magic formulas to offer in that regard except futher tax cuts, and corresponding cuts in government spending so that deficit financing does not reintroduce inflation through the back door.

The Equal Rights Amendment, if ratified, will in my view certainly be cited by feminists, and almost as certainly interpreted by the courts, to justify governmental interference with the market in the attack on wage-gap discrimination. Once one construes the differences in skill, motives and expectations with which women and men enter the labor market as social artifacts, they become the legacy of past discrimination. Don't women have a right to be free of that legacy? And don't laws under which that legacy continues

deny women that right? The wording of the E.R.A. is certainly loose enough to permit such an interpretation. Feminist organizations such as the National Organization for Women are forever promising that the E.R.A. will lead the way in the attack on the wage gap, and critics of the E.R.A. such as Phyllis Schlafly are forever insisting that the E.R.A. has nothing whatever to do with the wage gap. In point of legal logic, Mrs. Schlafly is probably right—but courts in this country for quite some time have not exactly been slavish followers of legal logic.

NOTES

1. Between 1955 and 1959, for example, white women earned on average 63.2% of what white men earned, while by 1978 this figure had dropped to 58.6%; See Donald J. Treiman and Heidi Hartmann (eds.), *Women, Work and Wages: Equal Pay for Jobs of Equal Value* (Washington, D.C.: National Academy Press, 1981), Table 3, p. 16. In 1982 the figure was 62% (*New York Times*, October 3, 1983).

2. Treiman and Hartmann, *op.cit.*, pp. 82-89.

3. June O'Neill and Rachel Braun, *Women and the Labor Market: A Survey of Issues and Policies in the United States* (Washington, D:C.: The Urban Institute, 1981), Table 8, p. 24.

4. *Ibid.*, Table 19, p. 46.

5. See Thomas Sowell, " 'Affirmative Action' Reconsidered," *The Public Interest*, 1976, Vol. 42 (Winter), pp. 47-65.

6. Walter Block, "Economic Intervention, Discrimination and Unintended Consequences," in Block and Michael Walker, (eds.), *Discrimination, Affirmation Action, and Equal Opportunity* (Vancouver, Canada: The Fraser Institute, 1982), p. 111-112.

7. See Linda Gottfredson, "Circumscription and Compromise: A Developmental Theory of Occupational Aspirations," *The Journal of Counseling Psychology*, Monograph 28, November 6, 1981, pp. 545-579.

8. For an empirical study of this last issue, see Maxwell, Rosenfeld and Spilerman, "Geographic Constraints on Women's Careers in Academia," *Science*, Vol. 205, September 21, 1979, pp. 1225-1231.

9. O'Neill and Braun, *op.cit.*, p. 63.

10. "Obstacles to Economic Parity for Women," *American Economic Review*, May 1982, pp. 163-64.

11. "Beyond the Feminist Mystique," *The New Republic*, July 11, 1983.

12. See Diane McGuinness and Karl Pribram, "The Origins of Sensory Bias in the Development of Gender Differences in Perception and Cognition," in Morton Bortner, (ed.), *Cognitive Growth and Development* (New York: Brunner/Mazel, 1978), pp. 3-56.

13. *Profile of American Youth: 1980 Nationwide Administration of the Armed Services Vocational Attitude Battery*, Office of the Assistant Secretary of Defense for Manpower, March 1982, p. 32.

14. Much of the pertinent research here is summarized in Alice Rossi's, "A Biosocial Perspective on Parenting," *Daedelus*, 1977, pp. 1-33.

15. *The Inevitability of Patriarchy*, 2nd ed. (London: Temple-Smith, 1977).

16. See *House Hearings on Reauthorization of the Vocational Education Act, Part II: Sex Equity in Vocational Education*, Dec. 16, 17, 1981, pp. 425-430.

Chapter 13

The Simple Analytics of Wage Disparity

by Cotton M. Lindsay

A scholar analyzes the unrealistic and untenable theories of the Comparable Worth advocates and demonstrates why their remedies are unworkable.

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It is dangerous to attempt to summarize informed opinion on issues, but with this in mind let me try to state three propositions which are being widely advocated today. (1) Worth in employment may be judged objectively in terms of some explicit set of job characteristics. I call this the objective worth theory. (2) Prejudice in the American labor market has effectively lowered women's

wages below their worth as defined by standard market criteria. This may be called the wage disparity theory. (3) The third proposition is that a mandated wage structure based on the objective worth theory may be imposed with inconsequential effect on the labor market. Call this the Comparable Worth remedy.

Note that the objective worth and the wage disparity theories are separate propositions. If either is false, the argument for the Comparable Worth remedy is in serious jeopardy. The weight of evidence at the present writing casts doubt on both. This paper will survey both the theoretical implications of prejudice for the wages of men and women and the empirical literature in an attempt to give the reader an understanding of the bases for those conclusions.

Wage Disparity and Its Sources

Let us set the stage for this discussion by placing the wage disparity between the sexes in a realistic context. Wages vary for a number of reasons unrelated to sex or discrimination, and the extent of this variation is substantial and systematic. The layman may be surprised by the extent to which wages vary—even when we restrict our observation to wages of year-round full-time white males and thus minimize the possible influence of prejudice. Table 1 (p. 163) presents 1981 earnings by occupational category for this group. Table 2 (p. 164) illustrates the variation in white male wages due to varying education level and region.

The extent of this non-prejudice related wage disparity is large. The factors giving rise to it are therefore important determinants of wages in any job or location regardless of race or sex. In a later section of this paper we shall discuss the extent to which earnings differences between sexes can be explained by such factors. Five factors must be considered as sources of wage variation which must be weighed.

Market Disequilibrium. The first is market disequilibrium. In equilibrium each employer must have exactly the number of workers of each type that he or she wants at the wages being paid, and no worker wishes to leave his or her present employment for a different job. This condition can never be perfectly satisfied. Wages on any day are certainly too high in some jobs or to some individuals and too low in others. The world is constantly changing, and employment decisions invariably lag behind new developments

to some extent. The important question is how much do they lag and how much of the observed variation in wages is the result of divergencies from equilibrium values.

There is considerable factual support for the view that market disequilibrium is not an important source of wage variation. Consider the variation in wages across occupations. The first two columns of Table 3 (p. 165) contain median wages of men for selected Census occupational categories which match up for the years 1969 and 1979. The wide variation observed in Table 1 is also reflected in wages here. If market disequilibrium were the source of interoccupational wage differences, there would be no reason to expect systematic relationships among wage differences in these two years. As these observations are separated by a full decade, there will have been ample time for supply to adjust to eliminate any disequilibrium producing wage differences in the earlier year. According to this view, wage variation in 1979 should reflect an entirely new set of disequilibrium-producing disturbances causing variation in wages that is unrelated to the variation in 1969. This is not what we observe.

On the contrary, when wages in each category for 1979 are regressed on 1969 wages for the same occupation, we obtain the following results:

$$\underset{\qquad\quad (4.42)\quad (16.85)}{\text{WAGES79} = 3704 = 1.48\ \text{WAGES69}}$$

$$(\,) = \text{t ratios} \qquad F_{1,21} = 283.8 \qquad R^2 = .93$$

We can reject the hypothesis that variation in wages in the two years is unrelated, at confidence levels of 1×10^{-13} percent. We also see that, contrary to the above hypothesis, a large amount of the variation in 1979 wages is explained by the variation which existed a decade earlier. Indeed, 93 percent of the wage disparity that existed between occupations in the later year is explained in this way. The third column of Table 3 lists predicted values of wages for each occupation in 1979 based on this regression.

One is led to conclude that existing wage differences are highly stable. The observed variation at any time is in large measure the result of continuing forces; we can reject the view that these differences in wages chiefly reflect transitory disequilibrating disturb-

ances. We can also reject the view held by some that wages are administered by employers and unions without regard for market forces. There would seem to be little reason for relative wages to exhibit this stability under an administered regime. It is difficult not to see in these results the influence of market forces preserving wage relationships among occupations.

The unimportance of disequilibrium in explaining observed wage variation at this level of aggregation should not be interpreted as suggesting that market instability is an unimportant consideration in the broader context of the issues addressed by this paper. On the contrary, the ability of individual employers to modify particular wages toward equilibrium levels is seriously impaired by adoption of the Comparable Worth remedy. Indeed, this is one of the chief problems with Comparable Worth as it is presently perceived. We shall elaborate the nature of these difficulties below.

Innate Ability. Even where labor markets are in equilibrium, substantial wage rate variation will remain. This remaining variation will have its origin in either demand or supply side choice. The supply price to an individual employer is the minimum wage rate that will induce additional workers to accept employment in that firm. Factors important to this supply choice are available alternative jobs, the working environment, freedom of entry, and costs of becoming qualified to supply labor to each market. The demand price that an employer will offer is influenced by worker productivity (that is, the contribution of the worker to total revenue). In the absence of prejudice the chief source of variation in this wage offer is ability.

Acquired abilities are best understood as influencing wages through supply side behavior. The supply price of bricklayers will ultimately be determined by the cost of becoming proficient at this trade and constraints on entry into this market such as unionization. The distribution of acquired skills such as these is endogenous to the market and will not therefore be influential in and of itself in determining the extent of income variation. Differences remain, however, that result from the luck of the draw in that great lottery which provides each of us with the set of genes that influences the skill with which we perform our chosen tasks. The factors that make Kareem Jabbar a great basketball player and Placido Domingo a great tenor are less acquired than innate. These

factors ultimately imply that employers will be willing to pay these workers more than others with equal amounts of training and experience in their fields.

Luckily for the rest of us, nearly everyone is reasonably good at something. Variation in ability is therefore more important in determining the distribution of earnings within occupations than in determining interoccupational wage differences. A fast running back will make more than a slow one, a clever lawyer will make more than a dull-witted one, and a tone deaf violinist earns less than one with perfect pitch. On average, however, running backs, lawyers and musicians probably earn about the same.

Supply Side Factors. The chief source of interoccupational wage variation therefore lies in decisions made by suppliers of labor themselves. As just noted, equilibrium on the supply side occurs when no worker is influenced to change employer or occupation. Factors other than wages can be important to this choice. The most obvious case is where barriers to entry exist that prevent workers from moving from a less desirable job to a preferred one. Union contracts can effectively maintain wages for members above those of other workers by preventing non-members from competing wages down to the level at which the employment is no more attractive than the jobs held by nonmember workers. Were such barriers eliminated, then wage differentials enjoyed by union members would disappear. These barriers are therefore responsible for some of the variation in earnings among workers.

A second source of wage rate variation consists of differences in the attractiveness of the location in which the work is performed or the character of the work itself. There can be little doubt that, given a choice of working in the oilfields of Texas and Point Barrow, Alaska at even wages, a trivial number would select the latter location. Firms seeking workers in Alaska must therefore pay a premium over the wages paid in Texas to *compensate* for the unattractive features of that employment. Similarly, morticians must be paid more than butchers to persuade labor suppliers to perform this less pleasant work. If funeral homes sought to hire morticians at the same wages as butchers, fewer than the number demanded at those wages would accept employment. Wages in the less pleasant occupation are therefore increased until the number seeking employment at these higher wages just equals the number sought by employers.

Finally there remains the case of acquired skills. People are not born machinists. Learning the various skills required to perform effectively in this occupation is costly. Time must be taken away from the task of earning a living so that skills may be studied and practiced. These forgone earnings are a part of the cost of supplying labor as a machinist. To the extent that the training involves other inputs besides the worker's time such as books, tools, materials, and tuition, the cost of these things must be added to forgone wages to determine the cost of supplying labor in this occupation. Few workers would be willing to bear these costs with no compensation. If machinist jobs and positions requiring no training paid the same wage, few would select the former occupation. Employers must therefore pay machinists a higher wage than they pay unskilled workers in order to ensure a sufficient number of them are available. For the same reason, occupations for which training costs are higher, pay higher wages than occupations with lower training costs. In equilibrium doctors earn more than pharmacists.

Although training for some job-related skills may be purchased in the market, one of the most important sources of training is the employing firm. There are law schools and dental schools, business schools and engineering schools, art schools and schools for the performing arts. By enrolling in such a school, a worker may acquire at least entry level skills in one of these occupations. However, few steelworkers or carpenters learn their trades in schools, and the same can be said for electricians. Skills for these and a host of other jobs are obtained while working. On-the-job training is obtained by new entrants through an implicit contract with the employer. Part of the worker's time while on the job is devoted to learning how to perform assigned tasks more effectively, and part of the time of more experienced workers is devoted to offering instruction and advice.

As the supply of this training is costly to employers, they make it available to unskilled workers only if compensated, and the principal form of this compensation is accepting wages that are less than the worth of the work actually performed. This process has been used to explain the variation of individual incomes over time. As skills accumulate, worker productivity rises. But skills also depreciate. Ben Porath (1967) has shown that workers under very general conditions will be led to invest in a diminishing amount of

this sort of training over the life cycle producing a generally rising pattern of earnings over time. A substantial amount of wage rate variation can be explained in terms of this type of training. Jacob Mincer (1974) was able to explain more than half of the variation in annual earnings of white urban males when schooling, weeks worked and a measure of on-the-job training were included.

In summary, even in a world without prejudice there is scope for a great deal of wage rate variation. Wage variation is the result of equilibrium differences in supply and demand in each market as well as transitory divergences from those equilibrium conditions. Variation in ability explains why employers are willing to pay some workers more than others, though this explanation is not as simple as it might first appear. Some people are good at some things but bad at others. It seems likely, therefore, that innate ability is more important as an explanation of intraoccupational rather than interoccupational wage differences. The remainder of wage disparity results from features affecting the supply of workers to different jobs. Workers may be prevented from entering jobs offering higher pay. Alternatively, workers may decline to enter certain occupations or decline to work in certain communities in sufficient numbers to drive wages to parity with wages elsewhere. One obvious reason for this is the varying character of work itself. Some work is pleasant, and other work is onerous. Some communities offer attractive living conditions while others are dismal. Compensating wage differentials must be paid at the margin to attract and keep workers in less preferred jobs and locations.

Finally, there is the issue of acquired skill. Skill is costly whether obtained in formal training programs or on the job. If jobs requiring investment in such skill are to be filled, then workers making these investments must earn sufficiently more in them to cover these costs. This implies that jobs requiring skills obtained through formal training and on-the-job training will pay more than others.

The Effect of Prejudice

It is difficult to construct a similar theory which predicts wage rate differences resulting from the influence of prejudice. This is because the impact of prejudice on wages is typically undone (at least theoretically) by the process of migration of workers, both male and female, toward jobs which pay more. In this section we

will explore the effects of prejudice on wages and employment to determine conditions under which prejudice will and will not have wage rate effects.

First let us consider the channels through which prejudice influences firms in their wage and employment decisions. Three sets of actors are potential sources of such bias. Owners and managers ultimately set employment policy. If they are determined to overlook qualified women and hire only male employees, then, of course, subject to the limits imposed by enforcement of antidiscriminatory law, they may do so.

Owners and top management are remote from most day-to-day operations of the typical firm, however, and it seems unlikely that prejudice from this source would affect opportunities of any but those seeking jobs at the top. Of greater empirical importance are likely to be the prejudices of rank and file workers themselves. If male workers would rather work in an all-male environment, the employers will have to pay men more to work side by side with (or under the supervision of) women. Even if owners are free of prejudice (or sufficiently remote not to care), the prejudice of male workers will influence them to install discriminatory hiring practices. By declining to hire women, the cost of male employees will be lowered.

Finally, there can be prejudice among customers of some firms. Men and even women customers may be willing to pay more to deal with men than with women agents. Revenues of the affected firms and therefore profits will be increased by a policy of excluding women from such client contact positions.

In each of these cases, the only recourse that women have *within the prejudiced firm* is to accept lower wages. If women offer their services to prejudiced owners at a sufficient discount, they may make discrimination of this type excessively costly. At some point the increased profits from replacing male employees with equally qualified but less costly women would logically seem overwhelmingly attractive. Women would be hired in this case, but only at lower wages. Similarly in the case of worker prejudice, at a sufficiently large discount the higher wages paid to men in compensation for the presence of women would be offset by the savings from hiring lower wage but equally qualified women. And the prejudices of customers can also be overcome by lower prices resulting from the lower costs of cheaper female employees.

The theory offered thus far seems to point to direct and possibly substantial wage effects of such prejudice. This conclusion is incorrect, however. Women seeking employment have superior alternatives to discounting their services to prejudiced firms. In order to explain this we must return to a discussion of equilibrium in such an employment market. As we noted above, in order for equilibrium to prevail among alternative firms, no worker can be influenced to change employers by wages or working conditions. Assume that working conditions and other non-wage characteristics of employment are identical among all firms, both prejudiced and unprejudiced. In such a case, if either men or women can earn higher wages, they will migrate toward firms offering higher wages. This migration will continue until any wage effects of prejudice have been eliminated. In equilibrium all men and women with equal productivity will earn the same wage.

Consider the following conceptual experiment: Assume initially that no firms exhibit prejudice, and that equally qualified men and women are employed in all firms at the same wage. As no worker of either sex can earn a higher wage by moving, none is influenced to move, and the market is in equilibrium. Now let us assume that half of these firms are suddenly afflicted by prejudice. Women employees may only remain where they are by discounting their wages as described above. However these low wages are not the best that women can do. By seeking employment from one of the firms which remains unprejudiced, they may earn more than is offered from their original employer. As women move to unprejudiced firms, however, they lower the wages of all employees in these firms including men. Their leaving also reduces the supply of manpower to prejudiced firms increasing the productivity of labor in that sector.

This shift of women from one set of firms to the other creates a wage differential between firms which in turn produces an offsetting migration by men in precisely the opposite direction. Men employed by firms that continue to be unprejudiced find their wages lowered relative to wages in the prejudiced sector by this influx of women. They are thus influenced to leave these lower paying jobs for jobs in the prejudiced sector. This reverse migration by men will continue until it is no longer attractive, that is, until wages between the two sectors are equal. The final equilibrium will thus find no women employed by prejudiced firms, and both men and

women employed by the unprejudiced firms. Wages of all employees of all firms, both men and women, will be equal.

Realistically, no such upheaval will ever be observed. No mass conversion to bigotry of the type described will occur; prejudice, if it exists, will be a relatively stable feature of the employment market. Some firms will exhibit prejudice from time to time and some will not. Women entering the labor force will naturally gravitate to those firms presently unprejudiced where they need offer no discount relative to men to obtain employment. Men will be employed by both prejudiced and unprejudiced firms. Wages of both men and women of equal productivity will be unaffected by prejudice.

Standard neoclassical price theory admits only three possible exceptions to this conclusion. First, these results depend on a mobile workforce. To the extent that workers of either sex are unable or unwilling to seek employment with an unprejudiced firm rather than suffer the consequences of working with a prejudiced firm, wage effects will be observed. Secondly, if so few firms are unprejudiced that all men are crowded out before all women have found places there, then wages of women in both sectors will be depressed below those of men. And finally, if the wage-setting process is not responsive to market forces, then the process described obviously will not produce the equal wage equilibrium conditions. Let us consider each of these exceptional cases in detail.

Mobility and Crowding. Consider the first two exceptions to the equal wage implication of the competitive model: insufficient mobility and crowding. Introspection suggests to this writer that little observable wage disparity will result for these reasons. To understand this conclusion, it is necessary to elaborate a bit on the peculiar way that prejudice manifests itself in the market. For simplicity in our discussion thus far we have discussed prejudice as arising in certain firms but not in others. Mobility eliminates wage effects of prejudice through the movement (or preselection) of women to (of) unprejudiced firms. Realistically, however, not all jobs are influenced by prejudice. Some are more sensitive to the influence of prejudice than others, even within the same firm.

If the owner is the source of prejudice, then all that is required is that the position filled be remote from the owner. The same can be said for male employees. If male employees prefer not to work

beside female employees, then women need only fill positions that are remote from such men. For example, if male operatives are prejudiced, this should have little influence on the staffing of clerical and administrative positions. Furthermore, if a substantial wage discount is produced between men and women operatives, it will pay the employer to replace *all* men with the lower cost but equally productive women. If customer prejudice is a factor, then women are free to fill all positions involving no customer contact.

Two important observations may be drawn from these considerations. First, in order for sorting and crowding out to produce the equal wage result, it is not necessary for labor to exhibit a great deal of *geographical* mobility. Opportunities will exist for women to fill a variety of jobs unaffected by prejudice in the same geographical area. Indeed, in many cases jobs may exist which are unaffected by prejudice within the same firms which exhibit prejudice connected with other positions. Immobility of workers is therefore unlikely to be responsible for prejudice-based wage differences.

Secondly, when viewed in this light, it is difficult to credit the "crowding" argument as a source of wage disparity. For crowding to produce permanent wage rate effects, it must be the case that the total number of unprejudiced jobs *of all types* available to women in a particular market be less than the number of women seeking employment there. For example, having too few unprejudiced machinist jobs for all the women who would be willing to perform these jobs at the going wage will not lower the wages of these women.

Wage Flexibility. There remains the case of those jobs for which wages may not adjust but are set administratively or by statute. Here the forces of competition and mobility may be prevented from eliminating the effects of prejudice on wage disparity. Consider, for example, the effect of prejudice on a particular set of positions for which wages are prevented by law or regulation from falling below some prescribed minimum. For such a prescription to have any effect, the wage set must be above the equilibrium level. Such a wage will attract more job seekers than there are positions to fill. This failure of price to clear the market has two important implications. First, employers have excessive numbers of qualified applicants and can be expected, if prejudiced, to choose only white male applicants from among the group of competing suppliers. Second, the wage prescription will prevent

the pressure of excessive supply from lowering wages here to parity with other jobs including those unaffected by prejudice. Fixed wages are fixed.

Unlike the immobility and crowding exceptions, such wage restrictions seem likely to be a source of substantial and continuing wage disparity. Competitive market forces will not eliminate these wage differentials, and casual empiricism suggests that the scope for such practices is broad. The minimum wage is the most obvious example of an institution that fosters such disparity. This legislation reduces employment in the sector covered and effectively succeeds in crowding displaced workers into the uncovered sector, reducing wages in that sector. We can be sure that disproportionate numbers of female and black workers and other victims of prejudice are among those crowded into the uncovered sector or are employed in that least remunerative employment of all: seeking to find a job when there is none. A recent study of the decline in black teenage employment, for example, finds extensions and increases in the minimum wage to be responsible for roughly half of this decline (J. F. Cogan, 1982).

A similar effect is produced by the Davis-Bacon Act which has been interpreted to require that wages paid to workers on government construction jobs be set at levels determined by unions. These union wages are far in excess of wages that are typically paid, even to union members, for nongovernment construction work. In the absence of this requirement we would expect that competition among all workers including women and black workers would lower wages there to the level that generally prevails. The law prevents such competition and permits prejudiced employers who satisfy the letter of antidiscrimination law to pay white male workers a premium. Union representation among women is far lower than men. Among all hourly workers in the U.S., for example, 40 percent of all men workers are union members while only 15 percent of all women workers are in unions. The effect of wage restrictions like Davis-Bacon is therefore to raise the wages of men employed under the Act above those of other workers employed elsewhere including the disproportionately large number of nonunion women effectively excluded from these jobs.

Finally, there is government employment itself. Governments at all levels need fear little competition from alternative suppliers of its services. As long as tax revenues are sufficient to cover its

costs, the government is free to set wages for any job at almost any level. It is certainly not concerned, as are competing firms, to set wages at the minimum amount that will attract a sufficient number of qualified applicants. If prejudice exists in government hiring, as it clearly has from time to time, then government jobs (and above-prevailing-market wage salaries) will go in disproportionate numbers to members of the favored race and sex. It is not surprising therefore to find that the one study to offer convincing documentation of wage discrimination against both blacks and women found these differentials in teacher pay in South Carolina public schools (Richard J. Butler, 1983).

Evidence of Discrimination

Economic theory has a lot of explaining to do. Our theory has indicated that wage rate effects of prejudice will be limited to markets where wages for some portion of the workers will be inflexible downward. These will be markets in which wages are affected by regulation, statute or government pay scale. Wages of men and women have been shown to differ strikingly, however, even when the sample is restricted to exclude the influence of such wage rigidities.* The theory presented above suggests, however, that wages will differ from worker to worker and job to job based on such factors as skill and training requirements, attractiveness of the job and location, and the extent to which each worker is accepting training in lieu of wages. If men and women workers and the jobs they fill differ on average in these and other characteristics, this evidence is not inconsistent with our theory.

Efforts to control for these differences in worker and job characteristics in statistical analyses have not fully reconciled these differences in wages. Oaxaca (1973) in one of the most detailed of these analyses found, for example, that after controlling for 12 such characteristics he was able to account for less than 40% of the difference in wages of men and women. Oaxaca's occupational identification was necessarily crude, however, and he suggested, as have other analysts who have subsequently considered the problem

*Malkiel and Malkiel (1973) considered wages paid within a single firm and found that women were paid on the average only about two thirds the wages of men. When other factors such as education and experience were considered, an unexplained residual of between 13 and 17 percent remained.

(D. J. Treiman and H. I. Hartmann, 1981) that there is little intra-occupational discrimination. If occupations are defined strictly enough, men and women in those occupations are paid equally. The discrepancy in wages on average arises because women typically, at least in a statistical sense, are overqualified for the jobs they fill. Thus, while men and women performing identical tasks are paid identical wages, men and women with the same characteristics do not fill jobs in the same proportions.

Four possible explanations for this result have been offered, each of which may account for some portion of the discrepancy in overall wages. The first is that this differential employment pattern reflects crowding of the sort described above and is the direct result of prejudice. Apart from the theoretical argument raised against this possibility earlier, however, there is an empirical consideration which seems inconsistent with this interpretation. Two-thirds of all female hourly workers are employed in sales, clerical and service jobs, each of which involves extensive contact with either management or customers. These are therefore jobs which one would predict would be most sensitive to the influence of prejudice and to represent jobs which women would be most likely to avoid.

The second explanation involves no prejudice but rather differential attitudes toward jobs of different types. Gwartney and Stroup (1973) argue that a different sort of crowding is responsible for observed wage differences between men and women. Married women typically have primary responsibility for operating the household and caring for children. Married men typically are assigned primary responsibility for bringing home the bacon. When the husband is moved in his job or must find alternative employment, the wife typically must be prepared to leave her own job and seek employment at a location most favorable to the employment opportunities of her spouse. These observations suggest that women will seek a different sort of job from men on average. They will seek jobs with flexible hours and jobs that are closer to home. They will also seek jobs whose requisite skills are highly transportable from place to place.

As women value these characteristics in jobs, they will be willing to give up income to secure them. They will decline to accept work involving rigid schedules, long commutes and highly specific job skills, even though such jobs may pay higher wages. In other words, women crowd into these occupations, not because they are

discriminated against elsewhere, but because they regard these jobs as more attractive than others offering higher money wages.

As a test of this theory, Gwartney and Stroup suggest that wages of men and women with more similar tastes for employment be compared. According to this view, where taste differentials are not present, wage differentials themselves should diminish. As the test group, they offer unmarried men and women. These workers are unable to exploit the possibilities of division of labor within households between job-centered and household-centered production. Both men and women who are unmarried must perform both. They will probably value the specific characteristics enumerated above less than married men but more than married women. One would predict, therefore, that they would be willing to give up less income for them than married women, but more than married men. Both groups should thus earn wages somewhere between those of the two extreme groups.

That is precisely what they found. While the means of the wages of married men and women in their sample differed by 44 percent, the disparity between wages virtually vanished when earnings of unmarried men and women were compared. When adjusted for differences in education and other characteristics, the ratio of women's wages to those of men in the unmarried group ranged from .91 to .96. We must interpret such results with caution, for factors leading men to remain unmarried may differ from those which influence women to remain single. These differences may themselves have different implications for the wages of each group. On the other hand, it is difficult to credit a theory which maintains that married women are victims of prejudice while unmarried women are not.

A third explanation is that there is no real discrepancy at all, and that measures indicating the presence of wage disparity reflect the presence of either measurement error or statistical artifact. Consider the effect of experience. One of the reasons wages rise with experience is that workers employ some of their worktime to extend and renew their skills. The level of wages, given any level of experience, will therefore reflect two aspects of this process. The more intense has been the training, the higher will be the wage rate earned. Secondly, skill tends to diminish and become obsolete over time. Therefore, the more recent is the experience, the less these factors will have influenced the skill level, and the higher will be

the wages.

Economic theory suggests that those most likely to experience continuous employment with the same firm over an extended period will find investment in such training most attractive. Interruptions interfere with the training process making it more costly to acquire. At the same time, the training obtained is worth less because the skills will not be continuously employed. Both these factors suggest that workers who expect interruptions in their employment will invest less in such training over their careers than identical workers who expect continous employment. The effect of such expected interruptions will be that, among workers with the same level of experience, those with discontinuous careers will have invested less in training and therefore earn less than those with continuous experience.

Women typically experience more interruptions in their careers than men. There are two reasons for this. Many women leave the workforce to bear and raise children. Women college graduates have a lifetime labor force participation rate of only 41%, and this rate is even lower among women with less education (Polachek, 1975). Secondly, as pointed out above, women are typically adversely affected by family relocation decisions. Often a move to another location is initiated by the husband whose employment conditions are favorably affected by the move even though the wife's employment conditions are worsened.

A number of studies have examined the effect of turnover and the lack of labor force commitment on wages. Mincer and Polachek (1974 and 1978) have been able to explain as much as 50% of the wage gap in terms of a model incorporating this effect. Landes (1977) explains between two-thirds and 100% of this disparity. Other studies have found it less important (Corcoran, 1977; Corcoran and Duncan, 1979) and study of this important consideration is being vigorously pursued (Mincer, 1979). Polachek (1979), for example, has found independent evidence that women workers seek employment in occupations where continuous training is less important, a finding supported by Landes (1977). A conclusive answer to the question of how much of the observed wage difference between men and women can be attributed to labor force commitment cannot be offered at this time. One can conclude, however, that at least some of the observed difference in wages is not the result of anything more than the fact that men and women with

equal experience do not on average have equal skill. Experience is thus a biased measure of skill, and it is skill differences which are responsible for wage differences.

Measurement error can give the appearance of discrimination in another more indirect way, even when that error itself is random and unbiased. Earnings equations normally used to control for the influence of variables such as education, experience, and job tenure themselves contain bias. If these proxies for productivity are measured with error, and there is also correlation between these variables and race or sex, then the coefficients of the race and sex variables in the earnings equation may give the appearance that race or sex has some independent explanatory power with regard to wages, when all wage variation is actually explained by real productivity differences.

One way to control the influence of this bias is to group observations. If the grouping can be successfully accomplished in a way that is independent of the measurement error, then the extent of such error will be reduced through the simple expedient of averaging out. Earnings equations may then be fitted on the grouped data for the identification of the unbiased parameters. Hashimoto and Kochin (1980) estimate such an equation for earnings of white and black males. Their results illustrate the potential impact of this bias on any such attempt to measure the effects of discrimination. When estimated on individual data, a difference in earnings of between 22% and 23% was identified, and this difference was found to be highly significant. When the same model was estimated on grouped data (by state), however, the extent of indicated wage disparity falls to 2.5% or less, and these measures are insignificantly different from zero at even the 10% significance level.

This possibility has also been studied empirically by Kamalich and Polachek (1982). They are able to eliminate the influence of this bias through a process called reverse regression which uses wages, race, sex and other variables to predict each of the productivity proxies. The presence of discrimination would be indicated by positive differentials in the levels of these predicted proxies such as education, experience and tenure, as groups discriminated against were forced to achieve higher levels of productivity to attain given wage levels. Kamalich and Polachek found no evidence of discrimination in these reverse regression results. On the contrary, their results indicate an absence of an effect of either sex or

race on these proxies, taken together. While a higher level of education was typically predicted for women, this was offset by lower predicted levels of tenure and experience, a result that is consistent with the findings reported above that suggest that women's experience yields less training than men's. Similarly, blacks were observed to compensate for less education with larger amounts of experience and longer tenure.

In general then, carefully done statistical studies suggest that the wage experience of women in the market is not necessarily inconsistent with our theory. That theory suggested that the scope for wage effects of prejudice was limited. Superficially this implication of economic theory seems to be refuted by large observed differences in the wages actually earned by men and women, and by the seeming inability to account for these differences by using proxies for productivity. The studies cited above point to another conclusion, however. They suggest that a large portion of this residual wage disparity may be accounted for by differences in tastes for occupational characteristics, biased measurement error in using experience as a proxy for skill, and bias in the influence of sex and race on earnings arising from the possibly random element in this error.

Implementation of Comparable Worth

Conceptual Problems. Comparable Worth means different things to different people. To one group it represents a scheme for determining a hierarchy of wage relations that is independent of economic and market considerations. Job worth is strictly a matter of the amounts of factors such as skill, responsibility and imagination, and the weights assigned to these factors as determined by job evaluations, and that is the end of the matter. Job A "ought" to pay more than Job B because it is rated higher in terms of these factors and for no other reason. Such an interpretation runs into serious practical and normative difficulties, and our discussion of it here will be brief.

At a practical level it is unworkable. If the relative wages between two such jobs differ by more or less than the market equilibrium differential, too many will seek employment in one and too few (perhaps none) in the other. The supply of workers to particular jobs and employers is influenced by the wage, and wages that do not reflect market forces will lead workers in the wrong direc-

tions. The problems created by these incorrect price signals are of more than theoretical interest; they imply severe hardship for the very population that the Comparable Worth remedy is intended to help. Wages set too low will discourage workers (including women) from seeking employment in positions where they might otherwise succeed in gaining employment. Rather than accept work in these occupations, they will decline these jobs in hopes of securing jobs that are rated higher which pay more. Sufficient highly-rated jobs will be inadequate for the number seeking them, however.

The fact that a job is rated at a particular level does not ensure that it is worth this amount to employers. On the contrary, if jobs are rated at more than their true productivity, we can be sure that employers will simply eliminate these positions. Raising the permissible level of pay for a position above its productivity does not result in higher pay for the employee; it results in the loss of a job. The effect of altering wages away from their market-determined level in either direction is therefore to reduce employment for both male and female workers.

The normative problems with such a scheme are no less serious. Wage differentials determined by market forces have the effect of guiding workers into different occupations in efficient numbers. A system of wages which ignores efficiency considerations in resource allocation is difficult to take seriously, especially by economists. Indeed, it is difficult to justify differentials in pay at all without reference to some allocative objective.

A second interpretation of Comparable Worth is more congenial to economics and common sense. It holds that worth is measured by the maximum wage that an employer would be willing to pay for workers with the appropriate qualifications regardless of race, sex or any other noneconomic criteria. In this view, job evaluations seek to simulate the forces of supply and demand in the absence of prejudice. The structure of wages resulting from properly executed job evaluations will reflect variations in productivity across occupations, assigning no weight to the spurious influence of prejudice on these wages. While this interpretation of Comparable Worth is defensible on conceptual grounds, there are serious problems associated with the implementation of such a doctrine.

As the preceding discussion should make clear, statistical identification of the presence of an effect of prejudice on wages is

problematic. It is confounded by the possibility of different tastes among workers for jobs with different characteristics, biased measures of such proxies for productivity as experience and education, and bias arising from statistical artifacts due to errors in measurement. If there are difficulties in establishing the effect of prejudice in the aggregate, the task of identifying a correct "prejudice free" wage for any particular job is more difficult still.

Consider how Comparable Worth is intended to achieve this objective. Statistical job evaluations are to be estimated over each job within a firm to determine its "worth," and deviations above and below the evaluated worth in each case will be examined to determine if they are sex or race related. Those which appear to be so must then be adjusted upward or downward to conform to the norm established by the job evaluation.

Attempts to simulate and replicate wage variation in economic models have proven very imprecise, however. In even the most detailed analysis of earnings which relates them to factors such as education, experience and job tenure, the amount of the variation in wages that can be accounted for by these variables is disappointing. Studies are regarded as successful which are able to explain less than a third of this variation *even when the sample is restricted to a single race and sex*. In such a case none of the remaining unexplained variation is due to prejudice, but wages typically vary widely around their predicted worth based on such a formula. Indeed, even when occupation and industry are themselves included in such an analysis, the unexplained residual variation amounts to more than half of the total (Oaxaca, 1973).

How do we react to these findings? There are two interpretations. The first is that the fitted equation is the correct measure of worth or productivity in each case, and that the residual variation represents error in the market which can and should be corrected by forcing all wages onto the regression. A second and more plausible interpretation is that the residual variation in wages reflects real variation in productivity which is not captured by the job evaluation. It can be argued that, in any firm at any particular time, wages paid reflect current conditions in the market for each job. Productivity there may deviate from its long run equilibrium due to transitory shortages or gluts in supply or special short-run needs of employers. Wages can also differ from productivity for efficient reasons. Differences may result from omitted influences

affecting the attractiveness of the jobs, such as on-the-job training or long-run economic rewards that are not reflected in current wages such as opportunities for advancement or job security.

If this second interpretation is correct, then no adjustment of wages toward indicated worth levels is appropriate. To make such adjustments would send incorrect price signals, influencing labor to seek employment where none is available and causing labor shortages in other markets. According to this interpretation, variation in wages around the fitted job evaluation represents variation in *real worth* which is not reflected in the job evaluation. This residual variation should not be smoothed away.

The problem of using such results to eliminate the influence of prejudice in wages is therefore clear. How are we to determine what part of the deviation of women's wages from a job evaluation rating in any particular case is the result of discrimination, and what part of that deviation is merely the same sort of deviation *unrelated to prejudice* that affects earnings equations for white males? Two thirds of the variation in wages of white women is also unexplained by job characteristics. Even if we are convinced that women are the victims of prejudice *on average*, we do not know in any particular case how much prejudice has affected wages and how much is "unexplained residual" productivity variation. The job evaluation is of no use in this task. All it is capable of doing is identifying deviations from the norm. But as we have seen, deviations from the norm *are* the norm in wage determination.

Crowding and Productivity. Comparable Worth is advanced to deal with wage effects of prejudice due to crowding. As noted earlier, this argument suggests that occupations that are free of the influence of prejudice become filled with women fleeing prejudice in other jobs to the extent that wages in those jobs and occupations become depressed. The argument for Comparable Worth maintains that job evaluations will identify these occupations and jobs with depressed wages and raise them to levels reflecting their true worth. This argument represents a second and perhaps more fundamental conceptual flaw.

The problem with this argument is that, when wages are hypothetically depressed by crowding in this situation, wages in the crowded occupations reflect *real* productivity deficits there. A perfectly specified job evaluation which measured everything would *not* indicate that women should earn more in those occupa-

tions. Wages are low in these cases *because* crowding has lowered productivity there. The effect of prejudice has been to divert women into the *wrong* jobs. The correct economic response to this problem is *not* to raise wages in jobs where too many resources are already concentrated. The correct response to the identification of crowding-based wage effects is to assure that women have access to the higher paying jobs from which they have been excluded. The correct solution to prejudiced based disparity in wages is ultimately equal opportunity and fair access to all jobs, not wage regulation which preserves the employment effects of that prejudice.

The Paper Chase. A third conceptual flaw associated with Comparable Worth is that it is possible to associate a job with its productivity without regard to the person who fills it. The productivity of a worker is not automatically determined when he is placed in a particular job; his or her productivity will respond to incentives and to the extent to which variation in productivity is associated with variation in economic rewards. By rating jobs rather than people, job evaluations dilute the incentive to be a productive worker and encourage instead the accumulation of factors important to the job evaluation itself. If schooling is such a factor, then workers will invest in more schooling—not because it will make them more productive, but because it will "qualify" them for higher rated jobs. If experience is rated as important, they will obtain experience—not for its skill-inculcating qualities, but because experience is one of the requirements to fill jobs rated at higher wages. Statistical indicators of qualifications will take precedence over the observations of foremen and managers who themselves have an important stake in the productivity of those under their supervision. If nothing but paper qualifications are required for securing and holding a job rated at a particular wage, then paper is all that will be produced.

Summary

Comparable Worth is a doctrine which is offered as a legal remedy for those who are paid less than they are worth due to prejudice. However, economic theory suggests that wage effects of prejudice will be limited to markets where wages are not free to adjust, where worker mobility is low, and where the number of jobs untouched by prejudice is smaller than the number of victims. In other cases, prejudice will influence the pattern of employment but

have no wage effects. Further arguments were advanced to the effect that the impact of prejudice from all sources is likely to be responsible for little of the observed variation in wages. The range of jobs likely to be unaffected by prejudice is broad, suggesting little scope for crowding or for worker mobility to affect wages.

Analyses of wages earned by men and women supports this view. While men on average do earn substantially more than women, there are reasons to believe that these wage differences reflect real productivity differences. Recent studies of such influences as differing tastes for work of different types, labor force attachment and measurement error bias have explained individually all or most of this disparity. There may be no wage effects to correct. Finally, we have looked at the effects of implementing Comparable Worth itself. Comparable Worth is unworkable in practice because it is impossible to distinguish deviations of wages from indicated worth due to omitted variables and deviations due to discrimination. It is the wrong remedy for wage effects of crowding, since crowding lowers both wages and worth in the affected jobs. Finally, when the Comparable Worth remedy is applied, its adverse effects are substantial and can be expected to outweigh any benefits produced. Wages may be increased for some women in some positions. However, these wage gains will be offset by widespread unemployment engendered by divergences between productivity and rated wage levels. Workers will eschew jobs rated below the competitive level seeking jobs rated higher. Jobs rated higher than they are worth to employers will simply be eliminated, reducing employment opportunities for those previously filling them. Comparable Worth also diminishes the incentive to produce and replaces it with an incentive to accumulate paper qualifications.

Table 1: Median Earnings of White Male Year-Round Full-Time Workers by Occupation, 1981

Occupation	*Earnings*
Professional, technical and kindred (private)	$26,954
Professional services (state government)	20,235
Professional services (federal government)	26,482
Managers and administrators (private)	27,290
Public administration workers (state government)	20,588

Public administration workers (federal government)	25,914
Sales workers	22,306
Clerical and kindred	17,794
Craft and kindred	20,812
Operatives including transport	17,650
Laborers	15,415
Service Workers	11,687

Source: U.S. Bureau of the Census, *Money Income of Households, Families and Persons in the U.S., 1981,* Current Population Reports, Series P-60, No. 137 (1983) Table 54, (p. 194).

Table 2: Median Earnings of White Male Year-Round Full-Time Workers by Education and Region, 1981

Years of Education	*Earnings*
Primary	
less than 8	$13,157
8	16,588
High School	
1-3	17,795
4	20,968
College	
1-3	23,129
4	26,864
more than 4	30,801

Region	*Earnings*
New England	$20,612
Middle Atlantic	21,365
East North Central	22,227
West North Central	19,767
Mountain	21,884
Pacific	22,877
South Atlantic	19,855
East South Central	19,647
West South Central	20,453

Source: U.S. Bureau of the Census, *Money Income of Households, Families and Persons in the U.S., 1981,* Current Population Reports, Series P-60, No. 137 (1983) Table 47 (p. 159) and Table 43 (p. 133).

Table 3: Median Earnings of Male Year-Round Full-Time Workers by Occupation, 1969 and 1979

Occupation	*1969 Earnings*	*Actual 1979 Earnings*	*Predicted 1979 Earnings*
Professional, Technical and kindred (total)	$11,750	$21,310	$21,000
Self-employed (total)	20,279	30,928	33,360
Salaried (total)	11,427	20,979	20,590
Engineers	13,501	25,701	23,650
Teachers, Primary and Secondary	9,988	16,905	18,460
Farmers and farm managers	4,108	10,179	9,730
Managers, officials and proprietors (excl. farm)	11,015	21,831	19,980
Self-employed (total)	7,830	14,526	15,270
Retail trade	7,520	12,245	14,810
Other self-employed	8,231	16,330	15,860
Salaried	11,849	22,978	21,210
Clerical and kindred	7,942	16,503	15,440
Sales Workers	9,233	17,084	17,340
In retail trade	7,436	12,235	14,690
Craftsmen, foremen and kindred (total)	8,741	17,106	16,620
Foremen	9,792	20,120	18,170
Operatives and kindred (total)	7,324	14,921	14,520
Manufacturing	7,370	15,109	14,590
Durable goods	7,520	15,218	14,810
Nondurable	6,996	14,890	14,040
Service workers, except private household	6,333	11,925	13,060
Farm laborers and foremen	3,051	7,358	8,211
Laborers except farm and mine	6,024	11,974	12,600

Source: U.S. Bureau of the Census, *Income in 1969 of families and persons in the United States*, Current Population Reports, Series P-60, No. 75, (1970) Table 49 (pp. 110-111) and *Money Income of Families and Persons in the U.S.: 1979,* Current Population Reports, Series P-60, No. 129 (1981) Table 58 (p. 251).

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PART IV

IMPACT ON INDUSTRIAL RELATIONS

Chapter 14

The Practical Problems of Comparable Worth

by Maxine Kurtz

A participant in the famous Denver nurses/tree-trimmers case describes the practical problems of wage-setting and equity from a personnel officer's point of view.

Maxine Kurtz is the Personnel Research Officer at the Career Service Authority for the city and county of Denver. She is an Urban Planner and an attorney with a master's degree and vast experience in Government Management. She has been the Personnel Research Officer for Denver since 1972 and was involved in the lawsuit Lemons v. the City and County of Denver. *Mrs. Kurtz is the author of numerous articles in professional publications and testified at the Congressional hearings on Pay Equity in late 1982. During the 1970s Mrs. Kurtz was a member of the faculty of the Graduate School of Public Affairs at the University of Colorado at Denver teaching Public Administration and Legal Research. She has guest-lectured at Texas A&M and at numerous other universities.*

The influx of women into the labor market has provided a new challenge to the organized labor movement. Led by AFSCME, the American Federation of State, County and Municipal Employees, the unions have seized upon Comparable Worth as one of the best organizing approaches to reach this group.

I will discuss three aspects of the Comparable Worth subject: (1) The *Lemons* case, more popularly known as the nurses vs. the

tree-trimmers; (2) Implementation of Comparable Worth criteria compared to current job evaluation methods used to implement prevailing wage requirements; (3) Relationship of market wages to discrimination.

Lemons v. City and County of Denver

Mary Lemons, the Director of Nursing Service at Denver General Hospital, and several of her colleagues brought a class action against the City and County of Denver, charging that nurses were not paid in accordance with their worth to the city. The nurses conceded that they were being paid the same as the nurses in the dozen or so general hospitals in the metropolitan Denver area, but they felt that this pay was discriminatory as compared to the pay for occupations predominantly performed by men.

During the preliminaries, the nurses compared themselves to dozens of other occupations, including, among others, tree-trimmers and civil engineers. Their theory was that jobs should be compared on the basis of minimum education and experience requirements, number of persons supervised, and one or two other factors, but not including the kind and levels of duties performed. By the time the trial was held, the nurses had decided that they wanted to be compared to the General Administrative Series, which is composed of personnel analysts, budget analysts, evaluation analysts, safety analysts, and the like.

The City's defense had to be based on a mandate in our City Charter to pay prevailing wages. We implement that mandate in this way. First, a sample of firms is carefully structured to mirror the metropolitan area on the basis of type of enterprise and size. Then compensation paid for key classes is determined. These key classes are commonly found both in the career service and in the community. Finally, pay for other classes is established in relation to key classes on the basis of a comparison of the kind and level of duties and responsibilities of each class as compared to a key class. Public hearings are held by the governing board of the Career Service and the City Council before the prevailing rates are adopted.

Note particularly that all determinations are made on the basis of the kind and levels of duties and responsibilities; not on the characteristics of the incumbents.

The key arguments, from a factual standpoint, which we presented were that we do not consider employees, only duties and

responsibilities, in setting pay. We presented testimony from Dr. Solomon Polachek, an economist from the University of North Carolina, showing that many factors contribute to the difference between pay for so-called "women's jobs" and "men's jobs."

The nurses' case covered the points I mentioned earlier. They demonstrated that the pay for women tends to be lower than the pay for men, compared compensation for selected occupations, and suggested an alternative classification system. This alternative classification system did not provide answers for the court, however. The judge wanted to know why, if jobs are compensated on the basis of physical effort, a championship professional basketball player was paid so much more than a custodian or a trash collector. If worth to the community was a criterion, why was a minister or priest paid so much less than the basketball player. These questions were not well answered by the nurses' expert witness.

The decision in the trial court was not published, by request of the court. The judge was convinced, rightly, that the case would be appealed, so he addressed his comments to the Court of Appeals for the Tenth Circuit. Let me, however, share some excerpts from that decision with you.

After finding that there was not a scintilla of evidence of discrimination by the City, and noting that "Congress cannot, and never has been able to, repeal the law of supply and demand," he added:

> ". . . but I am going to say that I can arrive at no conclusion other than that the Congress of the United States and the United States Supreme Court do not foresee that the courts of this country are going to fix everybody's pay. Neither the Congress of the United States nor the U.S. Supreme Court, as I read the law, want judges to run the country in that fashion. And I'll guarantee you that I, for one, do not want any part of trying to run the country in that fashion. Because that's not our way of life.
>
> "The courts of this country would be deluged with that type of litigation [Comparable Worth], and there isn't a judge in the United States, especially this judge, qualified to set everybody else's pay. It would be an absolutely hopeless morass."

The Court of Appeals for the Tenth Circuit found no discrimination either, and the U.S. Supreme Court refused to review the case.

In the well-known case *County of Washington, Oregon v. Gunther*, the appellate briefs devoted considerable space to an analysis of the *Lemons* case, but the U.S. Supreme Court took note of the fact that discrimination was not found in the *Lemons* case, and in a footnote specifically added that the *Gunther* case was not settling the controversial issue of Comparable Worth.

Job Evaluation

In Denver, job evaluation is known as "position classification." We have a City Charter mandate to classify positions on the basis of duties, which includes the kind and level of duties and responsibilities.

Working with incumbents and supervisors, we identify the tasks an employee performs without regard to how well these tasks are executed. Once the tasks have been identified and described in some detail, they are analyzed as to the level of their complexity, in addition to the mechanical skills involved, if any. For instance, one task might involve typing from dictation tapes. That task would not require a high degree of interpersonal skills. Another task might involve responding to calls in a centralized emergency referral office such as 911. That task does require a high degree of interpersonal skills. When tasks are analyzed in this manner, there is no way in which race, ethnicity, sex, or other non-job-related considerations can influence the system.

Historically and in different places, many kinds of classification systems have been developed. Some rely heavily on the characteristics of the worker. Examples in this country are the systems which reward differently teachers who are doing the same work, but who have attained different levels of training (such as a master's degree or a doctoral degree). The military system in this country assigns rank fairly independently of the work performed. A private might be a clerk, a military policeman, or a mechanic.

The entire philosophy of equal pay for equal work is found in the kind and level of job duties, *not* in education and experience. The most difficult area in writing class specifications and in comparing levels between classes is the area of establishing necessary educational requirements and reasonable minimal experience requirements. Classification systems throughout the country are tend-

ing toward no experience requirements, and lesser education requirements. The minimum knowledge, skill, and abilities requirements which are tied directly to class duties, if properly identified, are tested for and applicants are allowed entry into a class regardless of educational background or experience in many instances.

EEOC's selection guidelines of whatever vintage have emphasized the need for job analysis and for the job-relatedness of the tests. The U.S. Supreme Court confirmed this requirement in *Griggs v. Duke Power Company* and its numerous progeny in courts of all levels. Any "job worth" concept which abandons this approach is irrational and hence subject to abuse.

There are many challenges to credentialism, with an accompanying trend to train non-college people in certain professions where heretofore it has been considered essential to have academic degrees in the field. The Career Service Authority, among others, has actively encouraged substitution of experience for education to encourage upward mobility of minorities and women. The more successful employers are in adopting these practices, the *less* job worth values can be placed on the factors of education and experience.

The two prevalent types of job evaluation in this country currently are the "whole job" (non-quantitative) system and several varieties of quantitative systems. Denver uses the whole job system, and I will describe that one first.

Minimum knowledge, skills, and abilities (KSAs) are identified for each task. These KSAs are broken into two groups: those which can reasonably be learned on the job and those which the employee must bring to the job to have a reasonable chance of success. In this way, we assure ourselves and applicants that there are no unnecessary barriers to employment or promotion.

Several aspects of the criteria for job evaluation on the basis of duties should be noted: (1) It is oriented to the work performed, not to the person doing the work. (2) It compares work within occupations, not among them. Like all recognized systems of job analysis and position comparisons, it involves value judgments. None of the criteria relates to the qualifications of the person performing the duties, nor do any of the criteria smack of ethnicity, race, or sex.

As I noted earlier, we group our classes around certain key classes, which are occupations commonly found in the community.

Once we have determined the prevailing pay for the key classes, we must set the pay for the other classes. This is done on the basis of relationships, principally, level of responsibility, degree of judgment, impact of error, level of difficulty, supervision received, supervision given, required level of skill, and interpersonal relationships or public contact. In addition, there may be other considerations which are unique to certain positions. For instance, the compensation of nurses working in hospitals inherently includes working conditions typical of such facilities. In contrast, a nurse working at a county jail has considerably different working conditions, and these should be recognized as a compensable criterion. The whole job approach to classification and the pay related to that process allows consideration of these types of unique aspects of work. As a bottom line, the compensation for the related classes as compared to the key class is determined by the informed judgment of professional analysts.

There are several types of quantified systems, such as factor point and benchmark. What they have in common is that they are number-based. Let me describe the system used in the State of Washington, which has been the center of much attention by proponents of Comparable Worth because of recent court cases.

That system used some 120 benchmark classes for its original 1974 study. Each class was analyzed on four factors: knowledge and skills, mental demands, accountability, and working conditions. This resulted in a total numerical score which ranged from 89 for Library Guard to 571 for Registered Nurse IV. Each other class is then compared to the benchmark classes to find the closest fit. If this were a factor point analysis system or some variation of it, either the other jobs would be compared to the benchmark classes factor by factor or would be compared to some abstract scale with numbers attached. Pay is then determined by some formula such as this from Washington: Monthly Salary Dollars = $2.85 × Evaluation Points + $627.50.

Implicit in this approach is the assumption that each point is equal in value to each other point. Hence the 122 points given to a Homemaker I for knowledge and skills is equally valuable as the 122 points given to the mental demands of a Registered Nurse IV, and the 122 points given to the accountability of an Unemployment Insurance Actuary. Moving off of the high levels of the benchmark classes, the 61 points given to a laborer for knowledge

and skill equates to the 61 points given to a Licensed Practical Nurse IV for mental demands, and to the 61 points given to a Librarian III for accountability. Working conditions are a type of add-on apparently, ranging from no points for an office setting to 20 points for laborers' surroundings. I guess that involves such work as collecting trash or raking sludge in a sewage disposal plant.

The quantified systems are the bread-and-butter of the Comparable Worth proponents. Several courts have said that they, the judiciary, will not determine the value of jobs outside of the equal pay setting. However, if the employer is obliging enough to establish the value of dissimilar jobs for the court, it will take the employer at its own word, and find intentional discrimination if there is a significant disparity between the number of points assigned and the compensation paid on a relative basis. This is what happened in the *Gunther* case and also what happened in the *State of Washington* case.

The most common argument advanced for the use of the quantified classification system is that it is objective. The numbers express how different jobs are. We have given considerable thought to the implications of this type of classification as part of our evaluation of our own operations. Frankly, we cannot see where any great objectivity lies. Numbers as such are neutral.

Someone has to decide what factors will be considered. Note, for example, that the State of Washington evaluation did not give any separately identifiable credit for physical exertion. (I might add parenthetically that Comparable Worth advocates consider that factor to be sex-discriminatory.)

Someone has to decide how much value each step in the factor scale is worth. Someone, usually a labor-management team advising a consultant, has to decide what step of each factor applies to each job.

Then, because we as a number-driven society simply cannot look at arrays of numbers, the assigned values must be added to give us a total. This causes all points to be deemed equally valuable. It also leads to the *Gunther* situation, where the County classified a Matron's work as worth 95% of a Guard's work, but paid Matrons only 70% as much as Guards received.

In contrast, we have found that employees and managers readily understand our system of whole job analysis because of

their familiarity with their own occupations. In addition, the courts have found our whole job system to be impartial and non-discriminatory.

Prevailing Wage Concept and the Free Enterprise System

Many writers have documented the spread in average earnings between men and women and the differences in average pay between so-called "women's occupations" such as nursing, librarianship, teaching, and clerical work as compared to so-called "male occupations" such as engineering. I will not take your time to repeat these statistics.

Considerably less attention is being paid to the reason for these differences. The mere fact of difference is presumed by some, such as Dr. Ruth Blumrosen, to establish at least a prima facie case of discrimination.

In an article entitled "Sex Discrimination: Who is at Fault?" Dr. Solomon Polachek, a noted analyst of sex differences in pay, wrote:

> "Blatant discrimination on the part of firms is not the only cause for sex differences in wages and occupational status. Labor market supply differences in the continuity of lifetime labor force participation is at least equally important."

And more specifically:

> "Whereas it may be true that *some* of these differences in labor force participation are caused by women being discouraged from working continuously, it is documented that much of the differences are not caused by firms, but rather by more implicit and subtle forms of societal discrimination taking place directly within the family. The fact that women are on the average younger and less educated than their husbands is sufficient enough reason to cause a certain specialization within the household, such that men concentrate on market work and women on nonmarket and family activities. It is for this reason that we observe that single-never-been-married women have a greater lifetime labor force commitment than their married counterparts, as well as a higher wage. In fact,

the wage gap between single men and single women is one third that of married men and women.

"The importance of *continuous* labor force participation cannot be underemphasized (sic). Being out of the labor force for even a few years is a prime determinant of sex differences in wages and occupational status. Discontinuous labor force participation not only interrupts on-the-job training but also forces firms and individual workers to alter their lifetime investment perspectives. It is because of such labor force intermittency that much of the differences in wages and occupational structure can be explained. For example, each year out of the labor force is associated with between ½ and 1½% depreciation in female earnings potential.

"Coupled with such depreciation (or atrophy) is the loss of normal earnings increases (approximately 2-3% per annum) associated with achieving greater seniority. Given that the average married women spends at least ten years out of the labor force caring for children, women can be expected to earn 25-45% (ten times [2½ to 4½%]) less than the men solely on the basis of intermittent labor force participation.

"Recently it has been documented that much of the observed occupational segregation can also be explained by such female labor force intermittency. Because those females with the least labor force commitment take jobs with the least atrophy, it can be shown that if females were to have a full commitment to the labor force, the number of women professionals would more than double, and women in menial occupations would decrease by more than 25%.

"Given the importance of continuous labor force participation, and given the recent trends of increased labor force commitment of women, one may ask why sex differences do not seem to have narrowed, but instead have remained relatively constant. The answer to this seeming paradox lies in the fact that concentrating on mean wages for the whole population, while neglecting various population subgroups may be misleading. In fact, the constancy of the aggregate wage gap in recent years underscores the importance of the link between labor force continuity and wages because considering only the aggregate *mean* wage neglects the fact that it is the *low wage* women who are increasing their labor force

commitment and thereby *lowering* the mean female wage." (Emphasis in original text.)

Two more recent cross-sectional studies analyze the subgroups to which Dr. Polachek refers. The first was prepared by the U.S. Bureau of Labor Statistics, and was discussed by Dr. Janet Norwood in her testimony at the Congressional Hearings on Comparable Worth on September 16, 1982. The second was prepared by June O'Neill of the Urban Institute. Both of these analyses indicate that the more variables other than discrimination that one can hold constant, the less the gap between earnings of men and women. While these studies clearly do not account for all of the difference between the earnings of men and women, they also clearly indicate that the differences cannot all be attributed to discrimination. As Dr. Norwood observed, the subject is very complex and not susceptible to simplistic analyses.

Chief Judge Barbara Crabb of the U.S. District Court in the Western District of Wisconsin, writing in the decision of *Briggs v. City of Madison*, 28 FEP Cases 739, (1982) listed these explanations of sex differences in pay as alternatives to discrimination: (a) crowding (a heavy concentration of women available for the same job); (b) the willingness or unwillingness of women to organize for higher wages and increased benefits; (c) familial and peer expectations; (d) desire for part-time work or work with flexible hours; (e) reluctance to pioneer on non-traditional jobs; (f) absence of "role models" in non-traditional jobs; and (g) lack of information about higher-paying jobs. She adds that certain so-called women's jobs have never been well compensated, whether held by men or women, and continues in footnote 7:

> "Besides nursing, those that come to mind readily are jobs in teaching and in the ministry. All have low wages in common (perhaps a vestige of the times in which these jobs were performed almost exclusively by members of religious orders) but not all are jobs held primarily by women."

Among professionals, technicians, and service-maintenance categories, the turnover rate among females in the Denver Career Service between July 1, 1981 and June 30, 1982 is more than twice that of males. The overall turnover rate for women of 13.3% is

over twice that for men, whose rate is 5.0%. During the more affluent period between July 1, 1978 to June 30, 1979, the turnover rate for women was 17.3% as compared to a turnover rate for men of 9.0%, so this is not a relationship affected by the economy. This evidences, in part, the discontinuities.

Comparisons of pay made on a cash basis are fallacious, because fringe benefits paid to or on behalf of a staff member are not included. This is recognized in the contemporary concept of "Total Compensation." For a person in independent practice to have the same net income as a salaried person, he or she would have to earn more in order to buy the fringes. Denver probably is typical of private employers in our fringe benefits, since we must follow community practices. Our salaried employees receive fringe benefits equalling 37.9% of their earnings—a figure exactly the same as our survey indicates the employers in our community average. Only FICA is required. The other benefits include health insurance, dental insurance, life insurance, retirement, vacation, sick leave and holidays. These benefits vary greatly by employer, depending on size and type. In addition to the conventional fringe benefits, a salaried physician in Denver's health and hospital department also benefits from city-purchased malpractice insurance, as another example. Self-employed persons must buy these benefits from their earnings.

We have not been able to locate statistics on the relative self-employment of men and women, but to the extent that there may be sex differences, they are another factor to help explain the differences between comparative earnings.

In summary, the studies analyzing the differences in pay between occupations dominated by men and those dominated by women demonstrate that many factors contribute to this difference. Nonetheless, some residual amount cannot be accounted for by factors we can measure. It is not possible to say how much of that residual is due to discrimination.

In my opinion, the real question is what should be done to eliminate any discrimination that exists. Women's advocates have sought their remedy almost exclusively in the courts. I respectfully submit that women can raise their wages the same way that men did. These include three techniques: (1) Women taking non-traditional jobs; (2) Men entering so-called "women's jobs"; and (3) Organizing and bargaining for pay.

Accounting was traditionally a male occupation a few years ago, but in the Denver career service, 21 of 57 accountants are female, or 37%. Data processing traditionally was a male occupation, but in the Denver career service, 34 of 97 employees in the profession or 35% are female. Zookeepers also traditionally were male, but 11 of our 37 zookeepers are women, which makes the occupation 30% female. In addition, women are becoming laborers and truck drivers and taking other semi-skilled crafts jobs. Should a woman who is fully qualified in a skilled craft apply for a job with the city, we would have no qualms about hiring her. Librarians traditionally were female, but in Denver, 35 of 119 employees in this profession or 29% are male. Males constitute 13% of the clerical positions in the Denver career service as of last June 30. Our nurses remain "hard core" female—only 22 of 470 filled nursing positions are males, or 5%. These figures fluctuate to a limited degree with the size of the work force.

As a result of our system for setting pay, the Directors of the Nursing Service and the Public Health Nursing Service are paid as much as the Director of Traffic Engineering and the Director of Building Inspection. Our Zoning Administrator is paid as much as the Director of Budget, the Public Health Engineer, and the Director of Risk Management. A full performance nurse is paid as much as a chief paramedic on our ambulance service and the supervisors of many skilled crafts functions.

These comparisons have not resulted from litigation. The nurses lost their Comparable Worth claim in the U.S. District Court and in the U.S. Court of Appeals for the Tenth Circuit. The U.S. Supreme Court refused to grant a writ of certiorari. Instead, two economic factors caused the salaries of nurses to rise rapidly. First, a shortage of graduate nurses developed in the Denver area, so the non-public hospitals raised their pay to attract more nurses. Second, the nurses organized and initiated a job action against some of the non-public hospitals, which also resulted in pay increases. Since the City and County of Denver follows the marketplace, we also raised our salaries for nurses. I cited the Zoning Administrator in comparisons as an example of another way of reducing the spread between average earnings of men and women. Zoning and related enforcement activities have been dominated by males. In this case, a woman has entered a non-traditional occupation and has risen to the level of the agency head.

Summary

In conclusion:

1. The concentration of women in certain occupations and a spread in income between men and women can be explained on social and economic grounds, and is not proof of discrimination.

2. The classification and pay plan of the City and County of Denver is based on the duties performed, not on the person performing the work. It is as objective as a classification system can be made, and is non-discriminatory.

3. There is no known completely objective system for determining "job worth" across occupations other than the marketplace. The disparity among occupations is not inherently sex-related. Other than for the law of supply and demand, why should a champion professional basketball player be "worth" more than a custodian or a minister?

4. Based on our professional experience in both the public and private sectors, it is our considered judgment that it is not possible to devise a workable, objective, multi-industry classification and pay system independent of the marketplace.

Chapter 15

The Limitations of Job Evaluation Systems

by Donald P. Schwab

A scholar and expert in the field of personnel human resource management explains the practical problems of job evaluations.

Dr. Donald P. Schwab is a professor at both the Graduate School of Business and the Industrial Relations Research Institute at the University of Wisconsin. His Ph.D. is in Industrial Relations from the University of Minnesota. Professor Schwab is an expert in the field of personnel human resource management. He has done extensive research on job evaluation systems, including the system proposed by Hartmann and Treiman. Dr. Schwab participated in the 1980 conference on Comparable Worth held by the Equal Employment Advisory Council, where he presented a paper on job evaluation. A prolific writer, he is also editorial consultant for three professional management journals.

Job evaluation is an administrative procedure used by organizations to help array jobs for the purposes of establishing wage differentials among jobs. It addresses the question of wage variability, and hence the question of wage equity.

Two points are worth noting at the outset. First, although it is difficult to get accurate estimates of the extent of job evaluation usage (*e.g.*, Treiman, 1979), it certainly can be concluded that most employees in the private sector are *not* covered by job evaluation

plans. Thus, in the absence of legislation mandating the use of job evaluation, any public policy implemented through this particular administrative procedure will directly impact a minority of employees only.

Second, even where used, job evaluation accounts for only a portion of the variability in wages going to individuals (Schwab, 1980). This is true because organizations typically determine pay using several administrative policies and procedures. Some of these procedures, such as job evaluation, are aimed at the payment of jobs (regardless of individuals who perform them). Some, however, are aimed at individuals (regardless of the jobs they perform). Examples of the latter include seniority provisions often found in collective bargaining agreements, and merit provisions often found among white-collar employees. Again, short of regulations making job payment the exclusive basis of employee compensation, modifications in job evaluation will not ensure that individual wage differentials conform to some criterion such as Comparable Worth.[1]

With these caveats in mind, it is nevertheless obvious that job evaluation has received a great deal of attention recently as a part of the Comparable Worth debate. Advocates have considered it as a potential mechanism for attaining Comparable Worth but, at the same time, as a procedure that currently may be used in ways that prevent wage distributions from satisfying comparability criteria.

The present paper is designed to describe briefly the job evaluation process as it is typically conducted in the private sector. It then examines major suggestions offered by Comparable Worth proponents as ways for using job evaluation to achieve some alternative criterion of equity.

Job Evaluation: A Policy-Capturing Procedure

If compensation administrators rue the fact that proponents decided job evaluation might achieve Comparable Worth, they can nevertheless take credit for encouraging the idea. It has been management and its industrial engineering consultants, for the most part, who have argued (often in trying to obtain union acquiescence) that job evaluation is a scientific procedure that generates equitable wage structures. Moreover, the so-called compensable factors, on which job evaluation is typically rationalized, are usually cast in terms of internal characteristics of work. Skill,

effort, responsibility, and working conditions are widely included in private sector job evaluation plans. Indeed, their inclusion in the Equal Pay Act was with the encouragement of private sector representatives (Williams & McDowell, 1980). It should thus come as no surprise that those who want to extend equality to comparability would emphasize the same internal criteria.

So, job evaluation is frequently rationalized as developing job wage differentials based on internal job-related criteria (*e.g.*, Dunn & Rachel, 1971, p. 168). An examination of the way job evaluation typically has been implemented, however, suggests that another criterion has dominated practice (*e.g.*, Treiman, 1979). Specifically, when job evaluation is implemented, the system is usually "validated" by using wages for a subset of all jobs (called key or benchmark jobs) as the criterion or dependent variable.[2] This involves modeling the key job wages as a function of the compensable factor scores. Post hoc weights are determined (usually through regression) that maximize the relationship between the job evaluation results and wages. The resulting model is then used to determine wage rates for the non-key jobs in the organization. The "policy" of the external market is captured using internal job characteristics for scoring purposes (*e.g.*, Schwab, 1980).

It is essential that this very important characteristic of job evaluation be understood or at least accepted. A priori weights and even the type of compensable factors are not important so long as post hoc weighting can be performed to obtain an acceptable fit between key job wage rates and their evaluations. Moreover, it turns out that a variety of compensable factors and a priori weighting schemes can be made to predict wage rates quite well. Consequently, organizations have not devoted much effort or research to the type of compensable factors used in job evaluation.

Comparable Worth Suggestions

Those who propose the use of job evaluation for attaining Comparable Worth as well as those who believe job evaluation prevents payment based on Comparable Worth, have offered a number of suggestions for job evaluation practice. Some of these make sense, but given the realities of job evaluation practice, some do not. Some would probably have effects opposite of those intended. These suggestions are discussed briefly below.

Suggestions Involving the Predictor

Evaluating jobs. One frequently expressed concern involves the possibility that jobs populated predominantly by females are underevaluated, other things equal, relative to predominantly male jobs (*e.g.,* Smith, 1978; Treiman, 1979). The hypothesis is plausible. Evidence suggests that evaluations at the *individual* level sometimes favor males, other things equal, in employment decision-making contexts (*e.g.*, Arvey & Campion, 1982; Nieva & Gutek, 1980). Recently, a few studies have been performed on the possibility of bias in decisions about *jobs* (Arvey, Passino, & Lounsbury, 1977; Grams & Schwab, 1983; Mahoney & Blake, 1979). While more investigations are needed, the evidence to date does not provide much support for the bias hypothesis in either the description or subsequent evaluation of jobs.

It also should be noted that the consequences of sex bias in job evaluation are not necessarily clear-cut. If job evaluation was used without validation on an external criterion such as wages, then bias as hypothesized would serve to lower wage rates paid to predominantly female jobs. However, if the job evaluation system is validated against a wage criterion (*i.e.*, it involves policy capturing as described above), then the pay consequences of evaluation bias against female jobs is indeterminant. Indeed, Schwab and Wichern (1983) have shown that, given a set of reasonable assumptions, one could expect bias against female jobs to downgrade pay rates for the highest paid female jobs, but actually upgrade the pay of the lowest level female jobs. The impact of bias against female jobs on the total wage bill going to females is thus indeterminate. Nevertheless, bias in evaluations of female jobs would actually serve to offset bias in wages going to female jobs if both hypotheses are true.

Compensable factors and weights. Another issue raised by critics of current job evaluation practices has to do with the choice of compensable factors and the a priori weights assigned them. Again, it is frequently hypothesized that such choices favor predominantly male over female jobs (*e.g.,* Blumrosen, 1979; Remick, 1981; Treiman, 1979). For example, physical effort (a characteristic presumably more characteristic of male jobs) may receive a greater weight than manual dexterity (a characteristic presumably more descriptive of female jobs).

This criticism is far harder to address through research in a meaningful way than the criticism involving sex bias. First, it inevitably involves a question of values. What *should* constitute bases for making salary differentials? Only a value judgment can justify the use, or lack of use, of compensable factors balanced to account equally for jobs performed largely by females versus males.

Second, the consequences of modifying compensable factors or their a priori weights are ambiguous. As already noted, the effective weights given the policy-capturing approach to job evaluation are determined post hoc. Changes in a priori weights (and even compensable factors) may have little or no impact on resulting job hierarchies. At the very least, the impact cannot be determined before the system is actually implemented.

Consequences of altering compensable factors or a priori weights cannot be determined prior to implementation even if policy capturing is not used (*i.e.*, the sum of the compensable factor scores determine the job hierarchy without further weighting). This is true because the contribution of a compensable factor to the total job score depends on the *variability* in the distribution of jobs, not the absolute values assigned compensable factors, a priori (Schwab, 1980). Again, the consequences of changing compensable factors or weights would not be known before implementation and would vary across organizations as the distribution of jobs varied.

Suggestions Involving the Criterion

A few Comparable Worth advocates have addressed the criterion issue which really speaks to the heart of the job evaluation process as described above. Treiman and Hartmann (1981), in particular, have made several suggestions regarding the criterion that deserves consideration, and perhaps further research investigation. In essence, they propose that wage rates be adjusted to account for bias against jobs now held by females. Such an approach has appeal because it avoids (or at least obscures) the knotty value issues that are involved in trying to specify compensable factors.

The difficulty with this approach resides in the fact that identifying bias in wage rates may well be an impossible task. To conclude there is bias based on the results of any empirical analysis re-

quires that the investigator make numerous a priori assumptions. Investigators of good will can and do differ about the assumptions that are appropriate. Thus, while we may all agree in our hearts that current wage structures contain the results of some sex (and race) based bias, we can nevertheless disagree on its magnitude and perhaps even its existence in specific labor markets.

Conclusions

At present, only a minority of private sector employees are covered by job evaluation plans. Moreover, individual wages are also a function of other organizational pay policies even among those employees covered by job evaluation. Thus, whatever changes are made in job evaluation practice, their effects on individual wage differentials are unknown at this point.

In contrast to management rhetoric, job evaluation as practiced does not determine wages based on internal job requirements. Job evaluation is typically used as a procedure to replicate market wage determination internally for nonmarket jobs.

Most of the Comparable Worth suggestions to date have focused on the instrument for evaluating jobs. While the elimination of any bias that exists in the use of such systems may be desirable as a generally accepted value, it is unlikely that eliminating bias will have a major impact on wage rates emerging from such systems. In some cases, elimination of sex bias would likely serve to the wage disadvantage of female jobs.

A more effective way to modify results would focus on the criterion used to validate job evaluation. For example, adjustments could be made in wage rates as suggested by Treiman and Hartmann (1981). Such adjustments, however, are likely to be heatedly challenged because of the assumptions necessary to justify those adjustments.[3]

NOTES

1. This point is significant if for no other reason than the fact that the evidence used to argue that current wage distributions are biased against female *jobs* has come almost exclusively from data gathered at the *individual* level (see, for reviews, Blumrosen, 1979;

Treiman & Hartmann, 1981). While manipulation of wage distributions for jobs would certainly affect individual wage distributions, the effect would not necessarily achieve the objective sought.

2. Key jobs can be thought of as market jobs. They are employed in many organizations, have a relatively stable job content, and a market for such jobs exists.

3. The author gratefully acknowledges financial support of the Graduate School of Business and the Graduate School, University of Wisconsin-Madison.

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Chapter 16

Practical Considerations in Job Evaluation

by Charles M. Cumming

A compensation consultant with wide experience discusses the practical problems of evaluating jobs and setting wages.

Charles Cumming is the managing principal of the general compensation consulting unit of Sibson and Company, a management consulting firm. He has overall responsibility for managing Sibson's National Consulting Practice in the area of performance pay systems for non-executive employees. Mr. Cumming's personnel and compensation consulting expertise is based on extensive work in compensation administration, job evaluation, and management incentives. During the eight years prior to joining Sibson, he gained industry-wide experience in the personnel and compensation field as Director of Compensation for Aetna Life and Casuality Company. Mr. Cumming received his MBA from the University of Connecticut and is a frequent speaker at seminars and workshops.

In my job as a consultant, I have worked with some 50 companies in the area of job evaluation. I have worked with more companies than that, but in the particular area of job evaluation and setting pay rates, the number is approximately 50, so I feel that I have a lot of first-hand practical experience as to how job evaluation systems actually operate.

I would first like to say that, from the standpoint of Comparable

Worth as a broad economic and social goal, I, like probably anyone else, feel that it is not a goal with which you can take much issue. My principal concern with Comparable Worth, however, relates to the issue of practicality in terms of how one can really implement these goals. From the standpoint of a consultant, Comparable Worth has the potential to generate a lot of consulting business and a lot of income, just like pay controls did a number of years ago. Whenever employers perceive they need some help in dealing with issues that are not totally clear, it can mean a lot of business for consultants. Thus, my concern is that, from a practical standpoint, Comparable Worth can have serious implications for business and industry, and in some cases, I think, some very detrimental effects overall.

With respect to job evaluation systems themselves, we've heard a lot of discussion about so-called point factor systems or quantitative approaches to job evaluation. These types of systems were a major subject of the National Academy of Sciences report. There are other systems of evaluating jobs. The market-based system that the city and county of Denver uses is one quite frequently used approach to job evaluation which doesn't try to quantify how jobs score on compensable factors. The application of point factor systems in some respects may even be one of the things that, over the 20 or 30 years since point factor systems were originally developed, has tended to reduce the flexibility of the labor market in responding to changes in supply and demand. As Dr. Schwab pointed out, most point factor systems that have been developed and used in industry were designed to best replicate or reflect the relationships of pay that existed in the marketplace at the time they were developed. If changes in labor supply/demand, subsequent to the development of the job evaluation system, have an impact on prevailing wage rates, the insistence of employers on using point factor plans will preclude these employers from being responsive to those changes in market wages.

Another factor relating to the use of internal systems as a means of replicating the labor market is unions. Unions have an effect on the labor market that runs *counter* to the impact of supply and demand because supply and demand is ignored when wages are set through the collective bargaining process. Where a union is present, many companies experience problems when they try to apply a uniform internal job evaluation system. When they

evaluate nonunion jobs, which presumably do not reflect any premium over prevailing wages caused by union collective bargaining, they find that some of these nonunion jobs may score the same number of points as other jobs in the company where the wages have been driven upward by the collective bargaining process. In many of these cases, we find that companies or state governments have gone through an extensive job evaluation process and found that it would lead them to pay some jobs either substantially *below* prevailing market rates (which they can't do if they want to hire sufficient numbers of people or avoid a union strike) or, alternatively, pay a substantial number of jobs *above* the rate which the labor market requires because those jobs are not unionized.

Dr. Schwab also mentioned that job evaluation is an administrative system employed by the firm. I think this is one of the key issues to consider when we talk about revising job evaluation systems in order to adjust for whatever discriminatory effects might exist in labor market pay rates. Even if raising pay and making adjustments in current evaluation systems were affordable, we don't really know how much adjustment would be required until we know how much of the difference in pay results from discrimination. This is presumably the only difference we would be trying to adjust for within the job evaluation system.

Additionally, there are other significant implications involved in restructuring job evaluation systems as administrative processes. There have been several studies done over the last several years on the types of practices that are employed by high-performing companies in particular industries versus companies that do not do so well in those same industries. A book, which many of you may have read, *In Search of Excellence* by two former McKenzie consultants, a study undertaken by another consulting firm, and a study done by an employee of Sibson & Company in conjunction with UCLA, all came up with similar conclusions about the human resource management practices in high-performing companies as contrasted with those in lower-performing companies.

In high-performing companies, the administrative systems (and job evaluation is definitely one of these) are typically used to communicate and reinforce the significant values of the firm. In contrast, the administrative systems in poor-performing companies are typically used to either protect the company from its employees or

to protect the employees from the company.

If systems become highly "scientific," highly "esoteric," and highly "quantitative" in their construction, if they can only be administrated by highly trained administrators rather than by the supervisors and managers who are trying to communicate the results of those systems to employees, the net effect is likely to be that employees will perceive the system that is used in setting their wages as a system they don't really understand. In circumstances such as this, when employees try to learn why their pay rates were established at the level they are at, the supervisor is likely to take the position, "I don't know, but I tried to get something more for you. I just couldn't convince the evaluators of your job what it is that you're really doing."

Another factor that needs to be understood is how judgments that affect job values are actually made during the job evaluation process. No matter how apparently "objective" the job evaluation system purports to be, any system still requires subjective judgments to be made by the people doing the evaluating. These people typically know what the market-pay-rates generally are for the jobs they are evaluating. If the market rates for certain jobs have changed over time relative to what they were when the evaluation system was first designed, the subjective judgments that one must make allow the evaluators to take this knowledge into account. Thus, we see things going on in actual practice within the administration of job evaluation systems that allow employers to conform to market realities, regardless of how strongly some firms may say that they are basing their evaluations totally on internal values. We see committees evaluating jobs where horse-trading, to use one term, goes on—where one evaluator says, "If I'm going to evaluate your job and pass judgment on the number of points it should get on certain factors, I need to keep in mind that my job is coming up a month from now, and I don't want to get you working against me. So I'll go along with you, give you the points you need to get your job evaluated where it needs to be relative to the market. In return, I expect the same thing when my job comes along."

It seems to me that there are really only two logical definitions of job value. One definition is that a job's value is either what it is paid in the marketplace *or* a job's value is what employees perceive as fair and equitable. And very few, if any, firms have ever devel-

oped a job evaluation system that involves heavy input of employee perceptions of relative job rankings in structuring those systems. If we are going to deviate from the marketplace, and I think very few companies would prefer to do that, it seems that the next step we should take is to start getting employees to state expressions of what criteria should be used, or how they see jobs ranked against each other in order to develop a validation index against which we could develop factor points and factor weights.

The reason I said that most companies would not want to deviate from the marketplace, is a little like the analogy where companies decided to try to purchase raw materials, not based on the operation of a commodity marketplace, but using prices based on their evaluations of what different raw materials such as metals might be worth to them. They might establish a system that says certain metals have value to them based on their electrical conductivity, their brightness, their hardness, their malleability, and any other factors that are of value to a particular company. Following that procedure, a company might decide that copper was worth more than gold, or that copper was worth the same amount as silver. Consider how practical it would be for a company to go out in the marketplace with its purchasing agent and say, "This is the price we are going to pay for copper, or gold, or silver, because this is what our evaluation system has determined the value of those metals to be." It is important to remember that labor is to some extent a similar commodity that sells itself to companies on the open market.

Chapter 17

The Relationship of Wages to Profits

by Edwin R. Clarke

A management consultant reminds us that business must cover its costs or it can't provide jobs to anyone.

Mr. Edwin Clarke is a specialist in the management side of employee relations. He has had a distinguished career as an employee relations practitioner and as a specialist in labor relations, negotiations, compensation, benefits and employee communications. A graduate of Harvard University, Mr. Clarke headed the employee relations program for 18 years as vice-president of Fansteel, Inc., in Chicago. Prior to that, he was affiliated with Good Year Tire and Rubber Company. Mr. Clarke is now performing a consulting assignment for H. K. Porter Company in Pittsburgh, and in February, 1984 is opening his own firm of personnel practice consultants, E. R. Clarke Associates, Inc.

At the outset I think I should identify myself very clearly. My career has been in the manufacturing industry—always striving to make and sell a product competitively and profitably. A good profit on sales is pennies per dollar—3 cents, 4 cents, 5 cents usually. I intend and believe these remarks to be responsive to those of all our speakers on this topic.

The discussion so far this afternoon has not talked about selling prices for products. Yet, in the manufacturing industry it is the selling prices that determine what levels of wages and salaries can be paid. The selling price must be sufficient to cover material costs,

wages and salaries, other manufacturing expenses, *and* investment in plant and equipment. Unless the product can be sold competitively and profitably, people will *not* be employed and it will be unnecessary to determine *any* wage rates or salaries.

Sex discrimination against women in wages and salaries should not exist, but the methods employed to avoid it must not interfere with the competitive capability of the enterprise.

In fact, of course, we have an innumerable variety of enterprises competing in an innumerable variety of market situations. Even a very large company accomplishes its manufacturing in many plants, some large, some small. Each has the necessity of competing successfully in its product market.

To be unsuccessful means to close down. Even the large company, therefore, may not be able to pay the same rates for the same job in plants that make different products and compete in different product markets. The accounting clerk in the plant that makes a product which competes with imports from Singapore may have to be paid less than the accounting clerk in the plant that competes with other U.S. manufacturers. Any system intended to eliminate sex discrimination, such as a company-wide job evaluation system, or a Comparable Worth law, that would impose restrictions on a company's freedom to compete, would be destructive and should be avoided. Sex discrimination in wages and salaries, if found, should, and can be, and in my opinion must be, overcome without interfering with the ability of the plant to compete successfully in its product market.

The presentations we have heard in this Conference have described some situations in which discrimination was found to exist, and some situations in which it was found not to exist. My own experience of the last 15 years has seen no wage-structure discrimination, although in 1967 one of the old style males-and-females-separate wage structures was eliminated. Moreover, there has been quite a bit of movement of females into nontraditional classifications. All job rates are determined completely without regard to whether a male or a female will be the one to do the job. Women are notified when certain nontraditional jobs open up. A majority of the time the job has been refused in such a situation, but not always. The women who want to try the nontraditional jobs have the opportunity to do so. There have been some claims to jobs by females that had to be discussed and resolved; but no suggestion of

wage discrimination has been made.

My point is that my experience indicates that wage discrimination problems, when discovered, can be corrected. It seems to me that a generalized approach will be harmful and is unnecessary, especially the imposition of some method of arbitrarily raising wages and costs by additional legislation and the court actions that will inevitably follow. We have enough laws now. U.S. industry must not have more interference with its cost structure which is presently much troubled by foreign competition and is struggling to hold its own in steel, automobiles, heavy equipment, televisions, electronic devices, and other products.

Chapter 18

A Legislator's View of Comparable Worth

by Congressman Denny Smith

A Congressman discusses general guidelines for evaluating the impact of Comparable Worth on our economy and nation.

Congressman Denny Smith of Oregon achieved national recognition as an articulate advocate of the private enterprise system in 1980 when he defeated Al Ullman, then chairman of the House Ways and Means Committee. Representative Smith's leadership in behalf of reduced deficits, lower interest rates, and a balanced budget has gained him the respect of businessmen and political leaders. Mr. Smith's business background includes serving as CEO of an $8 million-dollar-a-year family newspaper business which he still continues to run. He now serves on the Compensation, Pension & Insurance Subcommittee of the House Veterans' Affairs Committee.

According to the media, the election of 1980 was an aberration. Ronald Reagan shouldn't have been elected to the Presidency; Denny Smith shouldn't have been elected to the House of Representatives; and, of course, Republicans should not have taken over the U.S. Senate. But all that did happen. It happened because the voters zeroed in on four issues which were particularly important to them. It is important that we not lose sight of why the 1980 election happened. It happened because people were tired of the tax-and-spend policies and overregulation, and they were concerned about national defense as well. It wasn't because of Amy Carter's

discussion of the Soviet problem. It wasn't because of the Equal Rights Amendment. It was not because of the nuclear freeze. It was not over the environment.

The election of 1980 happened because of four basic, simple issues. The American people wanted a return to opportunity, a return to the kind of incentive that they had previously known in their own lives, and a return to the American way of life—the way of life they had grown up with and that they wanted to have for their children.

Let's take those four basic issues and talk about them a little bit because I think they really reflect on any issue that we happen to talk about, including Comparable Worth.

What has happened to taxes? We have taken the tax code and cut the tax rate. However, that tax rate cut has not really been advertised that way. It has been advertised as a *straight* tax cut. Nothing could be further from the truth. We're currently raising just as much revenue, if not more revenue, than we did prior to the 1981 tax rate cut.

In the spending area, we have increased spending by some $200 billion, including $115 billion in the senior programs. Today we are borrowing 25¢ out of every $1.00 that we spend through the Federal checkbook.

In the area of regulation, we have reduced the number of pages in the Federal Register, and we have reduced the number of employees somewhat. But we still have not made the impact that many of us had hoped that we would be able to make on the major problem of overregulation of the economy. This is true in every area you want to select—the Equal Employment Opportunity Commission, OSHA, or any of the independent agencies.

We did increase our national defense. This was a very vital part of what the Reagan program was all about. It is important, to be sure, that we maintain our freedom. People understood that in 1980. If there is an area where we have failed, it is that some people in this country are concerned that we have spent too much money on defense. In fact, we have not truly provided the kind of defense that we need in order to maintain our freedom. We are in danger of losing a consensus of support for national defense because we haven't released enough information to the American people. I can think of no greater indication of the kind of opposition we face in the Soviet Union than the downing of the Korean Air Line flight

#007; that incident proved that the Soviets have no concern for human worth, let alone Comparable Worth.

The Preamble of the Constitution says: "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity do ordain and establish this Constitution for the United States of America." Nowhere does the Constitution say life, liberty, and the pursuit of happiness and entitlement programs; nor does it say Comparable Worth.

"Establish justice" does not mean that we have equality of outcome. Milton Friedman made this point in his book called *Free to Choose*. This new definition of equality—equality of outcome—means that everyone should have the same level of living, or of income, and should finish the race at the same time.

However, equality of outcome is in clear conflict with liberty. The entire concept also flies in the face of common sense, our forefathers' wisdom, and the principles they wrote into our Constitution. I have two nieces and a daughter as well as two sons and a nephew living in my household, and what I would like to have for them is "equality of opportunity," to quote Milton Friedman again. No arbitrary obstacles should prevent people from achieving those positions for which their talents fit them and which their values lead them to seek. Not birth, nationality, color, religion, sex, nor any other irrelevant characteristic should determine what opportunities are open to a person—only his abilities. This is what we hope for our children.

What about Comparable Worth as an issue of the 1980s? That means paying people the same dollars for different jobs based on comparable skills and comparable background. Who's to decide on the comparable skills and who's to decide on the comparable background? How does this fit into our four basic issues? Does it mean less taxes? Does it mean less spending? Or, less regulation? What about more defense?

Let's take a look at the legislative history. As we are well aware, the 1963 Equal Pay Act requires equal pay for equal work. The 1964 Civil Rights Act did away with sex discrimination in employment. If you look at the legislative history of the 1963 Equal Pay Act, you see what a complex issue it was for Congress to debate. Instead of the Congress codifying the "comparable pay" concept,

we codified the principle of "equal pay for equal work."

The Comparable Worth doctrine ignores the economic reality of supply and demand. It would require both government agencies and the courts to do the impossible task of determining the value of Comparable Worth, an area in which they have no, or very little, expertise.

I'm in an interesting position as an Oregon Congressman. The 1981 U.S. Supreme Court decision in the case called *County of Washington, Oregon v. Gunther* started in a county just north of my Congressional district. As a result of that decision, I think we can pretty well predict that this battle will be fought principally in the courts. It will also be fought in the state legislatures because the public employees are in a regulated environment. Oregon and 15 other states have authorized studies, and put forth dollars to study Comparable Worth and its impact on their labor groups.

In Congress, we will see politics played. Senator Alan Cranston has introduced a bill on Comparable Worth, but I don't think it will go anywhere, even though he is a Presidential candidate. Rep. Geraldine Ferraro held hearings in the 97th Congress on Comparable Worth and came to the conclusion that we should just enforce the laws that are already on the books. I think that Congress will not act, basically for three reasons that we will look at now.

Banking, trucking, and airlines have been deregulated in the last five or ten years. In each instance, we were working within a regulated environment. I used to fly for Pan American World Airways, and I still have a union card. I used to argue a great deal with the people in the flight deck about the fact that we were highly overpaid. I think that, when you look at what's happened to the Continental pilots in the last couple of weeks, you see what the marketplace and what supply-and-demand will do. The captains were in a position where their biggest problem was what they were going to do with the some 20 odd days they had off a month out of the 11 months they worked a year; the other month was a vacation month. The $120,000 average salary of a captain has been brought down to somewhere between $35,000 and $45,000 in the Continental situation. That means that Continental pilots and the rest of the pilots in this country will be getting what the marketplace will bring, which is about $35,000. In a deregulated environment, supply and demand create a much different situation.

Where's the cry for Comparable Worth coming from? It is

coming from the activists, from the media, and from the public employee unions. The activists who are using the 59¢ slogan are not making a true comparison of men's and women's wages. How many hours, how many weeks, how many days, how many years does a woman stay in the work force? This issue has been framed in the media as though the woman is in an underdog situation. I don't really see it in that manner.

If the battle is fought by the public employee unions, it will be because they have a regulated environment in which they can try to gain control over their wages and ask for anything regardless of the economic outcome. The front line of the battle will be in the courts, in the media, and in the public employee unions. You can see that clearly in the *State of Washington* decision where Judge Tanner claimed there had been discrimination against the female employees who worked for the state of Washington. It is estimated that this decision will cost at least $500 million in back-pay for women employees of the state of Washington.

Fortune magazine estimated that the Comparable Worth concept in the private sector would cost somewhere near $150 billion per year. Just to put that in perspective, that's somewhere near what we hope the deficit will end up at for this year, or about 25¢ out of every dollar that we are spending through the Federal checkbook this year. All this will be borne by the taxpayer and/or the consumer one way or another, and that is the key to this issue.

How does the Comparable Worth concept mesh with the taxpayer-voter on our four issues? Where does it stand in relation to taxes? Where does it stand with spending? Where does it stand with regulation? The tax cost, if you take just the state of Washington, has been estimated to cost at least $500 million. Washington is not that large a state. What will the impact be? Washington is already going to have a very difficult time with its budget this year, and Oregon is in much the same situation. I think that it is important that the voters understand that this issue will have a great impact on their taxes because it will impact so greatly on state spending.

What effect will Comparable Worth have in the area of regulation? It will be some kind of bureaucratic nightmare, and it will be a lawyer's paradise. Perhaps it already is.

I compliment Mrs. Schlafly and the Eagle Forum for putting together this Conference. It is important to focus on how we are

going to handle this kind of problem long before it becomes a front burner issue for those of us who are active in the political arena. It is important to know what the public employee unions are doing with this issue so that we can work on solutions to the problem.

I would like to conclude with another quote from Milton Friedman because I think he so often puts things in proper context. He says, "A society that puts equality, in the sense of equality of outcome, ahead of freedom, will end up with neither equality nor freedom. The use of force to achieve equality will destroy freedom, and the force introduced for good purposes will end up in the hands of people who use it to promote their own interests."

Chapter 19

A Business Viewpoint on Comparable Worth

by Orville V. Bergren

A businessman explains why the free market is the best wage-setting mechanism and how government wage control will only cost jobs by hurting our ability to compete in world markets.

Orville V. Bergren has been the president and spokesman of the Illinois Manufacturers' Association for the past ten years. As the staff director and chief operating officer of the largest state industrial association in the United States, he became a powerful voice for the Illinois Manufacturers' Association with its more than 5,500 member firms. Mr. Bergren's business experience also includes executive positions with A. O. Smith and its Harvestore subsidiary. He has also served as secretary-treasurer of the Manufacturers Political Action Committee. His prestige in the business community in Illinois well qualifies him to articulate the business viewpoint.

The concept of equal pay for Comparable Worth is disarmingly attractive on its face, partly because it sounds so fair, and partly because it is so ambiguous that its real meaning and impact do not seem to occur to one without thinking about it. It is being marketed by its proponents under the banner of "pay equity," and who can argue with the principle of "pay equity"?

The average businessman, even today, seems to think that it refers to equal pay for equal work. Equal pay for equal work, of course, is now the law of the land, and has been widely accepted

and implemented by the business community.

Equal pay for Comparable Worth is radically different. It is being pushed on the theory of pay inequity due to alleged discrimination by employers against women as a group. It is based on the theory that certain occupations where women are in substantial majority are significantly underpaid compared to occupations where men are in the majority.

This issue is considerably more complex than the simple sex discrimination basis that its vigorous proponents are claiming. In fact, the issue is not one of sexual discrimination at all. Rather, in having some wages set by government, this doctrine is an assault, whether intended or not, upon our free market economic system, and would result in substantial damage to the U.S. economy.

It is difficult for businessmen to believe that the doctrine, in the absence of *proof* of sexual discrimination, could be taken seriously by legislators or judges. After all, how could a judge or a government bureaucrat rule that stenographers should be paid as much as machinists because the stenographers' work is as "valuable" as the machinists' with the comparable value being based on some kind of point system? But in our present national political state, anything is possible. Therefore, let us examine this issue from the standpoint of the business community.

First, the fact that the prevailing wages in certain occupations are less than in other occupations is not evidence of discrimination, even if the employees in certain lower-paid occupational fields are mostly women.

Those wages are and have been set by market forces. Much has been made by women's groups of the statement that women make, on the average, only 59% as much as men. While that figure has gradually risen to 65% since 1979, it is still not very informative, and is not evidence of sexual discrimination.

In Madison, Wisconsin, Judge Barbara Crabb recently rejected a suit brought by city nurses to be paid the same as male sanitarians. In her decision, Judge Crabb said that there are several nondiscriminatory factors that could result in lower average pay for women.

First, she said, women are in certain occupational fields primarily because of personal choice. In a statewide sample of 900 women in Michigan, in ranking the desirability of various jobs, the women rated being an elementary school teacher more desirable

than being a high school physics teacher, where the pay is higher. They ranked a career as an electrical engineer less desirable than being a social worker, and so on. Construction contractors have found it very difficult to meet quotas set by the U.S. Department of Labor for hiring women for construction industry trades. Reason: lack of interested female applicants. There are many court opinions recognizing that female employees who have chosen to work in a particular job instead of a predominantly male job will find it difficult to prove segregation or wage discrimination.

The second nondiscriminatory factor pointed out by the judge in Wisconsin was the large numbers of members of one sex with similar skills available for certain jobs; for example, stenographic and clerical.

Third, there is a lack of information about work in higher paying jobs and a reluctance to pioneer in nontraditional but higher paying jobs.

Fourth, women are generally less willing to unionize than men.

Fifth, she said, many women have a desire for part-time work or work with flexible hours because of family requirements or lower career expectations. They tend to leave the workforce for periods of time more often than men. They therefore forfeit work experience and seniority benefits, and jeopardize their success in bidding into higher paying jobs. All of these factors bear on earnings.

The number of working women has grown dramatically in recent years. With women now comprising 47% of the entire workforce in the U.S., the argument that whole groups of women are being discriminated against as to their compensation because they are women is simply unacceptable.

Although women still earn less than men on average, the wage gap continues to narrow. More women are changing career goals, working more on a full-time basis, and entering educational and post-graduate programs to gain needed skills. They are increasingly working in occupations that have been traditionally held by males.

The Harvard Business School class of 1982 had 168 women graduates. In 1957 there were none. In the Georgetown University Law Center, 40% of today's students are women. In 1957 only two percent were women. The management pipelines are filling with women. As they move upward they will raise women's median salaries. Women today are doing jobs and entering career fields

that their mothers would never dream of. As time passes, the average compensation of working women will increase.

Under today's law, a woman may apply for any kind of job in order to raise her compensation. Title VII of the 1964 Civil Rights Act prevents an employer from denying women access to available jobs for which they are qualified unless sex is a bona fide occupational qualification. An employer cannot discriminate on the basis of sex in any of the whole array of employment-related decisions, including hiring, promotions, transfers, job bidding, seniority, job placement and discharge. And, under the Equal Pay Act, the employer cannot pay a woman less than a man for doing the same job.

So, today's statutory protections for women's rights in the workplace are adequate legal remedies for them. If they can show that their complained-of wage rate is the result of discrimination, they already have the law on their side.

When all the rhetoric about sex discrimination is analyzed in terms of existing protections for women, the debate is really over whether the courts or some independent agency should be able to look at the wage differential between different jobs and tell the employer that the gap is inappropriate. In the absence of a showing of intentional discrimination by the employer, the law should not permit the courts and governments to tell the employer how to set wages for dissimilar jobs.

The 1981 *Gunther* decision of the U.S. Supreme Court has been frequently quoted as supporting the doctrine of equal pay for Comparable Worth. That 5-4 decision ruled that, even if women were performing different work from men, they might be able to establish a violation of Title VII of the Civil Rights Act if they could show that the employer intentionally paid them less because of their sex. The majority stressed several times that it was not addressing the Comparable Worth issue where the sole basis for a suit was a pay differential between different jobs. The four dissenting justices expressed a positive aversion to the Comparable Worth theory.

Nonetheless, it is likely that there will be more suits for pay equity for Comparable Worth based on Title VII. If legislation sanctioning Comparable Worth should pass, a rash of suits would doubtless follow. This would be another "fair employment bill for lawyers." Soaring legal bills would be presented to U.S. employers.

The fundamental problem of the Comparable Worth doctrine is that it assumes that occupations similar in their demands for knowledge and responsibility will pay equal wages in the absence of discrimination. That is simply not so. The doctrine ignores the fact that there is a market for certain jobs. For whatever reasons, members of certain sexes select certain work. When there are shortages or surpluses of persons to do various jobs, employers will pay differing wages for those jobs.

Consider, for example, the case of nurses and nurses' pay. A few years ago they were underpaid, and a shortage of nurses soon followed. But when that shortage led to increased salaries to appropriate levels, the supply of nurses soon became adequate.

Wage rates reflect the forces of supply and demand in the labor market. There are many variables that enter into the setting of wage rates. Two jobs requiring similar education and responsiblity may pay different wages because of the relative attractiveness of the work or work location, or special talents of some kind, or because of the availability of job applicants in a particular field. In other words, all market conditions must be identical to justify equalizing earnings in two occupations.

Of course, the impact of wage contracts negotiated by organized labor unions is an additional factor in wage rates in certain occupations.

The fact is that the well-meaning but misguided doctrine of equal pay for Comparable Worth is simply unworkable. The concepts of wage fairness are entirely subjective—value judgments where the value criteria are not susceptible to being reduced to fair and objective rules. Certainly it is inadequate to say, as does a bill in the Illinois Legislature, that Comparable Worth is "the value of work as measured by the composite of skill, responsibility and working conditions normally required in the performance of work." No matter what kind of point system can be devised to assess the value of a particular job versus another one, it is bound to be inadequate.

You are the personnel director of a large company. How do you apply Comparable Worth in determining wages in different occupational fields? How do you compare the salary of a well-educated and capable administrative employee with the wage of a unionized, poorly educated but highly productive factory employee to determine their Comparable Worth?

Comparisons among diverse categories such as skilled technicians, machine operators, clericals, truck drivers, food service personnel, and construction laborers would be required. There are 23,000 occupation titles in the Census Bureau's Classified Index of Industries and Occupations. When one departs from labor marketplace factors in setting wages and salaries, there is deep trouble.

If the doctrine of Comparable Worth is adopted as the law of the land, there is no telling what the end consequences might be. It might not be confined to discrimination based on gender. Why shouldn't a male employee in one occupation complain about the disparity in pay in his occupation compared to the pay in other occupational groups? Why shouldn't the hourly production worker making $15,000 per year bring suit to at least double his wages because of his claim that the company president, with his $300,000 annual salary, may be ten times as valuable to the company as the hourly worker, but surely not twenty times? Isn't that pay equity?

If we are talking about intentional discrimination based on sex, let the complainant prove it and enjoy the remedies provided by existing law. If we are talking about "pay equity" based upon subjective valuations of Comparable Worth of different job fields, let us be prepared to take the economic consequences.

Those economic consequences would be great, let there be no mistake about it. Comparable Worth would substantially increase wage costs for many companies. When a U.S. District Court judge recently decreed that Comparable Worth should be the vehicle to overcome what he concluded to be illegal discrimination against women in salaries paid them by their employer, the state of Washington, the judgment was based on Title VII of the U.S. Civil Rights Act. Whether that holds up remains to be seen. It has been estimated that the cost to Washington taxpayers would vary from $300 million to $1 billion, depending upon the mechanism decided upon to ostensibly redress the grievances of the women state employees.

That provides some idea as to the cost to U.S. business if the doctrine were required nationwide and for private employers as well as public. Such increased cost would result in one or more of the following in the private sector:

1. A reduction in the workforce in the affected occupational field. Only the best qualified would be retained and the marginal

employees would lose their jobs. Just as minimum wage requirements have reduced teenage employment, so would equal pay for Comparable Worth hurt the very people it is intended to help.

2. Large companies with employees in many occupational fields could terminate all employees in the affected Comparable Worth field and hire the work done by contract employees of a company specializing in that field—for example, administrative and stenographic work. With employees only in one occupational field, a specialty company could pay them based on market considerations rather than on Comparable Worth. This would not be a very satisfactory arrangement for anyone.

3. Increased cost would make a manufacturing company less competitive in international trade. That could result in lower sales and earnings, or in movement of manufacturing operations offshore in order to be competitive. This is the most ominous prospect of all, because it means loss of jobs for our citizens. The ladies garment workers union, for example, is concerned that the Comparable Worth doctrine might result in the employers contracting out the jobs to foreign companies.

What we don't need these days is anything that will further reduce the ability of our U.S. industry to compete internationally. For the first seven months of 1983 our U.S. merchandise international trade deficit was $39.9 billion, compared to last year's deficit for the same period of $19 billion. We are headed for a record $70 billion deficit in merchandise international trade in 1983.

There is no doubt that our overvalued dollar has contributed to reduce the price of imports and increase the price of exports, and has thus contributed greatly to our foreign trade imbalance. But even if that were not the case, U.S.-made products would have trouble competing.

Quality conditions aside, U.S.-manufactured products have a tough job competing in price. The prices of our products reflect our costs. And the costs of U.S.-manufactured products reflect, among other things, the substantial costs imposed by government.

In addition to taxes, U.S. industry is paying for an increasing array of well-meaning but costly social and regulatory programs and laws of Federal, state and local governments; to name a few: Social Security; workers' disability compensation; unemployment compensation; equal employment opportunity (EEOC); occupational safety and health (OSHA); environmental protection (EPA).

There are many others.

High U.S. costs are causing many manufacturers to move sizeable portions of their manufacturing operations beyond our borders. High U.S. costs are also helping foreign manufacturers become the suppliers to U.S. citizens of cars, TV sets, cameras, motorcycles, clothing, machine tools, shoes, bicycles and on and on. The net loss of manufacturing jobs is extremely serious to the future of this country. They have declined 12.4% since 1979. Considering that many other jobs are dependent upon the payroll brought in by manufacturing jobs, it is small wonder that we have serious unemployment problems.

In our democratic government, we seem to constantly strive for a social and economic Utopia. Little thought seems to go into the question of whether we can afford to pursue such a domestic quest further in view of the desperate international competition now going on for industrial jobs.

We seem to assume in this country that it is preordained in the stars that the United States will always be the biggest and richest and strongest and freest country in the world. That is simply not so. Our problems of the moment are serious. Painful steps and adjustments would seem to be necessary to improve our ability to compete. One of them is to examine our government-imposed costs on manufacturers. Certainly we should guard against imposing any more of them, particularly when they are unjustified.

The substantially greater wage and salary costs that would result from imposition of the Comparable Worth concept would certainly worsen the already challenging problem that the U.S. has in international trade competition in manufactured goods.

To summarize:

- The fact that average compensation in some female-dominated occupations is lower than in some male-dominated occupations is not evidence of discrimination against women.
- If in some instances intentional discrimination can be shown, there are already adequate legal remedies available to such women. The average compensation for women is rising significantly compared to men's under present anti-discrimination laws.
- Present compensation variations among occupational groups are the result of myriad forces in the free labor marketplace.
- Comparable Worth is an unworkable idea that would do great damage to our economic system.

- Comparable Worth would surely result in great costs to employers and would, in some instances, hurt lower-qualified women.
- Those higher costs would worsen the ability of the U.S. to compete in the world struggle for industrial jobs.

The concept of equal pay for Comparable Worth is so bad that it is difficult to believe that it is being taken so seriously. It is a highly emotional issue, being exploited by labor unions and women's groups interested in increasing their membership. Alarmingly, many politicians seem to be jumping on the bandwagon, obviously without thinking about the economic impact.

Because of its political and business implications, much of U.S. industry is disinclined to disagree publicly with the issue that is so dear to militant women's groups. Major U.S. firms, particularly those companies in consumer goods, tend to shun controversy of this kind for business reasons. But be assured that they would take steps to cope with the increased cost if they were forced to. And those steps would not be helpful to U.S. employment or the U.S. economy.

It is time for the people of the United States to sort out their priorities. It is difficult to imagine that preserving jobs and protecting the well-being of our economy wouldn't be at the top of the list. Equal pay for Comparable Worth is some people's idea of improving social justice, but it would surely be a Pyrrhic victory for its enthusiastic supporters.

The equal pay for Comparable Worth proposal, attractive as it seems to be politically, would be a disaster economically. It should be rejected.

Assessing the Evidence

by Judith Finn

We assess the evidence in three areas of disagreement between the advocates and opponents of the Comparable Worth doctrine.

1. Is there evidence of discrimination that would warrant a Comparable Worth remedy?
2. How useful are the means available to implement a Comparable Worth remedy? Since there is no other means proposed, this amounts to a question about the wisdom of trying to set wages by imposing government-approved job evaluation systems.
3. Would Comparable Worth mean major new governmental interference in the economy, *i.e.*, would it be a form of government-controlled wages?

Evidence of discrimination. The most serious attempt to present evidence in support of the discrimination hypothesis is the report by the National Academy of Sciences (NAS), which was summarized at this conference by Dr. Heidi Hartmann. The shortcomings of this evidence were explored in detail in Dr. Michael Finn's paper. Additional research results that do not support the discrimination hypothesis, and which the NAS report does not cite, were detailed by Dr. Cotton M. Lindsay.

Dr. Hartmann and the NAS Committee conclude that the wage gap is at least in part due to discrimination. However, they offer no convincing proof. The studies they point to are said to "indicate that productivity differences simply do not account for all of the observed earnings gap, suggesting that discrimination is likely to be an important factor." However, as Dr. Finn points out, these studies use incomplete measures of productivity, and ignore some

of the legitimate factors other than productivity which affect wages (*e.g.*, a compensating wage premium for jobs with greater risks of accident and injury).

Lindsay cited studies (ignored by Hartmann and NAS) that explain virtually all of the wage gap between men and women who are not married—suggesting that the wage discrimination is either confined to the subset of married persons or, more likely, that the typical study's inability to explain the wage differences between married men and married women is due to a failure to correctly account for the different effects that marriage and family responsibilities have on the behavior and earnings of men versus women.

Another kind of evidence offered by Hartmann are studies which are said to "show that men and women who have similar qualifications are assigned differentially to first jobs when they are hired." However, the examples cited are isolated case studies, not enough to establish the existence of widespread barriers to employment of women in "men's jobs." Even if they did establish the existence of these barriers in the isolated firms examined, which they do not, Lindsay argues that isolated instances of barriers to entry in so-called "men's jobs" could not be enough to produce the occupational crowding that is observed, and that such barriers would have to be widespread to support the Hartmann argument. No direct evidence of such widespread barriers is available.

Hartmann makes the interesting argument that the widespread movement of women into nontraditional fields in recent years (law, medicine, engineering) is of itself support for the view that something other than women's preferences was responsible for their rarity in these fields in the past; *i.e.*, the recent movement has been so rapid that there must have been barriers in the past. It is easy to imagine other explanations for the increased movement of women into these fields. However, even to make the Hartmann argument seems to acknowledge that women are not prevented from entering the best paying professions at present. This changes the character of the debate considerably, suggesting that the issue should be whether there are female victims who need to be compensated for *past* discrimination, *not* whether there are barriers to women's employment at present.

In short, a review of the literature cited by Hartmann and the NAS indicates that there is no proof of the discrimination hypothesis.

Job evaluations. The advocates want to implement Comparable Worth using job evaluation techniques which typically assign points to jobs based on such factors as knowledge and skills, mental demands, accountability, and working conditions. They propose using job evaluation in this way to measure the worth of each job, and then to set wages within the firm according to this hierarchy of worth. They say job evaluation is a well-established technique, already used in most medium and large companies. They argue that the results obtained from such studies should be used even if they call for wage rates different from those prevailing in the labor market. Advocates say that the payment of prevailing wages in such cases would be wrong because they believe the market wages reflect sex discrimination. However, they do not make a strong case that such a scheme would be practical or desirable.

There are a number of problems with setting wages by job evaluations which are independent of wages prevailing in the marketplace.

(a) The process is imperfect and subjective even when you are trying to replicate the market. Two different studies will not produce the same result. While job evaluation is often a useful tool when there is agreement on basic values, it is not useful for resolving differences about basic values. Labor unions have often taken the view that job evaluation studies are used to promote the interests of the employer who commissioned the study.

Once we abandon market wages as a guide, there is no objective way to determine the relative rankings of job worth. One of the leading practitioners of job evaluation techniques, Hay Associates, says that, under these conditions, there should be general agreement within the firm on the values that will replace the market signals, otherwise job rankings produced by a job evaluation are not likely to work. That is, the resulting job rankings will not receive widespread agreement among employer and employees. The disagreement is likely to produce continued litigation, with the courts ultimately deciding what kind of job evaluation results are in accordance with the law.

(b) This process is much more than asking firms to rid their existing job evaluations of sex discrimination. First, many firms presently do not use job evaluation techniques to set wages. Dr. Schwab indicates that we don't know how many firms use job evaluation at present, but it is a minority. Secondly, Comparable

Worth advocates are urging a type of "job evaluation" which is dramatically different from what is meant by job evaluation in current usage. If any firms now establish their wages by job evaluation independent of market wages, they must be a very small fraction of those who use job evaluation techniques. Of the firms which use job evaluation today, most use it only to help fill in information that is not available from the market because, for example, the job is unique to the firm. When used this way, the imperfections of job evaluation results are tolerable because there is no information on market wages available.

A leading authority on job evaluation, Dr. Schwab, tells us that job evaluation is not capable of doing what the Comparable Worth advocates have in mind because:

> "Comparable Worth is based on the premise that worth can be defined and measured, something which job evaluation does not in fact do. As practiced, job evaluation chooses and weighs factors to conform to a wage distribution which is assumed to be appropriate, *i.e.*, reflects the market." (Livernash, E. Robert (ed.), *Comparable Worth: Issues and Alternatives*, Equal Employment Advisory Council, Washington, D.C., 1980, p. 68).

(c) Firms currently using job evaluation use it as only one tool in establishing wages. The firm's actual wage structure usually departs from the job evaluation results for a variety of reasons, including seniority, merit pay, and geographic differentials. Exceptions are also frequently made to retain valued employees. To advocate job evaluation as a means of implementing Comparable Worth is to advocate a more widespread and direct application of job evaluation. Both Cumming and Lindsay argued that job evaluation used to implement Comparable Worth would mean a more bureaucratized pay structure. This results in less use of merit pay, less reliance on supervisors' evaluations of individual performance and, thus, lower productivity.

In short, there is good reason to be concerned that job evaluation will not solve disputes but merely push them into the courts for final resolution, that it will increase costs directly by raising wages above the market rate, and indirectly by reducing labor productivity. We don't know exactly how divisive or inefficient job

evaluation might be because our economy has practically no experience with setting aside the labor market in this way.

Is Comparable Worth a form of government wage control? Proponents are quick to point out that they aren't asking for a uniform wage structure imposed on all employers. Nevertheless, Comparable Worth is clearly a major new interference with free labor markets. The kind of government regulation of labor markets we have at present is designed to channel market activities, to proscribe undesirable behavior, and to make the market outcomes more legitimate. The Comparable Worth remedy, on the other hand, is designed to replace market wage rates with the wage rates determined by studies performed by experts. Since the experts have no objective criteria to assure acceptance of their results by all parties, a court challenge of their work is almost inevitable. Experts setting wages with the oversight of the courts is indeed an unprecedented form of government control, even if it proceeds on a firm to firm basis.

APPENDICES

Appendix I

IT PAYS TO BE A MAN



The statistics bear it out. For every dollar a man makes, a woman earns only 59¢. Pretty frightening, isn't it? Especially, since on June 10th of this year, we celebrated the 20th anniversary of the Equal Pay Act. If anything, two decades have only seen the pay gap widen.

With a law on the books, why do women's paychecks continue to be as low as ever? Simple. You see, the law states that equal pay must be given for equal work. But the fact of the matter is, women don't do the same work as men. Comparable, yes—but on payday that doesn't count for much.

Today a secretary is usually paid less than a truck driver. A teacher less than a liquor store clerk. And a nurse less than a pharmacist. In fact, on the average, a woman with four years of college makes the same income as a man with an eighth grade education.

Law or no law, it pays to be a man.

Even today, 20 years after the Equal Pay Act. Instead of earning according to sex, isn't it time we made it pay just to do a good job? For more information, write to the organization working to protect the legal rights of women—The Women's Legal Defense Fund.

Women's Legal Defense Fund
2000 P Street, N.W.
Washington, D.C. 20036

SECOND REGULAR SESSION

SENATE BILL NO. 627

82ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS WOODS, BASS, PANETHIERE, WIGGINS, SCHNEIDER, DANNER, MURPHY, JONES, LYBYER, DIRCK, DYER, CURLS, MATHEWSON, JOHNSON, SNOWDEN, BANKS, SCOTT, WILSON(19TH) AND McCARTHY.

Read 1st time January 5, 1984, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2146-1

AN ACT

Relating to comparable compensation for employees of the state of Missouri.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section 1. 1. The state of Missouri and every department, agency, institution, or other entity of the state shall pay comparable compensation to all employees regardless of gender for positions that require or impose similar effort, responsibilities, judgment, knowledge, skills and working conditions.

2. The commissioner of administration shall, by January 1, 1985, perform a performance appraisal of all state departments, agencies, institutions, or other entities of the state to ascertain whether or not employees are being

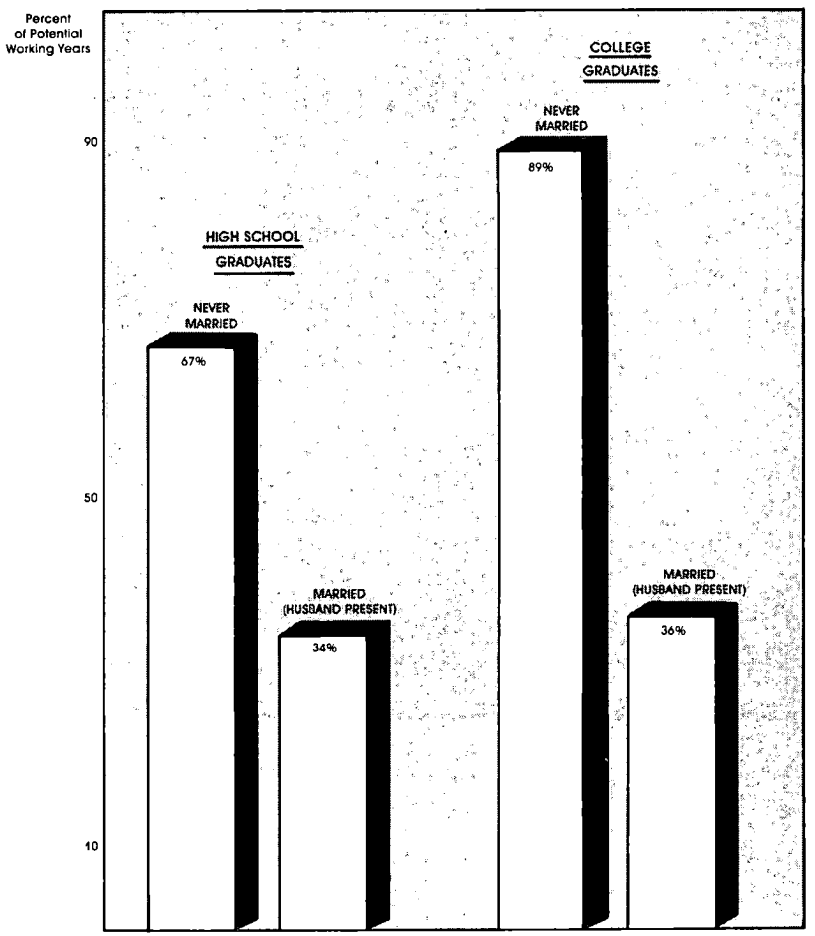
compensated on the basis of the value of the work measured by the composite of the skill, effort, responsibility, judgment, knowledge and working conditions regardless of the gender of the employee and shall prepare a report based on such appraisal for submission to the governor by July 1, 1985. A copy of the report shall be submitted by the governor to the general assembly with his budget recommendations for the fiscal year beginning July 1, 1986.

3. Beginning with the budget requests for the fiscal year beginning July 1, 1986, salary changes necessary to achieve comparable compensation for all employees regardless of gender for positions that require or impose similar effort, responsibilities, judgment, knowledge, skills and working conditions shall be implemented under a schedule developed by the commissioner of administration and shall be completed by the fiscal year beginning July 1, 1990. Adjustments in salaries and compensation solely for the purpose of maintaining comparable compensation shall be made at least annually thereafter.

4. No salary shall be reduced to achieve comparable compensation under the provisions of this section.

Appendix III

YEARS WOMEN SPEND IN THE LABOR MARKET



SOURCE: Solomon Polachek, "Discontinuous Labor Force Participation and Its Effects on Women's Market Earnings." In Sex Discrimination and the Division of Labor, edited by Cynthia B. Lloyd. New York: Columbia University Press, 1975.

Appendix IV

When the Government Says Who Gets Hired

by Charles Fried

Reprinted from the *Washington Post*, January 27, 1983.

The writer is a professor of general jurisprudence at the Harvard Law School.

To a lot of people the Reagan administration has seemed insufficiently enthusiastic about affirmative action. The Solicitor General's amicus brief in the Supreme Court supporting the right of nonminority Boston firemen to job security on the basis of seniority is cited as a recent example.

Administration spokesmen have been candid in expressing their reservations about programs that cast doubt on real achievements of minorities and women, programs that foster rather than break down race consciousness. There is another, more generalized reason for unease, however, which deserves far greater emphasis.

When the government—bureaucracy or judges—tells private businesses and institutions that they must hire more blacks or pay women more even if they are not discriminating, we are taking a large step in the direction of a command economy, an economy where the bureaucracy replaces market forces, individual judgment and the decentralized expertise of hundreds of thousands of managers and takes charge of the hiring process—in effect, assigning private-sector jobs on bureaucratic criteria for achieving a politically driven goal. Bad as they are, temporary bouts of wage and price control are a distant and abstract imposition compared with the intrusiveness of a regime in which private-sector jobs are

treated as a Federal benefit, to be administered or manipulated to achieve the goals of the Federal Government.

Surely one of the appalling things about countries like Czechoslovakia and China is the extent to which politics—your relation to the grand, final ends of the central regime—controls the training you get, the career you enter, the part of the country you work in. It is particularly abhorrent to such regimes that individual, decentralized, idiosyncratic judgments might determine where and in what ways the productive energies of "their" people are employed.

The more extreme versions of affirmative action and related doctrines push just in this direction. The business necessity text is one example. A firm manufacturing plastic containers for human blood products requires technical accreditation of quality control supervisors. A university department of comparative literature insists on a Ph.D. for tenure track appointments.

Because the number of blacks or women or Hispanics with the stated qualifications is disproportionately low, it has been claimed that such employers are, in effect, discriminating and that affirmative action requires changing the qualifications until the numbers are brought into "better balance"—unless it can be shown that qualifications are "necessary." And that's where the bureaucratic knife enters the private sector oyster: for it is a governmental judgment—first the Federal bureaucracy, then the Federal judiciary—whether admittedly relevant criteria adopted for admittedly nondiscriminatory purposes are "necessary":—whether the blood container firm might not run well enough and its costs be acceptable if on-the-job training were substituted for technical certification; whether the university department should strike a different balance between teaching and scholarship or even abandon the conception of teaching implicit in requiring a research degree.

The doctrine of Comparable Worth, which is on the far edge of the gender discrimination frontier, would have the bureaucracy ask not just if women have equal access to particular jobs, and if they are paid the same as men when they do those jobs. They would ask whether any pay discrepancies between traditionally male jobs (doctor, sanitation worker, college professor) and traditionally female jobs (nurse, restaurant worker, primary school teacher) are justified by their importance or difficulty.

But what are the criteria for determining whether a nurse's pay should be equal to, more than or less than a surgeon's? In a free

economy, these questions are answered by supply and demand in a market operating without discrimination or unfair barriers. Substituting a standard of intrinsic worth would not only ask an impossible (and meaningless) question but give the decision-maker—once again, the Federal bureaucracy—exactly that power which characterizes a command economy.

Of course, countless Federal policies—in defense, regional development, inflation, the environment, free trade, veterans' preferences, student loans, job training—help shape the economy and thus determine in part what work we do, for whom and where. Yet private judgment, initiative and just plain orneriness allow the individuals among us to get out from under Big Brother's thumb.

If the affirmative action extremists had their way, the Federal Government would gain direct control over the most intimate and crucial part of the economy: the employment relation.

Appendix V

Minority Report of the Illinois Commission on the Status of Women

Reprinted from the Minority Report of the Illinois Commission on the Status of Women (a Commission appointed by the Illinois State Legislature), which was presented to the Illinois General Assembly on February 1, 1984, and published by the authority of the State of Illinois.

The $10,000 job evaluation by Hay Associates referred to in this report resulted in a suit against the State of Illinois by the American Nurses Association claiming Comparable Worth with male electricians. The Hay job evaluation gave twice as many points to nurses as to electricians, although nurses are paid less. The lawyer for the Nurses Association said in the Chicago Sun-Times *of January 27, 1984, "The state had the study done and can't deny its validity."*

The Radical Theory of Comparable Worth

The Majority Report of the Illinois Commission on the Status of Women espouses the radical theory of Comparable Worth. It is important to understand that this theory is fundamentally different from the noncontroversial principle of "equal pay for equal work."

"Equal pay for equal work" has been the law of the land since the Equal Pay Act of 1963. The Equal Employment Opportunity Commission has successfully required the payment of many multi-million dollar judgments against employers who violate the law.

"Comparable Worth," on the other hand, is a concept which rejects wage levels set by the free market, and instead proposes wage-

setting on the basis of someone's subjective opinion about the "worth" of particular occupations in relation to other occupations. The Comparable Worth advocates are eager to provide their own biased "experts" to testify on job "worth," and they call on the power of government (through agency regulations or court decisions) to substitute their opinion of job "worth" for the marketplace.

The American Federation of State, County and Municipal Employees won a Comparable Worth lawsuit in the fall of 1983 which is estimated to cost the state of Washington $500 million. The alleged discrimination against women in this case rested on an "expert" evaluation of state jobs. A typical example of the job comparisons in this evaluation, which allegedly prove "sex discrimination," is that laundry workers (who are mostly women) are paid 40% less than truck drivers (who are mostly men). Most people would say that, if some "expert" claims that persons who dump loads of laundry into washing machines are "worth" the same wage as persons who drive big trucks on the highways, there is something the matter with the common sense of the "experts" and that the marketplace made a correct decision in paying more to truck drivers than to laundry workers.

"Experts" can be hired to give any kind of job evaluation desired because the "value" of a job is a subjective determination. One of the first Comparable Worth cases involved a comparison of nurses (primarily female) and tree trimmers (primarily male) in the city of Denver. An objective decision simply cannot be made that a nurse is "worth" the same as a plumber or a tree trimmer, since their work is obviously not equal. It may depend on what is the emergency of the moment, or the working conditions, or demand-and-supply in the local area.

This is why the bottom line of any demand for "equal pay for Comparable Worth" is Federal wage control. It means a Federal bureau or Federal court would be given the ultimate decision-making authority to order equal wages for *un*equal work. The judge who dismissed the Denver case said that the Comparable Worth concept is "pregnant with the possibility of disrupting the entire economic system" of the United States.

The Comparable Worth theory rests on the assumption that a massive societal (male) conspiracy has (1) segregated women into particular jobs by excluding them from other jobs, and then (2)

devalued the women's occupations by paying them less wages than other occupations held primarily by men. It is basically a conspiracy theory of jobs for which there isn't a shred of proof. All jobs, even those of coal miners, have been open to women for at least a decade.

It is true that occupations such as clerical workers, nurses, teachers, and librarians have a majority of women. It is also true that the *average* wage of all women is somewhere between 59% and 62% of the *average* pay of all men. But no evidence has been presented to support the claim that this gap is caused by conspiracy or discrimination.

The average woman in the labor force works 35.7 hours per week, while the average man works 44 hours per week. The average man has been on his present job 4.5 years, the average woman 2.6 years. Women are eleven times more likely to leave the work force than men. Aren't the men who work longer hours per week and stay on the job longer entitled to a higher wage? Or must we pay equal pay for *un*equal work?

If certain occupations are *under*paid, as the Comparable Worth theory claims, then which ones are overpaid? The answer of the Comparable Worth advocates is blue-collar men in skilled and unskilled labor: truck drivers, policemen, electricians, plumbers, laborers, and maintenance men. The Comparable Worth advocates assert that it is unfair that such men, who may have only a high school education, receive as much pay as a woman who may have a secretarial school or nursing school certificate.

The Comparable Worth advocates want to exalt *paper* credentials over strenuous and risky work, unpleasant working conditions, and uncertain job tenure. They want to bring about a redistribution of wages through bureaucratic power and judicial activism. Women are not excluded from any occupation today. If women want the pay of truck drivers or maintenance workers, they should do the hard physical work that these jobs require. Government wage-setting is not the answer.

In 1982, the Commission on the Status of Women hired Hay Associates to do a job evaluation of some Illinois state employees. This evaluation utilized a "point system" based upon subjective opinion about the "worth" of jobs totally divorced from marketplace factors. The report came up with such biased, subjective conclusions as that a nurse is worth twice as much as an electrician,

and a secretary is worth more than a prison guard. "Experts" who come up with such conclusions reveal a lot more about their own biases than they do about the "worth" of jobs.

Hay Associates is a firm which is quite willing to tailor its job evaluations to suit its paying clients. For example, the city of San Jose (known as "the feminist capital of the world" because militant feminists hold a majority on the city council) hired the Hay Associates to give "expert" backup to its highly-publicized campaign to establish Comparable Worth in San Jose and make it a national *cause célèbre*. Hay Associates gave San Jose its money's worth! In a "Client Briefing" of August 6, 1981, Hay Associates stated: "Within their situation it is perfectly reasonable for some organizations, like the City of San Jose, to attempt to lead the march for civil rights of women in the '80's." The Briefing makes clear that, if the client wants a Comparable Worth job evaluation based on the subjective opinion of alleged "experts" who pull criteria out of thin air and conduct interviews, Hay will comply. And if the client wants a job evaluation keyed to marketplace factors (*i.e.*, what an employer must pay to hire individuals for a given job), Hay will comply also ("The Comparable Worth Issue" published by the Bureau of National Affairs, pp. 124-127).

It is a self-evident fact that the Illinois Commission on the Status of Women is controlled by the feminists; so Hay Associates produced a job evaluation of Illinois state employees which tends to support the bias of the client and which totally ignores marketplace criteria.

In testifying at the 1982 Hearings on "Pay Equity: Equal Pay for Work of Comparable Value," Dr. Alvino Bellak of the Hay Group testified: "Such scales of job values, which are one of the ways to measure Comparable Worth or pay equity, are most acceptable in relation to jobs within a single establishment utilizing a limited range of different occupational skills" (U.S. House Committee on Post Office and Civil Service, Subcommittee on Human Resources, Civil Service, Compensation and Employee Benefits, p. 345).

It is obvious that a state, which employs a tremendous variety of occupational skills, is the *least acceptable* to this type of evaluation. The $10,000 evaluation by the Hay Associates of Illinois state employees is an example of an invalid objective compounded by feminist bias.

Appendix VI

Comparable Worth: Another Terrible Idea

by Geoffrey Cowley

Reprinted from *Washington Monthly*, January, 1984, 1711 Connecticut Ave., NW, Washington, D.C., 20009, (202) 462-0128.

Geoffrey Cowley is a staff writer for the Seattle Weekly.

Last November, a Federal judge in Tacoma, Washington, made national news by ruling that the state had discriminated against women. Sex discrimination lawsuits are hardly new to American life; but the issue in Washington was not whether the state was willing to hire women, or whether it offered equal pay for equal work. Rather, it was whether the 15,000 state workers holding traditionally female jobs—nurses and secretaries, for example—should be paid the same as those holding "comparable," male-dominated jobs in different trades, like plumbing or carpentry. In deciding against the state of Washington, Judge Jack Tanner declared that Title VII of the 1964 Civil Rights Act "was designed to bar not only overt employment discrimination, but also practices that are fair in form but discriminatory in operation," among which he counted the state's failure to grant equal pay for work of Comparable Worth. Tanner found the state guilty of "pervasive and intentional" discrimination, and promptly awarded the plaintiffs a projected $1 billion in back pay and wages.

No one missed the opportunity to hail the ruling as a major turning point in the battle against sexism. "The state of Washington was the defendant in this case," said a local spokesman for the

American Federation of State, County, and Municipal Employees, the union that brought the suit, "but all of society was on trial. This ruling gives us great cause for hope, because it will provide a model for other suits across the country." Dan Evans, the Republican ex-Governor recently elected to fill Henry Jackson's Senate seat, proposed that Congress create a commission to "study how the Federal Government . . . can root out gender bias" within its own workforce. And Gary Hart, who along with Walter Mondale, John Glenn, and Alan Cranston has jumped on the Comparable Worth bandwagon, was so overcome with enthusiasm that he hopped a plane to Seattle to hold a press conference where he called Tanner's decision "a national example of how women's organizations and unions can use existing laws to destroy wage discrimination."

Support for the notion of Comparable Worth has come to be expected of anyone who claims to care about the equality of women in our society. Proponents of the doctrine rightly argue that "equal pay for equal work" is only a partial solution to the problem women face in the workforce. The average working woman earns only 62¢ for every dollar a man earns. Women's groups correctly point out that the real problem isn't that female professionals are paid less than their male counterparts; if half of all lawyers were women who received the same salaries as their male colleagues, a wide income gap would still exist. The real problem, they say, is that secretaries and other women who toil in traditionally "female occupations" are making considerably less than men who possess the same, or lower, levels of skill, intelligence, and responsibility.

The egalitarian appeal of the Comparable Worth principle is obvious: why *shouldn't* a female secretary with an M.A. in English literature and responsibility for managing the office's accounts get paid the same as a Teamsters truck driver who hauls frozen chickens? But when it comes to larger problems of inequality faced by both women and society at large, Comparable Worth is a principle that will ultimately prove not merely inadequate, but destructive. Its greatest asset is that it affords politicians a way to demonstrate their solidarity in the battle for sexual equality, while leaving all the necessary little details that the "Comparable Worth" standard implies—like deciding who is worth what, and exactly how one goes about comparing the job of a deputy assistant to the ad-

ministrator to that of a cleaning woman—to somebody else. And it isn't hard to figure out who that "someone else" is going to be. When Tanner's decision was handed down, lawyers and consultants everywhere no doubt experienced something akin to the thrill felt by Cortez when he first gazed upon the shimmering Aztec temples of Tenochtitlan.

Take a Number, Please

The state of Washington first began to toy with the idea of Comparable Worth back in 1973, when then-Governor Dan Evans hired the Seattle consulting firm of Norman D. Willis & Associates to figure out whether the state was paying women as much as it was paying men at "a comparable level" of skill and responsibility. The study found a 20% wage gap. For example, laundry workers, who were mostly women, were estimated to be worth the same as low-level truck drivers, who were mostly men, but the laundry workers were making 41% less than the truck drivers.

Perhaps you're wondering how to figure out how much a laundry worker is worth. After all, such questions have perplexed philosophers and theologians for centuries. (They have even been known to give personal-injury lawyers some difficulty.) The answer is to develop "point-factor job evaluation systems" to do the job for you.

Each system works on a slightly different conception of "worth," of course, but all share a cheerfully mathematical view of qualities that you would think would be hard to quantify. Let's take a closer look at the Willis scale, which Judge Tanner relied on in making his decision. It assumes that the worth of any job, from circus clown to key-punch operator, varies in relation to the "knowledge and skills," "mental demands," "accountability," and "working conditions" it entails. Each of these components is further broken down into two or three subcomponents, and points are awarded on the basis of each one. Under "accountability," for instance, you can win points for your "freedom to take action" as well as for the nature and size of your "impact." Admittedly, the guidelines the instruction manual for the system offers are somewhat informal; for example, on "impact," the consultants instruct, "The simplest way to look at Size is to say the job most clearly impacts on something BIG, or on something LITTLE, or on something IN-BETWEEN."

The "knowledge and skills" component breaks down into "managerial," "interpersonal," and "technical" dimensions, each of which carries its own rating. To top out on the "managerial" scale, you have to manage "subfunctions that have significantly different natures, or where the end results of the subordinate subfunctions tend to be conflicting or competitive with each other and require special harmonizing." Got that? In English, "you have to know how to do different things and how to play your assistants against one another." There are two kinds of "mental demands"—"judgment" and "problem solving"—and three kinds of "working conditions" —"uncomfortable," "strenuous," and "hazardous."

To calculate all these factors, Willis assembled a group of people from within the state civil service. These civil servants reviewed job descriptions, interviewed their fellow workers and then, after much solemn mutual consultation, assigned each job a score. Thus a clerk-typist became a "152,"or, to be more precise, a "C1N 106 C2-f 23 C1N 23 L1A 0." Broken down, this meant a clerk-typist scored 106 on "knowledge and skills," 23 on "mental demands," 23 on "accountability," and 0 on "working conditions." (A score of 0 on "working conditions" is the Willis method's understated way of saying either that the employee has nothing to complain about or that he or she is working in embarrassingly plush surroundings. Because there are no negative points on the Willis scale, access to excessive perks does not lower anybody's score.) Broken down still further, the clerk-typist rating on "knowledge and skills" is level C on a "technical" scale from A to G, level 1 on a "managerial skills" scale of one to three, and level N on an "interpersonal skills" scale that is too complicated to explain without the aid of an astrolabe and a mood ring.

With the help of Willis's team of metaphysicians, Washington state calculated the worth of every civil service job category on the payroll. These were unveiled in 1974, revealing the awkward 20% gap between what women were earning and what their male "comparability" counterparts were earning. True to a long-standing tradition of how to respond to consultants bearing bad tidings, Evans ordered a second, more detailed Willis study. This study, published in 1976, estimated that the wage gap between "comparable" men and women could be closed by paying the women $38 million more a year. (What? Lower the wages for the men instead, you say? You must be kidding.) The $38 million gap struck

the legislature as a problem warranting still further study. By July, 1982, AFSCME had run out of patience, and filed suit.

The decision that resulted will be a serious blow to the finances of Washington state. The state will now have to cough up not $38 million, as the second Willis study showed, but an estimated $1 billion over the next 18 months. When Winn Newman, the lawyer who argued AFSCME's case, was asked about this he answered, "Congress didn't put a price tag on ending discrimination when it passed the Civil Rights Act. It didn't say to employers, 'Stop underpaying women and minorities when you think it's convenient.' The only ones saying we can't *afford* to stop discrimination are bigots—bigots and people with an interest in perpetuating it."

Surprisingly, the decision was disowned by none other than Norman Willis, who, despite the hubris of his worth-measuring enterprise, recoils at the thought that his or anybody else's scorecard should become law. Even some of those who support the decision seem hard-pressed to find a sound legal basis for Tanner's reasoning. When I asked Gary Hart about this, for example, he said, "I don't think it's appropriate for legislators to run around commenting on judicial rulings," even though that's exactly what he had come to Seattle to do.

Move Over, Max Planck

Hart and Newman have their hearts in the right place; we *do* want to pay people what they deserve, rather than what society's petty prejudices dictate. But if the courts are going to define "discrimination" so broadly that it applies to people who do different things and earn different salaries, they can't just go around measuring it on any scale they like—there will have to be state and Federal laws saying there shall always be, say, three kinds of occupational adversity, as opposed to two or 20, and just two kinds of mental demands. Otherwise, employers will start defining worth any way they please. Truck drivers could end up being paid entirely on the basis of their familiarity with *Finnegans Wake*.

Getting the nation to unite behind the Willis or the Hay or the Jones system of worth detection will be tricky, for we all have direct, and conflicting, interests in how the scale is calibrated. A ditchdigger could argue that the Willis system favors mental over physical exertion, a typist that it doesn't adequately register boredom. And anyone could claim, rightfully, that it gives more weight

to meaningless job requirements—for instance, why should a probation officer need a master's degree—than it does to individual initiative and resourcefulness.

But even if we agree on a scale, we'll have to accept the possibility that it will produce widely different results when applied in different environments. Unless we take the next step, which is to treat the whole economy as a single firm and determine the proper salary for every position in it, we'll have no way of knowing that secretaries are keeping up with each other, let alone staying ahead of the nation's janitors.

Imagine the nightmarish society that might result. A waitress down at Uncle Bob's House of Ribs might sue her boss because her sister-in-law was getting twice as much (and better tips) waiting tables at the diner across the street. Executives would knock back martinis after coming home on the five-forty-eight and torment themselves about their prospects for ever making F1Y 380 E4-k 122 E1D 160 L1A O. Children would have new ways to taunt one another in the sandbox:

"My daddy's a 634!"

"Oh yeah? Well, *my* daddy's a 723, and he says if he can harmonize subordinate subfunctions three more times this week we can go to Bermuda!"

AFSCME isn't proposing anything as ambitious as a planned economy, of course; it is simply claiming that individual employers have an obligation to rise above the sexism inherent in the marketplace. Once employers have done away with the wage gap between men's and women's professions, a spokesman for the union says, the problem will have been solved and everything will return to normal.

But will it? Many civil servants in Washington state who hold jobs as "worthy" as other, higher paying jobs are men. But unless they can prove that they're being discriminated against for performing "women's work"—legally defined as any job where women comprise more than 70% of the workforce—they won't get the raise that the nurses and the secretaries will get. It isn't hard to imagine the next step: a lawsuit by the men, arguing that they deserve "Comparable Worth" raises, too.

Then there are the inevitable adjustments that will have to be made to keep the worth scale up-to-date. Maintaining a standard as vague as "worth" could make quantum mechanics look simple.

It's fairly easy for the Equal Employment Opportunity Commission to spot a disparity in the wages an employer pays men and women to perform "equal work"; all it takes is a glance at the payroll. But checking out a Comparable Worth complaint would be quite another matter. In order to determine whether a Lockheed audit-machine operator II was legally entitled to the same pay as a senior steam-dryer maintainer, the EEOC would have to haul in a committee to perform a company-wide worth analysis.

The courts, too, would have to evaluate the working of an entire industry every time they heard a discrimination suit. Major civil rights battles would turn on such questions as whether error-free typing is a greater corporate asset than leak-free plumbing, or whether sitting at a VDT places greater strain on Betty's eyes than pipefitting places on Jack's back. And does Doris, the floor manager at Sears, "most clearly impact on something IN-BETWEEN" as opposed to "something LITTLE"?

If the administrative and judicial aspects of Comparable Worth are messy, the economics could be even messier. In the marketplace, people are paid in part according to the availability of labor. At Weyerhaeuser, for example, where a Willis Comparable Worth survey rated the job of personnel manager at 916 and that of pulp mill superintendent at 760, pulp mill superintendents make more money than personnel managers—because good ones are harder to find. Under a Comparable Worth standard, Weyerhaeuser could end up with two choices: pay the pulp mill superintendents less, thereby making good ones even harder to find, or give the desk-bound manager a big raise.

Comparable Worth also creates problems for labor-management relations. Subjected to the worth standard, many existing collective-bargaining agreements could be shown to have disparate impacts on men and women in different jobs. And if the unions that negotiated those agreements didn't move fast enough to pin the blame on the employers, as AFSCME did in its claim against Washington state, they could face massive lawsuits from their own members. (In fact, the AFSCME local that brought the suit against Washington pays its own employees not on the basis of Comparable Worth but by the same allegedly sexist pay scales used by the state.)

Worthier Than Thou

Advocates of the worth standard insist that this is all beside the point; as Newman says, you can't put a price tag on discrimination. But if anyone's putting a price tag on justice, it's the worth proponents themselves. Just take a look at the Willis scale. A beginning licensed practical nurse scores 158 Comparable Worth points, while an "Information Specialist III"—an experienced PR flack—scores 324. Or look at a janitor, who scores 101, while an "Advisory Sanitarian II"—someone who doesn't actually clean anything himself, but makes sure local hospitals and nursing homes do—scores 395. Why on earth should our society value people who issue press releases or fill out reports all day long more than people who save lives and do the dirty work?

This is the most pernicious aspect of Comparable Worth—it would do nothing to endanger the larger inefficiencies and inequalities that are built into the present hierarchy. In fact, it would solidify them by giving them the force of law. Whereas today we overpay lawyers regardless of their need, skill, and general value to society, because we are irrationally adversarial, credential-loving snobs who hope someday to behave more sensibly, in a world governed by Comparable Worth we would do so because it is the law. The purpose of Comparable Worth is not to balance the earnings of lawyers and secretaries who make equal contributions to the common good, but to make fine distinctions about the "worth" of jobs already accorded roughly the same status within society.

The Comparable Worth scale reflects the same credentialism that corrupts the society it is designed to mirror. Why is an advisory sanitarian any worthier than a janitor? Because it is suggested that advisory sanitarians have "an M.A. in public health, environmental health, or a closely allied field," and you must be registered as a sanitarian—an affiliation whose only advantage might be that its monthly four-colored newsletter, *Sanitarians Today*, advertises cheap charters to Luxembourg. AFSCME doesn't have any problem with unequal arrangements that result from society's obsession with credentialism; to the contrary, one official of the union was quoted a couple of years ago as complaining, "When a person whose job requires a college education makes less than what is basically a common laborer, there's something wrong." Advocates of Comparable Worth don't want to achieve

equality or a system of rewards based on the true merit. They want a merit-blind system of inequality.

Willis insists that his scale doesn't pretend to measure a person's contribution to the social good. Instead, it is a "bias-free instrument." But what does this bias-free instrument measure? It measures the biases of society. That's the problem. When a lawyer calls in his secretary to ask her to type up a brief on Comparable Worth, he isn't demonstrating to her his willingness to flatten the income curve; he's demonstrating to her the inevitability of her inferior status. Even if she's the best secretary in the world, and he the worst lawyer, Comparable Worth dictates that the lawyer will always be worth more than the secretary.

There are far better ways to fight sexual discrimination in the workplace. Where sexism obviously exists in hiring decisions, an anti-discrimination lawsuit is just one way to apply pressure. Another is to combat the deep-seated cultural prejudices that funnel women into jobs like that of secretary and nurse to begin with. And a final remedy is to fight the rigid rules that exist to keep women—and men—who occupy the lower status rungs in their place. Nurses and midwives, for instance, should have more freedom to perform essential medical services. And legal secretaries ought to have the authority to prepare wills and other documents that they now draw up for their bosses.

Obviously, the problem of sexual discrimination runs deep in our society. At least for a while, there will still be bosses who look upon their underpaid—and more intelligent—secretaries with condescension and perhaps lust. But Comparable Worth, appealing as the idea might sound, won't help end that inequality. Instead, it will enshrine it, while fine-tuning lesser inequalities through the use of questionable "scientific" means to measure what is ultimately unmeasurable.

Appendix VII

The First Court Decision Endorsing Comparable Worth

by Phyllis Schlafly

One of President Jimmy Carter's appointees to the Federal bench, U.S. District Judge Jack E. Tanner, handed down a 42-page decision on December 14, 1983, at Tacoma, Washington, which attempts to legitimatize a radical new concept of judicial activism that has massive implications for all governmental bodies and private employers.[1] As he boasted in his opinion, "This is a case of first impression insofar as it concerns the implementation of a Comparable Worth compensation system."[2]

Washington's assistant attorney general Clark Davis told the press that the court's ruling would "jeopardize the pay scheme of every employer in the country."[3] That's not hyperbole. When another Federal judge rejected a Comparable Worth complaint against the City of Denver in 1978, he accurately said that the Comparable Worth theory is "pregnant with the possibility of disrupting the entire economic system of the United States."[4]

The financial burden of Tanner's decision, unless reversed on appeal, is estimated to cost the Washington State taxpayers about $1 billion in wage increases, fringe benefits, back pay, and injunctive relief to the plaintiffs. The potential litigating load on the courts boggles one's imagination. When attorney Winn Newman won the Tanner ruling on behalf of the American Federation of State, County, and Municipal Employees against the state of Washington, AFSCME issued a news release predicting that "the ruling means similar actions can be expected in other state and local governments."[5] Indeed, class-action suits are already pending in Pennsylvania, New York, Illinois, Wisconsin, Connecticut, Los Angeles, and Hawaii.

What is Comparable Worth?

"Equal Pay for Comparable Worth" is a system of wage-setting which rejects marketplace factors and instead fixes wages by a point system based on (1) a subjective evaluation of job WORTH plus (2) a COMPARING of different kinds of jobs held mostly by women with jobs held mostly by men,[6] and then (3) uses litigation or legislation to mandate the system regardless of cost.

The Tanner ruling is the initial victory in a radical plan to restructure the American economy by a process of using the courts to raise wages for women's jobs significantly above prevailing market rates and without regard to productivity or costs. What makes this concept appealing to some people is that it is falsely packaged as "women's rights" when, in fact, the real issue is whether we will allow the courts to disrupt private enterprise as they have already disrupted the public schools.

"Disrupt" is not too strong a word. Judge Tanner conceded that his order might severely dent the recession-ridden Washington state treasury, but insisted that the remedy "has to be disruptive because you're changing past practice."[7]

Nothing less than a complete court takeover of the private sector is the goal of the Comparable Worth advocates. Winn Newman testified before a House subcommittee on September 16, 1982, "There can be little doubt that pervasive sex-based wage discrimination exists throughout the public sector, as well as the private sector."[8] Speaking to a friendly subcommittee, he laid out his game plan:

"It appears that only a strong litigative strategy will goad employers to end the blatant sex-based wage discrimination which exists in almost every workplace that has traditionally employed women workers. In a word, it is time to move Comparable Worth from the conference room to the courtroom.

"Labor unions, women's rights groups and individual female workers must step up the pace of filing discrimination charges and litigating these cases. A number of dramatic court victories will do more to inspire 'voluntary' compliance, effective collective bargaining and belated government enforcement than further hearings, reports and studies. The teaching of the enforcement of civil rights laws is that a lawsuit or the threat of a lawsuit is often the best way to educate."[9]

No Evidence of Discrimination

One would think that, in a dramatic $1 billion judgment against an employer, the 42-page opinion might contain some evidence of what Tanner asserted was "historical . . . direct, overt and institutionalized discrimination" against women.[10] But the evidence of any wrongdoing by Washington state against its female employees is so thin as to be laughable. The decision contains no evidence that any woman was paid less than a man for equal work, for substantially equal work, or for comparable work. The decision contains no evidence than any woman was excluded or even discouraged from taking a "man's job" or being promoted to one. The decision contains no evidence that women were induced to take "women's jobs" or were paid less because they were women. As would be expected, the decision leans heavily on current civil rights law that "it is not necessary to establish discriminatory intent."[11]

The Tanner decision rested its case for sex discrimination on: (1) a showing that the state did not pay women the salaries indicated by the job evaluation which the state hired to be made by the private consulting firm of Norman Willis & Associates, (2) a showing that prior to 1973 the state ran some "help wanted ads in the 'male' and 'female' columns of newspapers," (3) some self-serving generalities in politicians' news releases, and (4) the passage of two Comparable Worth implementation bills by the state Legislature in 1983,[12] which were ridiculed as a "token appropriation of $1.5 million" and construed as an admission against interest.[13]

The $1 billion decision essentially depends on the Willis job evaluation. Tanner ruled that the state discriminated and acted in "bad faith" because it did not pay equal wages for women's jobs to which the Willis evaluation had assigned a number of points "comparable" to other jobs held by men involving entirely different kinds of work. Tanner refused to listen to any argument about costs, saying, "It is time, *right now* for a remedy. Defendant's preoccupation with its budget constraints pales when compared with the invidiousness of the impact ongoing discrimination has upon the Plaintiffs herein."[14]

The Fraudulent Premise of Job Evaluation

The Tanner decision itself is based on invidious comparisons. The entire concept of Comparable Worth is a house of cards built on the false premise that persons who call themselves "experts" can —after completely closing their eyes to all marketplace factors— evaluate a wide variety of jobs (professional, white-collar and blue-collar) and give each one a "point" value which (1) is objectively accurate, and (2) is just and equitable in comparison with every other type of job with the same employer. The key element in the Comparable Worth methodology (and specifically in the Tanner decision) is getting the judge to accept the assumption that someone can and should set equitable wages totally divorced from prevailing market rates.

The Tanner decision states that the Willis job evaluation assessed each job class "using the following four evaluation components: (1) Knowledge and Skills (Job Knowledge, Interpersonal Communications Skills, Coordinating Skills), (2) Mental Demands (Independent Judgment, Decision Making, Problem Solving Requirements), (3) Accountability (Freedom to Take Action, Nature of the Job's Impact, Size of the Job's Impact), (4) Working Conditions (Physical Efforts, Hazards, Discomfort, Environmental Conditions). The total of the value of these four components constituted the final point value of the class."[15]

It is unlikely that any two persons, even "experts," could agree on a relative point distribution among that list of intangibles for even one job, let alone the 15,500 jobs in the plaintiffs' class-action suit.

The job type of evaluation used in the Tanner decision—and generally demanded by the Comparable Worth advocates—is fundamentally different from job evaluations used by employers today. First, the Comparable Worth job evaluation is a process of subjective opinion masquerading as objective fact. Second, the Comparable Worth job evaluation deliberately excludes marketplace factors such as prevailing wage rates. Third, the Comparable Worth job evaluation compares professional, white-collar and blue-collar jobs in the same point scheme. Fourth, the professional and white-collar "evaluators" (who have little real understanding of blue-collar work) systematically and consistently undervalue risky and unpleasant working conditions.

This process produced such bizarre results as the following:

laundry worker 96, truck driver 97, librarian 353, carpenter 197, nurse 573, chemist 277. The evaluation concluded that (female) laundry workers should be paid equally with (male) truck drivers; and that (female) librarians and nurses should be paid about twice as much as (male) carpenters and chemists.[16] It's no wonder that Washington state saw fit not to implement the Willis evaluations.

Lessons of the Tanner Decision

The strategy of the Comparable Worth advocates is clear. Seek the forum of a Carter-appointed judge in order to try class-action cases against state and local governments plus the Federal Government. The judges will be friendly, the government officials won't have to worry about keeping costs down in order to compete in the free market, and the politicians can be intimidated by the false assertion that this is a "women's rights" issue.

Then, having judicially established the premise that Comparable Worth is an equitable system, they will start litigating, legislating, and striking to force the private sector to comply. (At its 1981 Convention, the AFL-CIO delegates unanimously pledged "to adopt the concept of 'equal pay for comparable work' in contract negotiations [and to] take all other appropriate action to bring about true equality in pay for work of comparable value."[17])

The Tanner decision makes clear that Washington state put its head in the noose when it commissioned the Willis job evaluation. Under Tanner's reasoning, "discrimination" became self-evident when the state declined to implement the Willis evaluations. Tanner's decision ruthlessly stated:

> "The State was on notice of the legal implications of conducting Comparable Worth studies without implementing a salary structure commensurate with the evaluated worth of jobs. It would seem obvious that when the State passed the 1977 legislation requiring submission to the legislature of Comparable Worth studies that the State knew its employees would be entitled to pay commensurate with their evaluated worth. Any other conclusion defies reason. It would then follow that the economic consequences of Comparable Worth were predictable and foreseeable by the State. The State cannot be heard at this late date to argue they were surprised,

confused or misled as to the legality of its actions and subsequent failure to pay."[18]

All other employers, public and private, should ponder these words carefully before they commission a "job evaluation" or acquiesce in the radical notion of Comparable Worth.

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NOTES

1. *American Federation of State, County, and Municipal Employees v. State of Washington*, No. C82-465T, slip opinion filed December 14, 1983, reported at 33 FEP Cases 808 (W. D. Wash. 1983); cited hereafter as *AFSCME*.
2. *AFSCME*, slip op. at 29.
3. Reported in the *Chicago Tribune*, Dec. 13, 1983.
4. *Lemons v. City and County of Denver*, 17 FEP Cases 906 (D. Colo. 1978), aff'd, 620 F. 2d 228 (10th Cir. 1980), cert. denied, 449 U.S. 888 (1980).
5. AFSCME news release, Sept. 16, 1983. Judge Tanner announced his decision on September 16, 1983.
6. Women's jobs were defined in the Tanner decision as "all job classifications . . . which were 70% or more female." *AFSCME*, slip op. at 17.
7. *Newsweek*, Dec. 12, 1983, p. 48.
8. U.S. House Committee on Post Office and Civil Service, Joint Hearings of the Subcommittees on Human Resources, Civil Service, Compensation and Employee Benefits, Sept. 16, 1982, p. 157.
9. *Ibid.*, p. 164.
10. *AFSCME*, slip op. at 27.
11. *AFSCME*, slip op. at 12; citing *Griggs v. Duke Power Co.*, 401 U.S. 424 at 432, 91 S.Ct. 849 at 854.
12. Wash. Laws 1983, 1st Ex. Sess., Ch. 75 and Ch. 76 §135.
13. *AFSCME*, slip op. at 31 and 34; see also footnote 19: "What other logical reason [than sex discrimination] can there be for the Defendants [sic] adoption [by the passage of the 1983 statutes] of the 'Comparable Worth' theory of compensation."
14. *AFSCME*, slip op. at 34.
15. *AFSCME*, slip op. at 40.
16. AFSCME Memo in Support of Comparable Worth Charge Against Washington State, published by the Bureau of National Affairs, *The Comparable Worth Issue*, 1981, pp. 30-32.
17. U.S. House Hearings, op. cit., p. 164.
18. *AFSCME*, slip op. at 36-37.

Appendix VIII

New Era in Pay Scales?

The Push for "Comparable Worth" Could Destroy the Job Market

by Michael Brody

Reprinted from *Barron's*, November 21, 1983.

The Labor market isn't nice. The "Help Wanted" ads just aren't fair. Bosses are unfeeling and insensitive to women's needs. They are not willing to pay people for being caring and concerned and skilled at interpersonal relationships. They are only willing to pay people for doing things that make money. They are not willing to pay high wages for jobs they can easily fill: pleasant jobs requiring little training that involve wearing clean clothes and working in friendly offices. They are only willing to pay high wages for jobs that are hard to fill: jobs that require years of skilled training or involve dirty or dangerous or physically exhausting work. They pay less money to women who prefer jobs as nurses or secretaries than to men who prefer jobs as engineers or mechanics. Bosses dare to defend this blatantly discriminatory behavior by claiming that something called "market forces" give them no choice. But that just goes to show that "market forces" are as mean and insensitive to humanistic values as bosses are, and are undoubtedly in violation of women's rights.

If this sounds like leftover babble from the 'Seventies, it should. Equal opportunity, and equal pay for equal work, have been law for two decades. From construction sites to Wall Street trading rooms, women have been moving into jobs that their mothers would never have believed—and are getting paid the rate for the job. The idea that women should not have to do equal work to get equal pay—that "feminine" jobs possess the same in-

trinsic worth as "masculine" jobs, and should receive the same rewards regardless of their economic value—sounds like the embarrassing ideological relic of some early utopian feminist sect, long since overtaken by events.

It isn't. It's called "Comparable Worth," and it's the hottest item on the feminist agenda. It has been endorsed as "the issue of the Eighties" by Mondale, Glenn and every other Democratic candidate scrambling to get into the good graces of the official spokespersons for the gender gap. It is being studied by nervous legislators across the country, who are privately hoping to buy it off without spending more of the taxpayers' money than they have to.

It also threatens (incredibly, like affirmative action before it) to become the law of the land through judicial decree, without statutory authority of any kind. Last week, a Federal judge, who had flatly refused to hear any testimony on the market rates of pay for different jobs, handed down an order against the state of Washington for "discriminating" against women employees. The order, which the state is preparing to appeal, could force the taxpayers to come up with half a billion dollars in taxes to fund huge wage hikes and back-pay awards for state office workers, mostly women, who are paid less than mechanics and electricians, mostly men.

Similar suits and Equal Employment Opportunity Commission charges have been brought by the nation's largest public employee union, the American Federation of State, County and Municipal Employees, against the states of Connecticut, Wisconsin and Hawaii, the cities of Los Angeles, Chicago and Philadelphia, Nassau County on Long Island, and the school district of Reading, PA.

Legally, the decision of the court is without precedent, though the U.S. Supreme Court in a 1981 decision (*County of Washington v. Gunther*) left the door open to claims of wage discrimination under Title VII of the 1964 Civil Rights Act even where "equal work" was not involved—without indicating how it might deal with such a claim. Politically, the practice of mau-mauing weak-kneed public-sector bureaucrats for more money in the name of "equality" has plenty of precedent. (The Federal District Court judge in the Washington case, Judge Jack Tanner, is a former NAACP activist named to the bench by President Carter—as were a large number of the judges of the Ninth Circuit, which will be

hearing the state's appeal.)

The city of San Jose, in California, became the first to try to buy off such demands, after a 1981 strike, by offering $1.4 million over two years to about 750 women in clerical jobs which were declared to be "undervalued" relative to men's jobs. A committee of municipal union representatives was designated to rank jobs according to a complicated point system, based on paper qualifications, training, human relations skills, problem-solving requirements, accountability and working conditions. A personnel consulting firm ran these through computer programs, which revealed—without reference to the supply of and demand for such labor—that librarians ought to be making as much money as chemists, and that telephone operators and secretaries should earn as much as painters.

The unions involved were, of course, engaging in no redistribution of their members' incomes. The wages of the largely male skilled trades workers could not be cut to pay for the clerical workers' raises, since chemists and painters can demand and get the market rate for the job. The $1.4 million would come from the taxpayers, or out of layoffs of overpriced clerical workers: that, so far as the other unions were concerned, was AFSCME's gamble to take.

The economic naiveté of the city administration, however, horrified mayors in financially hard-pressed areas throughout the country. (San Jose's school district, which is administered separately, filed for bankruptcy this summer after money failed to materialize to pay for huge increases in teachers' pay it had agreed to.) Detroit Mayor Coleman Young commented wrathfully that "any time a city gets hung up on an abstract study that makes arbitrary comparisons of jobs but does not take into account the impact on society and its ability to pay, that's dealing in potential anarchy and inviting bankruptcy and the collapse of local government. . . . If a painter makes more than a secretary, then let more women be painters."

The reply of the feminist leadership to such a suggestion is not simply one of economic naiveté. It is one which reveals a bewildered hatred for the whole idea of labor markets, a willful denial of the very existence of supply and demand for human capital. It also betrays an elitist contempt—the contempt of Ivy League women with sociology degrees—for the jobs of most or-

dinary working stiffs, and the commitment shared with all of the leftist intelligentsia to statist determination and control of incomes.

Women, they declare, are "ghettoized" in low-paying jobs. Everyone knows there are shortages of nurses and secretaries, yet men have somehow conspired to hold down wages for the jobs women like to do, which shows that market forces don't really work for women. (The fact that there are hordes of young women pouring into these favorite vocations every day, even at those wage levels, is simply ignored.) Of course, there are traditionally male jobs that pay a lot more, and it's fine if a woman wants to be a painter or electrician or mechanic. But she shouldn't have to train herself for such jobs in order to get that higher pay.

Besides, the "movement's" ideologues hold, any system that permits a blue-collar Joe with an eighth-grade education to make more money than a woman with a master's degree in library science, just because his skills are in greater demand, is unacceptable and unfair. Jobs and incomes, they cry, are entitlements, matters of right. And nothing can guarantee women those rights except an all-powerful state, which would set the rate of pay for every job after democratic consultation and in line with egalitarian and feminist principles—with everyone, no doubt, having the right to an above-average wage.

The fact that such a system could neither exist nor work is probably beyond the grasp of political activists who prefer not to deal in economic analysis. The question of how an economy could obtain skilled machinists—or doctors, or accountants, or engineers—without wage differentials that repay the time and costs of study and training is one they never raise, much less answer. The implicit answer is that they have never really thought about women's work in terms of national output, only in terms of "self-fulfillment."

But most working women, like most working men, aren't working for any such la-di-da reasons. They're working because they nearly all have to. If they are working mothers, they may still prefer traditional jobs—clerical, bookkeeping, library, nursing, teaching—that they can leave and come back to as necessary. But in the past decade, huge numbers have been moving into such jobs as real-estate agents, insurance adjusters, production-line assemblers and inspectors, and even bus drivers and bartenders—all jobs in which women workers are now a majority. And they are making the same rates for the job as entry-level men are making.

The result: While women over 35 are still earning only 59¢ for every dollar earned by men, in the 25-34 age group that figure has jumped to 72¢, and in the 20-24 age group to 87¢. As more and more women who entered the job market in the last decade start moving up to take advantage of those higher-paying jobs, the ratio of women's wages to men's should be set for a sustained rise.

Lacking the incentives provided by those wage differentials, which both feminist ideologues and opportunistic politicians are now denouncing as discriminatory, neither women nor the national economy would go anywhere. But the relative worths which should be accorded to physical hardship, skilled training, academic credentials or whatever cannot be determined by Federal courts, or by committees of trade union officials meeting in smoke-filled back rooms. Relative wages can only be set, in the words of Adam Smith, "not by any accurate measure, but by the higgling and bargaining of the market, according to that sort of rough equality which, though not exact, is sufficient for carrying on the business of common life."

Appendix IX

The "Comparable Worth" Trap

by June O'Neill

Reprinted from *The Wall Street Journal*, January 20, 1984. Reprinted by permission of *The Wall Street Journal*, © Dow Jones & Company, Inc., 1984. All Rights Reserved.

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Equal pay for jobs of comparable value has emerged as a goal of the women's movement. Advocates of this concept of "Comparable Worth" would have us abandon the market and substitute wage-setting boards to determine what women's occupations are "really worth" compared with men's. It recently received the blessings of a federal judge in the case of *AFSCME v. the State of Washington*, where sex discrimination was equated with failure to pay women according to the Comparable Worth of their jobs.

At least as far back as the Middle Ages, the concept of "just price" has had some appeal. Practical considerations, however, have won out over philosophical musings. Most people recognize how inefficient it would be to use an evaluation system independent of the market to set wages or prices of consumer goods. So, for example, we accept a higher price for diamonds than for water, even though water is undoubtedly more important to our survival, and a higher wage for lawyers or engineers than for clergymen or bricklayers even though they may be equally important to our well-being.

The case for Comparable Worth is based on two beliefs: that

women are relegated to certain jobs because of sex discrimination in the labor market and that pay in those jobs is low simply because women hold them. (The implication is that if nurses and secretaries were men, the pay in these occupations would rise.)

Cultural Roles

The first argument may have some validity. Historically, there are many examples of barriers that restricted women's entry into particular occupations. These have included state laws governing women's hours and working conditions and the exclusion of women from certain schools. Individual employers who discriminate against women can always be found.

But the occupational patterns of men and women today also can be explained by factors that would operate even in the absence of any employer discrimination. The major reason men and women enter different occupations stems from the difference in their cultural roles, which are shaped early in life. Work roles may be starting to merge for young women and men, but most women already in the labor force have divided their efforts between home and work, spending about half as many years as men in the labor market. While employed, they have worked fewer hours. Research suggests that pay in women's occupations—for both women and men—is lower largely because of differences in education, and on-the-job experience as well as differences in hours and other working conditions (such as exposure to hazards or outdoor work.)

Comparable Worth would do nothing to remedy discrimination. To the contrary, Comparable Worth would reduce the incentive for women to seek access to nontraditional jobs because it would increase the pay in predominantly female jobs. The more logical remedy for discriminatory barriers—and one squarely in the American tradition of fair play—is to eliminate them. Up to now this has been the traditional goal of feminists.

What would happen if wages were set in accordance with Comparable Worth standards and independently of market forces? Take the example of the state of Washington. In the 1970s the state hired a job-evaluation firm to help a committee set pay scales for state employees. The committee's task was to assign points on the basis of knowledge and skills, mental demands, accountability and working conditions. In the evaluation, a registered nurse won 573 points, the highest number of points of any job. A computer sys-

tems analyst received only 426 points. In the market, however, computer systems analysts earn about 56% more than registered nurses.

The Washington study differed radically from the market in its assessment throughout the job schedule. A clerical supervisor received a higher rating than a chemist, yet the market rewards chemists with 41% higher pay. The evaluation assigned an electrician the same points for knowledge and skills and mental demands as a beginning secretary and five points less for accountability. Truck drivers were ranked at the bottom, receiving fewer points than telephone operators or retail clerks. The market, however, pays truck drivers 30% more than telephone operators and the differential is wider for retail clerks.

If a private firm employing both registered nurses and computer systems analysts were required to accept the rankings from the Washington state study, it would have to make significant pay adjustments. It could either lower the salaries of systems analysts or raise the pay of nurses. If it lowered the pay of systems analysts it would find it difficult to retain or recruit them. If it raised the pay of nurses it also would have to raise its prices and likely would end up reducing the number of registered nurses it employed as consumer demand for the service fell. Some women would benefit, but other women would lose. (In the Washington case, the state employee union explicitly requested and won a judgment that the wages in female occupations be raised, and not that wages to any male occupations be lowered.)

Public Sector

Of course, if the employer is a state government, the consequences would be somewhat different. The public sector does not face the rigors of competition to the same extent as a private firm, which probably explains why public-sector employee unions are in the forefront of the Comparable Worth movement. The state, unlike a company, can pay the bill for the higher pay by raising taxes. But if taxpayers are unwilling to foot the bill, the result would be similar to that in the private firm: unemployment of government workers, particularly women in predominantly female occupations, as government services are curtailed.

Is the solution then to go beyond a state government or an individual company and institute nationwide pay scales based on

Comparable Worth principles? That would bring us to a planned economy, with all the allocation problems of centralized wages. And it would not result in more women becoming electricians, physicists, farmers or truck drivers. In fact, it likely would retard the substantial progress that has been made in the past decade. Women have moved into predominantly male occupations, and younger women have dramatically shifted their educational and occupational goals. They have been undertaking the additional training required for law, medicine and engineering because the higher pay they can obtain from the investment makes it worthwhile. Raising the pay of clerical jobs, teaching and nursing above the market rate would reduce the incentive to enter other occupations, and simply lead to an oversupply in women's fields, making it still harder to find a stable solution to the problem.

If women have been discouraged by society or barred by employers from entering certain occupations, the appropriate response is to remove the barriers, not to abolish supply and demand. Comparable Worth is no shortcut to equality. It is the road to economic disruption and will benefit no one.

Appendix X

Suggestions for Further Reading

The following list has been selected to give a sampling of the best of recent writing on Comparable Worth, both pro and con.

Cook, Alice H. *Comparable Worth: The Problem and States' Approaches to Wage Equity*. Industrial Relations Center, University of Hawaii at Manoa, February 1983. (paper) $4.00.

This study was requested by the Hawaii legislature. The author spent considerable effort surveying state activity on Comparable Worth as of the Summer of 1982 and presents a good summary. Her overview of the issues contains some inaccuracies and seems somewhat biased in favor of Comparable Worth, but is quite readable.

Flick, Rachel. The new feminism and the world of work. *The Public Interest*, 1983, No. 71, (Spring), 33-44.

Flick, a former Senate aide and White House staffer describes Comparable Worth as "the most profoundly feminine political demand ever to be taken seriously in this country." She says it is both feminine and feminist in the sense that it tries to get higher wages for women who continue to exhibit the feminine "people-oriented" traits required in fields like nursing.

Gold, Michael Evans. *A Dialogue on Comparable Worth*. Ithaca, NY: ILR Press, 1983. (New York State School of Industrial Relations, Cornell University, Ithaca, NY 14853).

Professor Gold has cast the pro and con arguments into a somewhat artificial but still easy to read dialogue between a proponent and an opponent. Covers much recent academic and legal material relevant to Comparable Worth in fairly non-technical terms.

Golper, John B. The current legal status of "Comparable Worth" in the federal courts. *Labor Law Journal*, 1983, (September), 563-580.

Discusses legal cases in language understandable to non-lawyers. Includes a brief history.

Lindsay, Cotton Mather. *Equal Pay for Comparable Work*. Coral Gables, FL: University of Miami Law and Economics Center, 1980.

A critical view of Comparable Worth by a market-oriented economist.

Lindsay, Cotton M. & Shanor, Charles A. *County of Washington v. Gunther*: Economic and Legal Considerations for Resolving Sex-Based Wage Discrimination Cases. *Supreme Court Economic Review*, 1982, Vol. 1, 185-233.

A scholarly review of Comparable Worth in general and of the *Gunther* case in particular. This new journal is not yet widely available. It is published by Macmillan Publishing Co. for the Law and Economics Center of Emory University.

Livernash, Robert E. *Comparable Worth: Issues and Alternatives*. Equal Employment Advisory Council, 1980 (1015 Fifteenth St. N.W. Washington, D.C.: 20005).

Critical of Comparable Worth. An updated second edition may be available soon.

Nelson, Bruce A., et al. Wage Discrimination and The Comparable Worth Theory in Perspective. *University of Michigan Journal of Law Reform*, 1980, Vol. 13, No. 2, (Winter), 231-301.

A point-by-point reply to the widely-cited article by Ruth Blumrosen published in the same journal a year earlier. Since Comparable Worth proponents hardly ever mention the Nelson article, it can serve as a litmus test. If a Comparable Worth study cites Blumrosen but not Nelson (or vice versa), you know it was written by a person who was either poorly informed or biased.

Treiman, Donald J., & Hartmann, Heidi I., (eds.). *Women, Work, and Wages: Equal Pay for Jobs of Equal Value*. Washington, D.C.: National Academy Press, 1981.

This study, initiated at the request of the EEOC, covers a variety of topics relating to Comparable Worth. The committee of experts selected by the National Academy of Sciences comes to conclusions which are generally supportive of the positions taken by Comparable Worth proponents regarding the need to remedy "pay inequities." However, it also concludes that although a generally acceptable standard of job worth would be required to implement Comparable Worth, *no* universal standard of job worth exists.

U.S. House of Representatives, Committee on Post Office and Civil Service. *Pay Equity: Equal Pay for Work of Comparable Value*. (Serial No. 97-53) Washington, D.C.: U.S. Government Printing Office, 1983, 1829 pp.

This two-volume report includes testimony of a large number of witnesses in favor of Comparable Worth. It also includes critical testimony from three employment professionals who work for public employers. Vol. 2 includes a number of useful documents (*e.g.*, the *Gunther* decision, the NAS study, and a widely cited law journal article by Ruth Blumrosen).

Appendix XI

Comparable Worth Seminar Speakers
October 17-18, 1983

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Eagle Forum Education and Legal Defense Fund is a non-profit educational organization which conducts research, studies, seminars and surveys on the civil, legal, economic, moral and social rights of traditional families. It seeks to promote fair treatment for traditional family values in the media, the schools, and the economy.

Among its educational projects are its Headstart Reading Project, which assists parents in teaching their children to read at home; and its Herpes Alert Project, which is designed to help combat the problem of teenage pregnancies and promiscuity.

Eagle Forum Education and Legal Defense Fund filed an *amicus curiae* brief with the U.S. Supreme Court in *Rostker v. Goldberg* (1981), thereby contributing significantly to the successful defense of the exemption of all women from the military draft. Eagle Forum is filing an *amicus curiae* brief in *American Federation of State, County, and Municipal Employees v. State of Washington,* the Comparable Worth case now on appeal.

Publications include:

"Our Moral Duty to Defend Freedom," the Proceedings of a 1983 Seminar sponsored by Eagle Forum Education and Legal Defense Fund which brought together eminent scholars from different religious perspectives.

"Primer on Access to the Media," a handbook designed to assist the ordinary citizen to gain effective access to the media so that all points of view can be fairly represented.

"Nuclear Packet," a file of documents to give individuals the facts necessary to participate in discussions about weapons.

Future projects include:

The publication of a "Study Guide on the Problems of War and Peace," designed for use in junior and senior high schools.

An Anti-Drug Abuse Center to be operated in connection with Boys Town, Omaha, Nebraska.

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Equal Pay for UNequal Work