The gendered economy work, careers, and success

Rita Mae Kelly



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For information address:



SAGE Publications, Inc. 2455 Teller Road Newbury Park, California 91320

SAGE Publications Ltd. 6 Bonhill Street London EC2A 4PU United Kingdom

SAGE Publications India Pvt. Ltd. M-32 Market Greater Kailash I New Delhi 110 048 India

Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Kelly, Rita Mae.

The gendered economy: work, careers, and success / Rita Mae Kelly.

p. cm.

Includes bibliographical references and index. ISBN 0-8039-4215-X. — ISBN 0-8039-4216-8 (pbk.)

1. Sex discrimination in employment—Arizona. 2. Sexual division of labor—Arizona. 3. Sex role—Arizona. 4. Sex discrimination in employment—United States. 5. Sexual division of labor—United States. 6. Sex role—United States. I. Title.

HD6060.5.U52A65 1991
331.4'133'09791—dc20
91-14938

1-14938 CIP

FIRST PRINTING, 1991

Sage Production Editor: Astrid Virding

Contents

| Foreword | |
|--|------|
| Deborah Larkins | vii |
| Preface | x |
| Acknowledgments | xiii |
| 1. Introduction | 1 |
| PART I THE IMPACT OF CULTURE AND ECONOMIC STRUCTURE | 5 |
| 2. Sex-Role Ideology, the Constitution, and | _ |
| Gender Equality in the Labor Force | 7 |
| 3. Women, the Economy, and Careers | 28 |
| PART II SEX, GENDER, | |
| STEREOTYPES, AND SUCCESS | 55 |
| 4. Gender Culture and Socialization | 59 |
| 5. Sex-Role Spillover: Personal, Familial, and | |
| Organizational Roles | |
| with Phoebe Morgan Stambaugh | 78 |
| 6. Gender, Success, and Behavioral/Leadership Styles | 96 |
| with Marcia Cech-Soucy | 101 |
| 7. Careers: Linking Individuals to Organizations | 131 |
| PART III ALTERNATIVES FOR CHANGE | 157 |
| 8. The Role of Government and Business | |
| with Kimberly Fisher | 159 |

| 9. | Balancing the Scales of Justice: Alternatives for Integrating Women's Personal Lives into the U.S. Economy with Deborah De Paoli | 174 |
|-----|--|-----|
| PA | RT IV A CASE STUDY: WOMEN AND THE ECONOMY IN ARIZONA | 195 |
| | Women, Work, and Careers in Arizona with Marcia Cech-Soucy, Deborah De Paoli, and Kimberly Fisher | 197 |
| 11. | Consensus Statements and Recommendations of the Fifth Arizona Women's Town Hall | 221 |
| | Appendix: 1990 Arizona Women's Town Hall Panel Discussion Questions | 236 |
| | Glossary | 245 |
| | Suggested Readings | 249 |
| | Name Index | 256 |
| | Subject Index | 258 |
| | About the Author and Project Director | 263 |
| | About the Other Contributors | 264 |

Foreword

The "glass ceiling" has been explored in such diverse fields as religion, medicine, education, the public sector, and the corporate world. The research provided in *The Gendered Economy* by Dr. Rita Mae Kelly of Arizona State University together with the consensus recommendations of the participants in Arizona's Fifth Women's Town Hall add to our collective understanding of this issue at a critical time in our state's, and indeed our nation's, history.

Women and minorities will comprise the majority of entrants into the work force in the next decade. Although this trend has been predicted for some time, change has been slow and the 1990s find the world of work largely unprepared for this change, with salaries, benefits, and incentives designed for a diminishing labor pool of white, native-born males. Additionally, with more and more earning power, women will exercise more and more economic and political power as well.

By 1990 the number of women in management had increased fourfold over its level in 1970. Yet the average salary of women compared to men appeared to increase relatively little; and although sex-segregation by occupation declined, sex-segregation by industry increased. Women in 1990 remain baffled by their inconsistent and unclear progress toward gender equity and frustrated by their individual efforts to advance their own careers.

This book addresses these concerns in an interdisciplinary way, integrating and synthesizing up-to-date data and literature from management, organizational theory, psychology, sociology, political science, and law. The book is unique in that it provides a comprehensive

integration of the impact of U.S. history, the Constitution, and segmented labor markets with individual socialization, sex-role patterns, behavioral styles, and career strategies. It addresses the relative impact of individual decision making within the current U.S. legal, economic, social, and institutional structures.

The book is important for the 1990s. Women—and leaders of both sexes—are becoming increasingly concerned with the barriers women and minorities face in attempting to advance their careers. It provides a readable, integrative, comprehensive approach to understanding the leverage points for removing these barriers and facilitating change and new material on the gendered nature of the economy. It also presents alternative frameworks for balancing the scales of justice so that women will have an improved opportunity to gain career success in the U.S. labor force.

This book is intended for undergraduate students in Women's Studies and other social science courses focusing on gender issues at the junior-senior level and for the general public. Women interested in having successful careers as leaders or managers will benefit the most from this book. It can be used as a text for courses on gender and society, gender and the economy, sex roles, gender justice and public policy, and gender, leadership, and management. Selected chapters could be used in courses on women and the law/constitution. The discussion questions in the Appendix will be helpful learning guides.

The book was written in response to a request of the Soroptomist International of Phoenix, Arizona, Inc., to prepare a document to be used as the basis for the Fifth Arizona Women's Town Hall. Arizona holds annual meetings to discuss a topic of vital concern to women and decision makers in the state. The last two chapters focus directly on the gendered nature of the economy in the state of Arizona. The book is directed at this type of audience nationally as well.

Participants in the Town Hall represent diverse ethnic, economic, educational, and career backgrounds from throughout the state of Arizona. Their views, recommendations, and specific goals are contained in Chapter 11, the summary and consensus document of the Town Hall. The research and public comment contained therein is distributed to legislators, libraries, alumnae, the media, and others interested in the topic.

The Fifth Annual Arizona Women's Town Hall convened September 13-16, 1990. Researchers, organizers, and participants alike dedicated themselves to a quality process through more than two years of planning

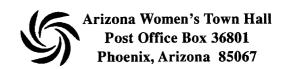
and preparation culminating in these exciting $3\frac{1}{2}$ days. Reflecting the efforts of nearly 200 women from throughout the state, this document is extraordinary in its scope of research and depth of presentation. The process is a model for how university scholars and citizens can work together to advance public knowledge and the public interest.

Foreword

It has been a great honor to serve as the Executive Chair of the Fifth Arizona Women's Town Hall. I would like to thank Dr. Rita Mae Kelly for a superbly authored research document. In addition, sincere appreciation is extended to the Executive Committee for countless hours of dedication, to individuals and businesses for the contributions that make a project of this scope possible, and to the participants for their hard work and consensus report that make this a document worthy of study and regard.

I strongly recommend the book to everyone who is concerned about the need for improving the status of women in the U.S. economy. It will help all readers learn more about policy options and personal choices for attaining that goal.

—DEBORAH LARKINS
Executive Chair
Arizona Women's Town Hall



Preface

Democracy requires knowledgeable participation of the citizenry. The difficulty of such participation, however, is great. It is time-consuming to obtain information and difficult to find quiet time and space for systematic reading of background information and relevant analytic materials. It is even more problematic for the average citizen to be able to reflect on policy-focused material and to discuss it with other citizens of diverse backgrounds in a meaningful dialogue.

The absence of community mechanisms to promote such knowledge acquisition and dialogue contributes to an apathetic citizenry and to a weakened political system. It certainly contributes to policy development that is not necessarily reflective of the broad citizenry. Non-involvement elevates the importance of the intellectual elite and policy analysts within bureaucracies and advocacy organizations. Although the role of a nation's intelligentsia, policy experts, and public servants in policymaking is vital and needs to exist, in a democratic society it is extremely important to have public fora linking university and research experts with concerned citizenry.

The Arizona Town Hall concept is an attempt to provide this link in a regularized, ongoing way. Each year in Arizona several town halls are held. Their topics are wide-ranging, encompassing transportation, crime, education, health, the economy, and the political system, among others. The basic idea of these town halls is to place the expertise of the university at the service of community. In the process it is hoped that the level of discourse over public problems will rise and that new, creative, more viable, and yet cost-effective solutions to societal

problems will result. At the minimum increased understanding of the historical and philosophical bases of public problems and a broader perspective on 'he nature of the issues are expected.

The First Arizona Women's Town Hall was held in 1986. The Arizona Women's Town Halls have been sponsored by the Soroptimist International, Inc., of Phoenix, Arizona. As the project director for two of these, the Second Town Hall on Women in the Arizona Political Process (Lanham, MD: University Press of America, 1988) and this Fifth Town Hall on "Windows of Opportunity or Locked Doors: Women, Work, and Success," I have been impressed with the organization, care, and work put in by citizens to develop and make these town halls succeed. The process used by the Soroptimists illustrates the effort required.

The Soroptimists have several committees responsible for each town hall. A Research Committee, consisting of about ten to fifteen people, selects the topic, seeks a project director to be responsible for the research and writing of the document, and monitors the research progress. This committee does not interfere with the research but rather seeks to clarify for the researcher(s) the issues of concern to the citizens. A major part of this committee's responsibility is to ensure that the final research document is comprehensible and readable for the town hall participants. Because some of the citizens may have less than a high school education, this is a formidable task, and one to which university scholars often do not attend. Typically the town hall documents are written for a college-level audience but with the expectation that they will be accessible to concerned citizens with high school degrees.

Several other committees are also involved. One committee raises funds for the research. Another solicits participants and selects the final attendees at the annual three-day town hall. Another identifies and obtains keynote, luncheon, and dinner speakers, and another deals with the logistics. Of course, public relations, the media, and advertising are also important functions needing attention.

For its part the university contributes not only released-time for faculty to complete the research but typically also makes matching funds available for research assistants and secretarial support and allows free use of its library, computer and other support facilities. The project director is responsible for reshaping the research issues and questions so that up-to-date theories, methodologies, and data can be used to address and advance the topic at hand.

The result of this teamwork between the university and the community is not only a document, such as this book, but also a three-day town

hall held in a conference-hotel and a consensus report (presented here as Chapter 11). The consensus report reflects the conclusions of the town hall participants on the issues raised and their recommendations to elected and appointed officials in the state. The research document along with the consensus report is then delivered to all relevant local and state officials. The Soroptimists and the town hall participants also return to their home communities and attempt to educate others on the issues and to promote nongovernmental efforts to address the problem at hand.

The greater outcome of such cooperation between universities and citizen groups is hopefully a strengthened and more participatory democracy. The process as well as any one specific research product is significant.

I have been pleased to participate in these cooperative endeavors. As an academic, I have found working with citizens helpful in focusing my research concerns. The attention of the members of the citizen Research Committee to logical argument and evidence for conclusions reached and positions stated by me substantially sharpened the presentation and analyses. The fact that many of the members and town hall participants would never consider themselves "feminists" also led to challenges concerning statements that might be considered ideological. Although all types of ideas and data were readily accepted by the committee as admissible, all material needed to be presented so that diverse ideological positions on gender, politics, the economy, and policy could deal with it logically and empirically rather than emotionally.

Citizen participation gives a different type of "peer review" than that given by one's academic colleagues. Both reviews are valuable, in my view essential, when dealing with matters of public policy. Academic review provides assurance of research quality and accuracy. Citizen review promotes clarity and relevance. In a cooperative atmosphere both contribute to a stronger and better democratic society.

-RITA MAE KELLY

Acknowledgments

This book reflects the efforts of many people, companies, and organizations. Financial support came primarily from the initiators of this project, Soroptimist International of Phoenix, Inc., which sponsored the Fifth Arizona Women's Town Hall. Arizona State University (ASU) has provided additional support. Special thanks go to Director Nancy Felipe Russo for all-around general assistance, space, and staff support from the ASU Women's Studies Program and to John Hepburn, Director of the School of Justice Studies, College of Public Programs, for facilitating my release from other duties so I could work on this project.

The number of contributors to this volume is large. Undergraduate and graduate students in the Arizona State University Justice Studies and Women's Studies programs have contributed not only to specific chapters in this Town Hall report (see credits in each chapter), but also by having completed theses and papers in classes over the years.

Steve Haugan, economist, U.S. Department of Labor, Bureau of Labor Statistics, provided us with appropriate statistics in the needed categories for 1964, Tables 3.5 and 3.6. His efforts were clearly above and beyond the call of duty and are much appreciated. Pat MacCorquodale, Associate Professor of Sociology, University of Arizona, also assisted in clarifying data in Figure 5.1. The various research assistants from the ASU School of Justice Studies and Honors College who assisted in gathering data and bibliographic references also greatly facilitated this research project: Marcia Cech-Soucy, Kimberly Fisher, Yen Li Yeh, Phoebe Morgan Stambaugh, Ria Hermann, Jody Horn, Chris Miller, and Jane Sugano.

I particularly wish to acknowledge Deborah Jean De Paoli, Kimberly A. Fischer, Marcia Cech-Soucy, and Phoebe Morgan Stambaugh who not only assisted in completing the research for portions of this book but also assisted in writing selected chapters, or portions of selected chapters.

I wish to acknowledge the assistance of Jan Lamoreaux and Julie Jones of the Women's Studies Program and Kay Korman, Gail Schroeder, and Anne El-Lissy of the School of Justice Studies for their typing, copying, and other assistance. A special note of thanks to the staff of the Auxiliary Resource Center, College of Public Programs, Marian Buckley, Fran Mularski, Tammy Stein, and Janet Soper for preparing the final manuscript in their usual outstandingly meticulous and efficient manner.

The editorial comments of Georgianne Baker, Allen Meyer, and Nancy Russo were also most important. Kimberly Fisher provided excellent assistance in facilitating the preparation of the final document.

Guidance provided by members of the Fifth Arizona Town Hall Research Committee has also been helpful. Special acknowledgments go to Mildred Bulpitt; Susan Cypert, Chair of the research committee; Janet Elsea; Jessica Funkhouser; Carol Hebert; and Deborah Larkins for their careful reviews and helpful advice throughout the project.

I also wish to acknowledge the following for granting permission to reproduce or cite specific items:

Aberdeen University Press for release of materials previously appearing in "Women, the Economy, and the U.S. Constitution," Andre-Jean Arnaud and Elizabeth Kingdom (eds.), Women's Rights and the Rights of Man, 1990.

Cambridge University Press for release of materials previously appearing in *Handbook of Career Theory* published in 1989.

Carolyn Desjardins, National Institute for Leadership and Development for permission to use her visual aid on morality of rights and morality of response.

Greenwood Press for permission to use data in Table 2 from Jane Bayes, "Occupational Sex Segregation and Comparable Worth," in *Comparable Worth, Pay Equity, and Public Policy*, edited by Rita Mae Kelly and Jane Bayes, 1988, page 19.

The Haworth Press, Inc. for release of material used in Women & Politics, Vol 10(4), 1990, and Vol 11(2), 1991.

Acknowledgments XV

D.C. Heath and Company for release of previously appearing figure in *Half the Human Experience: The Psychology of Women*, edited by J. S. Hyde, 1985.

National Conference of State Legislatures for release of material published in *The Fiscal Letter*, March/April 1989.

Soroptomist International of Phoenix and the Arizona Women's Town Hall Executive Committee extend sincere appreciation to the following organizations which through donations and support services have made this effort possible: All Media Communications; Arizona Public Service; Dr. Mildred Bulpitt; Communications Skills; Corroon and Black/Olliver Pilcher; Fry's Food Stores of Arizona; Gannett Foundation; Greyhound Dial Corporation; Hedlund Fabric and Supply; Honeywell, Inc.; Intergroup of Arizona; Larkins and Associates Advertising; Michael Dixon Productions; Performance Dynamics; Phoenix Camelback Hospital; Professional Data Systems; PSM Squared; Salt River Project; Security Pacific Bank; Ultrasound Diagnostic Services; University of Phoenix; US West Foundation; VSP, Inc.; Walker & Company Marketing Communications; YWCA of Maricopa County.

---RITA MAE KELLY Project Director

1

Introduction

In the 1990s, women will become increasingly concerned with their ability to reach the very pinnacle of career success—becoming a high-level manager or a key decision maker. The number of women in management has increased fourfold since 1970. Yet Ann M. Morrison of the Center for Creative Leadership and Mary Ann Von Glinow, a professor at the University of Southern California, charge that "the rate of upward movement of women and minority managers provides 'clear evidence of nothing less than the abiding racism and sexism of the corporation' (p. 200). Women are seeking ways to move beyond the management jobs with low pay and little authority that they currently hold. The purpose of this book is to explore factors that impede or facilitate women's advancement in business and professions in the United States.

Numerous explanations have been offered for the relative absence of women in high-level positions. Generally these explanations can be classified into three groups: theories of sex and gender differences, theories based on labor market and organizational discrimination, and theories about systemic barriers. Historically most attention has been given to the sex/gender difference theories. These theories stress male and female biological differences, different reproductive roles, socialization variations, and sex differences in education, training, and work experience. The focus of such theories tends to place responsibility for success or failure on the individual.

Discrimination theories argue that the primary responsibility for the limited success of women (and minorities) lies with systematic biases

of those who hold power in organizations, the economy, and the political system. Employers, supervisors, clients, and customers have bought into traditional sex-role stereotyping and discriminate against women to protect the privileged position afforded by the established gender hierarchy (or, in the case of race or ethnicity, the established racial/ethnic hierarchy). Discrimination theories imply that women and minorities will be hired, but only so long as no real change in power relations occurs.

Theories about systemic barriers concern structural patterns promoting discrimination. For example, dual labor market theory identifies primary and secondary jobs. Men tend to hold the primary or "good" jobs, which have the greatest stability and promotion potential, while women hold the secondary or "poorer" jobs, which have lower stability and lower wages.

All of these theoretical frameworks offer valid viewpoints, but each by itself offers an insufficient and distorted picture of reality. Taken individually, the picture each presents is like that of the twelve blind men describing the part of the elephant that they can touch. Each sees an important part of the reality of the elephant, but not one is able to present a comprehensive picture of the beast.

Examining the opportunities available to women in the U.S. economy is somewhat similar to examining the elephant. Describing one piece of the animal is helpful but grossly insufficient. This book seeks to provide a comprehensive overview of the place of women in the U.S. economy and the changing trends during U.S. history, with particular emphasis on the period since the mid-1960s. It also assesses the impact of sex-role ideology and socialization on gender differences in work-place aspirations, behavior, and achievements. The role that business organizations and government do and can play in incorporating women into the economic system as leaders and managers is also examined. Finally, an assessment is made of proposals offered to create an opportunity for women to play the leadership game on a level ball field.

Part I of this volume addresses the sociopolitical and cultural heritage and the economic structural constraints that shape a society and frame a human being's existence. This heritage and the institutions that enshrine it mold our belief systems and our expectations of what is possible and permissible.

Chapter 2 describes the sociopolitical heritage that has shaped U.S. cultural, legal, and institutional understandings of sex-role ideology and the role of women in the economy. It examines the impact of this

ideology on gender equality in the U.S. labor force, and lays the foundation for the development of policy alternatives that will facilitate explicit strategies of empowerment for women and women's organizations. For women to become leaders and to have the highest levels of career success, national support must exist for gender equality in all aspects of citizenship and leadership. For minority women to have the same equal opportunity as white women, racial and ethnic barriers to success also need to be addressed.

In Chapter 3, the segmented nature of the U.S. labor market is detailed. As groups, men and women are positioned in different segments of the U.S. economy with women in the most vulnerable positions. The odds of increasing percentages of women becoming chief executive officers (CEOs) of Fortune 500 companies are low largely because so few women work in that part of the U.S. economy. These structural constraints of career success should not be confused with individual qualifications and/or abilities.

Part II examines socialization and career paths. Because males and females have been and are socialized differently, they are likely to have different career aspirations and follow different career paths. Career paths develop as an interaction between what the individual sees as possible and works toward and what society allows and facilitates. This interaction produces personal and organizational role conflicts for women as they enter the labor force and attempt to advance their careers.

Chapter 4 presents an overview of the impact childhood socialization can have on the attainment of skills, aspirations, and motivations appropriate for career success. Chapter 5 articulates the difficulties women have in integrating personal, political, and economic life because of the overlapping of historical sex-role and gender expectations from the private sphere to the public sphere. Chapter 6 discusses the influence of sex differences in behavioral traits and management/leadership styles on career success, particularly the attainment of high-level management and leadership positions. Chapter 7 examines the relationship of the individual to careers and to organizations.

Part III of this book calls attention to the organizational and societal supports available for women. Chapter 8 examines selected policy options that employers, businesses, and government can adopt to facilitate women's career success. Chapter 9 presents options being proposed to balance the scales of justice so that women will have a more equal chance of competing and succeeding.

Part IV presents a case study of how the gendered economy is manifested in one state, Arizona. Chapter 10 describes the legal power of women under the Arizona state constitution and statutes, details demographic characteristics and trends in the state's female labor force, and profiles influential women who are political and business leaders in the state. Chapter 11 offers the comments of a diverse group of citizens from around the state who attended the Fifth Arizona Women's Town Hall, September 13-16, 1990. This Town Hall focused on the information presented in this volume and asked the participants to offer policy recommendations to public officials to suggest ways of improving women's position in society and of increasing their chances for career success. It is hoped that these recommendations, along with the material presented, will produce a broader understanding of the factors facilitating and impeding women's efforts to have successful careers as managers and leaders. It is also hoped the material will stimulate more—and more sophisticated—discussion among the citizenry of ways of attaining greater gender equity in the United States.

Note

1. Ann M. Morrison and Mary Ann Von Glinow, "Women and Minorities in Management," *American Psychologist* 45(2) (1990): 200; partial citation of K. Bradsher, "Women Gain Numbers, Respect in Board Rooms," *Los Angeles Times*, 17 March 1988, p. 1.

PART I

The Impact of Culture and Economic Structure

Chapters 2 and 3 provide a comprehensive overview of women's historical and current position in the legal and economic systems of the United States. Both chapters highlight how the traditional roles of wife and mother have heavily influenced women's current status and position in society.

Sex-Role Ideology, the Constitution, and Gender Equality in the Labor Force

Americans generally believe that neither ideology nor politics ought to influence any person's career prospects. The belief, however, is belied by reality. This chapter gives an overview of the legal and political status of women in the United States relevant to professional careers and public roles. The text first highlights the constitutional prohibitions against women engaging in occupations other than wife and mother, then traces the struggles for equal access in the labor market, equal opportunity in professional training, and pay equity. This overview notes the role that affirmative action has played in advancing women to higher management in all sectors of society. Finally, some thoughts are presented on policy areas that need systematic attention in the 1990s.

Women and the Constitution

The Patriarchal Foundations

Barriers which continue to impede women's advances into upperlevel positions reflect centuries-old myths about the appropriate role of women in society. Popular views of sex roles contain an assemblage of Graeco-Judeo-Christian beliefs. The Greek beliefs rest on six tenets:¹

- 1. Males and females are opposite in nature; mingling of these opposite beings brings order and harmony to society.
- 2. The roles of males and females are opposite and complementary in accord with the design of Nature.
- 3. Nature divides the needs of each society into two distinct spheres: the Outdoor, or male sphere, comprising heavy labor, military activity, and deliberation over the protection and livelihood of the society; and the Indoor, or female sphere, where less strength but a greater share of love and nurturing is required.
- 4. The outdoor nature of man prepares him to engage in the public, political, visible, and official activities of society; woman's indoor nature relegates her to private, publicly invisible functions.
- 5. The public sphere, concerned with the survival of the state and the freedom of its members, is more dignified and important than the private sphere, which is concerned with the basic animal need, survival of the species.
- 6. Men are stronger, more courageous, superior; women are weaker, irrational, inferior.

To some extent, these tenets are still used to define the rights and prerogatives to which each sex is entitled.

Historian T. M. Marshall notes that three essential rights of citizenship have been available throughout Western history:²

Social rights, the right to a basic level of economic welfare and security; the right to share in the social heritage, and to live as a civilized being according to the standards prevailing in the society;

Civil rights, liberty of person; freedom of speech, thought, and faith; the right to own property and to conclude valid contracts; the right to justice; Political rights, the right to vote and the opportunity to hold public office.

Throughout history, women have typically been granted only social rights. Women enjoyed civil and political rights indirectly through their husbands, fathers, sons, or other legally designated male protectors. Emphasis on equality, liberty, and fraternity during the French and American revolutions raised women's hopes for attaining all three rights of citizenship. These hopes were shattered by the conservative sex-role ideology of the male revolutionary leaders.³

The U.S. Declaration of Independence stated that men were created equal. Though many have argued that the word "man" subsumed "woman," the political and legal history of the United States conflicts

with this assertion. Table 2.1 presents an overview of women and the U.S. Constitution, depicting the 200-year time line of inequality that women have faced in their efforts to participate in America's political and economic life.

The U.S. Constitution of 1789 counted white women as equal members of the population, but restricted franchise to white, propertied males. Women were not specifically mentioned in the 1789 Constitution. Fortunately, this document was relatively gender-neutral in its language, referring to citizens and persons. This wording has allowed the U.S. Supreme Court to reinterpret the Constitution in a manner more favorable to women as changes have occurred in the nation's sex-role ideology. American women were granted the right to vote in 1920.

The Bill of Rights of 1791 did not immediately impact women. Social and civil rights—the only rights for which women had legal support—were left to state rather than federal law. Unfortunately, the laws of most states functioned within the narrow framework of English common law, which afforded few rights to women. In the Southwestern states, laws based on community property ideals of Spanish traditions also afforded little legal power to women.

Laws in the United States historically have assumed the patriarchal, nuclear family to be the basic unit of society. The law has reinforced men's control over women, asserting that the well-being of the state depended upon maintaining a "unity of interests" between men and women. Indeed, the commonality of interest was believed to be so important that English common law denied women a separate legal identity once they were married. The opinion of Justice Bradley, in the well-known 1873 U.S. Supreme Court case of Bradwell v. Illinois, summarizes the ideology that prevailed in the United States during the 18th and 19th centuries. In this case, Bradwell was denied the right to work as a lawyer even though she had the legal training.

The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. . . The constitution of the family organization, which is founded in divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. So firmly fixed was this sentiment in the

TABLE 2.1 Women and the Constitution: A Timeline of Inequality

| No mention of women. Great Compromise included women as equal to men for counting population. Gender-neutral—refers to citizens and persons. Only in New Jersey did women have the right to vote, taken away in 1807. | No immediate effect on women. State law, based on English Common Law, set women's rights (very restrictive). | Introduces sex-specific language into Constitution. If States denied males over 21 right to vote, then their proportional representation in U.S. Congress would be reduced. Prohibits states from "denying to any person the equal protection of the laws." In effect, women not considered legal persons. | Cases that the Equal Protection Clause should apply only to state laws discriminating vs. blacks apply only to state laws discriminating vs. blacks. In Bradwell v. Illinois (83 U.S. [16 Wall] 130) U. Supreme Court denies Myra Bradwell equal citizenship with men by denying her right to practice law, asserting basic sex differences and roles: "Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evident unfits it for many of the occupations of civil life. The constitution of the family organization, which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator." (p. 141) | Cases that the Equal Protection Clause should apply only to state laws discriminating vs. blacks. In Bradwell v. Illinois (83 U.S. [16 Wall] 130) U.S. Supreme Court denies Myra Bradwell equal citizenship with men by denying her right to practice law, asserting basic sex differences and roles: "Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her dusbrat The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator." (p. 141) |
|--|---|---|---|--|
| 1874 U.S. Supreme Court in Minor v. Happersett upheld Missouri male only voting law. | 1880 U.S. Supreme Court upheld West Virginia law restricting jury duty to men—held to 1975. | 1908 West Muller v. Oregon special luty to protection re working hours. Protectionist legislation justified because "history discloses the fact that woman has always been dependent upon man She is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men" (208 U.S. 412). | ng hours. Ing hours. scloses the fact agrs been in She is a class by ion designed ay be n like cessary for 412). | 1920 19th Amendment Women's Suffrage. |
| U.S. Supreme Court agreed Michigan state law could forbid women working as bartenders. Equal Protection Clause of 14th Amendment not violated even though the woman owned the bar. Goesaert v. Cleary (335 U.S. 464- | Brown v. Board of Education—beginning of civil rights litigation. | | 8 U.S. 57, stricting jury ining "woman he center of y life." | 1963 Equal Pay Act passed. |
| 1964 Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on basis of sex as well as race. | 1971 14th Amendment Equal Protection Clause used for first time to prevent a state law from discriminating vs. women in Reed v. Reed (404 U.S. 71), enabling women to be appointed as | tion Equal Rights Amendment passed, prevent a sent to states. | dment passed, | 1973 Roe v. Wade (410 U.S. 113) women's right to choose an abortion upheld, based on rights of privacy and integrity of the body. |

TABLE 2.1 Continued

stemming from it in hiring, promotions, under Equal Protection Clause vs. sex maternity leave, disability insurance, pension rights, seniority, etc. stereotyping and discrimination

the workplace laws, structures, and policies are based on a male reproduction/child-bearing pregnancy. No recognition that discriminating on the basis of Act modifies Title VII of the Civil Rights Act of 1964, prohibits employers from

hiring partners. 1st Amendment right U.S. 69) U.S. Supreme Court holds that if partnership is a privilege of discriminate on grounds of sex in employment, then firms may not In Hishon v. King & Spaulding of association no defense.

In Roberts v. Jaycees (468 U.S. 609) Supreme Court upheld Minn. statute requiring admission of women with full voting rights. First Amendment freedom of association does not override state's right to end

Action Plan to increase representation Supreme Court holds Title VII allows employer to adopt an Affirmative of women in sex-segregated jobs. (107 Supreme Court 1442) U harassment in the workplace a violation of Title VII of the Civil Rights Act of 1964. U.S. Supreme Court declares in

Meritor v. Vinson sexual

In Rotary Club case (107 S.Ct. 1940) U.S. Supreme Court reaffirms California law opening membership.

SOURCE: This chart was inspired by a speech given by U.S. Supreme Court Associate Justice Sandra Day O'Connor on "Women and the Constitution: A Bicentennial Tempe, AZ 85287.

founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, who was regarded as her head and representative in the social state.4

American women from Abigail Adams to the present have argued that women, as persons, are equal to men, and that women deserve separate political, economic, and legal identities. The feminist position did not gain political and occupational significance until the 20th century.

The 14th Amendment introduced sex-specific language into the U.S. Constitution for the first time in 1868, making women's position explicitly worse.⁵ This Amendment stated that, if states denied males over the age of 21 the right to vote, then their proportional representation in the U.S. Congress would be reduced. Given that the 14th Amendment prohibits states from "denying to ANY person . . . the equal protection of the laws," this statement in effect denied that women were legal persons. In 1873 the U.S. Supreme Court explicitly ruled that the Equal Protection Clause applied only to state laws discriminating against blacks.6

This patriarchal view of women continued until recently. For example, as late as the 1960s, some states prohibited women from keeping their maiden names or from getting driver's licenses in their own names, arguing that such practices would harm the interests of the state.7 In 1961, following previous precedent, the U.S. Supreme Court reaffirmed that jury duty could be restricted to men because a "woman is still regarded as the center of the home and family life."8

The argument that states had a responsibility to "protect" women from working for wages in particular capacities was politically accepted until the 1960s. For example, in the 1908 case Muller v. Oregon,9 the U.S. Supreme Court justified protectionist legislation to prevent women from working as many hours as men because a "woman's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence . . . History discloses the fact that woman has always been dependent upon man. . . . Legislation designed for her protection may be sustained, even when like legislation is not necessary for men."10

In the 1948 case Goesaert v. Cleary, the U.S. Supreme Court upheld a Michigan state law that forbade women from working as bartenders. In this case, Valentine Goesaert was denied the right to work at a bar which she owned after her husband had died. Reasoning that Goesaert could work as a bartender only as long as her husband was present to

protect her morals, the Court ruled the state could prohibit her from such work after his death without violating the Equal Protection Clause of the 14th Amendment. The Court allowed Goesaert's gender to override her rights as a citizen, as a worker in the free labor market, and as a business owner.11

The Impact of Culture and Economic Structure

The Changing Legal Basis for Sex Equality

Economic and military necessity contributed to changing beliefs regarding women and work in the United States. As early as 1942, the National War Board endorsed the principle of equal pay for equal work to entice women to work for wages during World War II. Nonetheless, significant legal and ideological changes did not occur until after the rise of the civil rights and women's rights movements in the 1950s and 1960s. Employers subject to the Fair Labor Standards Act were first required to pay women and men the same wages for similar work in 1963.

The most dramatic legal change for women was the last minute inclusion of "sex" in Title VII of the Civil Rights Act of 1964. Title VII "prohibits discrimination on the basis of sex, race, color, religion, or national origin in any employment condition, including hiring, firing, promotion, transfer, compensation and admission to training programs."12 Title VII authorized "affirmative action" as follows:

If the court finds that the respondent has intentionally engaged in an unlawful employment practice . . . , the court may order such affirmative action as may be appropriate.¹³

Through its interpretations of Title VII, the U.S. Supreme Court has articulated two conceptual frameworks for enforcing equality in the workplace: disparate treatment and disparate impact analysis.

Disparate Treatment Doctrine

The Disparate Treatment Doctrine prohibits practices motivated by discriminatory intent by guaranteeing similar treatment for those who are similarly situated. Most of the Title VII cases up to 1990 have been decided using this framework. This doctrine essentially takes the

labor force and economic structures as they are, together with their assumptions about job requirements, descriptions, and work hours. Hence, if a job description stated that an employee needed to be six feet tall, be able to lift 100 pounds, have been a high school wrestler, or meet other requirements that tend to fit the male physique, the courts would not be likely to find discriminatory intent. Women would not be similarly situated in seeking this job. However, if one woman met these requirements and was not considered, then discriminatory intent might be found.14

15

In the 1980s objections arose to the implicit assumption by employers and the courts that employment standards should accept masculine traits and sex-roles as the norm for job descriptions and work structures. 15 Tests for assumptions of gender neutrality and being "similarly situated" focused essentially on comparing individuals. The courts often ruled that only those women who could act like men were "similarly situated."16

The EEOC v. Sears, Roebuck & Co. case¹⁷ provides an example of this problem. Women were not being hired for highly paid commission sales positions. Using the disparate treatment analysis, the court decided that, on the basis of the standards used, women were found to be less suited to and less interested in commission sales than men¹⁸ and, therefore, no discrimination in hiring practices existed. The standards used, however, were such typically "masculine" traits as aggressiveness, assertiveness, competitiveness, personal dominance, and a desire to earn a large income. The tests used to screen job applicants included items that asked if the applicant had a low pitched voice, if they swore often, and if they had wrestled or played football. As Eichner¹⁹ notes,

Disparate treatment doctrine, which prohibits practices motivated by discriminatory intent, is inherently unsuited to the task of identifying these biases because it guarantees similar treatment only for the similarly situated. Women, when they cannot or will not conform to male patterns of behavior, remain outside the scope of its protection. . . . The link that is widely thought to exist between "male" characteristics and traditionally male jobs creates a vicious cycle for many women. Because these jobs are associated with the traits and lifestyles of men, employers fail to hire women who cannot or will not adopt "male" standards of behavior. Men therefore continue to dominate these positions, which, in turn, continue to be viewed as male and adapted to men. Women, meanwhile, remain trapped in the "pink collar" ghetto of the labor market.19

Disparate Impact Doctrine

To address male-biased ideology in the economy and in job standards, several legal scholars have suggested examining female disadvantages rather than just sex differences. Many advocate a more sophisticated use of disparate impact doctrine. This doctrine, established in Griggs v. Duke Power Co. in 1971,²⁰ prohibits employment practices from having a discriminatory effect and establishes that "facially neutral employment practices that have significant adverse effects on protected groups may violate Title VII."21 This doctrine goes beyond the disparate treatment doctrine by allowing courts to evaluate prohibited practices such as "male-biased job requirements [that] are 'fair in form, but discriminatory in operation.' "22 To be successful in addressing these ideological biases the courts need to examine carefully the use of what is called the "business necessity defense." Eichner suggests a two-part test, as follows:

The Impact of Culture and Economic Structure

They should ask first whether the challenged requirement is essential to the core function of the job. If the answer is affirmative, courts should then consider whether the selection process screens for that requirement in an unbiased manner. . . . The core function test would require courts to look beyond stereotyped notions of how the job should be performed to the basic function of the job itself.²³

Once these tests are completed, the employer still needs to demonstrate that no other employment options of comparable business utility would have a less discriminatory impact. They also need to be most careful in accepting the idea that it would cost too much to restructure either job standards, the job environment, or job characteristics to remove impediments to women. Discrimination is not more tolerable because it is more profitable.

The Insufficiency of Title VII

In the 1970s and 1980s more women moved into the labor force, and the pressures to incorporate women into all levels of work, management, and leadership increased. As a result, it became clear that discrimination in the labor market comes in many forms.²⁴ Three major forms were identified: (a) pre-market types of discrimination (e.g., in socialization, education, mobility, training, and family responsibilities), (b) employment discrimination (e.g., not hiring women at all or for certain,

usually less favorable, jobs only), and (c) wage and benefits discrimination (e.g., lower pay for the same or comparable job). Title VII was insufficient to deal with all of these issues.

Congressional Action

To address some of the pre-market types of discrimination, Congress passed several new laws. In 1972 the Equal Employment Opportunity Act became law; the Equal Rights Amendment cleared Congress, although it was not ratified by a sufficient number of states to become law; Title IX of the 1972 amendments to the Education Act gave women more equal educational opportunities; the Equal Credit Opportunity Act of 1974 gave women independence from husbands, fathers, and guardians in obtaining credit; the Career Education Incentive Act of 1977 sought to reduce sex stereotyping in employment; and the Women's Education Opportunity Act of 1978 sought to expand educational options. The gender bias of veterans' benefits and advantages open to males through military participation was reduced by the Defense Appropriations Act of 1976, opening the service academies to women. In 1978, the U.S. Pregnancy Discrimination Act modified Title VII of the Civil Rights Act of 1964 to prohibit employers from discriminating on the basis of pregnancy. However, there was no recognition that the workplace laws, structures, and policies are based on a male reproduction model.

Experience with differential treatment in hiring and promotion practices from the mid-1960s to the present revealed that addressing premarket discriminatory laws and behavior, although vital, was also insufficient. Discrimination in employment and its ideological underpinnings needed to be continually confronted.

Actions of the U.S. Supreme Court: The Equal Protection Clause

A major weapon in the fight against sex discrimination became available in 1971 when the U.S. Supreme Court finally used-for the first time—the Equal Protection Clause of the 14th Amendment to prevent a state law from discriminating against women.²⁵ In Reed v. Reed,²⁶ this clause was used to enable women to be appointed as administrators of estates. Since 1971, over 50 cases have been heard by the U.S. Supreme Court on sex-based challenges under the Equal Protection Clause. Among other things, the clause has been effective