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Gender Identity: Rights to Work and the Idea of Economic Citizenship

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Résumé

A partir de l'expérience historique des Etats-Unis, ce travail propose de montrer comment une idéologie profondément sexuée du travail salarié a entravé la capacité des femmes à obtenir des droits politiques et limité leur accès à la pleine citoyenneté. Jusqu'à un passé récent, l'idée que les femmes avaient droit à un travail salarié au même titre que les hommes a échappé à la plupart des femmes et des hommes ordinaires. N'imaginant pas ce «droit au travail», les femmes ont ainsi manqué leur accession au pouvoir politique. Pour expliquer la relation entre conception du travail et pouvoir politique, je développe un concept que j'appelle la «citoyenneté économique», lequel englobe une série de droits et de responsabilités, assumés, dans la théorie libérale, pour définir les obligations de la plupart des hommes et traditionnellement refusées à la plupart des femmes. Je me réfère à l'idée d'une citoyenneté économique pour mettre en évidence le contenu sexué des systèmes de croyances idéologiques qui ont marqué la version américaine de la démocratie politique; j'illustre comment ceux-ci ont contraint et lié les revendications des femmes sur le marché du travail, et finalement, je suggère de montrer comment l'idéologie traditionnelle des genres et les obstacles à la mobilité professionnelle des femmes se sont transformés dans les années 60 sous la pression des aspirations à une identification raciale des législateurs masculins blancs. L'article conclut sur quelques effets sociaux perturbateurs que pourraient provoquer l'ouverture aux femmes à la pleine citoyenneté économique.

A historical puzzle occupies the center of my current work*. Though it is located in the US – and the details are particular to one country, I suspect that the issues it raises will be generally familiar. After 1920 – when American women got the vote and thus achieved formal political equality, all the talk was about the logical next step – achieving economic equality, sometimes described as economic independence, and which I think can best be captured by a notion that I have begun to call "economic citizenship". The search for economic equality had many facets including changes in family, inheritance and divorce laws. But its centerpiece was the freedom for women to compete in the labor market: the right to work. There is nothing strange about this. After all, long before suffrage, feminist theorists assumed that economic independence was a necessary step to the full participation of women in civil and political society. Theorists of no less stature than Mary Wollstonecraft and Friedrich Engels had repeatedly made the case for the economic emancipation of women. John Stuart Mill took it for granted: noting in his classic, *The Subjection of Women*, that achieving "the just equality of women" required their admission to all the functions and occupations hitherto retained as the monopoly of the stronger sex[1]. A significant proportion of early twentieth century American feminists completely agreed. Even before the US entered the war, Henrietta Rodman, advocate of new living spaces for women, claimed that "feminism does not demand that every woman shall be a wage earner; but it does demand that no woman who does desire to be a wage earner shall be prevented from taking up her work because she has taken up the other responsibilities of women such as marriage and child bearing"[2]. Historians like Susan Becker and Nancy Cott have persuasively documented the ideas of American feminists who, in the pre-war period, argued that the "right to labor" was fundamental to women's equality, and after the war, assumed that economic independence was to be the next step[3]. Their efforts were captured by the slogan that appeared on the masthead of *Industrial Equality,* the newspaper of the Equal Rights Association: "Give a woman a man's chance ... industrially".

* Earlier versions of this paper were delivered at the Canadian Historical Association, in St. Catherine, Canada, May, 1996, and the European Social Science History Association, in Noordwijdhouk, the Netherlands, May, 1996. I am grateful to the participants for their constructive comments.

1 John Stuart Mill, *The Subjection of Women*, Cambridge, MA: MIT Press, 1979 [1869], p. 50.
2 George MacAdam, "Henrietta Rodman: An Interview with a Feminist", in June Sochen, ed., *The New Feminism in Twentieth Century America* (Lexington, MA: DC Heath, 1971), p. 51.
3 Susan Becker, *The Origins of the Equal Rights Amendment: American Feminism Between the Wars* (Westport, CT: Greenwood press, 1981), ch. 2; Nancy Cott, *The Grounding of Modern Feminism* (New Haven: Yale U. Press, 1987), ch. 4.

For all of its apparently over-determined character, the right of women to work remained an elusive goal. Denied a range of jobs by custom, legal proscription, and union rules, without access to appropriate training and education, crowded into a narrow band of "female occupations", ordinary women could and did expand their participation in the work force. Yet, whether as teachers, factory operatives or office workers, they had little access to the range of jobs, the satisfying work, or the potential financial rewards that goaded men into making work a life's commitment. If the situations of women and poor men seemed, in practice, to be equally bleak, still the idea of opportunity hardly meant the same thing to both sexes. Even as the idea of satisfying work and upward mobility through work took root among well educated and well-off women at the turn of the century, it had little resonance for the vast majority of American women of all racial and ethnic backgrounds. For at least half a century, most working class women did not seem to want a "man's chance". Except among a few small, self-conscious groups of feminists, the resulting occupational segmentation drew little protest or attention. Why not?

I suggest that the answer to that question lies less in a failure of political strategy or in the arguments in which feminists of various stripes engaged in the period after suffrage than in the absence among women as well as men of a sense that women possessed a "right to work" in the same sense as men did. Without an identity that encompassed a sense of entitlement to work, which men enjoyed in consequence of their positions in liberal theory, women lacked access to (perhaps even consciousness of) a range of rights which I identify as part of their "economic citizenship"[4]. The shifting content of economic citizenship – which I discuss below – can tell us something about how such powerful, self-justifying and politicized belief systems as individualism and equality of opportunity are gendered. In this instance, I use it to access first the general ambivalence, perhaps even oppositional stance among ordinary men and women to imagining women as full partners in the ideological belief systems that underpinned the US version of political democracy. I turn then to the constraints and boundaries that limited women's claims in the job market. And finally, I describe the disruption of these boundaries in the 1960s in consequence of the emergence of the idea of sex discrimination, itself a political offshoot of

4 The literature on the relationship of rights to identity and citizenship is now quite large. For some recent contributions see especially Marc Steinberg, "'The Labor of the Country is the Wealth of the Country': Class Identity, Consciousness, and the Role of Discourse in the Making of the English Working Class", *International Labor and Working Class History,* no. 49 (Spring, 1996), pp. 1–25; and Kathleen Canning, "'The Man Transformed into a Maiden'? Languages of Grievance and the Politics of Class in Germany, 1850–1914" in Ibid., pp. 47–72.

the push for civil rights on the part of African-Americans in the 1950s and 1960s.

The initially peripheral role of women in extending democratic participation to the arena of economic equality speaks to the limits of political rights. Later, women's assertive leadership around economic rights after the 1960s explains something of the power of individualism in the recent American women's movement, and it also provides a historical moment from which to view the changing nature of women's relationship to the state. The necessarily brief survey that follows will, I hope, nevertheless illustrate the point I want to make: namely that a deeply gendered ideology around work embedded in every major social institution, including the family, schools, religious establishments, trade unions, and charities, accounts for the failure until quite recently of most US women and men to internalize the conception that political democracy is a perhaps necessary, but certainly insufficient tool for assuming the full range of citizenship rights for women and men.

To capture the reciprocal transformation of ideas and economic life, I've adopted the idea of economic citizenship. In addition to invoking a "right" – the right to work – on behalf of women and suggesting at least the possibility of economic independence, the idea of economic citizenship calls up a set of political possibilities that otherwise remain illusory. I have here taken some liberties with the influential and oft-cited work of T.H. Marshall, whose conception of citizenship included three categories of rights – civil, political and social – and who contended that, in the economic sphere "the basic civil right is the right to work, that is to say the right to follow the occupation of one's choice in the place of one's choice ..."[5] Marshall added a qualifier. Individual economic freedom, accepted as axiomatic by the early nineteenth century, was, he argued, shared by "all adult members of the community – or perhaps one should say all male members, since the status of women, or at least of married women, was in some important respects peculiar"[6]. His passing acknowledgment of the exclusion first of women, and then of some women, and subsequent dismissal of its significance deserves notice[7]. Since Marshall's day, many of the political and civil rights denied women have been granted, but the one he called "basic" – the right to follow the occupation of

5 T. H. Marshall, *Citizenship and Social Class and Other Essays* (Cambridge: University Press, 1950), p. 15.

6 Marshall, *Citizenship and Social Class,* p. 18.

7 The idea that excluding women from places other than the family has been more central to their subjection than domination by the family has been picked up by Michael Walzer in *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), p. 240.

one's choice, still remains the subject of informal as well as formal contest – which is why I prefer to invoke it specifically, rather than subsume it into civil rights.

Not only has women's economic freedom never been accepted as axiomatic, but, with respect to the rights meant to accompany it, the limited freedoms available to all women were further restricted by marriage and motherhood, and by treating unmarried females in the workforce as if they were potentially married. The public interest that inhered (and still inheres) in regulating (by custom as well as law) women's work-related rights, was thus vested in their real or imagined family lives. In this sense the use of the family to justify and rationalize women's disadvantaged workforce position functions as a set of ideological and material blinders that limits women's access to the full range of economic life and shapes the nature of male as well as female economic experience[8].

Political theorist Carol Pateman, drawing on Marshall, acknowledges the paramount duty of the citizen to work, and argues that women have historically participated in a kind of secondary citizenship based on their roles as family members, and subject to male domination[9]. I want to suggest that the search for economic citizenship is more than an effort to evade the subordination implicit in the family. It embodies above all an active engagement: a search for access and entry with all their spin-off effects. Fundamentally rooted in the opportunity not merely to earn a living but to aspire to the benefits of success, economic citizenship provides the surest path to full participation in the polity and to political power. I draw here on the work of Norwegian political scientist Helga Hernes who makes this point eloquently. She tells us that despite their high level of social rights, Norwegian women, until recently excluded from economic decision-making processes, could not achieve political power. That began to come when their economic rights changed[10].

8 In "Treating the Male as Other: Re-defining the Parameters of Labor History", *Labor History,* 34 (Spring-Summer, 1993), pp. 190–204, I argue that class is a function of the household, as much as of work. Here, I invert that argument to suggest that gender is a function of 'work' as much as of the household.

9 Carol Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988); and see also Susan James, "The Good-enough Citizen: Citizenship and Independence", in Gisela Bock and Susan James, *Beyond Equality and Difference: Citizenship. Feminist Politics. Female Subjectivity* (NY: Routledge, 1992), pp. 52–53 on the restraints imposed by motherhood and wifehood. See Pateman's essay in Ibid., "Equality, Difference, Subordination: the Politics of Motherhood and Women's Citizenship", pp. 17–31, for her use of Marshall.

10 Helga Hernes, *Welfare State and Woman Power: Essays in State Feminism* (Oslo: Norwegian University Press, 1987), ch. 2, esp. pp. 35–37; and see Ann Phillips, *Engendering Democracy* (London: Polity Press, 1991), pp. 83–84, on the relationship between political representation and economic power in the Nordic countries. Susan James also makes use of the notion of economic independence as a vehicle for political participation. See "The good Enough Citizen", p. 54.

Shifting the frame from the rights denied to women when they are deemed to be primarily attached to the household to those that are meant to accrue to men and women as part of the obligation to engage in wage work immediately places in perspective the meaning of economic citizenship and highlights the barriers that restrict access to it. Michael Walzer provides a succinct example of how this works from nineteenth century China. Taiping rebels eager to transform their culture demanded access for women to the civil service exams, understanding that "if women are to take the exams, then they must be allowed to prepare for them: they must be admitted to the schools, freed from concubinage, arranged marriages, footbinding, and so on. The family itself must be reformed so that its power no longer reaches into the sphere of office"[11]. Inverting Walzer's example works as well: the trappings of civil and political citizenship as defined by Marshall are themselves reshaped by limiting access to a basic civil right. Lacking not merely the practice, but frequently the idea of individual economic freedom, women could not fully conceive, much less exercise any of the rights associated with individualism, most especially not the right to work. Allowing access to formerly restricted rights immediately reveals what had seemed natural, or just, or fair, to be constructed.

After all, for most of historical time, and certainly in the more recent past, assumptions about gender roles had encouraged the notion that different labor force roles for men and women were part of the normal order of things – the settled understandings that permeated the treatment of working people in the U.S. As equal citizens, under liberal theory, all men were free and capable of enjoying rights. Since each man, but not each woman, had, as T. H. Marshall put it "the power to engage as an independent unit in the economic struggle", he could also be denied the social protection of the state[12]. In the United States, this idea was carried to the extreme generally described as "freedom of contract". Except when public safety warranted intervention, nineteenth century workers possessed the right to freely contract with employers to sell their labor even where this meant that the imbalance in the contractual relationship led to extraordinarily harsh conditions.

The bargain left the least skilled workers and those who lacked trade union protection particularly vulnerable, and when this produced an outcry about women's poor health and neglected families, the state stepped in on their behalf. Because they lacked citizenship rights, they, like children, were entitled to receive protection. By the early part of the twentieth century, working women, unlike working men, were subject to a panoply

11 Michael Walzer, *Spheres of Justice,* p. 240.
12 Marshall, *Citizenship and Social Class,* p. 33.

of regulations excluding them from some jobs, defining when they might work, for how many hours each day, at what wages, and under what conditions of safety and health. Generally accepted concepts of fairness and justice supported such restrictions: custom, if not law, supported men's efforts to monopolize male control over their skills by controlling apprenticeships and excluding women from their trade unions. The rights of married women to keep their own wages were hard fought and granted by most states only in the 1860s and after. Calls for a family wage applied to men, but not women. Not accidentally, such restrictions severely limited a basic citizenship right and ensured continuing limits on political participation.

The notion that states might enact "protective labor legislation" for women that explicitly restricted women's rights to work was not unfamiliar among working women, nor unwelcome by many of them. At first reluctantly, and then enthusiastically supported by trade unionists who believed that women were too difficult to organize, it became the primary goal of middle class women, social reformers (maternalists) who insisted that the families of wage-earning women deserved protection from the consequences of women's harsh working life. By the early twentieth century restricting the capacity of working women to make their own contracts had become a favorite method of protecting the public interest in motherhood and family life.

This is not to imply that shared understandings of the fairness of restricting women's rights to work were universally held – only that they were widely shared. Yet the range of legislation covering women's lives illustrates how deeply rooted was the conception that women's rights inhered in their family roles rather than in the workplace, how functional this notion was and how difficult to dismantle. To be sure it was never without tension – most consistently articulated in the United States by the professional and privileged women who belonged to the National Women's Party during the 1920s. But it is the success of restrictions on women's workplace rights, rather than their failure that is so impressive.

The great depression of the 1930s (when the level of tension over jobs rose dramatically as a result of plummeting employment rates) affirmed the popular conception that women in general did not have the right to work, even as it smoothed the path for women with special responsibilities to hold jobs. Perhaps not surprisingly, ordinary working people then made it clear that fairness demanded that jobs go to "providers" – who were generally, but by no means always, understood to be male[13]. While 82% of

13 Alice Kessler-Garris, "Gender Ideology in Historical Reconstruction: A Case Study from the 1930s", *Gender and History,* 1 (Spring, 1989), pp. 31–49.

Americans, according to one Gallup poll, believed that wives should not work[14], this harsh judgement was suspended in the case of women who needed to support themselves or their families. Insofar as the right of those who "needed" to work was conceded, the linkage between sex and the right to a job was loosened.

Like the depression, the war that followed it, sent a double message. A national need for married women's employment justified their earning wages. But it did not significantly expand their rights either to work or at work. For the most part jobs remained sex segregated. And fairness to women took second place to the desire to protect the pay and jobs of the men who were expected to return to them. The campaign for equal pay for equal work is a case in point. Convinced that "a man has to make the money in order to keep his family ..." women workers attacked other women who undermined men's pay by accepting less for the same job. Such women, according to one war-time worker, were unfairly "doing him out of a job"[15]. Thus could equal pay, even in the post-war period, become a claim not to men's jobs but to protect them – embodying not a sense of women's rights but of men's.

A retired Westinghouse worker articulated her sense of priorities this way: "How're you going to feel?" she asked historian Ronald Schatz when he asked her how she had felt about giving up her job. "You gotta give him a *chance*, right? the fellow that you took his job and [he] went to the service to protect you and your country, the least you can do is give him back his job or there's going to be a war."[16]

A lengthy intermittent debate over women's seniority rights suggests the strong loyalty invoked by the principles of justice involved in maintaining families as opposed to those generated by individual desire. It was fuelled by women whose eagerness to keep their jobs in the post-war period led them to invoke the solidarity of unionism as opposed to that of family. In the United Automobile Workers of America, for example, women demonstrated how denying their claims to seniority could readily undermine their male colleagues. Incensed when, in 1945, local managers dismissed women with seniority, the women appealed to union officials who refused at first even to meet with them. "The inference we got from the board, and strongly" reported Mildred Jeffreys, later to become a vice-president, "was

14 William Chafe, *The American Woman: Her Changing Social, Economic and Political Roles: 1920–1970* (New York: Oxford University Press, 1974), p. 108, remarks that "Gallup reported that he had discovered an issue on which voters are about as solidly united as on any subject imaginable – including sin and hay fever".

15 Ronald Schatz, *The Electrical Workers: A History of Labor at General Electric and Westinghouse. 1923–60* (Urbana: University of Illinois Press, 1983), p. 125.

16 Schatz, *The Electrical Workers,* quoting Rose Meer, p. 122.

just who do you women think you are". The sense of aggrieved justice among women resonant in that statement was clearly not shared by the men. They agreed to meet only when UAW president R. J. Thomas insisted that if management could get away with disregarding seniority rights of women workers now, they will be in a stronger position to disregard seniority rights of other workers later on"[17].

Still, women's arguments in this period remained tenuous: when men supported their seniority rights, they did so out of concern for unionism, not out of a sense of fairness to women. And women who claimed those rights more often justified them by pleading need (widowhood and orphaned children to support) than as a matter of right[18]. One occasion when this led to conflict occurred in Sharon, PA, in 1947 when "single women voted ... to ask management to lay off married women before discharging single women regardless of seniority"[19]. When management complied with their request, the married women appealed to the union and threatened to sue. Here of course, competing senses of fairness are evident. At a union hearing the single women testified that

> "Because of the seniority the married women had accrued through their service with the company ... it was impossible for the single girls with less seniority to hold a job during cut-back periods ... yet the single girls did not have anyone to support them as did the married women who were living with their husbands."

For them, fairness still resided in the provider role. For the married women who countered by arguing that they had "a right to their jobs" because of their "greater seniority", justice was embedded in adhering to trade union principles. Ultimately union leaders supported the married women: "all UE (United Electrical Union) members have certain rights", commented the male UE leader's report, "among them the right of seniority ... these rights are of the same nature as those guaranteed the American people in the Constitution of the United States and it is a well established principle that these rights cannot be taken away from the people under any circumstances."[20]

The full employment debates of that period illustrate another facet of the restrictive conception of women's rights then operative. When in 1945 Congress, concerned about providing Americans with a modicum of job security, debated a bill to ensure jobs to everyone, one of the sticking

17 For the September, 1945 incident see Ruth Milkman, *The Dynamics of Job Segregation by Sex during World War II* (Urbana: University of Illinois Press, 1987), pp. 131–132.
18 Milkman, *Gender at Work,* pp. 137, 139.
19 Milkman, *Gender at Work*, reports of the Sharon, PA, incident that in a plant referendum of local 617, members endorsed the proposal to restrict the seniority and employment rights of married women by a vote of 2700 to 700, p. 145.
20 Schatz, *The Electrical Workers,* p. 126.

points was whether women would be covered. The rhetoric, initially gender-neutral, quickly demonstrated the limits on conceptions of women's rights. Thomas Dewey's 1944 acceptance speech for the Republican presidential nomination had declared unequivocally that "by full employment I mean a real chance for every man and woman to earn a decent living"[21]. But when the House of Representatives produced a draft of its bill, the original commitment was unaccountably modified. The draft introduced onto the floor declared that

> "All Americans able to work and seeking work have the right to useful, remunerative, regular, and full-time employment, and it is the policy of the United States to assure the existence at all times of sufficient employment opportunities to enable all Americans who have finished their schooling and who do not have full-time housekeeping responsibilities freely to exercise this right."[22]

Over the next several months, the debate over the rights of men and women to employment hovered around many issues, but one of the most hotly debated was the degree to which women's household tasks (what of the woman who completed her work befor 9 in the morning?) should properly restrict that right. In the end the provision was dropped from a bill that did not pass, largely because the largely male body of elected representatives agreed that housewives would not be available for employment anyway, and the provision was thus irrelevant.

By the 1950s, questions of women's "right to work" hovered close to the surface. One can readily explain why that happened: women's memories of satisfying experiences doing war-time work played a role as did the expanding consumer society that tempted families to find additional wage earners. One could point to increasing numbers of educated women, or note that a shifting occupational structure provided greater job opportunities in offices and semi-professional arenas. And surely the Civil Rights movement of the late fifties and sixties contributed to a heightened consciousness of the issue of rights as did the first glimmerings of women's discontent with household roles so ably captured by Betty Friedan's (1963) *The Feminine Mystique.* Their presence is testimony to the tenacity of the National Women's Party and the continuing activism of a group of feisty female trade union activists[23].

21 Russell Nixon, "The Historical Development of the Conception and Implementation of Full Employment in American History", in Alan Gartner, Russell Nixon, and Frank Riessman, eds., *Public Service Employment: an Analysis of its History and Problems* (NY: Praeger, 1973), p. 23.

22 Quoted from the 1945 Murray-Wagner Bill's statement of objectives in Russell Nixon, "The Historical Development ... of Unemployment in American History", p. 27.

23 Dorothy Sue Cobble, "Recapturing Working Class Feminism: Union Women in the Post War Era", in Joanne Meyerowitz, ed., *Not June Cleaver: Women and Gender in Postwar America. 1945–60* (Philadelphia: Temple University Press, 1994), pp. 57–83; Lisa Kannenberg, "The Impact of the Cold War on Women's Trade Union Activism: The UE Experience", L~Q[

Still, the notion of sex discrimination, as opposed to race discrimination, was barely evident[24]. The palpable tension may explain why the Presidential Commission on the Status of Women created by John Fitzgerald Kennedy in 1961 was inordinately cautious when it came to women's right to work. By then everyone knew that women were constrained in their labor force roles, but how far women's labor force position was fair, and how far unfair, was by no means self-evident. It required a leap of the imagination to think of women's special place as discrimination, as a product of prejudice and bias, rather than as a natural consequence of their family roles and of toleration for their special needs. Certainly no sense of entitlement to work yet existed, sufficient to uproot conceptions of fairness and justice and fuel a sense of grievance. Rather most women continued to see their limited access to jobs not as "discrimination" but as merely natural. Lacking a sense of the meaning of economic citizenship the commission's final report called for remedying the disadvantaged labor force positions of women by increasing opportunities for education and training. It asked for equal pay for equal work rather than encouraging women to compete with men, and it evaded the issue of discrimination. "Experience is needed", the commission concluded, "in determining what constitutes unjustified discrimination in the treatment of women workers"[25]. Consistent with this belief, members of the commission did not respond negatively when Pres. Kennedy prohibited federal contractors from engaging in racial and other forms of discrimination, yet omitted to mention sex. "Discrimination based on sex", explained the largely female commission, "... involves problems sufficiently different from discrimination based on the other factors listed"[26]. Nor would the commission approve even a recommendation to study Fair Employment Practices legislation, because it "preferred not to link discrimination because of sex with discrimination because of race"[27]. Instead, it put its efforts into an Equal Pay Act – successfully passed in 1963.

History 34 (Spring-Summer, 1993); Dennis Deslippe, "Organized Labor, National Politics and Second Wave Feminism in the United States, 1965–1975", in *International Labor and Working Class History* 49 (Spring, 1996), pp. 143–165; National Manpower Council, *Womanpower* (NY: Columbia University Press, 1957).

24 Daniel Horowitz, "Rethinking Betty Friedan and the Feminine Mystique: Labor Union Radicalism and Feminism in Cold War America", *American Quarterly* 48 (March, 1996), pp. 1–42.

25 Quoted in Cynthia Harrison, "A 'New Frontier' for Women: The Public Policy of the Kennedy Administration", *Journal of American History*, 67 (December, 1980), p. 644.

26 Quoted in Harrison, "A 'New Frontier'", p. 644.

27 *American Women: Report of the President's Commission on the Status of Women. 1963* (Washington, DC: Government Printing Office), p. 119. The commission did register strong support for equal pay, a distinction worth noting because it fit into a by-now established understanding that women worked out of need, and participated in the framework of government protection for equitable treatment for women in the workforce. Equal pay could be and often was construed as protecting men's jobs, by ensuring that women would not undermine

For all of its reluctance to engage the question of sex-discrimination – its refusal to see – the commission had suggested its links with race and formally engaged the issue of women's right to work. The shift in imagination provides the background for Title VII of the Civil Rights Act of 1964 – a moment when claims to the rights of economic citizenship became the subject of contest on the national scene. Note, however, how closely tied they remain to race. The ever-persistent National Women's Party, following routine practice, asked Representative Howard Smith, chair of the House Rules committee to include sex in Title VII of the Civil Rights Bill of 1964 – which banned employment discrimination on the grounds of race, creed and color. Whether or not Smith himself saw the inclusion of sex as a joke, or adopted it as a deadly serious strategy to point up the absurdity of legislating behaviour and defeat the bill (as many historians argue), many Southern congressmen enthusiastically supported the addition of "sex" in an effort to fend off what was to become the crucial civil rights bill of the post-war period.

Long-standing advocates of women's causes in the Women's Bureau of the Department of Labor and on the various state commissions on the status of women were taken aback. As union leader Carrie Donald recalled the moment, "the concept that women ... had equal rights, let alone the idea of providing preferential treatment to secure those job rights had not gained public acceptance"[28]. Esther Peterson, Assistant Secretary of Labor, Director of the Women's Bureau and of Kennedy's Commission on the Status of Women, and architect of the Equal Pay Act of 1963, flat out opposed the addition of sex. An attempt to amend the bill by adding sex "would not be to the best advantage of women at this time", declared the Women's Bureau[29]. Peterson and her ally, Congresswoman Edith Green, agreed that this was the "Negro's hour". The longest-lasting champion of women's rights in Congress, Green, fought tenaciously on the House floor to keep sex out of the bill. "The Negro will suffer far more discrimination

male wages. Yet, as Paul Burstein points out, in all the discussions of equal pay that occurred throughout the Post War period, and came to fruition in the 1963 equal pay act – "this never prompted anyone, even women testifying about sex discrimination, to propose including sex discrimination in the EEO bill". See *Discrimination. Jobs and Politics: The Struggle for Equal Employment Opportunity in the United States since the New Deal* (Chicago: University of Chicago Press, 1985), p. 22.

28 Brigid O'Farrell and Suzanne Moore, "Unions, Hard Hats and Women Workers", in Dorothy Sue Cobble, *Women and Unions: Forging a Partnership* (Ithaca: ILR Press, 1993), p. 103.

29 *Congressional Record,* 88th Congress, 2nd session, v. 110, pt 2, Feb. 8th, 1964, p. 2577, this is from a letter inserted into the record by Howard Smith. Peterson later recalled her opposition with some chagrin "at that time and in that climate, I was fearful that adding in women's rights would defeat the bill. I could not risk advancing women's rights on the back of my black sisters, ... Of course I was wrong." See Interview with Esther Peterson in Joyce Kornbluh and Brigid O'Farrell, *Rocking the Boat* (New Brunswick, Rutgers, 1996), p. 82.

than any discrimination that has been placed against me as a woman or against any other woman just because of her sex", she argued, "let us not add any amendment that would place in jeopardy in any way our primary objective of ending that discrimination that is most serious, most urgent, most tragic, and most widespread against the Negroes of our country"[30].

Other female members of Congress sharply disagreed. Martha Griffiths of Michigan, joined by four of the ten women Representatives, led the fight to keep the offending word in the bill, beating back several other amendments including one that would have "required the person filing charges of sex discrimination to sign an oath declaring that his or her spouse was unemployed"[31]. Their use of race was explicit and unashamed. Griffiths rose in support of the bill "as a white woman" because, she said, if the bill were passed without the addition of sex, "white women will be last at the hiring gate"[32]. One would like to be able to suggest that the debate evoked the powerful nexus of race and sex in a flurry of comprehension for the gendered meaning of discrimination. But the congressional discussion suggests quite the opposite. Griffiths, by all accounts the amendment's major protector in the House, never relented. Appealing to her male colleagues' sense of chivalry, she declared "a vote against this amendment today by a white man is a vote against his wife, or his widow, or his daughter or his sister"[33]. In so far as the idea of discrimination against women stirred any sympathy at all, it did so out of the racist fear that white women would be left behind.

And so it was. An unprepared Equal Employment Opportunities Commission (which started work in the summer of 1965) discovered to its surprise that a rising crescendo of complaints came from women – some 80,000 – almost half of the total – in the first year alone. Commission Chair FDR jr, did not think the problem sufficiently pressing to return from an extended fishing trip. And in this, he seemed to be supported by an unaware White House, from which President Lyndon Baines Johnson had issued an Executive Order mandating affirmative action on the grounds of race among federal contractors without mentioning sex at all.

EEOC staff members at first responded resentfully – puzzled about having "to deal with sex discrimination when more pressing matters [of

30 *Congressional Record*, Feb. 8th, 1964, p. 2581. Green here delivers a remarkable statement in which she notes that "discrimination against the female of the species is not really a 'way of life'".

31 Patricia Zelman, *Women. Work and National Policy: The Kennedy-Johnson Years* (Ann Arbor, MI: University Microfilms International, 1989), p. 69 (quoting from the Congressional Record, pp. 2634, 2637).

32 *Congressional Record*, vol 110, part 2, 88th Congress, 2nd session, Feb. 8th, 1964, p. 2578.

33 Ibid., p. 2580.

race] needed their attention"[34]. They flinched only when rumors began to circulate that Playboy clubs would have to hire male bunnies, and the sex provision was nicknamed the "bunny law". But the women would not go away. As their complaints mounted, and EEOC inaction persisted, State Commissions on the Status of Women began to press for some indication that the law was being obeyed. Congressional representatives called in Commissioner Roosevelt and demanded an accounting. "The whole issue of sex discrimination is terribly complicated", said Roosevelt diplomatically[35]. He might have said it again. Sex discrimination had suddenly become an issue – moving within a few short years from an oxymoron – a concept that seemed a contradiction in terms – to a central place in the vocabulary of workplace issues.

Its potential was immediately evident to people far beyond those charged with enforcing the law itself[36]. For example, since the full-employment debates at the end of World War II, the accepted definition of full employment had hovered around 4%. When the unemployment rate began to creep up to 5% in the early 1970s, the president's Eco Council declared that full employment still existed. They justified the shift because of "the large increase in the labor force since 1956 in the proportion of women and young workers of both sexes, two groups whose unemployment rates are substantially higher than the national average"[37]. Nor did the courts and other government officials deal any more decisively with the new legal demands – in part because of a continuing residue of doubt as to whether women were entitled to the right to work. As Shirley Chisholm, the distinguished female, black jurist who represented part of Brooklyn for many years, said when she testified in 1970 for the first anti-discrimination bill directed towards all aspects of sexual inequality: "How could it be that women are discriminated against? At first glance the idea may seem silly."[38] It took until 1987 before the supreme court approved an affirmative action plan to provide preferential treatment for women[39]. Even then

34 Zelman, *Women. Work and National Policy,* p. 94.

35 Ibid.

36 A campaign initiated by President Lyndon Baines Johnson to enhance the numbers of women in government included a decision to add 50 women to top jobs within the year. It drew support from women, but was attacked as a publicity stunt by others.

37 Helen Ginsburg, *Full Employment and Public Policy: The United States and Sweden* (Lexington, MA: Lexington Books, 1983), p. 25, quotes Carolyn Shaw Bell calling this reasoning "the economics of might have been ..." and Robert Aaron Gordon, later president of the American Economics Association telling a congressional committee in 1972 that according to this argument "the new troublemakers are women and teenagers".

38 House of Representatives, 91st Congress, 2nd session, Hearings Before the Special SubCommittee on Education of the Committee on Education and Labor on Section 805 of HR 16098. Part 2, July 1–31, 1970, p. 617.

39 Michel Rosenfeld, *Affirmative Action and Justice: a Philosophical and Constitutional Inquiry* (New Haven; Yale University Press, 1991), p. 198.

the court was, as Michael Rosenfeld suggests, silent "on the issue of whether affirmative action plans favoring women ought to be regarded differently than those that favor racial minorities". And a significant dissent from Antonin Scalia derided the majority approval of preferential treatment "to overcome the effect of 'societal attitudes'."[40]

Still, the continuing resistance aside, passage of a law forbidding employment discrimination on account of sex proved to be a powerful incentive to action. It captured a discomfiting shift from a wholly sanctioned set of constraints around women's work force roles (often perceived as tradition)[41] to a commitment to providing women with opportunities that would place them in direct competition with men. It introduced a political struggle over the idea of citizenship for women that, in seven short years, was to shake the idea of family to its core, and threaten the stability of America's most basic social institutions: church, military.

Once the idea of discrimination (tied to race) began to break out of its narrow venue, it could be and was called on to illuminate a set of social and economic relationships that began to seem increasingly questionable. Resting as it does on the conception that women, like men, are entitled to work, the concept of job discrimination on the grounds of sex invoked the notion that access to jobs was conditioned only by the worker's capacity to do the job. It ought, not merely theoretically, to be free of considerations of marital status, potential or actual pregnancy, ages of children, or economic need. Whatever else this implied, it certainly erected a new standard of fairness, familiar perhaps to Mill and an older generation of feminists, but not compatible with the sensibilities of the large majority of working men and women, and slow to win approval among them. But once accepted, its disruptive power was inestimable.

The shift opened the door to a paradigm change in the idea of "woman", and in the subjective identity of many women and men. What did equal treatment imply for the family? What would government intervention mean for cherished ideas of traditional roles? How far was discrimination to be not merely proscribed, but affirmatively opposed? What, in short, was fair, under these circumstances? The questions at issue included who was entitled to work; whether women as a group – not single women, or self-supporting women or poor women – but all women had the same

40 Rosenfeld, *Affirmative Action and Justice,* referring to the case of Johnson v. Transportation Agency, Santa Clara County, 1987, pp. 199–200, suggests that social attitudes that channel women away from certain jobs may be even more pernicious and harmful than first order discrimination because "the evils attributable to sexist social attitudes are often concealed, and their effects not readily perceived even by their victims. Accordingly the evil consequences of sexist social attitudes may be easier to perpetuate than those of first order discrimination". He also suggests that affirmative action may be uniquely suited to break up the vicious cycle.

41 O'Farrell and Moore in Cobble, *Women and Unions,* p. 82.

rights to jobs as were theoretically possessed by all men; what, in consequence, was to be the role of the family; how was the role of the state to be re-configured in the face of new understandings of "women".

The tide had turned: by invoking the spectre of racial equality unaccompanied by sexual equality, Griffiths had graphically demonstrated the racial consequences of limiting women's citizenship rights. She had done so by melding economic citizenship to a concept of rights that had comfortably excluded it for more than half a century. If sex had been meant by some of the bill's opponents to be a code inserted to reveal the blatant unfairness of challenging definitions of the natural order of things, it had made visible to others what had for many years been invisible, raising complicated questions about what was meant by the "natural order". Her timely intervention eloquently illustrates Marshall's cautious insistence on the inherent capacity of citizenship to produce unexpected pressures for social equality – in this case in the form of sexual equality – and demonstrates how closely gender, so readily dismissed by Marshall, hovers beneath the surface of his ideas. Uncovering it requires a shift in our imaginations as historians as well as a reconceptualization of what we take to be the imaginations of our subjects and historical agents. Still, if we are ever to discover the relationship between identity, citizenship and democracy, then gender must become an essential tool for unwrapping the past.