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GENDER JUSTICE:
EQUALITY IN EMPLOYMENT
WITH REGARDS TO LAWS AND THE COURTS INCLUDING
THE NORTH AMERICAN FREE TRADE AGREEMENT AND
THE EUROPEAN ECONOMIC COMMUNITY TREATY

Anne-Marie Cotter

A Thesis
In The
Special Individualized Program

Presented In Partial Fulfilment of the Requirements
for the Degree of Doctor of Philosophy at
Concordia University
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ABSTRACT

Gender Justice: Equality in Employment
with Regard to Laws and the Courts including
the North American Free Trade Agreement and
the European Community Treaty

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Ph.D. Special Individualized Program

Concordia University, 1998

The dissertation focuses on gender equality, specifically its relationship to law and the courts. As an attorney and a former judge, my interest in this subject revolves around the importance of the word of law and in turn how the law is interpreted by the Supreme Court of the land, which sets the agenda for the people.

The goal for this study is to better understand the issue of inequality and to improve the likelihood of achieving gender justice in the future. The dissertation examines the primary role of legislation, which has an impact on the court process, as well as the primary role of

the judicial system, which has an impact on the fight for gender equality.

In looking at women and the law, the dissertation encompasses several chapters: Chapter 2 covers law and feminism; Chapter 3 looks at employment statistics affecting men and women in the United States, Canada and Europe; Chapter 4 investigates pay equity and access to employment, looking at inequality in the workplace; Chapter 5 looks at international and North American laws and court cases dealing with gender discrimination and especially the important issue of the burden of proof required in discrimination cases; Chapter 6 examines the development of the North American Free Trade Agreement; and Chapter 7 examines the implementation of the European Economic Community Treaty.

The study begins with a look at the feminist perspective and how it relates to law and the court. Further, recent statistics in North America and in Europe are examined regarding employment issues affecting women.

The major part of the study examines equality in employment for men and women in terms of the law and the court, at both the national and international level. Since the American court system is the one most often compared with the European court system, the United States Supreme

Court rulings on the crucial aspect of the burden of proof will be uniquely examined in depth, contrasting the racial standard with the gender standard in discrimination cases.

The dissertation seeks to compare the two most important trade agreements of our day, namely the North American Free Trade Agreement and the European Economic Community Treaty, in a historical analysis. Although an important trade agreement with implications for labor, the North American Free Trade Agreement has a different system from the European system in that it has no overseeing court with jurisdiction over the respective countries.

On the other hand, the European Economic Community treaty takes a different approach, in that it is made part of the domestic law of every member state, weakening past discriminatory laws and judgments, including sex discrimination in employment. The European process also goes further by actively implementing new laws such as equal pay and equal treatment in access to employment for men and women.

The dissertation shows that in light of the evidence, the North American Free Trade Agreement should be amended to deal specifically with gender discrimination in employment, in dealing with the aspect of law. As well, an overseeing court encompassing several states, as does the

European Court of Justice, should be implemented in the North American context, in dealing with the aspect of the courts. On the other hand, the burden of proof in the European system should be elevated to that used in the American system, to facilitate the legal process for the victims of discrimination.

DEDICATION

To My Mother

VIRGILIA

My Superwoman

My Hero

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CHAPTER 1 INTRODUCTION

The dissertation focuses on gender equality, specifically its relationship to law and the courts. As an attorney and a former judge, my interest in this subject revolves around the importance of the word of law and in turn how the law is interpreted by the Supreme Court of the land, which sets the agenda for the people.

The goal for this study is to better understand the issue of inequality and to improve the likelihood of achieving gender justice in the future. The dissertation examines the primary role of legislation, which has an impact on the court process, as well as the primary role of the judicial system, which has an impact on the fight for gender equality.

Gender discrimination in the labor market involves the unequal treatment of men and women, affecting equal remuneration and access to employment. More specifically, the concept of pay equity encompasses the rendering of a salary on an objective basis, based on performance for like work without regard to sex. Discrimination involves the deprivation of a fair reward for effort produced. Pay equity and women's fight against sex discrimination in law

and in the courts are socially and morally driven concerns which are analyzed.

In looking at women and the law, the dissertation encompasses several chapters: Chapter 2 covers law and feminism; Chapter 3 looks at employment statistics affecting men and women in the United States, Canada and Europe; Chapter 4 investigates pay equity and access to employment, looking at inequality in the workplace; Chapter 5 looks at international and North American laws and court cases dealing with gender discrimination and especially the important issue of the burden of proof required in discrimination cases; Chapter 6 examines the development of the North American Free Trade Agreement; and Chapter 7 examines the implementation of the European Economic Community Treaty.

The study begins with a look at the feminist perspective and how it relates to law and the court. In terms of the policy perspective in framing the feminist agenda, the Sears case is examined for its impact on the debate. Further, recent statistics in North America and in Europe are examined regarding employment issues affecting women. This shows us that although some advances have been made, many more are yet to be achieved for equality between the sexes.

The major part of the study examines equality in employment for men and women in terms of the law and the court, at both the national and international level. Since the American court system is the one most often compared with the European court system, the United States Supreme Court rulings on the crucial aspect of the burden of proof will be uniquely examined in depth, contrasting the racial standard with the gender standard in discrimination cases.

The globalization process and the various economic agreements have a direct impact on women's lives as key players in the labor market today. Therefore, the dissertation seeks to compare the two most important trade agreements of our day, namely the North American Free Trade Agreement and the European Economic Community Treaty, in a historical analysis.

Although an important trade agreement with implications for labor, the North American Free Trade Agreement has a different system from the European system in that it has no overseeing court with jurisdiction over the respective countries. More memorable perhaps for what it fails to do, NAFTA largely leaves equity to the individual member country. Although, NAFTA has established a system for binding international arbitration for the settlement of disputes, only national legislation is used to control

discrimination and inequality in the labor force. This is not an adequate safeguard against discrimination.

This dissertation endeavors to show that the European Community, with its Treaty enforced by the European Court of Justice, has the potential to make a great impact on nations in favor of human rights and against labor injustices, by requiring the member states to conform to Community standards. As such, the European Economic Community treaty is made part of the domestic law of every member state, weakening past discriminatory laws and judgments, including sex discrimination in employment. The European process also goes further by actively implementing new laws such as equal pay and equal treatment in access to employment for men and women.

North America, as the new world with its image of freedom and equality, is considered to have made great strides in civil rights. However, the American philosophy of survival of the fittest and the pursuit of materialism have slowed down the process. With the advent of the European Community, the coming together of nations has had a very positive influence on the enforcement of human rights, much more so than that of North America, because of the unique European approach.

The dissertation shows that in light of the evidence, the North American Free Trade Agreement should be amended to deal specifically with gender discrimination in employment, in dealing with the aspect of law. As well, an overseeing court encompassing several states, as does the European Court of Justice, should be implemented in the North American context, in dealing with the aspect of the courts. On the other hand, the burden of proof in the European system should be elevated to that used in the American system, to facilitate the legal process for the victims of discrimination.

Women have had to fight in the formulation of laws and in the enforcement of equality in the courts. The Supreme Court of a nation or of a Community remains the paramount institution to make and enforce equality legislation. Both legislation and the courts have made inroads into gender justice, but there is not yet parity in salary and total access to employment for men and women anywhere in the world.

It is important to have adequate legislation to influence court conduct and outcome, as well as an appropriate system to achieve favorable results and to enforce them. By cooperating and learning from other similarly disadvantaged groups in the fight for equality, more changes can be made. With a greater appreciation of

the gender issue, as well as a better understanding of the important interaction between legislation and the courts, future endeavors in the field can improve the situation not only for women, but for all people in general.

We may learn from the immortal words of one of the greatest civil rights leaders and human rights activists in our universal quest for justice:

So we come here today to dramatize a shameful condition. In a sense we've come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every (human) was to fall heir. This note was the promise that all...would be guaranteed the unalienable rights of life, liberty, and the pursuit of happiness....A check which has come back marked insufficient funds. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. And so we've come to cash this check, a check that will give us upon demand the riches of freedom and the security of justice.

(Martin Luther King Jr., March on Washington, Aug. 28, 1963).

REFERENCES CHAPTER 1

-King Jr., Martin Luther, March on Washington, 1963.

CHAPTER 2 LAW AND FEMINISM

Despite concerns that focusing on gender equality will deter in the struggle for general human equality, the necessity exists more than ever to go beyond the invisible differences to those visible differences such as gender. Our patriarchal society has served to produce superordinates and subordinates (Lasch 1977:104). The concept of equality has never truly existed, nor was it ever meant to be anything more than empty promises of change.

This chapter will focus on the notion of law, stressing its importance in relation to the courts in providing for equality. In addition, it will examine women and feminism, and will analyze the case of Equal Opportunity Commission v. Sears Roebuck & Company.

A deep embedded patriarchal authority is still keeping society on the designated track. *De jure* discrimination has given way to *de facto* discrimination (Lasch 1979:116). In essence, inequality, once obvious and accepted, is now hidden and protected in a most dangerous way. Within society, there is an *a priori* assumption of freedom and impartiality. Therefore, the burden is high on the attackers of this universal opinion.

Human inequality both encompasses gender inequality and conceals it. Although other types of discrimination exist apart from gender and racial inequality, discrimination which is so blatant and open as to focus on one's sex or race is most persistent and threatening to society. Therefore, seeking out gender inequality and bringing it to the forefront of microscopic debate can only serve to advance all quests for equality.

The law is of central importance in the debate for change and gender justice. Modern law is a tension between facts and norms, facticity and validity, a duality of social reality and reason, where laws have a claim of legitimacy with social facts to be followed (Habermas:xi). Actionable and enforced rights are legal norms, which represent social facts demarcating areas of action, linked with universalized freedom (Habermas:xii).

Law is a tension between factual generation, administration and enforcement by social institutions on the one hand and its claim to deserve general recognition on the other hand (Habermas:xii). It is linked with the theory of communicative action, a theory of rationality, where the use of language and social interaction rely on notions of validity such as truth, normative rightness, sincerity and authenticity, for its claims to validity and unconditionality (Habermas:xiii).

Law is associated with command, duty and sanction, and emanates from a determined source (Fried:18). Law is a rule of conduct enforced by sanctions, and administered by a determinate locus of power concentrated in a sovereign or a surrogate (Fried:20). Legitimacy has subjective guarantees of internalization with the acceptance and belief in the authority, and objective guarantees of enforcement with the expectation of reactions to the behavior (Fried:23). Therefore, law must recognize equally all members of society, including women, in order for it to be effective.

In order for a law to be seen as legitimate from the court's point of view and accepted by the people in general to be followed, a process of inclusive interaction by all affected must first be realized. When creating laws, this means that input from various groups, including feminists, is critical.

Thus, laws have two components, namely, facts which stabilize expectations and sustain the order of freedom, and norms which provide a claim of approval by everyone. Law makes possible highly artificial communities whose integration is based simultaneously on the threat of internal sanctions and the supposition of a rationally motivated agreement (Habermas:8). The facticity of the enforcement of law is intertwined with the legitimacy of a

genesis of law that claims to be rational because it guarantees liberty (Habermas:28). Laws can effectively forbid inequality and provide for equality; where one ends the other begins.

There are two ranks of law, namely ordinary law of legislation, administration and adjudication, and higher constitutional law affecting rights and liberties which government must respect and protect. The latter encompasses the Constitutions of the various nations as interpreted by the Supreme Courts, and also such agreements as the European Community Treaty as interpreted by the European Court of Justice.

Law holds its legitimacy and validity by virtue of its coercive potential, its rational claim of acceptance as right. It is procedurally constructed to claim agreement by all citizens in a discursive process open to all equally for legitimacy and a presumption of fair results (Habermas:296). The legitimate legal order is found in its reflexive process.

Thus, conflict resolution is a process of reasoned agreement, where 1- members assume the same meanings by the same words, 2- members are rationally accountable for their actions, and 3- mutually acceptable resolutions can be reached so that supporting arguments justify the confidence

in the notion that the truth in justice will not be proven false (Habermas:xv). Disenchantment with the law and the legal process only serves to undermine the stabilization of communities (Habermas:xvii).

Habermas argues for the superiority of the proceduralist paradigm of law over other forms. Although, the liberal paradigm sees the women's struggle for an equal vote and equal access, it falls short of its stated goal. The overall feminist perspective has been criticized for being too concerned with formal legal equality ignoring real inequalities which stem from contingent social conditions and gender differences. As well, although the social welfare paradigm looks at the specific benefits to women of maternity leave, aid to women with children and child care services, it too falls short. Government aid programs define differences inappropriately and serve to make people dependent. Therefore, the dynamic proceduralist paradigm is a viable solution, seeing women as essential to public discussions (Habermas:xxxii).

Feminist legal theory views the western legal system as one of the faces of patriarchal domination (Lahey 1989:100). The terms of legal discourse too often project masculinist subjectivity, which men have transformed into false universals by virtue of the power they exert to enforce their views. Legal theory or masculinist

jurisprudence is an ideology of male supremacy. When women are the subject matter of legal doctrine, it is concerned with the uses men can make of them. Therefore, only women who meet male defined criteria and who speak in voices acceptable to men are welcome to participate in legal discourse.

Law has been used for the definition, appropriation and exploitation of women, and this for the benefit of men (Lahey:102). Feminist theory of law examines the ways in which law reflects and reinforces the social, economic and political structures that surround women. Certain perpetuating features of law have served to maintain women's depressed status: 1-women were not persons but subject matter, 2-women were viewed by the courts as things that could not enter into legal relationships, and were dominated by the patriarchal culture, 3-women were not able to participate in social, economic and political processes, 4-women were strictly seen as the means of human reproduction, and 5- women were simply viewed as sexualized objects for the benefit of men (Lahey:102).

Men's historic and absolute monopoly over formal political and legal processes has been the biggest barrier to structural reform (Lahey:108). Men controlled the interpretation of laws, with their vantage point supreme,

and still do to a certain extent. Serious reform is still needed to improve conditions (Lahey:113).

Feminism insists on the emancipatory meaning of equal legal treatment aimed at structural dependencies concealed by social redistribution. The process for the abolition of gender discrimination should involve 1- liberal demands for a more extensive inclusion of women in the implementation of basic rights and in the formulation of new legal definitions; 2- social welfare demands for an adequate standard of living not dependent on welfare; and 3- reflexive attitudes in feminist reforms for flexible, part-time and full-time employment (Habermas: 420).

In essence, legislation and adjudication have become part of the problem, since traditional approaches have failed in their definitions of differences (Habermas:423). There is a need for substantial change in the legal paradigm of equality, since courts have too often allowed biology to dictate one's destiny (Habermas:425). With the court system traditionally relying heavily on precedent, old prejudices become new prejudices.

Public discussions must clarify aspects of sameness and difference, not only between men and women but also among women for gender justice. This requires the affected parties, mainly women, to conduct public discourse

to better articulate standards of comparison and justify relevant experiences. Through this process, it is important to interpret rights as relationships, to negotiate a community committed to solve problems, with law newly focused on human responsibility for patterns of relationships. Rights should be seen as tools for continuing communal discourse with human responsibility of action and inaction (Habermas:425).

Laws should be predicated on principles of disinterestedness and on the observance of norms of reason not power, rationality not domination, truth not authority (Meehan 1995:97). Women have risked disrupting the gendered organization of society and the general opinion that has assigned them a place in the private domestic realm only (Meehan:98).

There are three philosophical features to the legal process, namely 1- the cognitive aspect, where moral conflicts are resolved through arguments of interactive skill and competence; 2- the universalistic aspect, where universal moral reasoning sees that normative claims must be supported by reasons and principles of public discourse where interests are debated, identities identified and legitimacy contested; and 3- the moral thinking aspect, where there is a formal shift in cognitive reasoning from the content of judgment to the form of judgment (Meehan:3).

This process involves such important legal issues as the burden of proof in discrimination cases, which will be discussed in a later chapter.

Gender is not simply a social role for women and men, but is the articulation in specific contexts of the social understandings of the sexual differences (Scott 1988:55). It is of a classifying phenomenon based on a socially agreed upon system of distinctions rather than an objective description of inherent traits and relations among categories (Scott 1996:153).

Gender identity and relationships have been socially constructed around biological differences (Habermas:425). In examining gender, no law can adequately concretize the equal right to autonomous freedom in the private sphere, unless it simultaneously strengthens the position of women in the public sphere and augments their participation in the communication for equal status, so that all facets of life are covered. Gender is a constitutive element of social relationships based on perceived differences between the sexes and is a primary way of signifying relationships of power (Scott:167).

Humanity developed gender and sexual identity, but the symbolic attributes grew under patriarchy (Rothblatt 1995:57). It is thought that society developed four reasons

for classifying people: 1- the allocation of rights and responsibilities, 2- the maintenance of civil order and morality, 3- the identity of members, and 4- the aggregation of demographic statistics in the census (Rothblatt:57).

Gender rightly identifies the persistence of asymmetric power relations rather than natural anatomic differences, with women occupying the lesser of dual pairs between man and woman (Flax 1992:193). Domination arises out of the inability to recognize, appreciate and nurture differences, not out of the failure to see all as same (Flax:195). Justice encompasses 1- the reconciliation of diversities into a new unity of difference; 2- the reciprocity of shared authority and the mutuality of decisions, precluding domination; 3- the recognition of the legitimacy of others and the identification with others; and 4- the judgment process seeing things from the other's point of view of empathy, logic and objectivity (Flax:205).

Equality is the ignoring of differences between individuals for a particular purpose in a particular context or the deliberate indifference to specified differences in the acknowledgment of the existence of difference (Scott 1988:172). The notion of rights and of equality should be bound to the notion of justice and fairness (Razack 1991:13). The terms equality and equity have been used

interchangeably, with the latter most associated with the concept of pay.

There is a relationship between objectification with a hierarchy between the self as being and the other as thing, and objectivity with a hierarchy between the knowing subject and the known object (Mackinnon 1989:xi). If the sexes were equal, women would not be subjected, their desperation and marginality cultivated, and their enforced dependence exploited (Mackinnon:215). Law has been constructed to structurally adopt the male point of view, with the notion of gender equality remaining but a dream (Mackinnon:216).

Assimilation is not equality (Habermas:419). Legal freedom and rights must be seen as relationships not possessions, doing not having. Injustice involves a constraint of freedom and a violation of human dignity, through a process of oppression and domination. Justice involves the institutional conditions necessary for the development and exercise of individual capacities for collective communication and cooperation (Habermas:419). Discrimination is the withholding from the oppressed and subordinated what enables them to exercise private and public autonomy.

Feminist theory is a clarifying structure of the world and of the way in which gender functions produce and reproduce male domination and female subordination (Meehan:1). Our personal identity is socially mediated, the constituent of the self being concomitant with the establishment of relations (Meehan:3). Only when the force of a group and of tradition loosens the grip do individuals question the legitimacy of norms and move beyond conventionally justified beliefs and values, and thus beyond prejudicial practices.

Feminism is identity politics and consciousness raising. It can fit within the proceduralist understanding of basic rights, a process which secures the private autonomy of equally entitled citizens in step with the activation of their political autonomy (Habermas:426). The feminist movement has undergone a reawakening in its dissatisfaction with the liberal approach, the social welfare approach, and the existing institutional framework contributing to the feminization of poverty, which all lead to the consolidation of stereotypes (Habermas:421).

While class rests on economic determination and historical change, race and gender have no such association and no unanimity of definition (Scott:154). However, gender inequality and class inequality have been compared.

Inequality in the distribution of private property between men and women has been and is just as characteristic of society as inequality in the distribution of private property among different classes of men (Clark:x).

The ruling class loathes that which it is not, that which is foreign to it, namely women and minorities. The patriarchal system has freely fashioned laws and adjusted society to suit those in power, namely men (Cox:178). This is done to the disadvantage of women who are generally outside this system (Cox:180).

There is a need to build the identity of 'woman' in order to give it solid political meaning, while at the same time having a need to tear down its all too solid history of constraint (Snitow 1996:505). A tension exists between needing to act as a woman and needing to act as an individual not overdetermined by gender (Snitow:506). While women not too long ago were perceived as almost a separate species, today the question of what is a woman is not a given.

Women are caught between not being heard because of being different and not being heard because of being almost invisible (Snitow:510). On the one hand, there is the promise of solidarity of women, while on the other hand, there is a rebellion about having to be a woman at all (Snitow:506). There are minimizers who undermine the

category of women and sexual differences, and maximizers who reclaim the social being of women and empowerment (Snitow:511).

Feminist ideology affirms several concepts: 1- women's oppression is founded in patriarchy, through male defined assumptions and male dominated institutions; 2-the feminist vision is a metamorphosis of society along female principles, not in a reversal of roles but in a partnership; 3-the struggle is about the female condition; 4-female politics and laws can only be defined by women; 5-change can only be realized through the efforts of women in their struggle; 6-womanness can only be ascertained and verified by women, free from the chains of definition by others; 7- women need to be the initiators not the passive recipients; and 8-women must determine their own relationships (Hughes 1989:405).

Feminism is a claim by women for the right to self-determination and personal autonomy (M.Evans 1997:7). It is a form of protest by women about their exclusion from full citizenship, historically considered male. Therefore, the fight is about inclusion as well as rights. Women have been universally repressed and exploited. Through a recognition of a commonality among women can structures be changed. The slogans of the past, 'the personal is the political' and 'sisterhood is powerful' are still useful

today. Consciousness raising involves showing women that their experiences are not based on inadequacy but are common to many, in the 'personal is political' (Charles:6).

There have been two major changes recently, namely the globalization of the late 20th century and a shift to post modernity (M.Evans:12). The marginalization and suppression of women's interests along with the female identity have occurred (M.Evans:123). Patriarchy has obscured individual differences of class, color and gender, significant for women as for men (M.Evans:17).

Feminist theory is based on the reality of specific historical experiences of oppression (Rado 1997:5). Three key questions in feminist theory highlight the self: 1- how does paying attention to experiences of women, such as caregiving responsibilities and victimization, affect our understanding of the self?; 2- if institutions of male dominance profoundly influence women's lives and minds, how can women form judgments about their own best interests and responsibilities toward others?; and 3- how can feminist politics survive the recognition that the female experience is diverse and shaped by race, class, ethnic, sexual orientation and gender? (Tietjens Meyers 1997:1).

The conceptualization of the self makes sense of experiences of interpersonal dependency and interdependency

in women's lives, while stressing the need to preserve autonomy and integrity (Tietjens Meyers:3). The early quest for the emancipation of women and their access to participation in the existing world can be combined with the later quest for their participation in the transformation of the world toward human equality (M.Evans:138).

Feminism seeks for women the same opportunities and privileges that society gives to men (J.Evans 1995:2). It also seeks to assert the distinctive value of womanhood against patriarchal denigration, in the protest against women's oppression (J.Evans:2). Feminism looks to the individuality of each human soul (J.Evans:160).

Though all women are women, no woman is only a woman (J.Evans 1995:7). Gender can be seen as a dichotomy, since one does not necessarily conform to the ascribed character (J.Evans:150). It is rather a hierarchy within society whereby one gender rules (J.Evans:150). In believing that the concepts of equality and difference are manifestations of male dominance, Catharine Mackinnon states "gender is an inequality of power....Only derivatively is it a difference" (Mackinnon 1987). Equality does not mean the elimination of difference, and difference does not preclude equality (Scott 1996).

There is a tension among and within the various feminist schools, namely liberal, radical, cultural, socialist and postmodernist (J.Evans:2). However, all have as their aim the improvement of women's lives (J.Evans:25).

Liberal feminism is concerned with equality between men and women above all else (J.Evans:25). These are the equality/sameness proponents, who put forth that sameness does not mean men and women are identical but rather are alike (J.Evans:3). They argue that difference is either nonexistent, the product of a mystique, or existing but must be overcome through various efforts including legal activism (J.Evans:44). Women were seen as capable of combining a career with family, in true fulfillment and equality, cautioning against the damage of overmothering (J.Evans:33).

Liberal feminism espouses a claim of 'adequate similarity', that no differences can justify discrimination on the grounds of sex (J.Evans:13). There is seen to be a positive relationship between sameness of the sexes in their possession of certain joint qualities and equality between the sexes in being treated the same way (J.Evans:15).

The push for equality demanded advancement for women in education, partnership in labor and remuneration, and coequality in the formation and administration of laws

in legislative assemblies, courts of law and executive offices (Donovan 1993:31). Feminism sees greater gender equality through legislation and policy, with the libertarian ideal being that women must fight for general reforms for the benefit of all people (Coppock 1995:10). Equal rights feminism was derived from the politics of liberalism (Coppock:10).

However, equality feminism has come under attack, because of its tradition of equality using the old male-defined societal structures (J.Evans:19). It thereby creates, recreates and renews inequality, and strengthens the public-private split (J.Evans:19).

Radical feminism sees the personal as political with the patriarchy of male domination at the root of women's oppression (Charles:142). Women can identify with the subjugated class and use their primary energy to combat their aggressors, men. Men and women are seen as fundamentally different, with the female mode the basis of a future society, in the rejection of marriage and family which act as oppressive psychological factors (Charles:142).

Radical feminism argues for 'womanhood' and has as its slogan, 'sisterhood is powerful' (J.Evans:74). It views women as 'we', believing in commonality and mutual support. It espouses the need to be freed from state control and from

the constraining association with the family (J.Evans:74). Strong difference feminists argue that the man-made world must be changed as it hinders women (J.Evans:4). The end goal is the elimination of male privilege and sexual distinction, to break the tyranny of biological and psychological power (J.Evans:67).

Radical feminism requires the overthrow of patriarchal systems for equality of the sexes (J.Evans:14). "We cannot use the master's tools to dismantle the master's house" (Lorde 1984:102). Hierarchy, exploitation, subjugation and oppression in all its forms must disappear (J.Evans:14). The aim is to lift the 'double curse that man should till the soil by the sweat of his brow, and that woman should bear in pain and travail' (Firestone 1971:274). In the pursuit of the eradication of gender discrimination, sexual oppression is thought to be the oppression from which all others spring (J.Evans:16).

Cultural feminism, instead of emphasizing similarities, looks to the differences between men and women, elevating feminine qualities of personal strength as an alternative to the relationship of marriage and home. Underlying cultural feminism is a matriarchal vision of strong women guided by female concerns and values of pacifism, cooperation, nonviolent settlement, and harmonious regulation of public life (Charles:32).

Strong cultural feminism believes that only women can say what a 'woman' is, by remaking and reclaiming themselves (J.Evans:87). It has an abhorrence for the man-made public realm, turning to the deployment of female values for the public good (J.Evans:87). It believes that women possess qualities superior to men, feminine qualities which are of better use outside the home for entry into the public world (J.Evans:18).

Weak cultural feminism believes that the female character with its values and beliefs can be held equally by men (J.Evans:91). It can be seen that the woman's voice has been born into and tainted by oppression (J.Evans:105). However, rather than accept dualism as liberal feminism does or transcend it as radical feminism does, overall, cultural feminism embraces and inverts it by valuing nature over culture, redefining motherhood and womanhood (J.Evans:19).

Socialist feminism strives to regain a true human nature (J.Evans:108). It has moved from revolutionary socialism to accommodation of the political and social system, focusing on differences between groups while failing to mention class (J.Evans:108). 'Identity politics' is emphasized through an appreciation of differences between women (J.Evans:21).

Further, socialist feminism explores racism within the feminist movement through the dissatisfaction with the mainly white heterosexual feminist movement (J.Evans:21). It looks to show that the equality approach has failed within a legal system unable to enforce the most basic rights (J.Evans:22).

Postmodernist feminism looks away from the category of woman to that of the fluid self (J.Evans:7). It objects to a socially constructed person and challenges both equality and difference as employed so far (J.Evans:125).

A central principle of post-feminism is that women have made it or have the opportunity to make it; women can decide on priorities and go for them (Coppock:4). This is at the heart of the superwoman image and the new man image, with access to promotions and job security assumed (Coppock:4).

Postmodernist deconstruction seeks to attack hierarchies and fight against closure, the limiting of options (J.Evans:23). It espouses pluralism by its abolition of the primacy of class, giving women a greater chance of gaining ground (J.Evans:24). In its pursuit of the self, postmodernism will make it difficult to use the term 'woman' (J.Evans:23).

Feminists have too often been depicted as eternal victims rather than powerful self-sufficient women, the power feminists (Van Lenning 1997:2). There is a negative and stereotypical representation of feminists as whiners, arguing to work outside the home and then once outside the home, arguing for equal pay, and complainers arguing about the dual responsibility of family and career (Van Lenning:2).

There is the ever present notion that women are unhappy with their new established status both at home and in the office, as wife, mother and career professional (Coppock:5). Feminism has been seen as the culprit pushing women to do more. As well, it has become fashionable to criticize feminism for the oppression of men (Coppock:5).

Further, some see a commitment to family and marriage as a form of escapism (Fox-Genovese 1996:172). This can produce the narcissist mother who gives incessant attention to the child, an extension of her, her exclusive possession, exaggerating the importance of her offspring (Lasch:171). This need to fulfil one's hopes and dreams through another cannot truly make a person whole. It is a reflection of a lost gender (Lasch:189).

Historically, women were limited to motherhood, in a state of mindless 'maternity-fecundity' (Olivier:xi).

This caused the birth of the mother and the disappearance of the woman (Olivier:137). However, today, females are mothers for a while, and women always, no more in a quasi-prison invented by men (Olivier:5). Choice of life's options is the important element for equality..

Women have invoked race, nationality, class and gender, transcending many barriers (Scott:12). Feminism has at once disengaged the categorizing of women and has also laid claim to it, torn between overfeminization and underfeminization (Scott:19). The notion of gender and sisterhood are at once devaluing and empowering (Fox-Genovese 1991:13).

Earlier assumptions of shared oppression uniting women have given way to the recognition of difference and diversity (Charles 1996:1). The subsequent fragmentation which feminism has experienced is linked to the notion of sisterhood having hidden differences. The western women's liberation has been based on specific identity, that of white middle class young highly educated and heterosexual females (Charles:2).

There is a mistrust of feminism as not being the story of 'my life' (Fox-Genovese:10). It has been seen as irrelevant to most women's day to day lives, not fitting into the official feminist programs or slogans, showing the

complexities and inadequacies of simple solutions (Fox-Genovese:11). Cutting through the different labels attached to it, feminism means radically different things to different people while heightening social policies and opportunities and transforming women's lives (Fox-Genovese:11).

The legal mandate of equality is to treat likes alike (Mackinnon 1989:216). The law's transformative potential is the role it can play in the creation of a society based on an ethic which responds to needs, honors differences and rejects discriminatory abstractions (Razack:21).

Gender equality law is still based on the notion that to be human is to be a man (Mackinnon:229). Women are born degraded and die degraded (Mackinnon:234). With the traditional legal system as it is, law becomes legitimate and social dominance becomes invisible perpetuating discrimination and male dominance (Mackinnon:237). Male forms of power over women are affirmatively embodied as individual rights in law (Mackinnon:244).

The female experience of social inequality and subordination strictly on the basis of sex needs to be confronted (Mackinnon:241). There needs to be a

relationship, an interaction between life and law for there to be adequate change (Mackinnon:249).

Doctrinally, there have been two alternative paths to sex equality within the mainstream legal approach to sex discrimination, illustrating the sameness/difference tension, namely 1- be the same as men, the gender neutrality doctrine, the single standard philosophy, the formal equality rule of equal to/same as, and 2- be different from men, the special benefit special protection doctrine, the double standard philosophy of protective labor laws which serve to reinforce subordination and male preference (Mackinnon:219). The debate over equality and difference, the fight for the rendering of equality or the fight for the protection of difference, still lies at the core of contemporary feminist thought (Fox-Genovese:56).

The early response by feminism was playing the equality game, insisting on women's fundamental sameness to men, with the key to legal judgments seen as the concept of similarly situated in order to be treated equally. However, stereotypes and the difficulty in finding strict comparisons between the sexes allowed the courts to find women differently situated (Razack:22). The opposite response was to show women's difference and special needs, not taken into account in a degrading way (Razack:23). In reality,

equality requires the recognition of both equal rights and special rights.

Both individual and collective experiences of women need to be appreciated and incorporated into a nonpatriarchal culture (Violi 1992:176). However, both concepts of equality and difference have been used against women, in that formal equality has been defined in male terms while appeals to female difference or otherness has justified the inequality of the sexes (Bock 1992:3). Equality and difference beg the questions of equal to whom and different from what. The debate is for a gender neutral society based on equality or a dual world with differences, both sometimes playing into the hands of inequality (Bock:4).

In looking at feminism, it is important to examine the case of Equal Employment Opportunity Commission v. Sears Roebuck & Company, which involved the nationwide sex discriminatory employment practices of a company failing to hire or promote women for commission sales jobs traditionally seen as male jobs. The case was closely observed by feminist groups.

Sears brought two fundamental opinions into legal focus. One argued that the fundamental differences between the sexes, a result of culture and a long socialization

period, justified unequal institutional practices and the manipulation of employment definitions and standards. This position was used by Rosalind Rosenberg and Sears Roebuck to show women as different from men, and as lacking interest in the positions traditionally held by men.

Alternatively, however, Alice Kessler-Harris argued for the diversity of women's work when they were given the opportunity. She endeavored to show that 1-historically, there was evidence of a large variety of jobs that women actually took, 2-economic considerations offset the effects of socialization in women's attitudes toward employment, with wage incentives playing a role in taking new demanding atypical positions, and 3-job segregation by sex was the consequence of employment preferences not employee choices, with the hiring process predetermining outcome and a generalized gender criteria not necessarily being relevant to work. The debate went beyond equality v. difference to the general ideas of sexual differences in a specific context (Scott:169).

When the Sears case went on appeal, the United States Court of Appeals Seventh Circuit in 1988 affirmed the decision of the United States District Court for the Northern District of Illinois and decided that 1- the Equal Employment Opportunity Commission failed to establish that the employer Sears discriminated against women in hiring

into commission sales positions, in light of the evidence presented by the employer indicating that women were not as interested in commission sales jobs as men; 2- statistical analyses presented by the EEOC failed to show that the employer discriminated against women in promotions from noncommission sales jobs; 3- the EEOC failed to establish sex discrimination in the wages that the employer paid management, professional and administrative employees; and 4- conflict of interest arising from the fact that the EEOC attorney and the special assistant were members of a woman's organization which urged litigation against employer did not require dismissal of the suit (Equal Opportunity Commission v. Sears Roebuck & Company, USCA 1988). Thus, the court found that the assumption of equal interest between the sexes was unfounded, because of the differences between men and women.

This judgment of real and fundamental difference redefined discrimination by a recognition of natural difference synonymous with inequality. Thus, the Sears ruling was seen to essentialize difference and naturalize inequality. However, legally speaking, the case is not one that is paramount to the issue of equal rights, because 1- it can factually or jurisdictionally be distinguished from other cases at hand in order to minimize its impact, and 2- more importantly, it is a decision from a lower court in the United States judicial process and not one that is

controlling by emanating from the United States Supreme Court. United States Supreme Court Justice Ruth Ginsburg once stated that men and women should be treated as individuals, not as members of a sexually determined class (Rothblatt:12).

Law has tended to overlook the substantive particularities of women's situations (Charles:193). It presumes neutrality and impartiality by assuming fairness. This ignores substantive inequalities which exist by virtue of societal, economic and ideological factors (Charles:193). In law, women's injuries are not analogous to men's. However, the debate is still whether to allot to women a different status as a special group with special treatment, or to allot a fair and equal status with existing remedies (Charles:195).

Reform of existing law is not by itself enough to improve the status of women, but acts only as a necessary precondition to advancement (Lahey:101). With this comes the need to avoid the excesses of cooptation and the threat of a backlash in the law reform process. It is necessary that women act as key players in law, for the achievement of a meaningful reform process of legislation and court judgments. Women have endured struggles in law, in order to bring about two objectives: 1-the repeal of laws which form

the conditions of women's oppression, and 2-the enactment of laws which mean to improve the status of women (Lahey:107).

A new strategy must be undertaken: 1-women themselves must look at the whole theory of law from an unfettered female perspective; 2-women must obtain the repeal of all provisions that perpetuate male appropriation of female production, reproduction and sexual capacity; 3-women must closely scrutinize every aspect of the law for disparate impact, differential application and nonneutralities in the language of legal thought; and 4-women must develop methods to prevent existing legal provisions from being applied in a discriminatory manner (Lahey:115). It is important that legal enforcement mechanisms be revised around the realities of women's experiences with the law (Lahey:116).

Utopia is the ideal society envisioned according to one's own perception. There are three classes of feminist utopia: 1- feminists who emphasize that women and men are basically equal describe the utopian society where both have equal rights and opportunities, expecting to live in the same situations with an equal division of the household responsibilities; 2- feminists who emphasize differences between men and women formulate the utopian society where women's positions are better than men's in a matriarchy of amazon days where feminine qualities are

valued more highly than traditional masculine qualities for emotion over rationality, love over status; and 3- feminists who neither want equality of the sexes nor female supremacy envision the utopian society where gender is hardly or is of no importance or no longer exists (Van Lenning:5).

Perhaps one day, there will be no need to have the 'Year of the Woman'. However, this day has not come, since we are still in the 'Years of the Man'. Women's liberation is the longest revolution (J.Evans:74).

We must learn from other groups' experiences in the fight for equality. As such, in examining laws and court judgments, we should take into account the civil rights movement of the 1960's in the United States, and its advancements in racial rights and tolerance. Gender justice and its fight to at least achieve what racial justice has achieved in the laws and in the courts can only help to serve the female struggle. Therefore, in the struggle to secure equal rights for women, the consultation process must include input from other groups for strategic purposes in order to strengthen the cause. The process must be one of inclusion not exclusion.

Having made a career in the legal profession, I argue for the central importance of the law and the court system in order to bring about change. Our very rights as

human beings emanate from the word of the law and the interpretation given by the highest courts in the land. Therefore, it is imperative that the struggle for gender justice encompass the legal system.

References Chapter 2

-Ang-Lygate, Magdalene, Desperately Seeking Sisterhood, London: Taylor & Francis, 1997.

-Atkins, Susan, Women and the Law, Oxford: Blackwell, 1984.

-Bacchi, Carol Lee, Same Difference. Feminism and Sexual Difference, North Sydney: Allen & Unwin, 1990.

-Bock, Gisela, James, Susan, Beyond Equality and Difference, Citizens, Feminist Politics and Female Subjectivity, London: Routledge, 1992.

-Charles, Nickie, Practising Feminism, New York: Routledge, 1996.

-Clark, Lorene M.G., Lange, Lynda, The Sexism of Social and Political Theory, Women and Reproduction from Plato to Nietzsche, Toronto: University of Toronto Press, 1979.

-Coppock, Vicki, The Illusions of Post Feminism, London: Taylor & Francis, 1995.

-Cox, Oliver, Caste, Class and Race, New York: Monthly Review Press, 1970.

-Donovan, Josephine, Feminist Theory, New York: Continuum, 1993.

-Equal Employment Opportunity Commission v. Sears Roebuck & Company, United States Court of Appeals Seventh Circuit, 1988.

-Evans, Judith, Feminist Theory Today, Thousand Oaks: Sage Publications, 1995.

-Evans, Mary, Introducing Contemporary Feminist Thought, Cambridge: Polity Press, 1997.

-Firestone, Shulamith, The Dialectic of Sex, London: Jonathan Cape, 1971.

-Flax, Jane, Beyond Equality: Gender, Justice and Difference, in Bock, Gisela, James, Susan, Beyond Equality and Difference, Citizens, Feminist Politics and Female Subjectivity, London: Routledge, 1992.

-Fox-Genovese, Elizabeth, Feminism Is Not the Story of My Life, New York: Doubleday, 1996.

-Fox-Genovese, Elizabeth, Feminism Without Illusions, Chapel Hill: University of North Carolina Press, 1991.

- Fox-Genovese, Elizabeth, The Birth of American Feminism, St. James: Brandywine Press, 1995.
- Fried, Morton, The Evolution of Political Society, New York: Random House, 1967.
- Friedan, Betty, The Feminine Mystique, Harmondsworth: Penguin, 1963.
- Friedan, Betty, The Second Stage, London: Sphere Books, 1983.
- Grande Jensen, Pamela, Finding a New Feminism, Lanham: Rowman & Littlefield Publishers, 1996.
- Habermas, Jurgen, Between Facts and Norms, Massachussetts: MIT Press, 1998.
- Hughes, Patricia, Fighting the Good Fight, in Miles, Angela, Finn, Geraldine, Feminism, Montreal: Black Rose Books, 1989.
- Jung, Anees, Breaking the Silence, New York: Penguin Books, 1997.
- Kanowitz, Leo, Women and the Law, The Unfinished Revolution, Albuquerque: University of New Mexico Press, 1969.
- Lahey, Kathleen, Celebration and Struggle, in Miles, Angela, Finn, Geraldine, Feminism, Montreal: Black Rose Books, 1989.
- Lasch, Christopher, Haven in a Heartless World, The Family Besieged, New York: Basic Books, 1977.
- Lasch, Christopher, The Culture of Narcissism, New York: W.W.Norton & Co., 1979.
- Livingstone, David, Recast Dreams, Toronto: Garamond Press, 1996.
- Lorde, Audre, Sister Outsider, Freedom: The Crossing Press, 1984.
- Mackinnon, Catharine, Feminism Unmodified, Cambridge: Harvard University Press, 1987.
- Mackinnon, Catharine, Only Words, Cambridge: Harvard University Press, 1993.
- Mackinnon, Catharine, Toward a Feminist Theory of the State, Cambridge: Harvard University Press, 1989.

- Meehan, Johanna, Feminists Read Habermas, New York: Routledge, 1995.
- Rado, Lisa, Modernism, Gender and Culture, New York: Garland Publishing, 1997.
- Razack, Sherene, Canadian Feminism and the Law, Toronto: Second Story Press, 1991.
- Rothblatt, Martine, The Apartheid of Sex, New York: Crown Publishers, 1995.
- Snitow, Ann, A Gender Diary, in Joan Wallach Scott, Feminism and History, Oxford: Oxford University Press, 1996.
- Tietjens Meyers, Diana, Feminists Rethink the Self, Boulder: Westview Press, 1997.
- Tietjens Meyers, Diana, Kindred Matters, Rethinking the Philosophy of the Family, Ithaca: Cornell University Press, 1993.
- Van Lenning, Alkeline, Feminist Utopias in a Postmodern Era, Tilburg University Press, 1997.
- Violi, Patrizia, Gender, Subjectivity and Language, in Bock, Gisela, James, Susan, Beyond Equality and Difference, Citizens, Feminist Politics and Female Subjectivity, London: Routledge, 1992.
- Scott, Joan, Feminism and History, Oxford: Oxford University Press, 1996.
- Scott, Joan, Gender and the Politics of History, New York: Columbia University Press, 1988.
- Weisberg, D. Kelly, Women and the Law, Cambridge: Schenkman, 1982.
- Wollstonecraft, Mary, Vindication of the Rights of Women, London: Source Book Press, 1792.

CHAPTER 3

A STATISTICAL PERSPECTIVE

This Chapter will look at various statistics involving women and the labor force in North America, including the United States and Canada, and in the European Community. Such areas as employment, unemployment, job sectors, salaries and education will be examined.

Globally, the world population numbers 5,304 million people, with men accounting for slightly over 50% (United Nations 1997). However, in looking at the situation of women as to population in North America and Europe, women outnumber men, accounting for slightly over 50%. In Canada, there are a total of 30,286,600 people, with 14,999,700 males and 15,286,900 (United Nations 1997). On a larger scale, in the United States, there are 265,284,000 people, of those 129,810,000 are male and 135,474,000 are female, with women accounting for just over 50% of the population (United Nations 1997). In Europe, there are 365,736,000 people, with 178,144,000 males and 187,592,000 females (United Nations 1997).

The United States

According to the latest census statistics available, in 1996, there were 68,207,000 men and 58,501,000

women employed (Table 1) (United States Census 1997). Concerning work schedules, there were 89,282,000 full-time workers, with men at 51,222,000 and women lower at 38,060,000. Among the unemployed, men number 3,880,000 and women number 3,356,000 in 1997 (United States Census).

**Table 1- United States
Employment Status of Population by sex (Thousand), 1960-96.**

| Total | Total | Employed | Unemployed |
|--------|--------|----------|------------|
| Male | | | |
| 1960 | 46,380 | 43,904 | 2,486 |
| 1970 | 51,228 | 48,990 | 2,238 |
| 1980 | 61,453 | 57,186 | 4,267 |
| 1990 | 69,011 | 65,104 | 3,906 |
| 1992 | 69,964 | 64,440 | 5,523 |
| 1993 | 70,404 | 65,349 | 5,055 |
| 1994 | 70,817 | 66,450 | 4,367 |
| 1995 | 71,360 | 67,377 | 3,983 |
| 1996 | 72,087 | 68,207 | 3,880 |
| Female | | | |
| 1960 | 23,240 | 21,874 | 1,366 |
| 1970 | 31,543 | 29,688 | 1,855 |
| 1980 | 45,487 | 42,117 | 3,370 |
| 1990 | 56,829 | 53,689 | 3,140 |
| 1992 | 58,141 | 54,052 | 4,090 |
| 1993 | 58,795 | 54,910 | 3,885 |
| 1994 | 60,239 | 56,610 | 3,629 |
| 1995 | 60,944 | 57,523 | 3,421 |
| 1996 | 61,857 | 58,501 | 3,356 |

Reasons given for the unemployment of both sexes were: lost their job; left their job; reentered the work force; or remained nonentrants. The rates for women and men were higher for reentrants and nonentrants (Table 2).

Table 2- United States
Unemployment by Sex and Reason (Thousand), 1988-1996.

| | 1988 | 1990 | 1992 | 1994 | 1996 |
|-------------|-------|-------|-------|-------|-------|
| Male | | | | | |
| Job Loser | 2,078 | 2,208 | 3,518 | 2,416 | 2,158 |
| Job Leaver | 503 | 511 | 479 | 408 | 372 |
| Reentrant | 697 | 782 | 950 | 1,265 | 1,076 |
| New Entrant | 376 | 328 | 356 | 437 | 273 |
| Female | | | | | |
| Job Loser | 1,014 | 1,114 | 1,773 | 1,399 | 1,212 |
| Job Leaver | 480 | 503 | 496 | 383 | 402 |
| Reentrant | 1,112 | 1,101 | 1,278 | 1,521 | 1,435 |
| New Entrant | 440 | 357 | 457 | 326 | 307 |

As far as salaries are concerned, in 1995, the median weekly salary for women was \$406, as compared to \$538 for men (Table 3). Women earned roughly 75% of men, with the wage gap persisting. However, as to the breakdown of the types of employment, women made a significant gain in the number of those employed in the managerial executive profession, accounting for 13,288,000 of these jobs in 1996, compared with 8,302,000 in 1985 (Table 3). The managerial and professional specialties include both the executive, administrative and managerial sectors, and the professions of architect, engineer, teacher, social science worker, and attorney/judge. In looking more closely at the legal profession, women still account for only 29% of attorneys and judges in 1996, up from 15.8% in 1983. As expected, however, women had their greatest numbers in the technical, sales and administrative support sector, while men were employed mostly in the managerial professional sector, the stereotype persisting (Table 3).

Table 3- United States
Full-Time Workers, Number (Thousand) and Median Weekly
Earnings by Sex, 1985 and 1996.

| | (000) 1985 | (000) 1996 | \$1985 | \$1996 |
|-----------------------------------|------------|------------|--------|--------|
| Total | 77,002 | 90,918 | 343 | 490 |
| Male | 45,589 | 51,895 | 406 | 557 |
| Female | 31,414 | 39,023 | 277 | 418 |
| Male Manager Professional | 11,078 | 13,934 | 583 | 852 |
| Sales Admin. Sup. | 8,803 | 9,988 | 420 | 567 |
| Service | 3,947 | 4,958 | 272 | 357 |
| Production Repair | 10,026 | 10,076 | 408 | 560 |
| Operators Laborers | 10,585 | 11,613 | 325 | 422 |
| Farming Forestry Fishing | 1,150 | 1,326 | 216 | 300 |
| Female Manager Professional | 8,302 | 13,288 | 399 | 616 |
| Sales Admin. Sup. | 14,622 | 16,128 | 269 | 394 |
| Service | 3,963 | 5,000 | 185 | 273 |
| Production Repair | 906 | 944 | 268 | 373 |
| Operators Laborers | 3,482 | 3,487 | 216 | 307 |
| Farming Forestry Fishing | 138 | 176 | 185 | 255 |

In terms of education, the participation rate of both sexes is highest for high school graduates. However, while men show an increase in the participation rate from some University education to University graduate, the participation rate of women actually goes down (Table 4) (United States Census). In 1995, female labor force participation rates were at 47.2% for those with less than high school, 68.9% for high school graduates, 77.3% for those with some University and 82.5% for University graduates. Male labor force participation rates were at 72% for those with less than high school, 86.9% for high school graduates, 90.1% for those with some University and 93.8% for University graduates.

Table 4- United States
Labor Force (Thousand) and Participation Rates by Education,
1992-1996.

| | Total | Not H.S. Grad. | H.S. Grad. | Not Univ. Grad. | Univ. Grad. |
|--------|--------|-------------------|---------------|--------------------|----------------|
| Male | | | | | |
| 1992 | 55,917 | 13.9 | 34.7 | 23.8 | 27.5 |
| 1993 | 56,544 | 13.2 | 33.9 | 24.7 | 28.1 |
| 1994 | 56,633 | 12.7 | 32.9 | 25.8 | 28.6 |
| 1995 | 57,454 | 12.2 | 32.3 | 25.7 | 29.7 |
| 1996 | 58,121 | 12.7 | 32.2 | 26.0 | 29.1 |
| Female | | | | | |
| 1992 | 46,469 | 10.2 | 37.9 | 26.9 | 25.0 |
| 1993 | 46,961 | 9.3 | 36.7 | 28.2 | 25.8 |
| 1994 | 48,235 | 9.1 | 35.3 | 29.8 | 25.8 |
| 1995 | 49,065 | 9.1 | 34.1 | 30.2 | 26.6 |
| 1996 | 49,916 | 8.8 | 33.7 | 29.7 | 27.8 |

In terms of the marital status of women in the labor force in 1996, 15,842,000 were single, 33,618,000 were married and 12,397,000 were other (Table 5). While marriage was once considered a total impediment to employment, women have managed to combine both.

Table 5- United States
Marital Status of Women in Labor Force (Thousand), 1960-1996.

| | Total | Single | Married | Other |
|------|--------|--------|---------|--------|
| 1960 | 23,240 | 5,410 | 12,893 | 4,937 |
| 1970 | 31,543 | 7,265 | 18,475 | 5,804 |
| 1980 | 45,487 | 11,865 | 24,980 | 8,643 |
| 1985 | 51,050 | 13,163 | 27,894 | 9,993 |
| 1990 | 56,554 | 14,229 | 30,970 | 11,354 |
| 1991 | 56,893 | 14,295 | 31,175 | 11,423 |
| 1992 | 57,798 | 14,477 | 31,720 | 11,601 |
| 1993 | 58,407 | 14,624 | 31,978 | 11,805 |
| 1994 | 60,239 | 15,333 | 32,888 | 12,018 |
| 1995 | 60,944 | 15,467 | 33,359 | 12,118 |
| 1996 | 61,857 | 15,842 | 33,618 | 12,397 |

Canada

There has been growth in the labor force for women over the years in Canada as well. However, women are still considerably less likely to be in the workforce than men (Statistics Canada 1994:8). According to the latest statistics, in 1995, 5,844,800 women were employed, while 514,700 were unemployed (Table 6).

Table 6- Canada
Employment and Unemployment by Sex, 1990 and 1995

| | 1990 | 1995 | % Change |
|------------|------------|------------|----------|
| Employed | 13,165,100 | 13,505,500 | 2.6 |
| Male | 7,320,300 | 7,396,500 | 1.0 |
| Female | 5,844,800 | 6,109,000 | 4.5 |
| Unemployed | 1,163,900 | 1,422,100 | 22.2 |
| Male | 649,200 | 801,100 | 23.4 |
| Female | 514,700 | 621,000 | 20.7 |

Labor force participation rates in 1996 were at 72.5% for men and 57.4% for women (Minister of Industry 1997). In 1996, men accounted for 6,613,000 of the full-

time jobs, compared to 4,384,000 for women, and 783,000 of the part-time jobs compared to 1,725,000 for women (Minister of Industry). Overall unemployment was at 9.5% in 1996, with men at 9.8% and women at 9.2% (Minister of Industry).

Women are more likely to work part-time, accounting for 69% of all part-time employment. Many women work part-time, because they cannot find full-time employment, and young women are more likely than older women to work part-time. Of those women employed part-time, 34% wanted full-time work but could not find it (Statistics Canada:14).

Women have made gains in some professional occupations (Table 7) (Statistics Canada:14). In management and professional positions, women number 2,258,000, compared to 2,190,000 men in 1995, having made tremendous gains, due in part to changes in occupational definitions (Table 1). The category of management and other professional occupations include the management and administrative sectors, and other professions such as natural sciences, social sciences, religion, teaching, medicine and art. However, women still predominate in the clerical sector, numbering 1,578,000 compared with 392,000 men.

Table 7- Canada
Employment by Selected Occupations (Thousand), 1995

| Occupation | Male | Female |
|----------------------------|-------|--------|
| Managerial Professional | 2,190 | 2,258 |
| Clerical | 392 | 1,578 |
| Processing Machinery | 1,310 | 308 |
| Construction | 670 | 19 |
| Transport Operator | 469 | 51 |

Women are also underrepresented among self-employed workers, with women accounting for only roughly 10% of such workers, in comparison with roughly 20% for male workers (Statistics Canada:16). However, there has been an increase, in the last decade, in the number of women running their own businesses.

Women have less tenure in employment than men, with an average ratio of 81 months compared to 108 months at the same job. Older women have greater job tenure than younger women, but still less tenure than men. This is due in part to the tradition of many women interrupting their work in order to raise a family (Statistics Canada:16).

However, increases in unemployment among women have been less severe than among men, so that female participants are less likely to be unemployed (Statistics

Canada:22). Women are more likely than men to drop out of the labor force when they lose their job. Young women are more likely to be unemployed than other women, but are less likely to be unemployed than their male counterparts (Statistics Canada:23).

There is variation in the level of unemployment in different occupational groups (Statistics Canada:23). Women in the goods producing industries are more likely to be unemployed than women in the service sector, but are less likely than their male colleagues to be unemployed. There is little difference, however, between the sexes in the service sector.

Unemployed women are more likely than men to be new job market entrants who have never worked, and are twice as likely as men to be reentrants who have not worked in the past five years. Women are also more likely to have left their job for personal responsibilities, in keeping with tradition (Statistics Canada:10). However, women are unemployed for shorter periods, and are less likely to experience extended periods of unemployment. However, older women are more likely than younger women to be unemployed for longer periods (Statistics Canada:24).

The difference in earnings between the sexes has closed in recent years mostly because of substantial

increases in the earnings of women and little change in the earnings of men. Women in professional occupations have considerably higher incomes than other occupations (Statistics Canada:30). However, women's earnings overall were significantly below those of men in all occupations (Statistics Canada:30).

The increased workforce participation of women is due in part to the higher levels of educational attainment (Table 8) (Statistics Canada:36).

Table 8- Canada
Educational Attainment by Sex, 1995

| | Male% | Female% | Total% |
|----------------------|-------|---------|--------|
| 0-8 Years | 12.2 | 13.1 | 12.6 |
| Some Secondary | 20.5 | 19.8 | 20.2 |
| High School Graduate | 18.4 | 20.8 | 19.6 |
| Some University | 8.8 | 9.0 | 8.9 |
| University Graduate | 14.6 | 12.0 | 13.3 |

In 1995, the university enrolment of women declines the higher the level of education, with women earning 72,884 bachelors and first professional degrees, compared with 53,276 for men, but women earning only 1,059 doctorates, compared with 2,588 for men (Table 9). The gap will narrow in the future, since women form the majority of students attending university.

Table 9- Canada

University Degrees Granted by Sex, 1995

| | Male | Female | Total |
|------------|--------|--------|---------|
| Bachelor | 53,276 | 72,884 | 126,160 |
| Master | 10,956 | 10,416 | 21,372 |
| Doctorates | 2,588 | 1,059 | 3,647 |

Women with high levels of education are more likely than other women to be employed in the labor force and are less likely to work part-time or be unemployed. As well, female graduates have a higher income than other women. Young women are better educated than their male counterparts, with the reverse true for the older population (Statistics Canada:36).

Women with high levels of educational attainment are less likely than other women to work part-time (Statistics Canada:38). However, women are more likely than their male counterparts to work part-time' regardless of educational qualifications, with female university graduates over three times more likely than male graduates to have part-time employment. Women who have graduated from a post-secondary institution have lower unemployment rates than other women. However, women with a university degree had a higher unemployment rate than similarly qualified men. As well, at all levels of educational attainment, women were less likely than men to be employed.

Women with a university degree have higher earnings than women with other educational qualifications (Statistics Canada:39). However, the earnings of women are below those of men in all educational groups (Statistics Canada:40).

There is little difference in the participation rate or the employment levels of women as concerns their marital status (Table 10) (Statistics Canada:45). In all marital categories, women are less likely than men to be employed.

Rapid growth has occurred in labor force participation rates for those women with children in the last decade. However, women with preschool children are less likely than those with school-aged children to be employed. In general, women are less likely than men to be in the labor force, and women with children are more likely than other women to be employed part-time (Statistics Canada:45). Female lone parents are less likely to be employed than women in two-parent families with children (Statistics Canada:46).

Women continue to be responsible for most of the unpaid domestic work even when employed, devoting two hours more per day than men. Domestic work activities account for most of the total unpaid work time of employed women (Statistics Canada:48). Employed women are nearly three times more likely than men to be absent from work because of personal family responsibilities. Most female homemakers spend more time on unpaid household activities than the employed do at their jobs, but these women are not included in national labor market surveys (Statistics Canada:50).

Women's membership in labor unions has increased, while that of men has declined. However, women are still less likely than their male counterparts to be union members (Statistics Canada:6). Women employed full-time are more likely than women employed part-time to be unionized. As

well, women employed part-time are more likely than their male counterparts to be union members (Statistics Canada:58). However, women are less likely than men to be unionized in most industries, with health and social services the only category in which females were more likely to be unionized (Statistics Canada:59).

The past thirty years have seen the growth of dual-earner families. As well, a recent trend has been the emergence of women as primary earners and sole earners within families (Crompton 1995:26).

From 1967 to 1993, the number of dual-earner families has gone from 33% to 60%. The traditional family of a breadwinning husband and a stay at home wife has been radically changed, in less than a generation, into one where both spouses work outside the home.

An interesting aspect of women working outside the home has been the growing proportion of working couples, in which the wife earns more than the husband (Crompton:26). Over the last thirty years, the proportion of women as the primary wage earner has risen from 11% to 25%. As well, changes have occurred in single earner families, which has seen the proportion of families with the wife as the earning spouse grow from 2% in 1967 to 20% in 1993 (Crompton:27).

The growing number of wives who earn more than their husbands is a reflection of women's long term movement into higher paying managerial and professional occupations, with their accumulated job experience (Crompton:27). As well, during this same period, there was slower growth in the average earnings of men. This combined for a rapid increase in the number of wives who occupied the position of primary earners.

Many wives became the main breadwinners by default. Between 1989 and 1993, most of the full-year, full-time earners who lost their jobs were men, accounting for 84%. The high-wage managerial jobs and manufacturing jobs, mostly held by men, were particularly hard hit (Crompton:27). Therefore, by the early 1990s, the combination of recessions and women's rising earnings left many wives as primary earners in their families (Crompton:27).

However, despite this progress, women cannot match men's earning power (Crompton:27). The average employment income of primary earner wives was \$31,000, 30% less than that of primary earner husbands at \$43,250. Primary earner wives were more likely to be employed in managerial professional occupations, 48% compared to 35% for primary earner husbands. However, at the same time, these women earned one-third less than their male counterparts.

Outside of the managerial professional occupations, almost 80% of female primary earners worked in clerical, sales or service jobs, with an average salary ranging from \$24,000 to \$30,000. In contrast, 60% of male primary earners worked in blue collar occupations, with an average salary ranging from \$37,000 to \$40,000.

One factor for the differential is the work pattern. Women primary earners were considerably less likely to have worked full-time than their male counterparts, 86% to 96% respectively (Crompton:27). Another factor is age, with the median age of female primary earners slightly younger at 38, compared with the median age of 40 for their male counterparts. Contributing to some lack of work experience, these factors helped to influence job tenure and salary level.

Another phenomenon has been the steady increase in families in which the wife was the only spouse earner. This can be traced to the general aging of the population (Crompton:28). Sole earner wives and their husbands are generally older, with 43% of such wives and 60% of such husbands aged 55 and over. In contrast, in families in which the sole wage earner is the husband, 47% of these men are between the ages of 25 and 44.

The generation gap suggests that the growth of female sole earner families is mainly due to the fact that husbands retire and the younger wives continue to work (Crompton:29). The labor force participation rates of older women have steadily risen. In addition, sole earner wives were less likely to experience unemployment than their male counterparts.

However, sole earner wives had an average employment income of \$18,250, while sole earner husbands made nearly twice as much at \$34,750 (Crompton:29). Despite this, families in which wives were the sole earners, reported an average income of \$44,250, only 12% less than those of sole earner husbands. The reason for this was the fact that almost half the family income of female sole earners came from sources other than employment, such as government transfer payments, private pensions and investments, compared to only one fifth for male sole earners.

The important contribution of primary earner wives to dual earner families has helped some to stay above the low income level, for without them 45% would have fallen below this line (Crompton:29). So it is, as well, in male primary earner families, in which the wives' contribution is smaller, but without which 9% would have fallen below the poverty line.

The importance of women wage earners has grown throughout the years. Overall, wives are the primary wage earners in one quarter of dual earner families and the sole earner in one fifth of families. At the same time, however, women's salaries still lag behind men's in similar situations (Crompton:29).

Women's advancements in the labor force have contributed to another recent trend of female entrepreneurs. Self-employment or entrepreneurship has boomed in the last few decades, accounting for more than one fourth of all employment from 1976 to 1994 (Cohen 1996:23). Self-employment reflects the shift to a service economy and the growth of small businesses. This has occurred as a result of corporate downsizing and restructuring, as well as contracting out and privatization.

By 1994, the number of entrepreneurs had risen to roughly 15% of those employed. The representation of women among the self-employed has jumped to account for one in three entrepreneurs in 1994, up from one in four in 1976.

In the last two decades, women have accounted for two thirds of all employment gains (Cohen:23). In addition, the number of self-employed women has tripled from 1976 to

1994, while the number of self-employed men has doubled. Women account for 40% in the rise of self-employment.

Two-thirds of women entrepreneurs work full-time. While both the full-time and part-time self-employment rates have doubled among women, the rate for male entrepreneurs fell from 95% in 1976 to 90% in 1994. During this period, the rate for part-time work considerably exceeded that of full-time work, by a ratio of 311% to 85%. In addition, women accounted for 22% of all employers in 1994, up from 12% in 1976.

The incidence of entrepreneurship has risen with age. Due to retirement, there was a particularly high rate of entrepreneurship for both sexes, with 34% of women and 55% of men aged 65 and over self-employed (Cohen:24).

Overall, self-employed workers are more likely than paid workers to be married. The incidence of self-employment was only slightly higher for married than non-married women, while that of married men was almost double that of non-married men. In addition, the incidence of self-employment was considerably higher among women who did not complete high school than those who had a higher level of education, with a similar pattern for men (Cohen:25).

Among self-employed women, 37% worked in the service industry, 21% in sales, 17% in the retail trade, 13% in business, and 11% in health and social services (Cohen:26). In contrast, among self-employed men, 21% worked in sales, 17% in the construction trade, and 13% in managerial and administrative occupations.

Average annual earnings for entrepreneur women were \$18,400 in 1993, compared with \$25,900 for female paid workers and contrasted with \$33,400 for entrepreneur men (Cohen:26). Several factors account for this: part-time work was more prevalent among women entrepreneurs; women entrepreneurs were concentrated in industries with lower earnings; the number of female employers was considerably lower than that of men; and the proportion of self-employed women with a university degree was lower than that of men (Cohen:27).

Although men still dominate the self-employment sphere, women are playing an increasing role (Cohen:27). Women entrepreneurs are frequently married to other entrepreneurs, reflecting changes in the way women view their role in the market place and in the family.

Europe

According to the latest statistics, the European Community has a population of 365,736,000 people, of which 178,144,000 are men and 187,592,000 are women (Table 10). Thus, women account for the majority of the population in the European Economic Community.

In most of the E.C. countries, women account for 40% of the labor force, which is significantly up from ten years ago (Table 11). The majority of women between the ages of 25 and 49 work, and this even despite having young children. This is a major difference from the once strict family imperatives, showing that women have made a bid for more autonomy in their careers.

Table 10-European Community
Population by Sex (Thousand) 1995

| | Total | Males | Females |
|-------------|---------|---------|---------|
| European 15 | 365,736 | 178,144 | 187,592 |
| Belgium | 10,105 | 4,945 | 5,159 |
| Denmark | 5,207 | 2,569 | 2,638 |
| Germany | 80,570 | 39,167 | 41,403 |
| Greece | 10,238 | 4,932 | 5,306 |
| Spain | 38,749 | 18,898 | 19,851 |
| France | 56,336 | 27,256 | 29,080 |
| Ireland | 3,536 | 1,758 | 1,778 |
| Italy | 56,413 | 27,346 | 29,068 |
| Luxembourg | 403 | 199 | 204 |
| Netherlands | 15,199 | 7,546 | 7,653 |
| Austria | 7,883 | 3,807 | 4,076 |
| Portugal | 9,807 | 4,702 | 5,105 |
| Finland | 4,929 | 2,390 | 2,539 |
| Sweden | 8,838 | 4,367 | 4,471 |
| U.K. | 57,525 | 28,262 | 29,263 |

Table 11-European Community
Employment Averages (Thousand) and Rates 1995

| | Total | Total % | Male | Male % | Female | Female % |
|----------------|---------|------------|--------|-----------|--------|-------------|
| European 15 | 148,326 | 49.3 | 86,786 | 59.9 | 61,540 | 39.4 |
| Belgium | 3,793 | 45.8 | 2,274 | 56.7 | 1,519 | 35.6 |
| Denmark | 2,601 | 60.1 | 1,440 | 68.0 | 1,161 | 52.5 |
| Germany | 35,782 | 53.0 | 20,669 | 63.7 | 15,114 | 43.1 |
| Greece | 3,821 | 44.7 | 2,449 | 60.4 | 1,371 | 30.6 |
| Spain | 12,027 | 37.2 | 7,882 | 50.8 | 4,145 | 24.7 |
| France | 22,057 | 48.8 | 12,280 | 57.0 | 9,777 | 41.4 |
| Ireland | 1,262 | 47.5 | 788 | 60.2 | 474 | 35.1 |
| Italy | 19,943 | 41.8 | 12,872 | 56.3 | 7,072 | 28.5 |
| Luxembourg | 162 | 49.3 | 104 | 65.0 | 58 | 34.3 |
| Netherlands | 6,785 | 54.9 | 4,005 | 65.7 | 2,781 | 44.4 |
| Austria | 3,674 | 56.8 | 2,085 | 67.7 | 1,589 | 47.0 |
| Portugal | 4,417 | 54.0 | 2,446 | 63.5 | 1,971 | 45.6 |
| Finland | 2,016 | 50.7 | 1,040 | 54.5 | 976 | 47.1 |
| Sweden | 4,051 | 57.3 | 2,097 | 60.9 | 1,954 | 43.7 |
| United Kingdom | 25,936 | 56.2 | 14,357 | 64.0 | 11,579 | 48.8 |

Now, 80% of women are employees and no longer work in family firms. Of the 19.8 million who are self-employed, 22.1% are women (Eurostat, Statistics in Focus 1996:1). As well, of the 23.8 million employed part-time, 80.7% of these are women, which accounts for 31% of the total female employment (Commission of the European Communities, Europe 1994). This integration into the labor force allows women to encounter a different universe from the family unit (Commission of the European Communities, Women's Information Service 1992:17).

In the industries which have expanded to adjust for the employment of women, an increasing proportion of these jobs have been part-time (Commission of the European Communities, Employment in Europe 1995:9). The share of women in employment has increased everywhere in the European Community, even in countries where part-time work is relatively unimportant (Commission of the European Communities, Employment in Europe:9).

Women find themselves most often in small non-unionized business, and are thus more vulnerable to wage inequity (Table 12) (Commission of the European Communities, Women's Information Service:17). As well, they predominate in the tertiary service sector, which accounts for 54% of

male employment and 79% of female employment (Commission of the European Communities, Europe 1994).

Table 12- European Community
Employment by Occupation for the Community (Thousand) 1995

| | Males | Males % | Females | Females % |
|----------------------------------|--------|---------|---------|-----------|
| Legislators and Managers | 8,067 | 9.7 | 3,492 | 6.0 |
| Professionals | 9,370 | 11.3 | 7,141 | 12.3 |
| Technicians | 10,070 | 12.1 | 9,261 | 15.9 |
| Clerks | 6,650 | 8.0 | 12,926 | 22.2 |
| Service and Sales Workers | 6,433 | 7.8 | 11,870 | 20.4 |
| Agricultural and Fishery Workers | 3,883 | 4.7 | 1,849 | 3.2 |
| Craft and Related Trades Workers | 20,504 | 24.7 | 2,582 | 4.4 |
| Plant and Machine Operators | 10,347 | 12.5 | 2,244 | 3.9 |
| Elementary Occupations | 6,797 | 8.2 | 6,742 | 11.6 |
| Armed Forces | 854 | 1.0 | 40 | 0.1 |
| Not Stated | 3,879 | - | 3,405 | - |
| Total | 86,855 | 100.0 | 61,552 | 100.0 |

There is a trend toward more jobs for women in the managerial, technical and professional category, which require more extensive education and higher skill levels.

It is important that equality for women be achieved in securing access to jobs which are commensurate with their skill levels (Commission of the European Communities, Employment in Europe:13).

Women are still lagging behind due to horizontal segregation, with a concentration in feminine jobs, and vertical segregation, with difficulty acceding to higher positions in the occupational hierarchy (Commission of the European Communities, The Position of Women on the Labor Market:53). The system has failed to reward women's skills, and even provides guises for discrimination in the form of a family allowance bonus (Commission of the European Communities, The Position of Women on the Labor Market:54).

In most European countries, women are still more likely than men to be unemployed (Table 13) (Commission of the European Communities, Women's Information Service:17). In Europe, there is a widening of unemployment rates, with women accounting for 55% of the unemployed (Commission of the European Communities, Equal Opportunity for Women and Men 1995:2). Women feel threatened, because of their lack of qualifications, their position in insecure jobs, the unemployment rates and the difficulty in professional reentry (Commission of the European Communities, Equal Opportunity for Women and Men:2).

Table 13- European Community
Unemployment Averages (Thousand) and Percentages 1995

| | Total | Total % | Male | Male% | Female | Female % |
|----------------|--------|------------|-------|-------|--------|-------------|
| European 15 | 17,828 | 10.7 | 9,094 | 9.5 | 8,733 | 12.4 |
| Belgium | 391 | 9.3 | 179 | 7.3 | 211 | 12. |
| Denmark | 196 | 7.0 | 86 | 5.6 | 110 | 8.6 |
| Germany | 3,179 | 8.2 | 1,568 | 7.1 | 1,610 | 9.6 |
| Greece | 381 | 9.1 | 162 | 6.2 | 219 | 13.8 |
| Spain | 3,533 | 22.7 | 1,733 | 18.0 | 1,800 | 30.3 |
| France | 2,977 | 11.9 | 1,371 | 10.0 | 1,606 | 14.1 |
| Ireland | 172 | 12.0 | 107 | 11.9 | 65 | 12.1 |
| Italy | 2,663 | 11.8 | 1,298 | 9.2 | 1,365 | 16.4 |
| Luxembourg | 5 | 2.9 | 2 | 2.1 | 3 | 4.4 |
| Netherlands | 552 | 7.5 | 271 | 6.3 | 281 | 9.2 |
| Austria | 167 | 4.3 | 85 | 3.9 | 82 | 4.9 |
| Portugal | 336 | 7.1 | 169 | 6.5 | 166 | 7.8 |
| Finland | 413 | 17.0 | 225 | 17.8 | 188 | 16.2 |
| Sweden | 398 | 8.9 | 230 | 9.9 | 167 | 7.9 |
| United Kingdom | 2,468 | 8.7 | 1,608 | 10.1 | 860 | 6.9 |

Over the last few years, the number of men in employment has fallen markedly, while the number of women in employment has gone down only marginally (Commission of the European Communities, Employment in Europe:9). However, despite the larger job losses suffered by men, the rate of unemployment for women remains higher averaging 12% than for men averaging 9% (Commission of the European Communities, Employment in Europe:10).

The wage gap continues to persist, even though it is smaller than twenty years ago (Commission of the European Communities, Women's Information Service:18). Gender differences in salaries persist and even have increased in some areas (Italy, Denmark, Portugal), despite economic activity of women and egalitarian legislation. Causes are specific to each country (Commission of the European Communities, The Position of Women on the Labor Market 1991:52). Female employees doing manual work earn 54.2% of men's wages in the United Kingdom, 64.6% in Belgium, 84.5% in Denmark, 66.6% in France, 69.8% in Greece, 69.2% in Italy, 54.9% in Luxembourg, 65.5% in the Netherlands, 70.7% in Portugal and 62.3% in Spain (Commission of the European Communities, Europe 1994).

The significant trends show that pay differentials between men and women are narrow for young people, grow with time, and peak at the middle and at the end of careers

(Commission of the European Communities, The Position of Women on the Labor Market:53). As well, in a number of countries, pay differentials are widest at the extremes of the educational scale, that is little education and extensive education.

Recent trends have brought about an increase in the level of education for women, but the types of fields chosen do not lend themselves to profitable job prospects (Table 14) (Commission of the European Communities, Women's Information Service:18). In comparison, 14% of women with no qualifications beyond basic schooling and 7% of those with university degrees were employed, while the figures for men were 12% and 5% respectively (Commission of the European Communities, Employment in Europe:12). Education does help to overcome some discrimination.

Table 14- European Community
Educational Attainment Level by Employment Status in the
Community 1995

| | Males | Females |
|-------------------------------------|--------|---------|
| Third Level Education | 100.0% | 100.0% |
| Employed | 90.1 | 79.3 |
| Unemployed | 4.8 | 6.0 |
| Inactive | 5.1 | 14.7 |
| Upper Secondary Education | 100.0 | 100.0 |
| Employed | 84.8 | 65.1 |
| Unemployed | 6.2 | 7.4 |
| Inactive | 9.0 | 27.5 |
| Less than Upper Secondary Education | 100.0 | 100.0 |
| Employed | 76.1 | 44.3 |
| Unemployed | 9.7 | 7.2 |
| Inactive | 14.3 | 48.4 |
| No Answer | 100.0 | 100.0 |
| Employed | 69.3 | 48.1 |
| Unemployed | 8.2 | 6.6 |
| Inactive | 22.5 | 45.2 |

Europe has experienced an increased divorce rate, a falling birth rate, a longer life expectancy and a positive net balance of migration (Table 15) (Commission of the European Communities, The Position of Women on the Labor Market:8). Marriage and children are no longer the sole limits to women.

Table 15- European Community
Employment by Marital Status 1995

| | Males | | | Females | | |
|----------------|--------|---------|---------------------------|---------|---------|---------------------------|
| | Single | Married | Widowed or Divorced | Single | Married | Widowed or Divorced |
| European 15 | 54.6% | 64.8% | 42.2% | 43.9% | 42.7% | 21.4% |
| Belgium | 46.2 | 63.5 | 41.6 | 34.8 | 41.9 | 16.9 |
| Denmark | 74.8 | 67.7 | 44.3 | 63.9 | 57.9 | 23.5 |
| Germany | 63.3 | 66.2 | 45.5 | 55.1 | 46.3 | 22.2 |
| Greece | 51.8 | 65.8 | 31.0 | 31.3 | 35.0 | 13.9 |
| Spain | 40.2 | 58.9 | 22.3 | 29.3 | 25.3 | 13.4 |
| France | 50.6 | 62.3 | 44.2 | 41.2 | 47.1 | 25.3 |
| Ireland | 50.4 | 70.3 | 30.2 | 43.8 | 34.9 | 11.5 |
| Italy | 47.0 | 63.0 | 35.1 | 30.6 | 31.7 | 12.8 |
| Luxembourg | 55.7 | 70.2 | 50.5 | 48.0 | 33.6 | 20.0 |
| Netherlands | 67.2 | 68.0 | 45.4 | 61.7 | 42.6 | 19.5 |
| Austria | 70.9 | 68.1 | 48.8 | 59.4 | 50.2 | 23.5 |
| Portugal | 47.9 | 72.3 | 35.9 | 39.3 | 52.8 | 28.0 |
| Finland | 48.2 | 62.3 | 46.7 | 46.0 | 58.2 | 34.5 |
| Sweden | - | - | - | - | - | - |
| United Kingdom | 62.4 | 68.1 | 45.4 | 55.0 | 54.6 | 27.7 |

Due to the various characteristics of the communities, the birth of children has had a different effect on women's level of participation in the workforce, namely no influence (Denmark), a minimal impact (France), part-time work (Germany, United Kingdom), and a drop with the advent of the first child (Netherlands, Ireland)

(Commission of the European Communities, The Position of Women on the Labor Market:9). Less than half of all women in the Community have children, and over a quarter of women are heads of households (Commission of the European Communities, Equal Opportunities for Women in the Community 1993:8).

The demographic changes on the horizon will bring about a further need for qualified workers, including women (Commission of the European Communities, Equal Opportunities:2). However, women are still underutilized, considered as reserve labor. This attitude is a barrier to progressive legislation. Although they have had the law behind them from the start of the European Community, women have yet to enjoy the equality they are entitled to in theory (Commission of the European Communities, Equal Opportunities for Women in the Community:1).

The effect of cultural liberalism, hedonism and anti-authoritarian attitudes have made a difference for women. Women with these new values have the potential to bring about change through their influence on their friends and their children, who in turn become less sexist. However, although women have made some progress into the higher echelons of corporations, they often have to start out in part-time work, that is not always chosen or that does not afford opportunities for promotion.

Overall, women have experienced important changes in the workforce over the years in the United States, in Canada and in the European Community. However, women still have a way to go in achieving wage equity and complete access to employment.

REFERENCES CHAPTER 3

- Cohen, Gary L., Women Entrepreneurs, Perspectives, 1996.
- Commission of the European Communities, Employment in Europe, Brussels, 1995.
- Commission of the European Communities, Equal Opportunity for Women and Men, Brussels.
- Commission of the European Communities, Europe, Brussels, 1994.
- Commission of the European Communities, The Position of Women on the Labor Market, Brussels, 1991.
- Commission of the European Communities, Women's Information Service, Brussels, 1992.
- Crompton, Susan, Geran, Leslie, Women as Main Wage-Earners, Perspectives, 1995.
- Eurostat, Statistics 1995.
- Eurostat, Statistics in Focus 1996.
- Minister of Industry, Canada Yearbook, 1997.
- Statistics Canada, Canada at a Glance, 1996.
- Statistics Canada, Women in the Labor Force, 1994.
- United Nations, Demographic Yearbook, 1996.
- United States Census, Statistical Abstract, 1997.

CHAPTER 4

WOMEN IN SOCIETY

The concept of gender does not have a well entrenched meaning (Acker 1989:17). It was first used by feminists to denote a difference in the biological sexes and in the social process. Today, gender is far more. It is used to show the complexity between males and females as a basis for organizing social life, to establish an identity and interpret experiences, and to symbolize the material line dividing work resources, power and honor (Acker:17).

Inequality between the sexes has shown itself to be a persistent problem (Acker:7). Since the mid 1960s, sex segregation and the wage gap have only slightly altered. While there has been improvement for women in some middle class jobs, there has been a persistent standstill in others (Acker:7). Job inequity is so deeply imbedded in societal structures and processes, that they recreate as others are eliminated. Therefore, the differences in sexes are reconstituted in new guises in the restructuring process (Acker:5). However, efforts must still be undertaken to alleviate inequality, through resort to legislation and the courts.

This Chapter will examine the issues of pay inequity and gender segregation, which lead to sex

discrimination in employment. The equal value and wage solidarity approaches will be analyzed to combat gender discrimination.

The Labor Force with Pay Inequity and Gender Segregation

The division of labor is a fragmentation or a splitting up of work tasks into increasingly narrow and more distinct components, which are fuelled by pressure to increase output and produce more goods and services with limited resources (Piori 1980:7). The result is specialization of the production process (Piori:7). The redistribution of uncertainty is an underlying issue, being a response to worker unrest and a proximate cause of duality in the labor market (Piori:6). The market is separated into a stable component which consists of an extensive division of labor and highly specialized resources, and an unstable component which consists of less articulate or specialized labor (Piori:8).

The supply side argues that women prefer certain occupations, accounting for their overrepresentation in certain jobs (Courchane:153). This is because of certain characteristics like care-taking, or because of issues of time training, flexible employment or reentry possibilities (Courchane:153). The demand side argues that employers prefer women for some jobs and men for other jobs, and that

workers and customers have preferences which would allow for some discrimination (Courchane:154).

The concept of dualism looks to the structure of institutions, which have maintained a difference between the modern sector which consists of advanced technology and capital intensive enterprises, and the traditional sector which consists of smaller enterprises, local rather than imported technology and a lack of formal educational requirements (Piori:4). The evidence from developed and developing societies suggests the persistence of the traditional or informal sector, with the processes of industrialization and modernization generating a heterogenous recast of old molds (Piori:5).

The theory of dual labor markets involves either good jobs with high responsibility, salary and job stability, or bad jobs, the rest that make up the lower echelon (Courchane:154). Access to good jobs is controlled by institutional factors and discrimination. Incorrect beliefs become self-fulfilling. Therefore, occupational segregation is a lack of opportunity, which will not be automatically reversed. It requires affirmative action to overcome stereotypes (Courchane:154).

The theory of labor market discrimination involves civil rights, the women's movement and antidiscrimination

legislation. It postulates that earnings differences are based on race and sex, which are only reduced through effective enforcement of antidiscrimination policies (Kaufman:128). Discriminatory economic policy defines, explains and measures labor market discrimination in the unequal access to jobs and to education, with the policy used to appraise the effect of antidiscrimination measures (Kaufman 1988:131).

Organizational constraints are expressed through the functionally necessary task hierarchy (Schwartz 1975:6). A queue is a societal structure, which consists of elements organized in terms of a priority and waiting system (Schwartz:7). The queue discipline involves the moral rule of first come first served (Schwartz:6). Queuing for resources is the fundamental process of social organization (Schwartz:13).

In business, client processing is a highly sexualized operation catering to comforts and prejudices (Schwartz:204). Race and sex are moral evaluations, which have a consequence on the allocation of goods and services, in terms of quantity and priority, in a discriminatory manner. These are traditional elements of the discipline of queuing in the discriminatory North American service system (Schwartz:112). Some groups judged inferior, such as women, are assigned a lower priority (Schwartz:112).

Transformation rules, whether explicit or implicit, formal or informal, enable service systems to infer from one's character the priority category to which one belongs (Schwartz:124).

The labor market is a labor queue, comprised of ordered elements, with society granting men first choice of jobs which are the most attractive (Reskin:30). A queue has three structural properties, namely the order of elements which includes jobs and groups of workers; the shape which includes the size of various elements, the population subgroups in the labor queue and the occupations in the job queue; and the intensity of rankers' preferences (Reskin:31).

The queue governs labor outcomes, with employers hiring workers from as high in the labor queue as possible and the worker accepting the best jobs (Reskin:30). This creates occupational segregation (Reskin:30). If preferred jobs outnumber the high ranked, then the employer will fill them with the lower ranked, and visa versa. A preferred group is often chosen regardless of qualifications on the basis of group membership (Reskin:31). Shortages spur occupational composition change to force employers to resort to a lower rank. Therefore, nonwhite men, white women and nonwhite women benefit from employment descent and labor shortage (Reskin:34).

Further, the queue theory notes that the worker from the lowest rank is the last hired and the first fired. Specifically, the gender queue is the system of sex segregation established in most jobs. This has resulted in the fact that the high ranked male workforce has grown the fastest, is paid the best, has more vocational training, requires less strength, and shelters incumbents from competition.

Several conclusions can be drawn: 1-sex labels of jobs as male or female influence the day to day hiring and job assignments, which affects the employment notion of appropriate workers; 2-difficulty in identifying productive workers requires the resort to proxies of educational attainment, experience and group membership. Sex stereotyping produces the beliefs that men outproduce and are rationally stronger than women, who are perceived to have higher absenteeism and turnover rates. Where observers can easily judge preferences, the employer will act less on stereotypes; 3-the male worker has a negative response to female interlopers, who are seen as reducing production and raising labor costs by increasing turnover. This leads men to demand higher wages to compensate for working with women, and to organize opposition through strikes, slowdowns and on the job resistance; and 4-higher wages for men is a reality, since they are favored in biased rankings. Gender solidarity

preserves male sex based privileges, forestalling women in a patriarchal norm of power (Reskin:37).

Women could move ahead if employers believed that: 1-production costs between sexes have changed; 2-aversion to women has declined; 3-costs for discriminatory preferences have risen, due to legislation limiting employer downranking of women; and 4-new rankers do not have a male preference (Reskin:49).

However, occupational segregation of the sexes along different lines of work is recognized (Reskin 1990:4). Men are usually found in sectors of management, craft and transportation, being the best paid white and blue collar workers, while women are usually found in the service and administrative support jobs, as well as the semi-professional female dominated sectors of nursing, library, social work and teaching (Reskin:5).

Over the last decades, we have seen the rise of employed married women with children, who have experienced the most growth in the labor force (Reskin:9). Only a century ago, in 1890, the women who worked were young and unmarried (Reskin:9). However, one factor considered to have played a role in the segregation of women is the marital-parental status, which has acted as a limiting force (Reskin:35).

As well, there has been a change in the gender distribution of certain occupations. In terms of clerical workers, while few were women in the late 19th century, now this sector is predominantly female (Reskin:12). This was due to the fact that women were considered less expensive and well suited for boring manual work (Reskin:12). In terms of waiting occupations which were predominantly male until the 1920s, they are now mainly female, with waitressing the sixth largest occupation for women, due to the perceived greater cleanliness of women (Reskin:13). While school teachers were mostly male at one point, a changeover occurred early on, with women being less costly (Reskin:14). However, men have had an increase in numbers in three female occupations, namely cooks, kitchen workers and maids (Reskin:21).

Women today, however, have a sense of entitlement to a greater choice in the types of jobs (Reskin:60). Education has been a pathway for the advancement of women, who have earned professional degrees in male occupations (Reskin:60). In many cases, women have moved into jobs men have left, leaving a choice to employers to hire men who are less qualified or hire women (Reskin:61). Economic exigencies should give an advantage to women who are hired at a lower labor price (Reskin:303).

Antidiscrimination legislation has made it costly not to hire women, with the possibility of litigation to enforce the law (Reskin:64). There has been some change in social attitudes with some decline in discrimination and in resistance by male workers. However, there is also a resurgence in the movement toward segregation in desegregated occupations (Reskin:306).

Both the Civil Rights movement and the women's movement have challenged the white man's birthright to first place in the labor queue (Reskin:304). These movements have worked tirelessly to transform public attitudes toward the propriety of exclusion based on sex, by way of antidiscrimination legislation (Reskin:304). However, queues still exist through collective sex segregation; such factors in ranking of working conditions as autonomy, social standing, career opportunities, sex compositions, peer pressure and stereotyping; the assumption of gender as to occupational characteristics, with superior rewards for male occupations spurning female entry; and the ghettoizing of women into specific types of jobs (Reskin:309).

Certain alternatives undermine women, namely the mechanization of jobs, exporting, nondocumented workers and the employment of youth (Reskin:315). The more things change the more they stay the same, with endurance of

internal segregation, men's advancement, social inequality (Reskin:320).

Women have made significant strides in the past decades. Relevant factors to explain the increase in the participation rate of women are rising wages, decreasing fertility rates, and changes in attitude toward married women in the labor force (Courchane:148). The increase in the labor force participation of women under age 35 is synchronized with the decline in the fertility rate (Courchane:149).

Wage increases have two offsetting effects on the employment of married women, namely an increase in the attractiveness of employment to women increasing the probability of entering the work force, and an increase in the income of the spouse reducing the probability of women entering the labor force (Courchane:150). However, there is an agreement that there is a gap between the wages of women and men, with inequality blamed on different factors (Gold 1983).

Advocates of pay equity believe that the gap exists, because of sex discrimination and the exclusion of women from high paying jobs. They emphasize occupational and job segregation as key elements in sex discrimination. They cite the manipulation of hiring standards in setting

different titles for the same jobs, and the undervaluation of work performed by women, thereby perpetuating a prejudicial system. They point out that women overall earn less than men.

Conversely, critics of pay equity believe that there are legitimate causes for the differences in salaries. They note the differences in job related characteristics, and emphasize job experience as a plausible reason for the disparity in pay. They point out that it is irrational for employers to discriminate against qualified women. In a perfect world, this would be true. However, they put the blame of job limitations on women's low expectations and their choice for motherhood.

Men are not concentrated in the same occupations as women (Courchane:152). The concentration of women in a few occupations shows a disturbing continuity (Courchane:152). Further, the traditional female dominated jobs are low paying for both women and men who find themselves employed in these types of occupations (Courchane:156).

Both occupational segregation and earning differentials are persistent towards women (Courchane:159). More than ever, discrimination is affecting more women, since they are participating in the labor force to an

unprecedented degree. Some see an increase in opportunity, while others see an increase in need (Courchane:159).

There are two types of inequity, namely pure, where one is paid less for the same job, and systemic, where there are discriminatory effects to policies and practices (Agarwal 1990: 518). Internal components include undervaluation, while external components include segregation into a limited number of low paying jobs.

Historically, women have only had access to a limited number of occupations, in a process called 'crowding'. This has caused an oversupply of labor and has reduced wages. People employed in female dominated occupations have lower returns, so that the percentage of females within an occupation is negatively associated with earnings. Thus, there are lower earnings for women, due to a differential placement and occupational discrimination (Gerhart & El Cheich 1991: 62).

In the fight against sex discrimination comes more discrimination through retaliatory behavior. The burden of proof for this often invisible prejudice is a hard one to meet (Abramson, 1979). Therefore, the merit system is often a myth, with the victim, often the woman, not necessarily responsible for career failure.

In addition, women in male dominated professions are channelled into certain types of work and are marginalized into discriminatory environments, which add to the segregationist argument (Spencer 1987). Their careers are shaped in detrimental ways, because of their gender. Equal employment opportunity is a myth, because of the stereotyping of women, their work and their profession, the lack of sponsorship and role models, informal anti-women sentiment, their perceived lack of professional commitment, the unplanned nature of their career, discriminatory client expectations, and the inequality in compensation.

Women are judged according to the standard set by men, even though they juggle bimodal careers. When women are dominant and in power in a particular occupation, it is systematically viewed lower. Even though women are capable, they sometimes underperform, underachieve and underproduce, because of the patriarchal structure which wastes female potential. Women and men are evaluated differently as to salaries, access to jobs and promotions. Therefore, women still find themselves to be an oppressed minority.

Segregation exists on two levels. There is horizontal segregation, since most men work with men. If equality existed, then there would be the same proportion of women as men in any one occupation (Wickham 1986: 90). There is also vertical segregation, since women occupy the

lower ranks of occupations (Wickham: 91). Despite equal opportunity legislation, women and men hold different jobs. The dual labor market theory postulates that direct discrimination is a minor cause, with the major element being the different labor market sectors for each sex (Wickham: 87).

In support of the argument of intentional channelling of female careers through the proposition of segregation, women are still found mainly in the traditional roles of teacher and administrator, and are overrepresented in social work and library science (Yohalem 1979: 63). There is significant occupational segregation, with half of the women found in three traditional female careers, namely the clerical, sales and service sectors (Soreman 1994:130). Only one out of five blue collar or managerial jobs are held by women (Soreman:130). Added to this is the fact that employers still commit sex wage discrimination, since female dominated jobs pay less than male jobs (Soreman:134).

When women are employed in male dominated fields and are underrepresented, there is found to be a stronger attachment to work and higher pay (Yohalem: 72). Women, in the workforce, who have never been married work more continuously and earn more. Often, husbands are found to be hindrances to careers, and children a barrier as it is still exceptional to work immediately after having a child.

Divorced women are propelled faster into the workforce due to economic conditions.

There is usually instability early in life, with employment stability coming at middle age. Women with higher degrees are more successful than other women, with high achievers working more often (Yohalem:141). As well, the majority of women are found to work in the area of their degree. Therefore, the reality is that there is not equal treatment between the sexes in the workforce, in considering access, promotion and salary (Yohalem: 150).

Society is divided along patriarchal lines, with gender playing a role in subordinating women to men (Jackson:294). This hierarchy is reproduced in the diverse social structures of politics, work, education and church, thus creating gender expectations (Jackson:294). There is a sexual division of labor, thereby leaving women at a disadvantage and in a precarious position (Jackson:302)

Interestingly, the relationship between mothers and daughters can play an important role in the career choices of women (Hayes 1987: 66). Mothers can often have a strong influence on daughters, which far exceeds the influence that fathers may have on daughters and sons. A mother's occupational attainment has been found to have some

impact in predicting a daughter's occupational inheritance and destiny.

A mother is a strong gender role model, and her occupation is a significant dimension in intergenerational occupational mobility. Mothers, who worked in a field classified as professional or nonmanual workers, had a positive effect on their daughter's achievement of professional work. However, mothers who were classified as semi-skilled/unskilled manual workers or housewives, had a negative effect on their daughter's chances for professional work, since daughters often significantly inherit the occupational status of their mothers (Hayes: 74). This reinforces gender disparity and inequality of opportunities (Hayes: 73).

Women occupy most of the part-time and dead end low paying jobs (Pettman 1975). They are overrepresented in low wage clerical work, and underrepresented in managerial and professional work. The more homogeneous the occupational group, the smaller the wage gap. Age and education alone do not account for the inequality in wages (Pettman:135). It is possible that wage discrimination will be diminished, due to women being paid lower, meaning more will be hired, which will eventually increase their wages. However, it is also possible that wage discrimination will be increased, due to equal pay laws and the perception of women as

threatening the employment of men, which will decrease their wages (Pettman:135).

There is occupational segregation by employers, where people work almost entirely with their own sex (Goshen 1991: 458). This not only impacts access to employment, but also causes a wage gap (Goshen: 458). Overall, 83% of people do not work with the opposite sex (Goshen: 465). Normally, wages within the same job differ by only 1% (Goshen: 457). However, wages are strongly linked to the proportion of females in an occupation. The femaleness of an occupation still correlates to lower wages (Goshen:471).

In building the argument of wage disparity, the movement from virtually 100% male to 100% female occupations causes roughly a 20% reduction in pay for men and roughly a 3% reduction for women (Gerhart & El Cheich: 73). Earning discrimination exists, but the most likely culprit is the unequal treatment based on individual not occupational characteristics (Gerhart & El Cheich: 76).

Further, there is an added explanation for the difference in salaries, finding a salary disadvantage at the time of hiring, with the pay differential favoring men (Gerhart 1990: 418). Labor market discrimination relies on group stereotyping for unequal starting salaries (Gerhart: 420). Furthermore, there is often a temporary acceptance of

lower starting salaries by women, in order to gain access, after which a larger role is played by affirmative action and legal pressures (Gerhart: 430). The wage gap has decreased only slightly with equal employment opportunity, affirmative action, and equal education.

Equal Value and Wage Solidarity

Equal pay for work of equal value was introduced in the International Labor Organization Convention 100 of 1951 (Fudge 1991:3). Job evaluation was a management tool for wage administration, hiring, placement and supervision. However, the changes in employment for women during World War II brought about the desire to equalize wage rates for competition both in quality and in quantity (Fudge:3).

Comparative worth or equal pay for work of equal value has as its goal to raise the pay in sex segregated female dominated jobs, which have historically been undervalued (Acker:3). It compares the complexity and responsibility of female and male dominated jobs, and provides for pay increases to eliminate discrimination (Acker:3).

The wage gap came about because of a cumulative history of discrimination and bias, and because of different skills, education, and individual family employment choices

(Fudge:4). Pay equity has the goal of ending wage discrimination, and comparative worth is the process through which to end it. Jobs of dissimilar nature are to be compared by knowledge, skill, effort, responsibility and work conditions for equality in value, in order to achieve pay equity (Fudge:4).

Feminism looks to how gender is constructed and gives value to social relations, in order to end systemic inequality (Fudge:5). Systemic sex segregation along with women's historical dependence on men have served to reinforce masculinity as having mechanical and technical skills, and femininity as having patience and selfless dedication for repetitive tasks (Fudge:6). This ideology is tantamount to a weapon that excludes women from the mainstream of society, and entrenches gender inequity.

The wage difference between sectors and establishments is reinforced by the present system of job evaluation for pay equity on a per establishment basis, with little coordination across industry or country (Fudge:7). Implementing pay equity takes negotiation, consultation and litigation (Fudge:9).

Feminists challenge gender stratification and the discriminatory nature of the system, which undervalue performance and salaries. Opponents of pay equity state

that wage hierarchies and job evaluation give value to employers. They believe that in reality, pay equity fails to bridge class divisions, and rather reinforces the separation of feminists from other groups (Fudge:9).

The public policy goal of pay equity is focused on closing that part of the gender gap, which has resulted from a systemic undervaluation of women's work. It challenges the traditional cultural assumptions of the worth of female work, and the conventional gender hierarchies (Fudge:281). Women have come to refuse to accept less pay because of their gender (Fudge:284).

The equal value approach has become the chosen strategy for feminists, who view the oppression of women as endemic to the system (Warskett 1991:172). Those who favor it believe that it will revalue women's work and eliminate inequality in women's substantially lower pay. It compares job content in gender neutral systems, instead of the present job evaluation scheme, which legitimizes class differentials (Warskett:173). Those who oppose it believe that it is not possible to compare and differentiate between jobs based on job content. Value in the market place means value to the employer, who justifies existing hierarchies and women's subordination.

The women's liberation movement was mainly aimed at University and professional middle class women, but working class and marginalized women were also active. Working class feminism focused on the changes experienced by women, including their participation in the labor force and their unequal position in the workplace. It covered many issues, including sexual harassment, child care and male leader dominance (Warskett:177).

The issue of female low pay began to be a central issue for women in the 1970s, with unionism and collectivism acting as important weapons against subordination (Warskett:178). To be an employee is to sell one's labor power within a system of management control (Warskett:189). The system of job evaluation highly values professional skills, which ultimately reinforces status and pay within a gender hierarchy. Management control is given the highest weighting and value, serving gender discrimination. There is an assumption of the existence of fine divisions of skill and responsibility, rather than recognition of the imposed differentials between the sexes.

Pay equality has come to mean value, which masks the inequality. Equal value shows that gender bias and discrimination have prevented women from being valued on merit and achievement, denying to them their proper place (Warskett:189). By contesting, women help to construct new

structures and develop a consciousness of who has the power, who needs to become empowered and what strategies are needed to end discriminatory pay (Warskett:191).

The women's movement has had a great impact by pressing for policies and legislation to address the issue of lower pay (Warskett 1990:55). There have been considerable changes in the home and in the participation of women in the labor force over the last thirty years. It is important to note that women do different work from men and are occupationally segregated into lower paid jobs.

Two avenues exist in this fight: 1-the equal value approach, which sees the working woman as undervalued and seeks to raise pay by using job evaluation of skill, effort, responsibility and working conditions for the same value at the same rate; and 2-the wage solidarity approach, which seeks to decrease pay differentials and raise the lowest paid by using the union strategy of power of all members (Warskett:57). Therefore, the integration of both approaches is essential in the fight against gender bias and discrimination, with women still occupying the most subordinate and controlled positions.

Equal value is needed, because women are paid less and their work is undervalued. Wage solidarity is also needed, because women are drawn into the subordinate

positions due to their limited bargaining power, low pay and little opportunity for promotion (Warskett:58). Skilled tasks are those which have control, and unskilled are those that lack self-control and follow the rules. The structure of class system degraded and deskilled jobs, by separating management from execution, thus causing subordination (Warskett:59).

Women have been routinized by monotonous tasks within subordinate dead end jobs, while men have had opportunities within superior administrative positions along the corporate ladder. Therefore, men do different work from women. Men's jobs usually involve responsibility, skill and control over women, the subordinates. Women are more likely to be workers not bosses, directed by men or machines (Warskett:60). Of the workers who exercise control over others, only 27% are women.

Women have less power and are vertically separated. The organization of work and the management control of the labor process have led to a white male dominated hierarchy (Warskett:62). The career mobility of men has been possible due to the support of women in the subordinate positions at the office, as well as their physical and emotional support at home.

The justification for lower pay has been strengthened by segregation, which has made for the assumption that female work should be slotted in a lower position (Warskett:63). As well, different job titles for men and women has led to the perception of different work. While men direct and do, women coordinate and assist, at the bottom of the ladder in less powerful positions (Warskett:64). An important factor, in the inability for women to improve their position, is that women did not form a permanent part of the paid labor force until recently. However, women's growing independence from men has not brought about substantially higher wages, thereby forcing a continued dependence on men.

The wage solidarity approach has been less popular than the dominant strategy for raising pay, the equal value approach of job evaluation (Warskett:65). However, job evaluation has been a means for justifying women's lower pay. It involves 1-the description and analysis of job content, skill, effort, responsibility and working conditions, 2-the evaluation of relative value to the job, and 3-the wage setting of internal and external comparisons in the labor market (Warskett:66).

Equal value advocates have criticized the present system of job evaluation, because different plans are used for men and women, perpetuating gender bias. Adjustments are

needed for an objective job evaluation in the determination of just wages, regardless of gender (Warskett:67). However, evaluation systems reflect and rationalize the unequal class structure, since heavy weight is assigned to skill and responsibility rather than effort and working conditions (Warskett:68).

The standards of occupational worth in job evaluation plans have been inegalitarian and meritocratic within a class hierarchy (Warskett:70). Gender bias and discrimination have prevented women from being valued on merit and achievement. The demand is for women to be given their proper place in the hierarchy, in order to rectify past distortions.

However, equal value does not question the unequal structuring of the system, with women generally at the bottom (Warskett:71). The determination of equal value should not be left to job evaluation consultants and experts, who constructed gender biased plans. Gender, race and class inequalities need to be exposed.

To decrease the division among members of the workforce, the unequal pay of women has to be treated as main business (Warskett:73). Therefore, there is a need for the integration of the wage solidarity approach with the equal value approach.

Few jobs have been created in the better paid occupations, which have traditionally been in the primary sector, which is unionized and male dominated (Warskett:75). Women have been primarily in the low paid jobs, which are often only part-time and non-unionized. While women have been striving for equal value, employers have been reducing labor costs in order to raise profits, by moving capital and jobs to low wage countries. The cheaper labor of women has contributed to the restructuring of work for lower costs. Therefore, the wage solidarity approach must also cover those outside the organized labor movement, in order to raise minimum wages and to unionize the unorganized to stop exploitation (Warskett:76).

Occupational segregation comes from gender and class forces both in the family and in society (Warskett:77). A new strategy of wage and work solidarity would improve the situation, through a sharing with the marginal groups like women and minorities in the integration of equality and equal pay (Warskett 1993:249).

One problem has been the definition by unions of fair wages (Warskett:250). The definition has been tied to conventions and practices, which have legitimized and perpetuated an inegalitarian income hierarchy between men and women. Although unionization generally results in

better wages, women are not necessarily in a fairer position than men. It has been found that white men have the highest income, followed by non-white men, white women and non-white women, in that order (Warskett:250).

Therefore, union practices help to reproduce wage inequality (Warskett:251). However, unions have undergone a major change in the last fifteen years, with women gaining more power (Warskett:72). Women now represent 40% of unionized workers compared to 16.6% in 1965 (Warskett:56).

There have been three ways of looking at wages: 1-wages for skill, whereby equal pay for equal work is sought, emphasizing skills and job content; 2-wages for living, whereby a living wage below subsistence levels has been often tolerated by women, because of their subordinated status in the family unit, as secondary wage earners dependent on men for living costs; and 3-wages for the family head, whereby males are positioned as the head of the house, and women are placed simply as mothers and wives, not co-workers (Warskett:252). Therefore, women's issues need to be integrated into the policy making of unions to have a valid effect (Warskett:254).

The marginalization of union policy with attempts to raise women's pay have only served to create gender conflict and competition. This in turn weakens unions, and

also the move for solidarity. Mainstream union practices have worked against the fight for pay equity, with some negating the effects of reevaluating women's work (Warskett:254).

Women's demand for the redefinition of skills seeks to include recognizing the skills of caring, supporting and nurturing (Warskett:256). Large wage differentials and hierarchies still exist. Pay equity has not challenged the concept of hierarchy, occupational segregation, or the quality of jobs. The standard norm is still male wages and skill, which are applied to women. Thus, women will not often score highly by these male standards, with their lower rank in the hierarchy further legitimized.

When changes do occur in the gender order, it threatens management and those who want to maintain the status quo (Warskett:256). Attempts to break occupational segregation brings resistance from men and also women (Warskett:257). Economic and political conditions are making it harder for wage equality (Warskett:258). There is increased competition for scarce resources and jobs. The structure of production, employment and technology have changed dramatically over the years.

Global competition and trade harmonization with the advent of free trade have made for increased production but with fewer workers, due to new technology and methods. The drop in blue collar manufacturing and industrial jobs, and the expansion of marginal employment have led to greater polarization between core and periphery workers (Warskett:258). The full-time permanent pensionable core is mostly made up of white males, while the periphery consists of women, youth and minorities (Warskett:259). Women are the working poor.

It is increasingly more difficult to achieve equal pay gains, due to increased gender and racial conflict (Warskett:259). Women still take most of the responsibility in the home, which affects their capacity in the workplace and in unions (Warskett:260). The family wage concept serves to prevent women from being fully integrated into the system, and to reassert that the home is the woman's proper place.

Women's inequality must be at the centre, the main business. Policies favoring solidarity between men and women, as well as minorities, must be sought to heal the divisions (Warskett:260). Wage solidarity seeks to push up the wages of the lowest paid to an acceptable living standard, flattening the hierarchy and eliminating gender bias in pay differentials (Warskett:261).

Businesses desire to accumulate capital, through increased production and reduced labor costs (Warskett:261). This is accomplished by separating the execution from the conception of tasks. Solidarity demands the requalification of work, adjusting for the knowledge and experience of all workers while increasing the range of tasks and responsibilities (Warskett:261). Women, however, remain outside the demand for the reevaluation of work.

Therefore, solidarity must include the homefront, not just the job sphere (Warskett:262). Since part-time and casual workers are mainly women, the equitable distribution of paid work would remove a barrier to men's participation in domestic work. Restrictions on overtime would benefit women and the unemployed. It would free women to take more responsibility in the paid labor force, and it would free men to take more responsibility at home.

Solidarity recognizes gender and race differences, and the fact that these groups have been excluded from the mainstream policies. Being a demand for quality jobs and quality pay for all working men and women, solidarity has the potential to combine with various other initiatives, such as reevaluation of women's work in raising the wages of the lowest paid and affirmative action in ending occupational segregation (Warskett:262).

With fierce global competition and economic restructuring, there are fewer jobs in the industrial and manufacturing sectors (Briskin 1993:3). In contrast, there are more non-standard part-time part-year service work in small organizations, with a shift to contracting out, in a more flexible labor force. Unions need to equalize the relationship between labor and management, with the key demand being a decent living wage and the right to work. (Briskin:3).

Personal empowerment, political awareness and collective solidarity are needed (Briskin:4). Unions ultimately need women as members. Unions have to increase their representation in the private sector where most of the women are found (Briskin:4). With the increased participation of women in the workforce, unions have to incorporate the feminist perspective to survive and flourish (Briskin:5).

Important women's issues such as sexual harassment, child care, maternity, affirmative action and pay equity must be addressed (Briskin:5). Women need to increase their representation in elected positions, and priority must be given to women's issues in collective bargaining towards alliances to link legislation with the community (Briskin:5).

The challenge of inequity is also the challenge of economic restructuring (Briskin:6). Unions, however, provide for gender segmentation of the market, support the traditional ideology of women's work and male breadwinners, resist broader bargaining, and enforce a patriarchal bureaucratic hierarchy (Briskin:7). Labor strategies have changed, with more part-time, intensive and seasonal work (Cockburn:81). There is a need for prorated benefits, job security for part-time part-year workers, affirmative action to integrate women into the highly paid jobs, and equally shared responsibility in the home (Briskin:7).

Unions must 1-make gender visible, addressing gender specific needs and seeking a feminization of labor, the work force, unions and the concept of militancy; 2-challenge male standards and the belief that women are atypical; 3-build alliances and coalitions, linking the labor movement with outside forces, for a class specific understanding of women's realities; and 4-fight workplace discrimination in order for women to have a fuller place inside the union movement (Briskin:16).

Career strategies in the past have promoted career changes as a solution to the problem, to the neglect of low paid unskilled jobs (Cockburn 1991:12). There is a disproportionate responsibility given to women in the home,

which is exploited by employers. There needs to be recruitment in male occupations in order to break horizontal sex segregation, and promotion to climbing the corporate ladder within these occupations in order to break vertical sex segregation. However, institutional and cultural means impede women (Cockburn:12).

It is important to maintain consistency in pay allocation procedures and in basing pay decisions on accurate performance information (McCarty 1990:580). Procedural justice theory calls for adequate explanations of decision-making policies, and interpersonal treatment for interactional justice. Employees expect adequate accounts of decisions, the suppression of personal bias, consistent decision-making criteria, timely feedback and consideration of other views, since interpersonal ethical treatment affects people's perception of fairness.

There is a common pattern in comparative worth whereby legislation and collective bargaining are formulated to establish a policy, jobs are evaluated for wage disparity, and a plan for equity adjustment is formulated and instituted through politics and bargaining (Acker:9). Women suffer, because of sex segregation, low wages, intermittent employment, and subordination both at work and at home (Acker:19). However, many men benefit by sex segregation, higher wages, lifelong employment, and little

contact with women both at work and at home through dominance (Acker:19).

What is needed is an unbiased sex neutral job evaluation system (Acker:27). Better wages for women, especially for those in low paying jobs, would help to ease poverty, draw women into unions, and improve labor issues (Acker:27).

Equal pay for equal work means that people performing the same job or like jobs must be paid the same wage, regardless of their gender (Labor Canada,3-1). Pay equality concerns equal pay for equal work, for the same jobs and qualifications (Courchane:159). Further, equal pay for work of equal value adds to this by requiring that all jobs within an organization be compared on the basis of their value to the employer, not limiting comparisons to similar work (Labor Canada:3-1). Legislation requires four factors be taken into account for measuring the value of a job: skill, effort, responsibility required in the performance, and the conditions under which it is performed (Labor Canada:3-1). Therefore, pay equity concerns equal pay for work of equal value for jobs with similar characteristics (Courchane:159).

However, a gender neutral system measuring the four factors needs to be applied for an effective result.

Employers must review their compensation systems to determine whether sex based discriminatory pay practices exist, with corrective action taken to eliminate and ensure it does not recur (Labor Canada:4-1). The benefits to employers are a successful defense against a complaint of pay inequity; an accurate up-to-date job description system for the appraisal of performance, an incentive plan and the establishment of criteria for hiring employees; the development of a formalized salary administration system; and the attraction, retention and motivation of a competent work force (Labor Canada:4-2).

Women will be the main beneficiaries of the fight for pay equity. However, males employed in female dominated occupations will also benefit in the implementation of an equitable method of determining wages that is not based on historical pay practices or discriminatory bargaining patterns (Labor Canada:5-1).

Affirmative action provides positive measures to remedy the effects of past discrimination (Clayton 1992:2). Remedial measures can be court ordered, required by law or voluntarily adopted (Clayton:3). The proportion of protected groups in various job categories should be monitored for equity. Any positive efforts by business or educational institutions can advance the employment status of target groups. Equality of opportunity is affected when

there is underrepresentation in significant positions due to the explicit use of gender characteristics for discrimination (Clayton:3).

In order to have a responsible and effective society, there needs to be an improvement in the financial position of women and men through the elimination of segregation (Clayton:4). There must also be changes in the perception of members of certain groups as second class citizens, to eliminate social and economic barriers (Clayton:4).

The goal of affirmative action is to replace the illusion with the reality of equality of opportunity (Clayton:97). Its success will be an effective plan to reduce and eventually eliminate the disparity between the sexes, without substantially reducing material or emotional benefits, or alienating a significant portion of the workforce in the pursuit of justice. In the end, in some cases, one must overcome the stigma of feeling personally responsible for one's disadvantages (Clayton:97).

Despite efforts, women have not achieved total equality (Scott 1984). Over the years, there has been a feminization of poverty, with women poorer than men across class, race, national, economic and ethnic lines (Scott). The position of women throughout the industrialized world is

very much alike, with women occupying a very fragile position despite institutions and laws to promote their rights. High unemployment in general does not help the cause of equity, since gender discrimination is still not seen as a priority with so many people out of work.

Contrary to popular belief, the net effect on discrimination is close to 0, because of the way the laws are written, interpreted and enforced by hostility or indifference. Thus, there continues to be segregation and income gaps, with women's economic mobility limited by sex discrimination.

In the 19th century, women fought for the right to education and to suitable employment (Cockburn:79). In the 1960s and 1970s came the women's liberation movement because of a dissatisfaction with women's rights. There was an ambivalence to the term 'equality', with women wanting to be accepted like men, while at the same time wanting to be accepted as women (Cockburn:27). Today, there have been important changes for women, with increased access to education, less frequency to childbearing, and less complexity for housework (Cockburn:81). Women are more available and willing to work (Cockburn:81).

Therefore, wage inequity and limited access to employment continue to persist. Horizontal and vertical

segregation are still real problems, which women must encounter in the workplace everyday. This is unacceptable.

Although, there has been a feminization of the labor force both as to numbers and as to length of employment, lower pay is still a reality for women, with fewer occupations open to them. Inequity starts in the home. Pay equity seeks to positively mobilize women, in order to break the isolating barriers of the home, to delegitimize the ideological and material incentives of a family wage dependent on men, to chip away at the economic dependence of women on men and on the state, and to alleviate feminine poverty.

A revised employment standards policy is needed for a living minimum wage, in order to protect from exploitative and discriminatory treatment. Pay equity has ignored flexible and temporary workers, as well as those who work at home (Fudge:286). Therefore, statutory domestic responsibility leave needs to be adopted, in order to undermine impediments to pay equity, and to provide some flexibility in the balancing of work with domestic responsibility.

Women, who have made it into the executive and management positions, have a duty as primary forces to see that the rest are not forgotten (Cartright, Lenora, Panel

Response, 9). Women need to be a rallying symbol of political and economic force, so that equality can become a reality.

REFERENCES CHAPTER 4

- Abramson, Joan, Old Boys New Women, Praeger, New York, 1979.
- Acker, Joan, Doing Comparative Worth, 1989.
- Argawal, Naresh, Pay Equity in Canada, Labor Law Journal, Vol.41, 1990, p.518.
- Asimakopoulos, A., An Introduction to Economic Theory: Microeconomics, 1978.
- Briskin, Linda, McDermott, Patricia, Women Challenging Unions, Feminism, Democracy and Militance, Toronto: University of Toronto Press, 1993.
- Canadian Human Rights Commission, Equal Dollars Make Good Sense, Ottawa, 1991.
- Cassells, Peter, Can Europe Solve its Job Crisis?, Administration, Vol.40, N.1, 1992.
- Clayton, Susan, Crosby, Faye, Justice, Gender and Affirmative Action, An Arbor: University of Michigan Press, 1992.
- Cockburn, Cynthia, In the Way of Women, Men's Resistance to Sex Equality in Organizations, Ithaca: ILR Press, 1991.
- Courchane, Marsha, Redish, Angela, Women in the Labour Force, 1911-1986, in Allen, Robert, Rosenbluth, Gideon, False Promises, Vancouver: New Stae Books, 1992.
- Fudge, Judy, McDermott, Patricia, Just Wages, Feminine Perspective of Pay Equity, Toronto: University of Toronto Press, 1991.
- Gerhart Barry, Gender Differences in Current and Starting Salaries, Industrial and Labor Relations Review, Vol.43, N.4, 1990, p.418.
- Gerhart, Barry, El Cheich, Nabil, Earnings and Percentage Female, Industrial Relations, Vol.30, N.1, 1991, p.62.
- Gold, Michael, A Dialogue on Comparable Worth, Ithaca: Cornell University Press, 1983.
- Goshen, Erica, Structure of Female / Male Wage Differentials, Journal of Human Resources, Vol.26, Summer 1991, p.457.

-Hayes, Bernadette, Female Intergenerational Occupational Mobility Within Northern Ireland and the Republic of Ireland, British Journal of Sociology, Vol.38, May 1987, p.66.

-Jackson, Pauline, Worlds Apart, Ireland, 1986.

-Jordan, Bill, The Reform of Social Security, Administration, 1986.

-Kahn, Peggy, Equal Value / Comparable Worth in the U.K. and the USA, New York: St. Martin's Press, 1992.

-Kaufman, Bruce E., How Labor Markets Work, Lexington: Lexington Books, 1988.

-Kelly, J.M., The Irish Constitution, Ireland: Leinster Leader, 1984.

-Kokott, Juliane, European Communities - Equal Pay for Men and Women - DeFacto Discrimination, American Journal of International Law, Vol.86, N.2, 1991, p.348.

-Kremer, John, Attitudes Toward Women in Northern Ireland, Journal of Social Psychology, 127(5), 1987, p.531.

-Labor Canada, Equal Pay for Work of Equal Value, Ottawa, 1986.

-Lee, Yong, Shaping Judicial Response to Gender Discrimination in Employment Compensation, Public Administration Review, Sept. 1989, p.420.

-McCarty, Claire, The International Aspects of Procedural Justice, Labor Law Journal, Vol.41, 1990, p.580.

-McMahon, Gerard, Pay Inequality in the 1990s, Administration, Vol.40, 1992, p.97.

-Mexican Investment Board, Mexico Your Partner for Growth, Regulatory Reform and Competition Policy, Setting the Incentives for an Efficient Economy, Mexico, 1994.

-Pettman, Barrie, Equal Pay for Women, Bradford: MCB Books, 1975.

-Piori, Michael, Dualism and Discontinuity in Industrial Societies, Cambridge: Cambridge University Press, 1980.

-Pope John Paul II, Laborem Exercens.

-Pyle, Jean, The State and Women in the Economy, Albany: State University of New York, 1990.

-Research and Advocacy of the Hull House Association, Women in Poverty, Report on a Conference about the Feminization of Poverty, 1982.

-Reskin, Barbara, Roos, Patricia, Job Queues, Gender Queues, Philadelphia: Temple University Press, 1990.

-Sargeant, Georgia, Pay Equity: Lagging in Court, Gaining at the Bargaining Table, Trial, Vol.26, N.2, 1990, p.98.

-Schwartz, Barry, Queuing and Waiting, Chicago: University Of Chicago Press, 1975.

-Scott, Hilda, Working Your Way to the Bottom, London: Pandora Press, 1984.

-Shuaib, Susan, Courtesy of Europe, New Statesman & Society, Dec. 1988, p.25.

-Spencer, Anne, In a Man's World, London: Tavistock Publishing, 1987.

-Soreman, Elaine, Comparative Worth, Is It a Worthy Policy?, 1994.

-Walsh, Brendan, Can Europe Solve its Job Crisis?, Administration, Vol.40, N.1, 1992.

-Warskett, Rosemary, Can a Disappearing Pie Be Shared Equally?: Unions, Women, and Wage 'Fairness', in Briskin, Linda, McDermott, Patrick, Women Challenging Unions: Feminism, Democracy and Militancy, Toronto: University Of Toronto Press, 1993.

-Warskett, Rosemary, Political Power, Technical Disputes, and Unequal Pay: A Federal Case, in Fudge, Judy, McDermott, Patricia, Just Wages - Pay Equity, Toronto: University Of Toronto Press, 1991.

-Warskett, Rosemary, Wage Solidarity and Equal Value: Or Gender and Class in the Structuring of Work Place Hierarchies, Studies in Political Economy 32, 1990.

-White, Gerry, Report of the Revision Group on the Treatment of Households in the Social Welfare Code, Administration, Vol.40, N.3, 1992.

-Wickham, James, Industrializing Work and Unemployment, Ireland, 1986.

-Yohalem, Alice, The Careers of Professional Women, Montclair: Allanheld Osmun & Co., 1979.

CHAPTER 5
LAWS AND CASES: AN INTERNATIONAL AND NORTH AMERICAN ANALYSIS

Fundamental rights are rights which either are inherent in a person by natural law or are instituted by the state in the citizen. There is the ascending view of the natural law of divine origin over human law. This involves moral expectations in human beings through a social contract, which includes minimum moral rights of which one may not be deprived by government or society (Singh:2). There is also the competing view that courts operating under the Constitution can enforce only those guarantees which are expressed (Singh:1).

Legislation has an impact on the court system. Internationally and nationally, attempts have been made to improve the situation of women and outlaw discrimination. This Chapter will examine legislation impacting women's rights, both globally and in North America, specifically Canada and the United States only since Mexico lags far behind legislatively and judicially due to its history. European legislation and court cases will be examined in a latter chapter.

The United States Court system is the one most compared to the European Court of Justice. Therefore, the historic gender struggle in the United States will be

examined. In order to properly analyze the laws and the courts, cases will be reviewed not for their factual content or the judgment issued, but more importantly for the burden of proof required in gender discrimination as opposed to racial discrimination.

Internationally

On the international level, attempts have been made to provide legislatively for equality and pay equity. Since 1919, the International Labor Organization's objective has been the "principle that men and women should receive equal remuneration for work of equal value" (Labor Canada 1986). The universal concord is a 'fair day's pay for a fair day's work' (McMahon: 99).

Pay equity is a basic right, which is found in the European Charter of Fundamental Social Rights of 1989, which calls for equitable remuneration provisions throughout the community. Further, the United Nations, through its Charter, is called upon to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion".

In the United Nations Declaration of Human Rights, there is a right to a just and favorable remuneration, with no right to discriminate based on sex (McMahon: 97). The Declaration states "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". Further, article 2 of the Declaration states:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In the International Covenant on Economic, Social and Cultural Rights, there is the right to a fair remuneration. Further, the Preamble of the Declaration on the Elimination of Discrimination against Women states "there continues to exist considerable discrimination against women". It establishes that women have fundamental human rights on equal terms with men and have equality with men before the law (Singh:6).

In 1981, the Convention on the Elimination of all Forms of Discrimination against Women was ratified and adopted by the United Nations, calling for equal work for equal value. It recognized women as full members of the permanent labor force, no longer just a pool of reserve labor. It states:

1. For purposes of the present Covenant, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

The International Covenant on Civil and Political

Rights states:

3. The States Parties to the Present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Present Covenant.

26. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

International covenants are binding obligations on governments, establishing a machinery to supervise the enforcement of human rights (Singh:4). However, Covenants are often vague and evasive on the implementation and enforcement of their provisions (Singh:4). Members of the United Nations are only required to file periodic reports with the Economic and Social Council concerning measures adopted, and these reports are reviewed by the United Nations Commission on Human Rights for General Assembly resolutions. Therefore, the procedures to encourage compliance by governments are not strong, with the Covenants

serving as instruments of collective delegitimization for mainly large scale government violations of human rights (Singh:5).

The United Nations Conferences on Women have put forth several objectives: to promote the integration of equality in all policies and activities, to mobilize all the actors to achieve equal opportunities for men and women, to reconcile work and family life for men and women, to promote a gender balance in decision-making, and to make conditions more conducive to exercising equality rights in the respect of human dignity (Flynn 1996).

However, historically, women have had no input in the Constitution and the laws of the land (CACSW 1992:8). From the feminist perspective, it is important that the needs and interests of women be valued as highly as those of men, and viewed in the social context in which women are devalued (CACSW:8). Despite their numbers, women are still severely underrepresented in government and the judiciary (CACSW:55).

Constitutional rules have been interpreted and implemented without much participation of women (CACSW:55). Women's issues are still at the margins of the national agenda (CACSW:57). In recycling discrimination, "the stream always tries to return to its habitual course" (CACSW:57).

North America

The British Model of government, which has influenced greatly the Canadian structure, sees the legislature making the laws and the judiciary applying them (Mandel 1989:4). Parliamentary supremacy is not founded on democratic ideals, but rather a narrow power struggle representing property (Mandel:5).

However, the American Model sees judicial activism and the judicial power as fundamentally legislative in character (Mandel:4). Royal power is displaced and overthrown, but class power remains, with the upper class combining the popular republican form of government with the protection of property (Mandel:6).

The North American Free Trade Agreement does not provide specifically for equality in employment in order to fight against gender discrimination, and does not have a North American Court of Justice. Therefore, Canada and the United States have had to proceed nationally instead of regionally, in terms of laws and court cases involving pay equity. Accordingly, let me now turn to a discussion of each country.

Canada

The Canadian Constitution

The Canada Act, the Canadian Constitution, was proclaimed into force and entrenched on April 17, 1982. It is made up of three separate documents: The British North America Act and its various amendments, the Constitution Act and its amending formula, and the Canadian Charter of Rights and Freedoms. Section 32 of the Charter provides for its application to the Parliament and government of Canada, as well as to the legislature and government of each province.

The purpose of the Canadian Charter of Rights and Freedoms is to protect and safeguard the rights and freedoms enumerated, and to contain governmental action within reasonable limits. Section 52(1) of the Constitution Act provides:

The Constitution of Canada is the supreme law of Canada and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

The Charter guarantees equality of rights, and also deals with affirmative action programs to help reverse the discrimination process. Section 15 states:

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based

on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The Charter implements gender equality through Section 28 which states: "Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons". This provision cannot be overridden by legislation or act of Parliament.

However, Section 33 of the Charter is the infamous notwithstanding clause, whereby the Canadian provinces are allowed to opt out of the Constitution for successive and infinite five year periods. It provides:

Parliament or the legislature of a province may expressly declare in an act of Parliament or of the legislature...that the act or a provision thereof shall operate notwithstanding a provision included in ...Section...15 of this Charter.

The Canadian Constitution extends power to judges to review legislative action on the basis of congruence with protected values in the Charter, and treats the judicial branch of government as a partner with the legislative and executive branches, in determining the rights of citizens.

However, Section 33, the overriding clause, will ensure that legislatures rather than judges have the final say on important matters of public policy, so that laws offensive to certain provisions of the Charter may be upheld.

Section 1 of the Charter is also an overriding clause and states:

The Canadian Charter of Rights and Freedoms set out is subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Thus, fundamental freedoms, as well as legal and equality rights, can be subjected to this notwithstanding clause. Remarkably, the right against sex discrimination is not absolute. The Canadian Charter of Rights and Freedoms strengthens inequalities, by weighing in on the side of power and undermines popular movements (Mandel:4).

The Supreme Court of Canada uses the purposive approach to interpret the Charter, whereby the underlying purpose of the legislative provision and the nature of the interest are identified. A two step procedure is utilized to see whether the limit of the Charter contained in Section 1 can uphold an infringement of a right. Two questions are asked: 1-has the right been violated?, and 2-can the violation be justified under Section 1?

The burden of proof is such that the onus of establishing a *prima facie* infringement of the Charter is on the person alleging it, while the onus of justifying a reasonable limit on the protected right is on the party invoking Section 1. The standard is a preponderance of probabilities.

Two criteria must be satisfied in order to come within Section 1 of the Charter: 1-the objective of the limiting measure must be sufficiently important, and the concerns must be pressing and substantial to justify overriding a constitutionally protected right, and 2-the means must be reasonable and demonstrably justified according to a proportionality test, which balances the interests of society against those of individuals. There are three components to the test 1-the measure must be carefully designed to achieve the stated objective, and must not be arbitrary, unfair or irrational, 2-the measure should impair the right as little as possible, and 3-proportionality must exist between the effect of the limiting measure and its objectives (Regina v. Oakes, 1986 1 S.C.R.).

The Canadian Human Rights Act

In addition to the Canadian Constitution, the Canadian Human Rights Act was implemented. The Act came into

force on March 1, 1978. It has been very influential for those seeking relief through an alternate channel other than the traditional court system, namely the Canadian Human Rights Tribunal. The Act covers both private and public employers, going further than the Constitution.

Equal pay for work of equal value was first mentioned after the First World War, but it had little effect on compensation policies until the 1970s (Labor Canada 1986:i). The Canadian Human Rights Act deals with pay equity, applying the same wages where respective work is shown to be equal in value in respect to a combination of factors, influencing comparisons between dissimilar jobs.

The Act was passed as a result of political lobbying by mostly highly educated women and those at the grass roots level. It implemented a complaints process through a commission, which assumes that systemic discrimination does not exist but for a few cases (Warskett:180). It differs from a proactive approach, which places an obligation on the employer to determine if systemic gendered wage discrimination exists and to remedy it within a time frame.

The Canadian Human Rights Act recognizes that

2. every individual should have an equal opportunity to make for himself or herself the life that he or she is able and wishes to have,

consistent with his or her duties and obligations as a member of society, without being hindered in or prevented from doing so by discriminatory practices based on...sex.

The Act states that it is discriminatory directly or indirectly to refuse to employ or, in the course of employment, to differentiate adversely against an employee in recruitment, referral, hiring, promotion, training or transfer policies. Article 11 of the Act states:

(1) It is a discriminatory practice for an employer to establish or maintain a difference in wages between male and female employees employed in the same establishment who are performing work of equal value;

(2) In assessing the value of work performed by employees employed in the same establishment, the criterion to be applied is the composite of the skill, effort and responsibility required in the performance of the work and the conditions under which the work is performed.

The Canadian Human Rights Act looks at comparable worth, applying the same wages where respective work is shown to be equal in value through a combination of skill, effort, responsibility and working conditions. It thereby makes comparisons between dissimilar jobs, in order to reduce the historical social injustice of the undervaluation of women's work. It is a discriminatory practice to establish different wages, so that if men and women do work of equal value in the same establishment then they must be paid equally (Labor Canada:9).

Discriminatory practices for wage inequities include segregated employment, exclusion of females categorically from the existing evaluation system, undervaluation of female positions, fewer promotion opportunities for women, senior rules disadvantaging women, and discriminatory transfers, promotion and layoffs (Labor Canada: 21). There are, however, some reasonable factors to permit a pay difference, such as periodic pay increases for length of service or working in remote locations (Labor Canada: 10).

Equal value can be incorporated by a complaint driven process and a proactive requirement process on the employer to initiate plans (Warskett:181). The government policy is that employer initiated compliance with equal pay legislation is the effective way for goodwill (Labor Canada: 6).

The Canadian Human Rights Commission has jurisdiction over the federal public service and federally regulated employers in the quest for equal pay for work of equal value (Canadian Human Rights Commission:1). One drawback to the federal law is that it is limited to comparisons within the same establishment (Canadian Human Rights Commission:5).

The Act allows anyone working within the federal jurisdiction to file a complaint with the Canadian Human Rights Commission (Canadian Human Rights Commission:6). The Commission will then investigate by collecting job information, analyzing the job evaluation plan, and calculating the pay adjustment to eliminate the wage discrimination (Canadian Human Rights Commission:6). If discrimination is found and there is no agreement for adjustment, a conciliator is appointed or a tribunal is established, with its decision appealable to the courts (Canadian Human Rights Commission:6).

Discrimination includes practices or attitudes whether by design or impact which have the effect of limiting the individual's right to the opportunities generally available, because of attributes such as gender rather than actual characteristics. The Supreme Court of Canada agreed with the tribunal of human rights which had found a discriminatory practice toward women in nontraditional employment, and called for the future setting aside of jobs for women to prevent similar discrimination in the future (Action Travail des Femmes v. Canadien National [1987] 1 S.C.R. 1114).

However, the Supreme Court skirted the issue by dismissing cases on jurisdictional and procedural grounds, and by stating that Section 11 of the Canadian Human Rights

Act was to prohibit discrimination by an employer between 'male and female' employees who perform work of equal value and "not to guarantee to individual employees equal pay for work of equal value irrespective of sex". However, the dissent stated that the evaluation of work is delicate and inherently subject to individual bias and sexual stereotyping, with all steps involving some degree of subjectivity.

In the judicial system, the Plaintiff has the burden to prove a *prima facie* case of discrimination. Then, the burden shifts to the Defendant who must show a reasonable explanation for the distinction. The Plaintiff must then demonstrate that it is a pretext, the true motive being discrimination. The Canadian Human Rights Tribunal found that there is not a *prima facie* case of discrimination when others are better qualified (Folch v. Canadian Airlines (1992)).

The importance of sensitivity to gender issues should be emphasized. Nondiscriminatory equitable pay is a basic human right guaranteed to every employee by natural and positive law that must be respected and enforced in full.

United States

The American judicial system is the one most often compared to the European judicial system. The concepts of equality and good government were important principles to the Founding Fathers of the United States. They fundamentally stated:

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organize its powers in such form, as to them shall seem most likely to effect their safety and happiness.

The Declaration of Independence, the bedrock of the United States, was made on July 4, 1776.

Jefferson, Madison and Jay were influential thinkers, believing in a national government and a Bill of Rights. Government was seen as essential to the security of liberty (Federalist Papers, N1 Ham.), with every citizen ceding some rights for the protection thereof (Federalist Papers, N2 Jay). The diversities in the faculties of men are where property rights originate (Federalist Papers, N10 Madi.). The objective of government was to secure the public good and private rights against the danger of factions. The

most common source of faction is the unequal distribution of property.

The purpose of the Union is the common defense of the members, so that the means are proportionate to the ends (Federalist Papers, N23 Ham.). Government must act before the public (Federalist Papers, N37 Madi.), and must be derived from the body of society (Federalist Papers, N39). The Constitution is founded on the assent and ratification of the people, and every man who loves liberty must cherish the attachment to the Union and preserve it (Federalist papers, N41 Madi).

Among the three branches of government, the Judicial branch is considered the least dangerous to the political rights of the Constitution (Federalist Papers, N78 Ham.). The Executive branch dispenses the honors and holds the sword, the Legislative branch controls the purse and prescribes the rules to regulate duties and rights, and the Judiciary has no influence over the sword or the purse, needing the aid of the Executive for the efficacy of judgments. Oppression can proceed from the Courts, but liberty will not be endangered if the branches are separate.

The Constitution is the fundamental law of the land.

We, the people of the United States, to secure the blessings of liberty to ourselves and our prosperity, do ordain and establish this Constitution for the United States of America (Federalist Papers, N84 Ham.).

This is a recognition of popular rights. The judgments of many unite into one, with the voluntary consent of a whole people (Federalist Papers, N85 Ham.).

The Federalist Papers give us an important insight into the making of the Constitution, showing us early on the concept of equality of man and the formation of one government out of many people. The importance of the Judiciary must not be overlooked, as it is a major contributor of policy through its judgments, often itself influencing the sword, the Executive, and the purse, the Legislative.

American constitutionalism is the product of the revolutionary movement in political thought of Hobbes, the parent of the modern U.S. political process (Coleman 1977:3). The chief purpose of political institutions is the management of social conflict (Coleman:3). According to Hobbes, the only source of public authority is the private need of independently situated political actors, with a prior right to act based on self-defined standards of conscience and interest (Coleman:4). If used wisely, the Constitution can serve to remedy past injustices of gender discrimination.

The American Founding Fathers designed the United States Constitution to be a set of broad guidelines established by free and intelligent men for the government of free and intelligent people for successive generations (North 1964:2). It has survived for over two hundred years due to the common sense of the American people, the prudence of their representatives, and the calculated wisdom of its judicial interpreters, the Supreme Court of the United States (North:2). Chief Justice Marshall said of the Constitution, "it was intended to endure for ages to come and consequentially to be adapted to the various crises of human affairs" (McCullough V. Maryland, 4 Wheaton 415 (1819)).

It was a common opinion that each branch of government in matters pertaining to itself be the final judge of its own powers (North:2). However, it was the function of the judiciary, and especially the Supreme Court, to construe in the last resort the meaning of the Constitution, with its opinion final and binding (North:2). Justice Hughes stated, "We are under a Constitution but the Constitution is what the judges say it is" (North:3).

The seminal case of Marbury v. Madison brought forth the important principles that 1-the Constitution is the supreme law of the land, 2-the powers granted to various

branches of government were limited, and 3-it was the sole and essential function of the Court to determine which law should prevail in conflict of laws (Marbury v. Madison, 1 Cranch 137 (1803)).

In a dynamic society, the creativity of judges is important for the development of law and the adaptability of the Constitution to the needs of modern society, according to the Realist Theory (North:8). Courts are the best means for recognizing social change, in order to focus social attitudes on unachieved goals and assist in their attainment through a decision-making process of judgments and thus policy-making, according to the Free Legal Decision Sociological Jurisprudence Theory (North:8).

History has a record of the past and provides the Court with a reservoir of social wisdom and political insight (North:19). It points out the evils against which the great constitutional clauses were designed as remedies (North:19).

The 39th Article of the Magna Carta of 1215 is a foundation for the 5th and 14th Amendments of the American Constitution regarding due process and the rights of life, liberty and property (North:30). The Magna Carta states:

No free man shall be taken or imprisoned or dispossessed, or outlawed or banished, or in any way destroyed, nor will we go upon him nor send

upon him, except by the legal judgment of his peers or by the law of the land (North:30).

The adjudicative process depends on a delicate symbiotic relationship, whereby the Court must know us better than we know ourselves, acting as a voice of the spirit to remind us of our better selves (Cox 1976:117). It provides a stimulus and quickens moral education. However, the roots of the Supreme Court's decisions must be already in the nation (Cox:117). The aspirations voiced by the Court must be those the community is willing not only to avow but in the end to live by (Cox:118). For the power of the great constitutional decisions rest upon the accuracy of the Court's perceptions of this kind of common will and upon its ability ultimately to command a consensus (Cox:118).

The rule of law, the capacity to command free assent, is the substitute for power (Cox 1967:21). Law is the fabric of a free society, organized with a minimum of force and a maximum of reason, in an ideal sense of right and justice (Cox: 21). A neutral government, with its various branches, serves only as a participant in the inhumanities of its citizens (Cox:55).

Legislation in the United States has seen the use of two acts, the Equal Pay Act and the Civil Rights Act, as alternatives to the American Constitution. The Civil Rights

Act has been most successful in guarding against discrimination.

The American Constitution

The United States Constitution, through Article 6(2) the Supremacy Clause, is the supreme law of the land. The 5th and 14th Amendments to the Constitution provide due process of law and equal protection to citizens from federal and state actions, respectively. They state:

5. No person shall... be deprived of life, liberty or protection without due process of law.

14(1) Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The due process clause of the 5th Amendment includes an equal protection component, which prohibits government from invidious discrimination. These provisions are of paramount importance to the courts in fighting discrimination.

The United States Supreme Court examines the legislative purpose of the governmental action alleged to be contrary to the constitutional amendments. Rather than the strict scrutiny level of review applied where the classification is suspect, affecting fundamental rights, or the minimum rationality level of scrutiny applied to see the rational basis for the means to the ends, a middle level of

heightened scrutiny is applied to quasi-suspect cases, such as gender. Sex discrimination, with its exaggerated stereotyping of women as unsuited to the working world, is an ideology rampant throughout the male dominated working world and legislature calling for constitutional suspicion of blocked access (Ely:166).

The Supreme Court found that the equal protection clause and the due process clause of the Amendments confer a constitutional right to be free from gender discrimination, which does not serve an important government objective or is not substantially related to the achievement of the objective (Davis V. Passman, 442 U.S. 228 (1979)). The cause of action is examined to see whether a plaintiff is a member of a class which as a matter of law can invoke the power of the court.

The Supreme Court found that it was a mistake to resolve 5th Amendment cases through the Civil Rights Act. A law which has a disproportionate impact is not necessarily unconstitutional. The statutory standards of the Civil Rights Act are more prohibiting to judicial review, and accord less deference to administrative acts than the constitution.

The Equal Pay Act

The Equal Pay Act of 1963 established that it was unlawful for an employer to pay unequal wages for equal work based on gender. An exception was made where there was a system of 1- seniority, 2- merit, 3- earnings based on quantity or quality of production, or 4- something other than gender.

Section 16 of the Equal Pay Act states:

No employer having employees...shall discriminate, within any establishment, ..., between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort and responsibility, and which are performed under similar working conditions except where such payment is made pursuant to 1- a seniority system, 2- a merit system, 3- a system which measures earnings by quantity or quality of product or 4- a differential based on any other factor other than sex.

Jobs though not identical can be considered equal for Equal Pay Act standards, if there is only an insubstantial difference in skill, effort and responsibility (Murphy v. Miller Brewer Co., 307 F.Supp. 829 (1969)). The Equal Pay Act only includes jobs that are very much alike or closely related, considered virtually or substantially identical (Brennan v. City Stores, 479 F.2d. 235 (1973)).

For the Equal Pay Act, there is sex discrimination when there is a different wage rate for equal work, that is work which requires equal skill, effort and responsibility under similar working conditions (Corning Glass v. Brennan, 417 U.S. 188 (1974)). Equal protection is violated only by intentional discrimination. A different impact is not enough, standing alone. There is the need for a failure to act, or a desire to benefit men at the expense of women. There is no legal duty to undo the effects of previous discrimination (American Nurses Association v. State of Illinois, 783 F.2d. 716 (1985)).

Therefore, the Plaintiff has the burden of establishing that equal pay for equal work was not received. Then, the Defendant must show the different wages were based on seniority, merit, a quantitative or qualitative system, or reasons other than sex (Spaulding v. University of Washington, 740 F.2d. 686 (1984)).

The court, however, is concerned with the actual job performance and content, not job description, titles or classifications, and the scrutiny is done on a case by case basis. If skill is irrelevant to job requirements, it is not considered. Therefore, a nonjob related pretext can act as a shield for invidious discrimination.

The Civil Rights Act

The Civil Rights Act was implemented to safeguard important civil liberties. It served to strengthen legislation, thereby helping the courts rule against discrimination. Section 703(a) of Title VII, the Civil Rights Act, states:

It shall be an unlawful employment practice for an employer, (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privilege of employment, because of such individual's race, color, religion, sex, or national origin, or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Further, the Civil Rights Act incorporates the Equal Pay Act with the Bennett Act Amendment, and states:

(h) Notwithstanding any other provision of this title, it shall be a lawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work different locations, provided that such are not the result of an intention to discriminate because of race, color, religion, sex, or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of wages or compensation paid to employees of such employer if such differentiation is authorized by

the provisions of Section 6(d) of the Fair Standards Act.

The Civil Rights Act goes further than the Equal Pay Act by not requiring equal work. It is flexible enough to include all forms of pay discrimination, namely unequal pay for equal work, unequal pay for comparable worth, adverse impact involving a neutral but unequal impact, and disparate treatment involving an intent for a less favorable treatment.

More cases today are brought under the Civil Rights Act, because it expands the availability of relief. Title VII prohibits sex discrimination allowing for compensation, thus recognizing equal pay as a legal right (AFSCME v. State of Washington). The Civil Rights Act eliminates artificial, arbitrary and unnecessary barriers to employment in the form of invidious discrimination, unless there is a demonstrably reasonable measure of job performance (Griggs v. Duke Power, 401 U.S. 424 (1971)).

According to Section 703(a) of the Civil Rights Act, a person of like qualification must be given an employment opportunity regardless of sex (Phillips V. Martin Marietta, 400 U.S. 542 (1971)). There can not be different hiring practices for each sex. However, there can arguably be a basis for a distinction based on sex, since conflicting family obligations can be considered in the employment of a

woman with school age children, if it is demonstrably more relevant to job performance.

For cases brought under the Civil Rights Act, the Plaintiff has the burden to show he belongs to a minority, has applied for a job, was qualified for the job that the employer tried to fill but was rejected, and the employer continued to seek applicants (McDonnell Douglas v. Green, 411 U.S. 796 (1973)). Then, in rebutting a *prima facie* case, the Defendant is required to show the absence of a discriminatory motive for his actions. However, this was later revised by the court, so that the Defendant is not required to show the absence, but must merely articulate a legitimate non-discriminatory reason for the employee's rejection (Board of Trustees of Can State College v. Sweeney, 439 U.S. 24 (1978)).

In using Title VII, a Plaintiff need not have to meet the equal work standard required by the Equal Pay Act (Gunther v. County of Washington, 452 U.S. 161 (1981)). The Civil Rights Act is often used to fight sex discrimination in compensation, with a differentiation made between disparate treatment and impact.

Disparate treatment is concerned with direct or circumstantial discriminatory motives, which lack a well defined criteria (Spaulding). It involves intent or motive

as an essential element of liability concerning the effects of a chosen policy, with awareness alone of adverse consequences on a group not enough (American Federation of State, County and Municipal Employees v. Washington, 770 F.2d. 1401 (1985)). In a disparate treatment approach, the Plaintiff in a *prima facie* case is required to show by a preponderance of the evidence the overt motive. In turn, the Defendant must prove that it was nondiscriminatory either by the four exceptions, by necessity or by a *bona fide* occupational qualification.

On the other hand, disparate impact is more than an inference of discriminatory impact of outwardly neutral employment practices and adversity (Spaulding). It does not need a profession of intent by the employer to discriminate, only a clearly delineated employment practice (American Federation). In a disparate impact approach, the Plaintiff need only show the disproportionate impact, thus the burden then shifted to the Defendant to show that it was nondiscriminatory.

Under an affirmative action plan, the Supreme Court has found that the consideration of gender as to a female employee, as a factor in her promotion over an equally qualified employee of the male sex, did not violate the Civil Rights Act (Johnson v. Transportation Agency, 480 U.S. 616 (1987)). Therefore, in order to expand job

opportunities, the sex of a qualified applicant can be considered, when promoting into a position within a traditionally underrepresented job sphere. However, it must be shown that there is an inconspicuous imbalance in these traditionally segregated job categories, and that there is no unnecessary trampling of the rights of male employees.

The Court has failed to follow precedent and the doctrine which requires a finding of intentional violation of the Civil Rights Act if the disparate condition 'more likely than not' resulted from the discrimination (Sargeant 1990:98). Therefore, there is a recent Supreme Court trend making it harder to win pay equity cases in the United States.

Women and The Burden of Proof in the United States

The concept of the burden of proof is an important element in court cases, especially those impacting gender. The court must choose among three levels of scrutiny in evaluating a case: rational basis, the lowest level, where the Plaintiff must show that there is no rational basis for the State restriction, which is a hard burden to meet; heightened scrutiny, the intermediary level, where the Defendant government must show that the restriction has a substantial relationship to an important government interest, which is used in gender cases; and strict

scrutiny, the highest level, where the Defendant government must show a compelling interest for the restriction, a hard burden to meet which is used in such suspect cases as race.

Women have been discriminated against for centuries, often being put on a pedestal or being treated as inferior citizens. Because of the unresponsive rendering of rights through the rational basis test of the burden of proof, the heightened scrutiny test was developed in order to better protect women. However, today more than ever, there is a greater push to better recognize gender discrimination and to elevate the level of review to that of the strict scrutiny test.

Over a century ago, the Court distinguished between the sexes. In a demand by a woman to practice as an attorney, the court in Bradwell v. Illinois, enunciated the role of women in society.

The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of men and women...The paramount destiny and mission of women are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator. (16 Wall. 130, 141 (1873))

Traditionally, the woman's place was in the home, which the Supreme Court has readily justified in distinguishing between womanhood and personhood. Women were

seen as unfit for many occupations, with the domestic sphere properly belonging to womanhood (83 U.S. at 141).

This distinction continued with the Court in Goesart v. Cleary, using the rationality test, the least protective (335 U.S. 464 (1948)). Certain virtues were seen as prerogatives of the domain of men, even though it was recognized by the legal system that there had been many changes in the social position of women (335 U.S. 464 (1948)).

However, a woman's opportunity to serve the judicial system as a juror was also diminished in Hoyt v. Florida, an important case even today (368 U.S. 57 (1961)). A woman was thus allowed to be convicted by an all male jury, not a jury of her peers, with the woman still seen as the center of the home and family life (368 U.S. 57, 90 (1961)).

The lowest standard of scrutiny finds that the State has a legitimate interest in regulating an activity, within its jurisdiction. Thus, the Court pronounced that the governmental classification will not offend the Constitution's equal protection clause "simply because it is not made with material nicety or because in practice it results in some inequality" (Dandridge v. William, 397 U.S. 471, 485 (1970)). However, it will fail if the unequal

distinction "rests on grounds wholly irrelevant to the achievement of the State's objective" (McGowan v. Maryland, 366 U.S. 420, 425 (1961)). However, this standard was not adequate to meet the needs of women, and therefore, gender discrimination persisted.

A different outlook of women was taken in the 1970s. Gender discrimination was rarely upheld by the Court, unless it met the higher intermediate level, which required the justification for limiting a right be substantially related to an important government objective.

The first case in which the heightened scrutiny test was used was Reed v. Reed, in which a restriction based on gender was struck down (404 U.S. 71 (1971)). As such, a mandatory preference solely on the basis of sex through an arbitrary legislative choice was forbidden (Loewy 1981:90). The Court stated that the classification must be reasonable not arbitrary, and must rest upon a ground which is fair and substantially related to the objective of the legislation (404 U.S. 71 (1971)). Even though the Court purported to apply "any rational basis", the lowest standard, the language used in the judgment resulted in a more stringent standard for gender cases (Kanowitz 1980: 1381). It was an important case, which hinted at a special type of scrutiny, higher than the mere rational basis test.

Further decisions drained the previous reasoning of Bradwell, Goesart and Hoyt (Loewy: 93). In contravention of Hoyt, the court in Taylor v. Louisiana found that administrative convenience was not justified in excluding women from juries, dismissing the antiquated notion that society cannot spare any women from the home (419 U.S. 522 (1975)).

As well, contrary to the principles enunciated in Bradwell, the Court in Stanton v. Stanton found that women were no longer to be considered uniquely reserved for the home, having taken their place in the marketplace and in all walks of life (421 U.S. 57 (1975)). The Supreme Court was thus trying to put an end to gender stereotyping, allowing for the acceptance of the concept of women attorneys.

The seminal far reaching case of Craig v. Boren, decided in 1976, was the first Supreme Court decision to officially recognize the heightened scrutiny test for gender. It held that

to withstand a constitutional challenge,...classifications by gender must serve important government objectives and must be substantially related to the achievement of these objectives (429 U.S. 190, 197 (1976)).

It is important to understand that the intermediate level of scrutiny is a lower burden than the one used for fundamental rights or suspect classifications,

which require an overwhelming and compelling state interest to contravene a right. This higher burden is used for racial and national origin classifications.

The distinction on the basis of sex was found not to be invidious, being against males who were not a discreet and insular minority, with an inoffensive legislative purpose (Craig v. Boren, 429 U.S. 190, 197 (1976)). The minority opinion still rejected the notion of a higher standard beyond the rational basis test, holding that a more active review was reserved for discriminated members of discrete insular minorities, and women were not included in this.

While invalidating a discriminatory statute, the Court, in a unanimous decision, stressed that the party wishing to uphold a classification on the basis of gender must show 'an exceedingly persuasive justification' for it (Kirchberg v. Feenstra, 101 S.Ct. 1195 (1981)).

In the fight against sex discrimination, the court has sometimes moved beyond the concept of equality for women. The Supreme Court has recognized the concept of 'benign' discrimination, when one is being treated differently as a means for compensation for past and present injustices. The problem occurs when one is compensated and

the other is denied compensation, and they were not parties to the original injustice.

The first modern case to deal appropriately with benign discrimination found that widows should be treated more favorably than widowers, since women have been negatively impacted by discrimination (Kahn v. Shevin, 416 U.S. 351 (1974)). The Court made a distinction between sex and race, allowing benign discrimination for gender.

To remedy past discrimination, the Court permitted the favoring of women by rejecting gender equality (Schlesinger v. Ballard, 419 U.S. 498 (1975)). It was specifically found that men had more of an opportunity in the past for promotion in the military service. It emphasized the prior treatment in society toward the sexes (419 U.S. 498).

In the 1980s, more cases were decided which impaired the move toward equal citizens without distinction as to sex (Loewy: 87). Gender stereotyping was again evident when the Court upheld a Congressional exemption of women in the draft, dismissing the potential contribution of women (Rotsker v. Goldberg, 101 S.Ct. 2646 (1981)). Further, the Court upheld a discriminatory statutory rape law which was applied against males only, and did not preclude women as the `fair sex` from engaging in the same

conduct (Michael M v. Superior Court, 101 S.Ct. 1200 (1981)).

This trend brought forth the idea, some would feel, that men do not need the protection of the courts and legislatures as much as women. Previously, however, Brennan had cautioned against classifications on the basis of sex, because they "carry the inherent risk of reinforcing the stereotypes about the 'proper place' of women and their need for special protection" (Orr v. Orr, 440 U.S. 268, 283 (1979)).

A recent court decision, however, looked again at the question of women and the 'invidious, archaic and overbroad stereotypes' of the sexes. The Court extended the outlawing of peremptory challenges based on race to include sex, and found that gender-based challenges in choosing jurors violate the 14th Amendment equal protection clause. However, the old notion of discrimination on the basis of sex is still alive and well, since the dissent branded the majority decision 'a unisex creed'.

Equal rights advocates and women's groups have rallied to argue for the adoption of the highest standard, that of strict scrutiny to sex discrimination cases. It requires a precisely tailored objective to a compelling government interest, with no less drastic means available

(Plyler v. Doe, 457 U.S. 420, 425 (1961)). It is used where there has been "a history of purposeful unequal treatment...and a position of political powerlessness" (San Antonio Independent School Division v. Rodriguez, 411 U.S. 1, 16 (1973)).

The closest that the United States Supreme Court has come to the strict scrutiny test for gender differentiations was in the important case of Frontiero v. Richardson in 1973, with the minority decision involving Judges Brennan, Douglas, White and Marshall (411 U.S. 677). These four members of the Court found that sex was a suspect classification like race and national origin, with its equally 'immutable' character. They decided that gender "frequently bears no relation to ability to perform or contribute to society", so that statutory distinctions based on sex have invidious effects.

Justice Brennan, in Frontiero, postulated the suspect nature of gender comparing it to race. Gender is to be considered as immutable, like race is, since one cannot change one's sex. In addition, gender like race has historically been suspect to invidious discrimination, relegating an entire class to an inferior legal status without regard to actual individual capabilities (411 U.S. at 686). Members of both groups carry an obvious badge by

sight, causing *de jure* discrimination not simply *de facto* discrimination (Kanowitz 1980: 1391).

Today, there is a new level of proof, 'the smoking gun', beyond a reasonable doubt standard, usually reserved for criminal cases (Sargeant:98). It is more difficult for employees to prove unlawful discrimination in the absence of deliberate discrimination. Settlements occur, usually, when an employer believes he will lose the case, and tries to show good faith. Therefore, litigation is an important tool to bring public and political attention to the matter (Sargeant:98).

In the fight for equal rights without regard to sex, it is true that women have achieved some gains, the biggest being the Supreme Court developing a higher standard of review of heightened scrutiny, which has stopped some discrimination. However, I would agree with the minority opinion in the Frontiero case, that gender, like race, should be considered suspect and thus be subject to the highest level of review of strict scrutiny.

Therefore, laws and court judgments must stamp out gender discrimination. It is now time, to give to women, who have long suffered through gender discrimination, full equality rights and the best possible protection of the law.

REFERENCES CHAPTER 5

- Action Travail des Femmes v. Canadien National (1992).
- American Constitution, 1776.
- American Federation of State, County and Municipal Employees v. Washington (770 F.2d. 1401 (1985)).
- American Nurses Association v. State of Illinois (783 F.2d. 716 (1985)).
- Andry, Jacqueline Hunt, The Supreme Court Tightens the Reins on Heightened Scrutiny, Loyola Law Review, Vol. 35, 1989, p.267.
- Board of Trustees of Can State College v. Sweeney (439 U.S. 24 (1978)).
- Bradwell v. Illinois (83 U.S. 130 (1873)).
- Brennan v. City Stores (479 F.2d. 235 (1973)).
- British North America Act, 1867.
- Canadian Bill of Rights, 1960.
- Canadian Charter of Human Rights, 1978.
- Canadian Charter of Rights and Freedoms, 1982.
- Canadian Advisory Council on the Status of Women, Feminist Guide to the Canadian Constitution, Ottawa:1992.
- Coleman, Frank, Hobbes and America, Toronto: University of Toronto, 1977.
- Convention on the Elimination of all Forms of Discrimination Against Women, 1981.
- Corning Glass v. Brennan (417 U.S. 188 (1974)).
- Cox, Archibald, Civil Rights, The Constitution and the Court, Cambridge: Harvard University Press, 1967.
- Cox, Archibald, The Role of the Supreme Court in American Government, New York: Oxford University Press, 1976.
- Craig v. Boren (429 U.S. 190 (1976)).
- Dandridge v. William (397 U.S. 471 (1970)).
- Davis v. Passman (442 U.S. 228 (1979)).

- Ely, J., Democracy and Distrust, Cambridge: Harvard University Press, 1980.
- European Charter of Fundamental Social Rights, 1989.
- Federalist Papers.
- Flynn, Padraig, Defining the Gender Contract, 1996.
- Folch v. Canadian Airlines, 1992.
- Frontiero v. Richardson (411 U.S. 677 (1973)).
- Goesart v. Cleary (335 U.S. 464 (1948)).
- Griggs v. Duke Power (401 U.S. 424 (1971)).
- Gunther v. County of Washington (452 U.S. 161 (1981)).
- Hoyt v. Florida (368 U.S. 57 (1961)).
- International Covenant on Economic, Social and Cultural Rights.
- Johnson v. Transportation Agency (480 U.S. 616 (1987)).
- Kahn v. Shevin (416 U.S. 351 (1974)).
- Kanowitz, Leo, Benign Sex Discrimination: Its Troubles and Their Cure, Hastings Law Journal, Vol. 31, 1980, p.1379.
- Kennedy v. CTP, 1992.
- Kirchberg v. Feenstra (101 S.Ct. 1195 (1981)).
- Klarman, Michael, Interpretive History of Equal Protection, Michigan Law Review, Vol. 90, 1991, p.213.
- Kouba v. Allstate (691 F.2d. 873 (1982)).
- Loewy, Arnold, Returned to the Pedestal the Supreme Court and Gender Classification Cases : 1980 Term, North Carolina Law Review, Vol. 60, 1981, p.87.
- Magna Carta, 1215.
- Maltz, Earl, Legislative Inputs and Gender-Based Discrimination in the Burger Court, Michigan Law Review, Vol. 90, 1992, p.1023.
- Mandel, Michael, The Charter of Rights and the Legalization of Politics in Canada, Toronto: Wall & Thompson, 1989.
- Marbury v. Madison, 1 Cranch 137 (1803).

- Mary Murphy and Others v. On Bord Telecom Eireann 1988 ECR.
- McCullough V. Maryland, 4 Wheaton 415 (1819).
- McDonnell Douglas v. Green (411 U.S. 796 (1973)).
- McGowan v. Maryland (366 U.S. 420 (1961)).
- Michael M v. Superior Court (101 S.Ct. 1200 (1981)).
- Murphy v. Miller Brewer Co. (307 F.Supp. 829 (1969)).
- Orr v. Orr (440 U.S. 268 (1979)).
- Pasqua Hospital, 1987.
- Phillips v. Martin Marietta (400 U.S. 542 (1971)).
- Plyler v. Doe (457 U.S. 202 (1982)).
- Reed v. Reed (404 U.S. 71 (1971)).
- Regina v. Oakes, 1986 1 S.C.R.
- Rotsker v. Goldberg (101 S.Ct. 2646 (1981)).
- San Antonio Independent School Division v. Rodriguez (411 U.S. 1 (1973)).
- Singh, L.P., International Concerns for Women's Rights.
- Schlesinger v. Ballard (419 U.S. 498 (1975)).
- Shultz v. Wheaton Glass (421 F.2d. 259 (1970)).
- Spaulding v. University of Washington (740 F.2d. 686 (1984)).
- Stanton v. Stanton (421 U.S. 57 (1975)).
- Taylor v. Louisiana (419 U.S. 522 (1975)).
- Teuling v. Bredrijfsvereniging (1987 ECR 2497).
- United Nations Declaration of Human Rights.
- United States Civil Rights Act, 1964.
- United States Declaration of Independence, 1776.
- United States Equal Pay Act, 1963.
- Washington v. Davis (426 U.S. 229 (1976)).

CHAPTER 6

THE NORTH AMERICAN FREE TRADE AGREEMENT

The North American Free Trade Agreement is the largest undertaking ever attempted and has an important impact on the labor force. Women are particularly affected by the agreement. This Chapter will examine the North American Free Trade Agreement from its inception, looking first at its benefits and then its drawbacks, in general and in regard to women.

Early Developments and Initial Agreements

Free trade is an economic association, first brought about in North America in 1854. Prior to this, however, there were several developments in the relationship between the United States and what was to become Canada.

The War of 1812 brought an end to the fear of American annexation of Canada, with rather a new view of commercial and economic rivalry between the two countries (White 1988: 37). The Canadian national sentiment favored trade with the United States through transportation via the railways and the waterways (Hamelin: xiv). With the industrial movement in the 1850s came the Grand Trunk, with an investment of \$100 million in transportation and communication (Hamelin: 371). The construction of canals

and railways were a move toward the avoidance of continental integration with the United States (Easterbrook 1976: 381).

The United States, with these developments, was not seen as the enemy, but a concurrent competitor, with Canada furnishing natural resources (Hamelin: 371). It was more economical for the United States to pass exports by Montreal through the St. Lawrence seaway in order to lower transportation costs (Hamelin: 18). To assist them, the English, who controlled Canada at the time, would exempt the Americans from duties, treating them like Canadians (Hamelin: 18). Among the market terminals of North America - Mississippi, the Hudson, New Orleans, New York and Montreal - the latter two were rivals, with New York prevailing (Hamelin: 46). North American seaboard centres participated actively in the prosperity brought about by commercialism (Faucher, Lamontagne: 25).

The first major trade pact between the United States and Canada was the Elgin-Marcy Reciprocity Treaty of 1854 (Fry: 28). Reciprocity was an attempt to create, in North America, a single market area covering several distinct political jurisdictions, where specified types of products were freely exchanged for a partial and limited economic union between British North America and the United States (Easterbrook: 362). This was thought to be the only feasible alternative to annexation.

However, the American Civil War influenced the economic development of British North America, with new markets in the United States opened for Canadian exports (Easterbrook, Aitken 1975: 361). At the end of the war, the removal of restraints on the expansion of American settlement west of the Mississippi jeopardized the security of the Canadian west and hastened Confederation (Easterbrook, Aitken: 361). However, the waterways were a uniting force (Easterbrook, Aitken: 362). The businessmen from Upper Canada were the first to seize the idea of reciprocity. Nevertheless, immediate economic and political union with the United States would have sacrificed valued institutions, national identity and loyalty to Britain for Canada.

In the United States, the South with its plantations wanted low tariffs to lower prices of imported goods and to reduce the costs of production for exports of raw materials (Easterbrook: 363). On the other hand, the North, with its small farms and factories, was protectionist (Easterbrook: 363). There was little enthusiasm for reciprocity in the United States. It was seen as simply a concession for the inclusion of fisheries, the immediate and urgent objective.

Thus, the Treaty was abrogated by the United States on March 17, 1866. British support for the Confederacy during the Civil War and new Canadian tariffs served to antagonize the United States (Fry: 28). Other factors played a role, namely the disastrous effects on timber and grain growing regions of the United States, the resentment by farming and lumber interests of Canadian competition, the jealousy by shipping and forwarding interests in Buffalo and Philadelphia of the St Lawrence Route and of the Grand Trunk with the Victoria Bridge completion in Montreal in 1860 furthering competition, and the manufacturing interests blaming Canadian tariffs for the decline of certain exports. All were a rallying cry for its end (Masters: 69).

Canada's policy in economic relations was to favor east-west relations (Dinsmore 1975: 187). However, the natural tendencies have been the opposite, north-south. Shortly after the death of the Reciprocity Treaty until the advent of the 1911 'free trade' election in Canada, free trade with the United States had been the central issue in Canadian politics (Stevens, in Riggs 1988: 9). Prime Minister Laurier was the first continentalist Prime Minister to appreciate that Canada shares North America with the United States, which shapes the national destiny (Stevens:11).

With the 1911 Free Trade agreement, Canada built up its own manufacturing protection tariff (Velk:94). In 1911, there was the sentiment in Canada of 'no truck or trade with the Yankees' (d'Aquino:74). However, with the exception of Great Britain, Canada was the chief trading partner of the United States (Velk, in Riggs 2: 93). In 1910 alone, Canada bought \$242 million and sold \$97 million to the United States (Velk:93).

President Taft negotiated for full scale reciprocity for better trade relations between the United States and Canada (Stevens:14). Common interests called for special arrangements. Canadians and Americans were reminded that there were 3000 miles of joint border between the two countries.

The 1911 agreement was similar to the 1854 pact, but was not a treaty, and thus did not require the two thirds approval of the American Senate. Most American tariffs on manufacturing goods were reduced, while most Canadian manufacturing tariffs remained (Fry:28). It was passed by Congress and signed by President Taft. However, Prime Minister Borden, who defeated Prime Minister Laurier in 1911, opposed the trade legislation and did not put the reciprocity agreement to a vote, with the United States rescinding its vote eight years later (Fry:28).

Other agreements were entered into over the years, and Canada wished for trade on a liberalized basis, which was the first Article of the General Agreement on Tariffs and Trade, as well as same treatment (Axworthy:34). GATT provided for an impressive reduction of tariffs, with some having impeded economic efficiency, production, competition and growth (Stone:174). GATT, through Article 24, permitted the United States and Canada to enter into free trade, with an agreement to remove customs duties and other restrictions on substantially all bilateral trade (Stone:173).

Over the last forty years of GATT and the new WTO, Canadian exports have multiplied ten times, the national wealth has more than tripled and the number of jobs has doubled (Laun: 205). On the other hand, unemployment has also risen over this period, which raises important questions about the benefits of free trade.

Wartime demands required greater cooperation on a continental basis, with Canada and Mexico being prime sources of raw materials for American factories (Fry:29). In 1947, President Truman and Prime Minister King had private negotiations on free trade once again, in an era of the Marshall Plan, and American economic assistance to Western Europe and Japan. King approved the agreement in October 1947, but it was later vetoed in May 1948, because

he feared the Canadian public would label it continentalist and anti-British (Fry:29).

Overall, by examining the years leading to the advent of the Free Trade Agreement of the 1980s, we can observe a number of characteristics of the trade relationship between the two countries: 1- Canada has been the initiator in free trade on almost all the occasions; 2- the United States has been largely indifferent except for President Taft in 1911; 3- in the two most important negotiations of the 20th century, 1911 and 1947, Canada had second thoughts and put an end to the agreement; 4- the United States is a formidable obstacle to closer economic ties between the two nations; 5- the 1911 and 1947 deals provided for more American concessions; 6- statements made by the United States were cannon fodder for groups in Canada which were opposed to annexation; 7- Canadian opponents find economic costs to free trade outweigh economic benefits. They react on an emotional, loyal, national, love of country level, branding those in favor as stooges of American financial interests; 8- while there is more emphasis today on business, commercial and economic issues, Canada on the other hand has cultural, regional economic development, social welfare and sovereignty concerns; 9- when times are tough, Canada wants improved access to United States' markets while the United States turns inward toward protectionism (Fry:34). As well, the structural adjustment

costs such as a rise in unemployment tend to be underestimated by free trade advocates (Clark 1996).

There is a regional aspect to the overall economic evolution of the North American continent (Faucher, Lamontagne: 35). Canada's industrial development has been North American, with its development based on its natural resources, and its expansion characterized by large-scale monopolistic industries (Faucher, Lamontagne: 35).

Over time, Canada's dealings with Britain and the United States changed. Canada once had an autonomous relationship with Britain, producing an un-American sentiment (Oliver: 213). Great Britain was once the major investor in Canada. However, over the years, the United States has replaced it (Linteau 1: 443). Canada went from dependence on the British to dependence on the Americans, with its foreign controlled economy (Linteau 1: 444). In addition, the nature of foreign investment had changed, since the British invested indirectly through obligations and finance, while Americans invested directly, usually as proprietors funding production. Tariffs and natural resources attracted American enterprises, and Canada benefited from their capital, their technological advancement and their mass production.

The United States invested \$168 billion in 1900 and \$881 billion in 1914. The Canadian policy was to increase tariffs and oblige American companies wishing to do business to build factories in Canada (Roby: 209). The United States penetrated the Canadian economy by installing branch plants for American made products (Linteau: 387).

The United States had dominated the industrial sector, accounting for 82% of car production, 68% of electricity, one third of pulp and paper, and was solidly ahead in petroleum, pharmaceuticals, rubber, machinery and non metallic minerals, by 1932 (Linteau: 389). Of the American enterprises in Canada, 36% of them were established in the period between 1920 to 1929 (Roby: 5). Today, Canada sends more than three quarters of all its exports to the United States, accounting for 25% of its annual gross national product (Fry 1987: 27).

American policies are destined to affect the policies of Canada and North America as a whole (Innis 1995:262). Canada is carried into the whirlpool of common points of view, to the advantage of the United States (Innis:263). Her own point of view is easily overwhelmed. It is important to understand the way the biases of information would be used to control what individuals do and think (Innis:ii). Innis believed that approaches should be adopted by which cultural traits of civilization might

persist, with the least possible depreciation of the national sensibility and dependence of Canadians upon Americans.

Canada's trade pattern from the outset was based on the importing of manufactured goods in return for the export of staples (Watkins: 29). This staple approach views staple exports to more advanced industrialized economies as the engine of growth of the Canadian economy (Watkins 1989: 17). The commercial rather than industrial bias of the Canadian capitalist class, along with dependent branch plant industrialization flowed from the unequal alliance with American foreign ownership and capital (Watkins: 17).

This policy resulted in the overwhelming trade dependence of Canada on the United States over the years (Watkins: 29). Canada was within the tight embrace of the American empire, and occupied whatever room was left open by American capital (Watkins: 30). It became the exemplary client state (Watkins: 31).

Today, the United States makes up 70% of Canada's total exports (Laun:205). At the same time, Canada takes in over 20% of United States' exports, and has a direct investment of over \$17 billion (Laun: 205). It is not a zero sum gain with one benefitting at the expense of the other (Laun:206). Canada's prosperity depends on trade with

other countries, with one third of its jobs and one quarter of its wealth depending on international trade (Government of Canada:1).

From the outset, Canada was torn between republicanism and conservatism, trying to forge a national identity (Riggs:xi). Canada has wished to be more independent in its foreign policy. At the same time, it has had to guard against the departure of Canadian firms going south in search of cheaper labor and less regulation (Soldatos:45).

Free trade continentalism, according to its advocates, involves 1-tariff liberalization; 2-a high volume of trade with the United States; 3-meagre diversification; 4-some protectionism by the United States; 5-restructuration of the Canadian economy for a more competitive industrial society; and 6-transborder transregionalism between provinces and states (Soldatos:42). Continentalism is a process of microregional (subcontinental) integration, which is transnational (multinational corporations, unions, economic elites) and transgovernmental (direct contacts between two central bureaucracies, relations between provinces and states), with closer Canada-United States transactional ties (diplomatic, administrative, commercial, cultural) and structural interpenetration (economic) (Soldatos:41).

Canada and the United States are similar as societies with transnational and transgovernmental relationships, attitudes and values, strong social factors and a deep rooted structural economic interpenetration, in a widespread integration pattern (Soldatos:46). Canada is strategically situated, with its border close to American development centers (Soldatos:47).

The free trade zone has eliminated trade barriers as to goods. However, the movement of capital in production has caused negative integration generating disturbances and distortions in the economy. This occurs especially if there is asymmetry within the society, causing imbalances, both regionally and between partners in interactions. The freeing of circulation of goods creates initial imbalances and economic distortions (Soldatos:51).

Before World War II, Canada's prosperity depended on resource industries, which required a high cost in order to protect the manufacturing sector serving the home market (Lipsey: 59). However, in the 1980s, the prosperity of resource based industries was seriously hurt by international development in the areas of new sources of supply and man-made substitutes for natural materials. Export and service related products depended on hard pressed resource based industries (Lipsey:59). This created

uncertainties in business and job dislocations (Brecher:67). However, free trade advocates argued that it was important to secure continued access to the United States' market and to work against protectionism, for benefits to producers in sales and to consumers in prices (Neufeld: 152).

Greater specialization in North America brings greater international competition, encouraging more rapid diffusion of new technology, new management and organizational production (Neufeld:153). However, textile and clothing industries were vulnerable in trade liberalization (Neufeld:154). The clothing industry would be hard pressed in lowering prices, except for high volume segments that are successful when moving into particular niches for export. Canada has specialized and expanded its primary and manufacturing sectors, which the proponents of free trade argue has afforded a net benefit through access to the vital American market that is less restrictive and more secure today.

The tertiary service industries are more sharply differentiated among countries by the varied regulatory environments. In the goods producing industry, tariffs or quotas have been the main barrier. The service industry has subtle impediments, with discrimination being a barrier because of immigration labor laws (Neufeld:154).

National treatment calls for no regulatory distinction between foreign and domestic firms, which is good if there are similar industries for reciprocity and market access (Neufeld:155). These laws restrict one country's firms transferring staff to the other country (Neufeld:157). Trade in services encompasses a large number of areas, having different characteristics of trade and efforts for international rulemaking (Stone:178).

Considering these factors, sectoral trade discussions in 1983 later gave way to a comprehensive free trade approach in 1985 (Fry:31). President Reagan and Prime Minister Mulroney launched an initiative for a bilateral trade agreement, with its goal to remove all or most remaining barriers to cross border trade in goods and services, and to create an enlarged body of agreed rules to govern trade, which produced the 1989 Canada-United States Free Trade Agreement (Stone: 173).

President Reagan called this Free Trade Agreement, signed on January 2, 1988, the most important bilateral trade negotiation ever undertaken by the United States (Layton:200). It was horizontal not sectoral for market access, and called for mutual restraint on unilateral commercial policies. It was believed that there would be a direct link between productivity and jobs, with higher productivity and additional spending power leading to higher

incomes and more jobs (Layton:200). Free trade is thought to afford a longer cycle of production, investment and specialization (Davenport:xix). This Free Trade Agreement was the biggest trade agreement ever reached between two countries, in excess of \$200 billion in trade of goods and services (Velk: 3).

Canada exports more per citizen than any counterpart in any other industrial power (d'Aquino: 74). Thirty percent of its national income is generated by exports, and more than three million jobs depend on these exports. The United States absorbs 80% of Canada's exports, in a southward flow (d'Aquino:74).

The Canada-United States Free Trade Agreement involved a trading relationship which was the world's largest at the time, before the North American Free Trade Agreement (d'Aquino:76). The United States has an economy ten times bigger than Canada's, affording the latter greater access to opportunities (d'Aquino:76). The relationship encourages lower cost production in factories, and more specialized and efficient industries, thereby strengthening the capacity to compete in the global market (d'Aquino:77). The goal is to generate growth and production, in order to increase the standard of living for challenging and rewarding careers (Raynold: 84).

The benefits of free trade, according to its advocates, are: 1-increased specialization; 2-rationalization, eliminating some production and expanding in others while introducing new production techniques; 3-longer production runs in larger specialized plants; and 4-easier transfer of technology (Raynauld:84). The costs of free trade are 1-transition, and 2-harmonization requirements (Raynauld:86). Rationalization entails: 1-a reduction in the number of manufacturing plants; 2-an increase in production runs; 3-an increase in trade between the United States and Canada; and 4-a reduction in production costs (Wigle: 92).

Those in favor of the North American Free Trade Agreement argue that free trade improves efficiency and competition, stimulates production and economic growth, and opens new opportunities, supplementing and broadening GATT (Stone:183). The United States, thereby, consolidates access to the biggest export market (Layton: 198). However, NAFTA has many drawbacks, which will be examined, especially for women.

The North American Free Trade Agreement

In June 1991, Canada, the United States and Mexico began negotiations for the North American Free Trade Agreement (NAFTA). The free trade agenda shifted from a

sectoral approach to a comprehensive accord between the United States, Canada and Mexico, because of a difficulty in matching sectors and accommodate regional concerns (Fry: 31).

The 1989 Canada-United States Free Trade Agreement laid the foundation for the North American Free Trade Agreement, which secured Canada's economic relationship with the United States (Government of Canada:1). Prior to NAFTA coming into effect on January 1, 1994, trade between the United States and Canada had never been larger and was growing faster than the rest of the economy (Government of Canada:2). As well, the flow of trade and investment among the United States, Canada and Mexico was \$500 billion per year.

Mexico has a rapidly growing market of over 85 million people, which historically was hard to penetrate because of strict Mexican barriers to trade. Before NAFTA, Mexico was restrictive on foreign investment (Government of Canada:13). However, with NAFTA, Mexican tariffs are phased out either immediately, within five years or ten years. Mexico's border is aligned with the United States and its coastline faces Europe and Asia. It has a key global strategic advantage with its unique geographic position, and is considered the gateway to Latin America (Mexican Investment Board:1). Among the world's nations, Mexico is

ranked as 10th in population, 12th in area and 15th in Gross Domestic Product.

Mexico has a cost efficient labor force and a modernizing infrastructure (Mexican Investment Board:3). There was a liberalization within a legal framework, with the privatization of some state enterprises in nonstrategic areas, and regulatory reform in an open and competitive environment in sectors previously restricted or closed to the private sector (Mexican Investment Board:3). Regulations give legal security to market transactions, protect consumers and the environment, and safeguard intellectual property rights (Mexican Investment Board:4). Free trade promotes competition and provides adequate incentives for private decision making in a free market. However, the regulatory environment must ensure the rules of the game are clear and uniformly applied, subject to monitoring (Mexican Investment Board:4).

The North American Free Trade Agreement is the biggest trade agreement ever reached (Velk, Riggs, 1988: 3). It covers 360 million consumers (Mexican Investment Board:1) It is far reaching, removing all tariffs and liberalizing nontariff barriers to trade (Ritchie, 1988: 9). NAFTA regulates trade in services, liberalizes investment, promotes specialization, and implements a mechanism for a

binding resolution to disputes, which is unprecedented in free trade (Ritchie: 9).

The objectives of the North American Free Trade Agreement are the removal of tariff and non-tariff barriers for goods and services, the neutralization of government policies, practices and procedures, and a consistency with the GATT agreement to cover all trade (Laun 1987: 208). The long-term goals of free trade are the improvement of real income wages and production, an increase in the number of jobs, a reduction of protectionism, a decrease in competitive pressures from developing and newly industrialized countries, and the mitigation of pressures due to global imbalances (Harris 1988: 52).

The United States had several objectives of its own, namely the elimination of tariffs, the reduction of nontariff barriers, the development of rules governing trade in services, trucking and insurance, the improvement of protection to intellectual property, greater discipline over subsidies, and an open and secure environment for foreign investment (Laun, 1987: 209).

Canada, for its part, had several goals, as well, namely the improved access to the United States and Mexico for goods and services, the strengthening of the initial Canada-United States Free Trade Agreement, and the guarantee

of its position as a prime location for investors to serve all the North American Continent. Canada hopes that NAFTA will supply it with a sharper edge for international competitiveness, by widening trade horizons and providing a bigger stage on which to demonstrate and prove its economic expertise and leadership.

The agreement provides that tariffs are removed within 10 years in the traditional sectors, accounting for half of the trade, and removed either immediately, in five or exceptionally in twenty years for the remainder (Ritchie:10). It moves toward a harmonized system of tariff nomenclature (Ritchie:10). It has quantitative restrictions, which build on GATT, and has a sectoral perspective as to agriculture, foods, automotives and energy (Ritchie:12).

There are new elements to the agreement, which include the restriction of investment, freedom in the future to regulate in conformity with the basic principles of nondiscrimination, and the principles of national treatment, right of establishment and right of commercial presence (Ritchie:16). There is a provision for access for temporary personnel in the service and manufacturing sectors, and business recognition of professional and sales services in the spirit of freedom of movement. This latter aspect, however, has not yet been extended to blue collar workers

(Ritchie:17). This important provision for equal employment in the member states must go further to protect against any form of discrimination, including gender.

NAFTA provides for a trade commission in charge of political management, which includes a dispute settlement mechanism in the form of a panel (Ritchie:19). If nothing results from the notification of a consultation action, then a panel review ensues with recommendations that are binding if both sides agree (Ritchie:19). The dispute settlement is also binding when one side believes that a surge of imports is damaging to it, thereby receiving compensation while the other side is snapped back to a most favored nation tariff (Ritchie:20).

This procedure is in effect for the first ten years of the agreement, providing steps for negotiation, legislation specificity and panel review (Ritchie:21). The settlement mechanism calls for compulsory consultation on changes of law, and an evaluation procedure by a panel, with the right to retaliate or withdraw if the panel so favors (Watson:64).

NAFTA also provides, for the first time, a system of settling private investment disputes (Government of Canada:13). Disputes between an investor from a NAFTA country and another NAFTA government can be settled at the

investor's option by binding international arbitration, with all investors treated equally. The NAFTA dispute settlement provisions call for the rapid and fair settlement of disputes, including the use of impartial panels. There are three basic steps to the process, namely consultation among the three countries for a satisfactory settlement. If the first round fails, the NAFTA trade commission, which is comprised of cabinet level representatives, will examine the case for interpretation of trade rules; and if this fails, in order to promote an impartial decision, the issue will be reviewed by a specially selected panel. This panel is composed of five members chosen from a trilaterally agreed roster, with two panellists from the complaining party selected by the defending party, two from the defending party nominated by the complainant and the panel's chair allowed to be a representative from the third NAFTA country or another neutral country chosen by mutual agreement or drawn by lot (Government of Canada:23).

The elimination of tariffs is important for a reduction of protectionism and a climate of open investment (Skud: 26). However, protection is still lacking for intellectual property (Skud:28). Nonetheless, NAFTA has the first international code of binding rules and principles for services (Skud:29). It obliges one country's service providers to treat the other country's no less favorably than their own for domestic and cross border sales,

distribution, and the right of establishment of facilities. It also provides for mutually acceptable professional licensing standards (Skud:29).

Canada's service industry is the fastest growing sector of the economy, accounting for the employment of more than nine million Canadians, two thirds of the workforce (Government of Canada:10). The service sector has provided 90% of all new jobs in Canada, or 304,000 jobs in the past seven years. More Canadians now work in software than in the auto industry. Canada's export of services around the world totals an average of \$23.4 billion per year, with business and professional services accounting for 20% of these exports.

Cross border trade in services was first included in the Canada-United States Free Trade Agreement, and NAFTA has extended these provisions with procedures to encourage the recognition of licenses and certificates through mutually acceptable professional standards and criteria, such as education, experience and professional development (Government of Canada:10). It opens up temporary entry across the border for over 60 professions (Government of Canada:11). Although access to employment is important, it needs to be explicitly guaranteed in a nondiscriminatory manner.

NAFTA sets out strict rules of origin, requiring that products originate in North America to qualify for preferential duties. For those not meeting this, larger quotas for preferential access to the American market have been included, with these new levels helping textile and apparel manufacturers expand their exports of products to the lucrative American market (Government of Canada:14). Canadian and Mexican tariffs on apparel will be eliminated within 10 years, and tariffs on textiles within eight years (Government of Canada:15). Mexico has concentrated on less expensive lower quality items, while Canada is moving toward higher value textiles and quality designer fashions (Government of Canada:15).

The financial industry was first included in the Canadian-United States Free Trade Agreement (Government of Canada:12). It believed that freer market access for financial services would help trade flow more easily. The United States agreed to national treatment, market access and most favored nation status be applied to financial services, fully subjecting the sector to dispute settlement.

Benefits of the Agreement

The North American Free Trade Agreement, the advocates argue, provides several benefits: 1-improved access to the North American market of 360 million

consumers, as to manufactured goods, and business and professional services; 2- opportunities to export more products and services to Mexico, which needs capital goods, services and investment; 3-new export and investment opportunities for companies in different markets; 4-a more equitable trading relationship through the elimination of almost all Mexican tariffs and imports, with Mexico being the largest trading partner in Latin America; 5-strengthened and precise North American rules of origin to determine which goods qualify for duty free treatment in North America; 6-opportunities to bid on large government procurement contracts, with equal access to the bid process in some sectors; 7-improved methods to settle trade disputes among Canada, Mexico and the United States; 8-protection of key domestic interests, including culture, education, water, health and social services, such as child care, the environment and aboriginal people; 9-increased market opportunities in Latin America; and 10-enhancement of the area as a foreign investment destination through secure access to the North American market for foreign investors, with key selling points of strong transportation and telecommunication infrastructures, abundant energy resources, a highly educated and skilled workforce, comprehensive social and health services, and a stable political and economic environment (Government of Canada:3, 4) .

The North American Free Trade Agreement eliminates the majority of current tariffs and import licenses on all manufactured goods, provides greater access for service industries, permits more mobility for professional and business workers, and allows easier entry into the North American market of 360 million consumers. By recognizing that we share a hemisphere, it sets an important precedent for north-south continental trade, and looks toward the future by allowing for participation by other countries, if they meet the membership criteria set by the three founding nations.

Latin America countries have expressed an interest in becoming signatory members of the Free Trade Agreement. As well, Québec has already given thought to joining as a separate member in the event it becomes a separate nation. Québec wishes to maintain the current division of legislative powers, respect fully its unique social policy, language and culture, maintain a leeway to modernize and develop its economy, provide for transitional periods for businesses in less competitive sectors, adopt a dispute settlement mechanism, maintain its special status for agriculture and fisheries, and protect its right to decide on the Agreement in light of its interests (Government of Québec: 17).

Concerns Over the Agreement

The Free Trade Agreement, according to its critics who paint a more realistic picture, is not free, since Canada has paid a high price to gain greater access to the American and Mexican markets (Merrett 1996:270). Canadian consumers have seen prices rise along with the advent of the Goods and Services Tax. Thousands of jobs have been lost and unemployment hovers around the 9% level (Merrett:270).

Further, the agreement is also not about trade, and is more about the creation of a new continental model of development for the regulation of capitalism (Merrett:95). It serves more as a corporate bill of rights entrenching deregulation and market orientation in an international treaty, while at the same time eroding national economic, social and political institutions.

Neoconservatives in Canada and the United States wanted a deregulated continental model of development to increase capital mobility in order to restore profitability. Corporate managers have worked in a continent wide drive to bring down wages and welfare state spending, by playing communities off against one another. The goal is to harmonize and integrate Canadian standards and institutions with the United States (Merrett:95). Canada's economy, political system and labor practices have been significantly

altered as a result of closer ties with the United States' economy (Merrett:271).

Canada has been forced to acquiesce to the continental model of development by continental market forces and American geopolitical pressures. Free trade is designed to restructure society to suit corporate needs, causing a threat to communities, by capital enhanced geographic mobility, which is not universally beneficial.

Many have benefited, but in the eyes of the critics, many more have been hurt. Sovereignty has been compromised, and the three most important industries for Canada, wood exports, agriculture and automobile manufacturing, have been hurt. "The burden of Free Trade driven restructuring was shared unequally on a national, regional, class and gender basis" (Merrett:271). The critics argue that the new capital labor accord relies on domination instead of negotiation (Merrett:273). Canadian workers are suffering from a 'whiplash process', being forced concessions on wage benefits and work rules (Merrett:273). Mergers, temporary and part-time workers, and cheap labor increase competitiveness (Merrett:274).

Failure to acquiesce has resulted in relocation out of Canada. Free trade generated jobs have never materialized as promised by the advocates. The Continental

Model has led to polarization and segmentation of the Canadian labor force. The discourse of universality has ended, so that there is more social inequality across Canada (Merrett:274). The Welfare State is viewed as an impediment to profit in the eyes of business, which has chipped away at it, giving way to a 'policy of stealth' (Merrett:275).

With deregulation, budget cuts and privatization, importance is given to corporate profit at the expense of social equality (Merrett:275). "Continental free trade has helped to create a neoconservative utopia where issues such as social justice and regional equality have become relics" of a bygone era (Merrett:279).

Opponents of free trade are said to suffer from 'emporiophobia', a fear of free trade (Merrett:277). Yet, the effects of free trade are something to fear, since hemispheric free trade is now a possibility (Merrett:278).

Ross Perot argued that there would be a 'sucking sound' of jobs going south of the border, ultimately to Mexico (McPhail 1985:44). However, no tripartite treaty will disturb the overwhelming dominance that accrues to the United States, because of its geographic position, between Canada and Mexico (McPhail:78). A borderland is a region jointly shared by two nations that houses people with common social characteristics in spite of the political boundaries

between them, and thus the United States has a strong influence on the other two countries bordering it (McPhail:78).

The outflow of investment and the hemorrhaging of profits and service payments out of Canada is intrinsically intertwined with the North American Free trade Agreement (Hurtig 1991:303). According to the critics, the human and economic debris will be with us for as long as we can see into the future.

The single most important impact of NAFTA is the decline in the standard of living of Canadians which has coincided with the agreements (Hurtig:303). We need to reform democracy and political institutions so citizens and not just corporate business benefit from change (Hurtig:304). There is presently more foreign ownership and control, with fewer jobs and poorer jobs (Hurtig:75). More imports of goods and services should be sourced in Canada, but there is a failure to develop new competitive products while at the same time having less diversification of exports (Hurtig:75).

Northrop Frye pointed out long ago, "Why go to the trouble of annexing a country that is so easy to exploit without taking any responsibility for it" (Hurtig:89).

Economic penetration has proven simpler than military force (Hurtig:89).

The North American Free Trade agreement, according to its critics, is a neo-conservative Americanization of Canada (Watkins:3). The pre-agreement years saw trade on a multilateral level, without abandoning national control of the foreign market (Watkins:1). The agreement is seen as a straightjacket, because it is difficult to introduce new measures to strengthen or expand national control of firms and industries (Watkins:16). Watkins argues that it is clearly a dangerous and indefensible gamble for Canada to commit to a binding dispute settlement mechanism with a trading partner, the United States, which has such a disproportionate power (Watkins:16).

The North American Free Trade Agreement has set up a trading bloc designed to fit Canada and Mexico into the American model of development, keeping Europe and Japan out (Cameron 1993:xxi). There is no willingness to share political powers like in the European Community, but simply the use of American power (Cameron:xxi).

However, Mexico is an attractive site for low wage production of standardized industrial goods (Cameron:243). With this comes Canadian and American job losses with production shifts to Mexico and a downward pressure on wages

(Cameron:243). Workers have been displaced from industries and are vulnerable to competition from low wage countries, with the loss especially to low income jobs (Cameron:249). The North American Free Trade Agreement does nothing for basic labor (Cameron:251).

Obviously, the job crisis existed before free trade and was not confined to Canada (Campbell 1993:1). However, there is a conflict between the profitability of individual corporations and the pressures of global capabilities against human needs for high employment levels, decent pay, healthy working conditions and job security (Campbell:1). What has occurred is a decrease in full-time employment and an increase in part-time and temporary employment, as well as an increase in unemployment and in welfare levels (Campbell:2). This has been "the longest and deepest unemployment crisis since the Great Depression", with inappropriate monetary policy playing a major role (Campbell:2).

There is a gap in the free trade effect between the top corporate executive and the average shop floor worker (Campbell:16). Free trade encourages self-reinforcing cycles of destructive competition, exerting great pressure on the Continent (Campbell:21). It has eliminated jobs, depressed incomes and standards, and aggregated demands. The effects of investment diversion and

export harassment far outweigh the positive effects of tariff reductions. There is a one-sided advantage for a corporate elite that is globally competitive, increasing profits, surviving and growing unfettered by government controls, and securing the highest rate of return for the interests of financial capital.

Decent jobs and decent living standards have become unimportant. Employment needs of society must be paramount, and therefore, corporate interests must yield to broader public interests. However, the North American Free Trade Agreement is tilted in the wrong direction (Campbell:21). Multilateral trading arrangements with the European Community and Japan would be alternatives to the North American Free Trade Agreement and its shortfalls (Campbell 1992:21).

Canada's social programs are a contrast to those of the United States (Barlow 1990:82). Americanization is balkanizing the country (Barlow:87). Regional equality is promised, but individuals, families, communities and regions are being abandoned (Barlow:87). Canada was founded on the national principle of building strong communities and regions to serve the needs of their residents, not to deplete these areas in order to supply land and factories for economic interests (Barlow:94).

With lay-offs and closures, there is a bitter legacy of unemployment, poverty and inequality, with society becoming distinctly harsher (Barlow:104). Those who are able to thrive are doing very well, but the societal gap is growing so that there is a chasm between rich and poor, young and old, men and women, with a disappearing middle class (Barlow:104). There is a severe strain on the societal fabric, with a sacrificing of the needs of many for the demands of few (Barlow:106).

Among those who were opposed to the Free Trade agreement, Canadian Mitchell Sharp, who has been a mentor to the current Prime Minister Jean Chretien, stated it best:

From the very beginnings of our country, we have sought to preserve a separate identity, to live in harmony with our next door neighbor but as an independent country. By entering into this...preferential agreement, we would be deciding no longer to resist the continental pull. On the contrary, we would be accelerating the process of the Americanization of Canada (Axworthy:38).

Many believe that free trade challenges the fundamentals of Canada's nationhood, with its powers limited by interdependence and domination from foreign multinationals (Axworthy:38).

The benefits of free trade do not fall equally (Ritchie:23). Free trade serves to undermine full employment (Axworthy:39). The first essential ingredient for free

trade should be a commitment to full employment. Sufficient independence for blueprint choices and for flexible alternatives for long term planning is needed, looking away from integration (Axworthy:39).

The advocates argue that there will be an increase in the wages of the skilled in manufacturing, and that this will spill over into the other sectors (Harris:53). However, it will not occur where unemployment is high, since high-paying and secure jobs require an overall low unemployment rate (Harris:53).

By operating under the deceptive banner of 'free' trade, multinational corporations are working hard to expand their control over the international economy, and to dismantle vital health, safety and environmental protections, which in recent decades have been won by citizens' movements across the globe (Nader 1993:1). According to Ralph Nader, this serves to devalue jobs, depress wage levels, make workplaces less safe, destroy family farms, and undermine consumer protections (Nader:1).

Because of the North American Free Trade Agreement, large global companies have capitalized on poverty in the Third World, by lowering safety and wages in employment (Nader:2). There is a race 'to the bottom' pitting State against State, for the lowest wage levels,

lowest environmental policies and lowest consumer safety standards (Nader:6). As such, workers, consumers and communities will continue to lose, while short-term profits soar and big business wins, in a threat to move South (Nader:6).

The centralization of commercial power is unsound (Nader:11). There is a need for community oriented production in smaller scale operations, along with more flexibility and adaptability to local needs for sustainable production methods and democratic controls (Nader:11). Thus, the allocation of power to lower levels of government bodies tends to increase citizen power (Nader:11).

The Impact on Women

According to the National Action Committee on the Status of Women, there is a gender gap on the issue of Free Trade (Campbell 1992:20). More women than men are against the free trade deal, because it affects every issue women in this country are concerned about, including day care, health care, the environment, consumer protection and prices (Campbell:20).

The North American Free Trade Agreement has forced Canada to harmonize its social and economic policies to conform to the United States (Griffin Cohen:11). Free trade

calls for privatization and deregulation, but policy intervention is needed to reduce unemployment and raise wage rates (Griffin Cohen:14).

Women and the types of jobs they occupy are especially vulnerable to free trade (Griffin Cohen:15). Over 60% of women work in the sectors of manufacturing, textiles, clothing, food processing, electrical, and leather products. There has been a shift away from service type jobs in which women are heavily concentrated, with pressure to decrease wages and provide fewer benefits. There has been major job loss by sourcing services outside Canada (Griffin Cohen:16).

It is important to negotiate over the right of establishment and the right to national treatment. Manufacturing is vulnerable to trade liberalization, which will lead to an increase in female unemployment, confinement of female work to certain occupations, and adverse working conditions (Griffin Cohen:22).

The United States has an advantage over Canada, because of cheap material, capital intensiveness and technological advancement (Griffin Cohen:26). Due to its size and climate, Canada is again at a disadvantage in the food industry, with its imports being greater in female concentrated jobs (Griffin Cohen:30). The United States is

again favored in the electrical field, where there is a rationalization of production for specializations, leaving women at a disadvantage (Griffin Cohen:32). There is a 'going South' policy. Firms want to locate elsewhere, while still having access to the Canadian market. At the same time, by phasing out import restrictions, the domestic sector is not protected (Griffin Cohen:34).

With restructuring in the 1970s, it was found that women were hit harder, with the older married low-skill worker more affected. Women found it more difficult to find work than men at a rate of 38% to 62%, suffered longer unemployment, and moved out of the labor force at a rate of 15% to 9%. There was a shifting of jobs, by which men were afforded a wider variety of employment while women were forced to move most often into clerical work and gender segregation (Griffin Cohen:37).

The United States legislation for realignment will curtail equal rights legislation, since equal pay is too costly for the industry (Griffin Cohen:45). No women's sector will experience growth under free trade (Griffin Cohen:49). Of the three major categories of sectors, the primary (agriculture and resource extracting), the secondary (construction and manufacturing) and the tertiary (service). The latter sector contains the largest number of women, and

therefore has the most to lose in the loss of jobs and the replacement of domestic with imports (Griffin Cohen:51).

The service sector accounts for two thirds of the national income and 70% of jobs in Canada (Griffin Cohen:55). Free trade will erode the domestic service economy, which is predominated by women (Griffin Cohen:58). There have been important changes in women's labor. From 1911-21, there was a move away by women from the manufacturing sector, from 26% to 18%, to the clerical sector, from 9% to 19%. As well, from 1941-51, there was an increase of working married women in the labor force (Griffin Cohen:60).

Foreign service industry activity is limited by non-tariff barriers, through control over investment, ownership and trade levels (Griffin Cohen:64). The United States, however, believes that government intervention as a matter of security and sovereignty is an unfair practice (Griffin Cohen:67). The United States accounts for roughly 80% of Canada's trade (Griffin Cohen:69).

The expansion of the clerical and public service areas is necessary for women's participation. However, the Canadian market is vulnerable, because of the large percentage of American-owned businesses, which causes an

indirect pressure to conform to United States policy (Griffin Cohen:71).

The United States has easier access to Canada than Canada to the United States. The American trade remedy legislation imposes pressure upon Canada to harmonize, which impacts social services, job loss, wages, working conditions and types of employment (Griffin Cohen:75). Women become the losers in the reorganization of production for export (Griffin Cohen:82). It is found that trade led growth is not always an adequate economic policy (Griffin Cohen:84). Free trade is a means not an end.

I believe that the North American Free Trade Agreement has had an important impact on women, more so because of what it fails to protect. The biggest drawback to the North American Free Trade Agreement, which was also a weakness in the Canada-United States Free Trade Agreement, is the lack of an explicit provision against discrimination in employment. Therefore, the North American Free Trade Agreement should be amended to include the vital provisions concerning pay equity and full access to the labor force, especially if the agreement is to be broadened in the future to include other member states. As well, in this respect, an overseeing court system for the effective implementation of equity policy regionally would be a great advantage. However, as the agreement stands, discrimination in

employment remains only a national concern, if at all. This is not enough.

I contend that the European Economic Community Treaty remains a good blueprint, which can be adapted to the North American experience. The North American Free Trade Agreement, as it is, falls short of the necessary legislative and judicial protection afforded in the European Community Treaty (Smith:72).

President John F. Kennedy's statement concerning the relationship between Canada and the United States is still applicable today and can even be further extended to North America: "Geography has made us neighbors, history has made us friends, the economy has made us partners and necessity has made us allies" (Laun, 1987: 208). In this spirit, we need to work together to bring about full equality in employment for men and women.

REFERENCES CHAPTER 6

-Armstrong, Donald, Canada-U.S. Free Trade and Canadian Culture, in Riggs, A. R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Axworthy, Lloyd, Free Trade, The Costs for Canada, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Balthazar, Louis, Quebec's Policies Toward the United States, in Alfred O. Hero, Jr. and Marcel Daneau, Problems and Opportunities in the United States and Quebec Relations, Boulder: Westview Press, 1984.

-Barlow, Maude, Parcel of Rogues, Toronto: Key Porter Books, 1990.

-Brecher, Irving, The Free Trade Initiative, On Course or Off, in Riggs, A. R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Cameron, Duncan, Watkins, Mel, Canada Under Free Trade, Toronto, James Lorimer & Co., 1993.

-Campbell, Bruce, Free Trade, Destroyer of Jobs, Ottawa: Canadian Centre for Policy Alternatives, 1993.

-Campbell, Bruce, We Need Free Trade Abrogation to Rebuild the Nation, Ottawa: Canadian Centre for Policy Alternatives, 1992.

-Chartier, Armand, Franco-Americans and Quebec, in Alfred O. Hero, Jr. and Marcel Daneau, Problems and Opportunities in the United States and Quebec Relations, Boulder: Westview Press, 1984.

-Creighton, Donald, The Empire of the St.Lawrence, Toronto: Macmillan, 1970.

-d'Aquino, Thomas, Truck and Trade with the Yankees, The Case for a Canada-U.S. Comprehensive Trade Agreement, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Davenport, Paul, L'Economie Politique du Libre Echange, Un Survol, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Dinsmore, John, Elements d'une position du Québec dans les relations économiques avec les Etats-Unis, in Choix, Laval: Centre Québécois de Relations Internationales, 1975.

-Easterbrook, W.T., Aitken, Hugh, Canadian Economic History, Toronto: Macmillan, 1976.

-Faucher, Albert, Lamontagne, Maurice, The History of Industrial Development, in Falardeau, Jean-Claude, Essays on Contemporary Quebec, Quebec: Les Presses Universitaires Laval, 1953.

-Fry, Earl, Trends in Canada-U.S. Free Trade Discussions, in Riggs, A. R., Welk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Government of Canada, The North American Free Trade Agreement At A Glance, Ottawa.

-Government of Quebec, Quebec and the North American Free Trade Agreement, Ministère des Affaires Internationales, Quebec, 1993.

-Griffin Cohen, Marjorie, Free Trade and the Future of Women's Work, Manufacturing and Service Industries, Toronto: Garamond Press, 1987.

-Guindon, Hubert, Quebec Society: Tradition, Modernity, and Nationhood, Toronto: University of Toronto Press, 1988.

-Hamelin, Jean, Roby, Yves, Histoire Economique du Québec 1851-1896, Montréal: Fides, 1971.

-Hamelin, Jean, Histoire du Québec, StHyacinthe: Edisem, 1976.

-Harris, Richard, Some Observations on the Canada-U.S. Free Trade Deal, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Hazledine, Tim, What do Economists Know about Free Trade, in Riggs, A. R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Hero, Alfred, Balthazar, Louis, Contemporary Quebec and the United States 1960-1985, Boston: University Press of America, 1988.

-Hurtig, Mel, The Betrayal of Canada, Toronto: Stoddart Publishing, 1991.

-Innis, Harold, Staples, Markets and Cultural Change, Montreal, McGill Queen's University Press, 1995.

-Jones, Robert, Agriculture in Lower Canada, 1792-1815, in The Canadian Historical Review, vol.27, 1946, p.33.

-Laun, Louis, U.S.-Canada Free Trade Negotiations: Historical Opportunities, in Riggs, A. R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Lavoie, Yolande, L'Emigration des Québécois aux Etats-Unis de 1840-1930, Editeur Officielle du Québec, 1981.

-Layton, Robert, Why Canada Needs Free Trade, in Riggs, A. R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Lipsey, Richard, Canada's Trade Options, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Lisée, Jean-Francois, Dans l'Oeil de L'Aigle, Boreal, 1990.

-Little, J.I., Nationalism, Capitalism and Colonization, Kingston: McGill Queen's University Press, 1989.

-Lyon, Peyton, CUFTA and Canadian Independence, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Marr, William, Paterson, Donald, Canada: An Economic History, Toronto: Gage, 1980.

-Masters, Donald, The Reciprocity Treaty of 1854, London: McClelland & Stewart Ltd., 1963.

-McPhail, Brenda, NAFTA Now, Lanham: University Press of America, 1985.

-Merrett, Christopher, Free Trade, Neither Free Nor About Trade, New York: Black Rose Books, 1996.

-Ministère des Affaires Internationales, de l'Immigration et des Communautés Culturelles du Québec, Commerce International du Québec, Etats-Unis, Jan-Juin, 1993-1994, Québec, 1994.

-Ministère des Affaires Internationales, de l'Immigration et des Communautés Culturelles du Québec, Commerce International du Québec, Etats-Unis, 1992-1993, Québec, 1994.

-Ministère des Affaires Internationales, de l'Immigration et des Communautés Culturelles du Québec, Répertoire des Représentations du Québec à l'Etranger, Québec, 1994.

-Nader, Ralph, The Case Against Free Trade, San Francisco: Earth Island Press, 1993.

-Neufeld, E.P., Financial and Economic Dimensions of Free Trade, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Niles, Thomas, Address, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Oliver, Michael, The Passionate Debate, Montreal: Vehicule Press, 1991.

-Papillon, Benoit, Bankruptcy Law, Free Trade and Economic Adjustments, Preliminary Considerations, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Raynauld, Andre, Looking Outward Again, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Riggs, A.R., Velk, Tom, Canada-American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Ritchie, Gordon, The Free Trade Agreement, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Skud, Tim, Free Trade, What Now for the U.S., in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Soldatos, P, Canada's Foreign Policy in Search of a Fourth Option: Continuity and Change in Orientation Towards the U.S., in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Stevens, Paul, Reciprocity 1911: The Canadian Perspective, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Stone, Frank, Removing Barriers to Canada, in Riggs, A. R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Surrey, David, Choice of Conscience - Vietnam Era and Draft Resisters in Canada, New York: Praeger, 1982.

-Thompson, Mark, Le Syndicalisme Québécois dans le contexte Nord-Américain, in Choix, Laval: Centre Québécois de Relations Internationales, 1975.

-Velk, Tom, Riggs, A.R., The Men that Corrupted Everyburg, American Farmers and the Free Trade Initiative 1911, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Velk, Tom, Riggs, A.R., The Ongoing Debate Over Free Trade, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Watkins, Mel, Alternatives to Free Trade, Ottawa: Centre for Policy Alternatives.

-Watkins, Mel, The Political Economy of Growth, in Clement, Wallace, Williams, Glen, The New Canadian Political Economy, Kingston: McGill-Queen's University Press, 1989.

-Watson, William, The Draft Agreement, Cohabitation Worth a Try, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-White, Randall, Fur Trade to Free Trade: Putting the Canada-U.S. Trade Agreement in Historical Perspective, Toronto: Dundurn Press, 1988.

-Wigle, Randall, The Received Wisdom of the Canada-U.S. Free Trade, Qualifications, in Riggs, A. R., Welk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Young, Robert, Canada-U.S. Free Trade, Economic Realities and Political Choices, in Riggs, A.R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

CHAPTER 7

THE EUROPEAN ECONOMIC COMMUNITY TREATY

The European Economic Community has provided important contributions to the ending of gender discrimination in the coming together of people of different nations. Equal pay and equal treatment are real commitments for the Member States.

This Chapter will examine the European Community Treaty from its inception, and the various branches of the Community. It will also look at the European Court of Justice and its impact on equality. Important laws and court cases affecting women will be analyzed.

Early Developments

A world level of government is still too distant, but in Europe, a political structure at a supranational level exists. Only continental wide superpowers can think of solving their major problems at the national level (Daltrop 1982:vii). For smaller powers like Western Europe, it requires wider alliance decisions (Daltrop:vii). It is a multi-tiered approach to government and decision-making (Daltrop:viii).

Initially, many centuries ago, Europe was united within the Roman Empire (Daltrop:1). Throughout its history, the European continent has been restless, fragile, contradictory, competitive and pluralistic, divided by language and religion (Nicoll 1994:3). National ambitions and self-interest have been the predominant political forces throughout the twentieth century.

However, with the two World Wars and the threat of the Cold War, European integration by peaceful methods was seriously reconsidered as an alternative to the independent and aggressive Nation State (Daltrop:2). Political integration is the peaceful creation of a larger political unit out of several separate ones, which voluntarily give up some powers to a central authority and renounce the use of force toward the other units (Daltrop:2). Therefore, by the Treaty of Rome, the European Community States transferred to the Community the power to conclude treaties with international organizations and with non-member countries (Nicoll 1994:20).

Prior to the development of the European Economic Community, there had been a growing disparity between European and American industrial growth (Daltrop:7). In the United States, industrial production had increased by 163% between 1900 and 1938 (Daltrop:7). In contrast, while Western Europe had produced one half of the world's

industrial goods in 1913, this had dropped to merely a quarter only forty years later (Daltrop:8).

Thus, the European Community was set up so as to be the only one which removed countervailing duties, having a supernational mechanism called the European Court, which disciplined the use of subsidies (Smith:72). Prior to the European Community, there was little experience in regional trade arrangements for disputes over subsidies, and countervailing duties for services and investments (Smith:71).

There were two important episodes in Europe: first, the period of the 1950s and 1960s, which saw the formation of the European Community. This allowed the expansion of interindustry and intraindustry trade, with no major dislocations of individual industries, and brought about more specialization and production. The second episode occurred in the 1970s, when open trade in the European Community brought about both small-scale and large-scale economic growth (Smith:74).

With democratic governments reinstated in liberated Europe in the post-war era, the restructuring of the region was begun (Nicoll:9). A Congress of Europe was held in the Hague in May 1948, bringing together leading figures from France, Britain, the Netherlands, Belgium,

Germany, Italy and elsewhere (Nicoll:9). Britain's Prime Minister Winston Churchill referred to the idea of a setting up 'a kind of United States of Europe', which made a powerful impact (Nicoll:11).

The advocates of integration sought to escape from national rivalries (Nicoll:12). Thus came the flagship of European integration, the European Communities. The first of these was the Coal and Steel Community, also known as the Treaty of Paris signed on April 18, 1951. It removed the Coal and Steel industries from full national control to a supranational stewardship (Nicoll:12). The High Authority, which it created, was presided over by Jean Monnet and comprised delegates from the Member States, making decisions in consultation with the Assembly (Nicoll:13).

The Treaty of Paris was regarded only as a starting point, with the success foreseen in this sector expected to spread to others. The preamble of the Treaty spoke of safeguarding world peace, establishing an economic community, and substituting essential interests for age-old rivalries and conflicts (Nicoll:13).

Monnet, the most influential of the founding fathers of the European Economic Community, insisted on cooperation across national frontiers in a sector by sector approach (Daltrop:9). He persuaded the foreign ministers of

the six countries involved to meet at Messina on June 1, 1955 (Nicoll:16). They resolved that the moment had come to go a step further towards the construction of Europe (Nicoll:16).

The Messina Conference set up a committee of government representatives (Nicoll:16). They wanted to proceed to a customs union with no internal tariff barriers, but only a common external tariff (Nicoll:18). However, under imperial preference, Britain gave free entry to raw materials and manufactured goods from Commonwealth countries, and received tariff preferences for exports to them. So Britain was not prepared to join and be subject to reverse preferences (Nicoll:18). Nevertheless, Treaty drafts began in the fall of 1956, and compromises were negotiated at both the foreign minister level and at the meeting of heads of state in February 1957 (Nicoll:19).

European Economic Community Treaty

Lord Denning, a leading constitutional expert, stated "the Treaty of Rome is like an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back" (Nicoll:99). On March 27, 1957, the Treaty of Rome was signed by France, Italy, West Germany, Luxembourg, the Netherlands and Belgium (Daltrop:9). The Treaty of Rome came into force on January 1, 1958, creating the European

Economic Community (Daltrop:15). The reaction of the Soviet Union was one of total opposition, regarding the European Community as part of the war-making plot against Soviets.

The European Community was set up by the Treaty of Rome to maintain peace in Europe and to foster prosperity through cooperation (Daltrop:viii). These industrialized member states are dependent on scarce imported raw materials, energy and minerals (Daltrop:ix). The countries are individually too small and densely populated to take full advantage of modern industrial and technological developments. Therefore, Europe's industries have moved beyond national frontiers, and are dominated by multinational companies (Daltrop:ix).

The Member States agreed to work together for an integrated multinational economy for the free movement of labor and capital in the Community, while having joint institutions and common policies toward underdeveloped regions of the Community and toward those outside the Community (Daltrop:15). It was "to lay the foundations of an even closer union among the peoples of Europe" (Treaty of Rome).

The Treaty gave the community institutions power to take the necessary steps to adjust national legal rules through harmonization procedures (Daltrop:20). This was

required in order to remove national, technical or legal arrangements inhibiting the free movement of products, people and resources. The Member States, meeting in Council, had the final say on most issues and often decided only by unanimity (Nicoll:22).

The larger market allowed for a more rational use of resources and provided for higher productivity (Daltrop:23). By July 1, 1968, all internal tariffs had been abolished among the Member States for a community wide production and distribution of products and services (Daltrop:18). The abolition of tariffs encouraged mutual trade so that by 1969, intra-Community trade in manufactured products was about 50% higher than previously (Daltrop:23).

The long term implications of the Treaty of Rome were: a system of majority voting among the representatives of the national governments in the Council, a supranational bureaucracy over which national governments would have little control, a directly elected European Parliament, and a commitment by the Member States to work for a closer union (Daltrop:28).

The Treaty of Rome states "any European state may apply to become a member of the Community" (Daltrop:153). Treaties of Accession were signed on January 22, 1972, and came into force on January 1, 1973, with Britain, Ireland

and Denmark joining the European Community (Daltrop:35). Further, Greece joined in 1981, Spain and Portugal joined in 1986, and Austria, Sweden and Finland were the last to become Member States (Daltrop:36).

The Treaty on the European Union, Maastricht, was negotiated on February 7, 1992 (Duff 1994:3). This was a creation of an internal market of over 340 million people providing for the free movement of goods, capital, services and citizens of member states (Duff:7). The European Economic Community has become one of the three most important players on the world scene, the other two being the United States and Japan (Duff:7).

The Maastricht Treaty affirms that it marks a new stage in the process of European integration undertaken with the establishment of the European Communities. The Treaty was designed to create a firm basis for the construction of the future of Europe, by deepening the solidarity between peoples while respecting the different histories, cultures and traditions. It created an institutional framework for a common foreign and security policy, and institutionalized cooperation in justice and home affairs.

The Maastricht treaty espoused the desire to enhance further the democracy and efficient functioning of the institutions so as to enable them better to carry out,

within a single institutional framework, the tasks entrusted to them (Maastricht Treaty).

The European Communities confirm "their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law" (Maastricht Treaty). The foundations for a united Europe were laid on fundamental values including peace, unity, equality, freedom, solidarity and security (Borchardt 1993:12).

In essence, Europe is now the biggest frontier-free market in the world (Commission..., From Single...1992:8). The single market removed three types of barriers to free movement, namely physical, technical and fiscal. The four freedoms of the Community - for goods, services, people and capital - have become a reality. Further, a new single currency, the euro is set to be introduced as legal tender on January 1, 1999, and will replace the currencies of those Member States which have agreed, by January 1, 2002.

The present membership of 15 States may be expanded to 26 States early in the next century, with the applications from several nations to join the European Community. The six most promising nations for membership are Poland, Hungary, the Czech Republic, Estonia, Slovenia

and Cyprus. Another five nations, namely Romania, Bulgaria, Slovakia, Lithuania and Latvia, must undergo a further review of their laws and the judgment of suitability for membership. Still further nations are considering membership, namely Turkey, Malta, Switzerland, Norway, Iceland, Lichtenstein, and Albania (Duff:12).

The criteria used for a nation to secure membership in the European Community is: 1- democratic institutions and the rule of law, with respect for human rights and minorities within the borders; 2- a functioning market economy capable of competing within the union's single market; and 3- the acceptance of obligations of membership, signing onto the union's body of rules. The latter is perhaps the most important criteria for equal rights and their enforcement. The European Community is at a crossroads, challenged to adapt the vision of the 'founding fathers' first designed for six Member States to a future union of perhaps over twenty states.

The Community and the European Court of Justice

The Community is composed of four major institutions. The Commission is responsible for making legislative proposals, executing policies and monitoring the compliance of member states' with their obligations. It is the driving force behind European integration by its right

of initiative. It is also the guardian of the treaties by its right to intervene with member states and to demand compliance with their obligations. If Member States breach their treaty obligations, they will face Commission action, and possible legal proceedings in the European Court of Justice (Commission..., Serving...1996:15).

The Council of Ministers is composed of representatives of Member State governments, and decides on Commission proposals. It is the Community's legislator, with all decisions involving new policies requiring unanimity.

The Assembly is charged with proposing, to the Council, arrangements for universal direct elections. The Council, in turn, commends them to the member states for adoption under constitutional procedures. The Assembly is consultative and can, if it has a sufficient majority, express its non-confidence in the commission by dismissing it.

The Court of Justice is the Community's supreme constitutional authority. It renders judgments on the obligations of the institutions, Member States and citizens. The very existence of the European Community is conditional on the recognition of the binding nature of its rules, by the Member States, by the institutions, and by individuals

(Commission..., Serving...:17). Community law has successfully embedded itself thoroughly in the legal life of the Member States through the supervision of the European Court of Justice (Commission..., Serving...:17).

The European Court of Justice was to provide the legal sanctions for the carrying out of the Treaty (Daltrop:17). Before the European Economic Community, courts operating beyond national boundaries were set up by international agreement, such as the International Court of Justice for the United Nations (Daltrop:49).

Community citizens are affected by two legal systems, national and Community law (Daltrop:52). The courts of law must apply both systems of law where relevant, and if there is a conflict, the Community law takes precedence. The supremacy of Community law is implicit in the nature of the Communities, since their existence and functioning require its application. This surrender of sovereignty cannot be reversed by measures taken by national authorities in conflict with the Community (Daltrop:52).

Community law is directly applicable to Member States. There is no requirement that it be passed into national law for its validity, since the rights and obligations accrue directly to citizens (Nicoll:97). This has been successfully upheld by the European Court of

Justice, and is no longer under legal challenge. The primacy of Community law and its direct applicability are distinctive features of the European Community, turning freedoms into rights (Nicoll:98).

European Community law is a system of laws, which is directly applicable to people and institutions in members states, and is invoked in national courts (Daltrop:49). Community law touches on many aspects of national life, including immigration, control of foreign workers and matters relating to equality between the sexes (Daltrop:50).

National law has been challenged or influenced by Community law, which is enforced and overseen by the European Court of Justice. This is a loss of sovereignty by the member states, surrendering far-reaching powers to a new and independent legal order, which acts in Community affairs on the international scene and binds member states.

The founding European Treaties are the primary source of Community law, and therein is found the central jurisdiction of the European Court of Justice. Further, community law involves primary law, namely treaties, and secondary law, namely legislative acts, both of which are binding on national governments, and take precedence over national law. The nature of the Community, its existence and its functions, demand a consistent application of

Community law between Member States. Points of law and the interpretation of treaties are decided by the European Court of Justice, the community's judicial institution having jurisdiction over disputes concerning the Member states.

In enforcing this provision, if a Nation State's court decides that a question of community law needs to be answered before it can render a judgment, it can go before the European Court of Justice for the ruling. With the European Court of Justice's ruling in hand, the nation court can thus apply the principle.

The European Community Treaties are part of the domestic law of the state (Kelly 1984:188). As such, they impinge on the finality of national court decisions. Often, the national court is faced with issues, such as the interpretation of a treaty, the validity of acts, or the lack of a judicial remedy under national law. These issues, therefore, must come before the European Court of Justice (Kelly: 188).

The Community can legislate directly through regulations, which are binding in law and are automatically incorporated into the national legal systems of Member States, without the need for specific individual ratification (Daltrop:50). The Community can also work through the legal systems of the member states, by the use

of the Commission, which implements directives with broad objectives (Daltrop:51).

Directives are laws transposed into Member States' legislation to enforce Treaty principles (Commission..., Equal...1993:2). However, these directives require some legal action, such as legislation, by the Member States before they become national law.

Two types of cases may be brought before the Court of Justice, namely direct actions, brought directly before the Court by the Commission, other Community institutions or a Member State, or preliminary rulings, requested by courts or tribunals in the Member States on a question of Community Law (Commission..., Serving...:18). Since 1954, over 9000 cases have been brought before the Court of Justice (Commission..., Serving...:18).

Decisions of the Community are directed to specific parties and are binding on them. However, recommendations and opinions given by the Council of Ministers or the Commission do not have binding force of law. They are simply useful to test the reaction to a proposed new Community policy without commitment.

The Treaties state that the Community's legal system, which must not be impeded by any state, applies

throughout the Community. The European Court of Justice, which is at the heart of the legal system, sits in Luxembourg and ensures that Community law is observed in the interpretation and application of the Treaties. Its judgments are binding on Member States. The court reviews the lawfulness of acts of Council, the Commission, the Member State governments and citizens.

National laws in conflict with Community law may be declared invalid by the European Court of Justice. Appeals against acts of an institution or a Member State can be lodged by any other institution, government, firm or individual citizen directly affected (Daltrop:51).

The Court of Justice consists of 15 appointed judges, one from each Member State. They are jurists chosen for their independence and recognized competence, and hold office for a renewable six-year term (Daltrop:52). The Court's decisions are made by majority vote, presented in open court. The judgments are directly applicable to Member States and are enforceable through the national courts (Daltrop:52).

The legal order is called the 'originality' of the European Community, which is the jurisdiction of the constitutional court, the European Court of Justice (Nicoll:22). The Court of Justice may sit in plenary

session, when a Member State or a Community institution is a party to the proceeding and so requests or when a case is considered complex and important, or may sit in chamber with three or five judges.

The judges of the European Court of Justice select their own President from among the 15, for a renewable term of three years (Nicoll:93). The President directs the work of the Court and presides at hearings. He also selects a judge-rapporteur who takes a lead in the deliberations. The staff of the Court is headed by the registrar, who is appointed by the Court and acts as Secretary General of the institution (Nicoll:93). Since all the official languages of the Community are used at some point, the Court provides for a large translation and interpretation service.

The Court is also assisted by nine Advocates General, as *amici curiae*, who act as independent judicial observers representing the public interest (Daltrop:52). The Advocate General makes a reasoned presentation of the case before the Court, gives a summary of the submissions of the parties, puts forth observations of oral hearings, statute law and previous cases, and offers an opinion on the possible decision (Nicoll:93). His opinion, although published, is not binding on the Court (Nicoll:95).

The types of actions heard by the European Court of Justice are cases involving: annulment of binding legal acts; failure to act; infringement of the European Economic Community Treaties, under Article 33, in order to have Commission decisions or recommendations declared void for lack of competence, infringement of an essential procedural requirement, the Treaty or any rule of law relating to its application, or misuse of powers; preliminary rulings, in which national courts petition the Court of Justice for a ruling on a point of Community law, binding in the case; damages; and application of Staff Regulations (Nicoll:96). Due to its paramount importance, the Court of Justice presently has a two-year backlog.

In order to enable the Court of Justice to concentrate its activities on the fundamental task of ensuring uniform interpretation of Community Law, a Court of First Instance was established in 1989, consisting of 15 judges appointed by the Member States (Commission..., Serving...:17). It has jurisdiction over actions brought by individuals and companies against decisions of the Community institutions and agencies, and these judgments are in turn subject to appeal before the Court of Justice on a point of law (Commission..., Serving...:17).

Fundamental rights are part of the bedrock of the Community's legal order (Nicoll:97). The European Court of Justice stated that

the protection of such rights, whilst inspired by the constitutional traditions common to Member States, must be ensured within the framework of the structure and objectives of the Community (Internationale Handelsgesellschaft, Case 11/70).

The Parliament, Council and Commission adopted a Joint Declaration on the protection of human rights and fundamental freedoms in 1977, and declared that they would respect human rights in the exercise of their powers, in the pursuance of the aims of the European Community (Nicoll:97).

In a seminal case, the European Court of Justice stated:

The integration into the laws of each Member State of provisions which derive from the Community, and more generally the terms and the spirit of the Treaty, make it impossible for the States, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity....The executive force of Community law cannot vary from one State to another...without jeopardizing the attainment of the object of the Treaty....It follows from all these observations that the law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question (Costa v. ENEL 1964, CHLR 425).

As the arbiter of Community law, the European Court of Justice, with its power, has strengthened the

Community as a political system. Defiance of its rulings has been exceptional. By creating a body of independent Community law, the European Community has promoted its survival, by requiring harmonization of the laws of the Member States. The national courts are, therefore, responsible for aligning national law with Community law (Daltrop:53).

The Treaties are a comprehensive code of law, which set out the rights and duties of governments and individuals, and from which rights and remedies can be deduced (Daltrop:54). For the European Court of Justice, the Community's common aims count more than a literal construction of legal texts (Daltrop:54).

The legal character of the Community is also concerned with influencing, shaping and controlling the legislative output of the Community (Daltrop:55). As assistance to the Court, the Commission is the Community watchdog for the observance of the Treaties. It originates and administers Community law.

The extension of civil rights is a step toward European integration (Duff 1994:29). The concept of citizenship is based on the principle that nationals of Member States have certain rights to move freely across national borders in the common market (Duff:104). Freedom

of movement, under the Treaty of Rome, applied only to certain economic categories of workers, the self-employed and service providers (Duff:110). This, however, was expanded by the Court, and had a profound impact on employment.

Pay Equity

The Treaty of Rome calls for pay equity and the abolishment by Member States of sex discrimination in employment. Article 119 is paramount and states:

Each member state shall...ensure and subsequently maintain the application of the principle of equal remuneration for equal work as between men and women workers. For the purposes of this Article, remuneration shall mean the ordinary basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employ. Equal remuneration without discrimination based on sex means: (a) that remuneration for the same work at piece rates shall be calculated on the basis of the same unit of measurement; and (b) that remuneration for work at time rates shall be the same for the same job.

According to the ruling of the European Court of Justice in conjunction with the spirit of the law, Article 119 calls for member states to ensure and maintain the application of the principle that men and women should receive equal pay for equal work (Mary Murphy and others v. On Bord Telecom Eireann, 1989). It is directly applicable

where unequal pay for equal work is carried out in the same establishment or service, whether public or private.

The concept of equal work for equal value forbids the payment of a lower salary to workers of one sex, who are engaged in work of equal value to the opposite sex. A *fortiori*, it prohibits also different pay at a lower rate for higher valued work. The contrary would render equal pay laws ineffective, and would allow an employer to circumvent the law by assigning additional duties to one sex in order to pay them lower.

Therefore, the European Court of Justice found that national courts must take into account Article 119 as a constituent part of community law. This provision helps to ensure equal pay for equal work, and equal pay for work of equal value.

Under national law, the national court of the Member State is within its limits of discretion, when interpreting domestic law. However, domestic law must be in accord with the requirements of community law, and if this is not possible, then domestic law is inapplicable. This, therefore, will be a strong incentive for national courts to rule against gender discrimination.

Article 119 of the Treaty must be applied by the national court to ensure that free competition at work is not distorted (Daltrop:127). It guards against the employment of women at lower rates than men, when doing the same job.

When women became more militant in the 1970s, the Community began to adopt a more positive attitude toward women's rights. Community legislation, through Council Directives, reinforced the general legal provisions for equal pay and equal treatment (Daltrop:127).

The Council Directive on the Approximation of the Laws of the Member States Relating to the Application of the Principle of Equal Pay for Men and Women was passed on February 10, 1975, in order to further reinforce the equality provisions of Article 119 of the European Economic Community Treaty. It calls for the approximation of laws of Member States to the application of equal pay between men and women. Article 3 states:

Member States shall abolish all discrimination between men and women arising from laws, regulations or administrative provisions which are contrary to the provisions of equal pay (75/117/EEC).

The Council Directive on the Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and

Working Conditions was passed on February 9, 1976. Article 2 of the Council Directive states:

Application of the principle of equal treatment means that there shall be no discrimination whatsoever on grounds of sex in the conditions, including selection criteria, for access to all jobs or posts, whatever the sector or branch of activity, and to all levels of the occupational hierarchy (76/207/EEC).

Both Council Directives require the Member States to realign their national laws in providing recourse to the courts, and importantly prohibit any possible retribution against those who pursue a judicial action. They state:

Member States shall introduce into their national legal systems such measures as are necessary to enable all persons who consider themselves wronged by failure to apply them the principle...to pursue their claims by judicial process after possible recourse to other competent authorities.

Member States shall take the necessary measures to protect employees against dismissal by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle.

The Council Recommendation on the Promotion of Positive Action for Women of December 13, 1984 states:

1. To adopt a positive action policy designed to eliminate existing inequalities affecting women in working life and to promote a better balance between the sexes in employment,
 - (a) to eliminate or counteract the prejudicial effects on women in employment or seeking employment which arise from existing attitudes, behaviours and structures based on the idea of a traditional division of roles in society between men and women;
 - (b) to encourage the participation of women in various occupations in those sectors of working

life where they are at present under-represented, particularly in the sectors of the future, and at higher levels of responsibility in order to achieve better use of all human resources (84/635/EEC).

Positive action is needed to not only help guarantee equality, but also to combat the perpetuation of traditional attitudes so as to ensure access to equal opportunities for a population against discrimination (Commission..., Promotion...:8). It thereby corrects the situation which prevents women from seeking the same jobs as men. In order to correct *de facto* inequalities, to promote women in all professions at all levels and to eliminate occupational segregation, personnel procedures and practices have to be changed in the initial allocation of work, the rules of transfer and promotion, and the conditions of employment (Commission..., Promotion...:8).

Historically, there have been discriminatory policies directly on their face or indirectly, applied to either sex. However, in practice, these affect women more heavily (White, 1992).

Unlike the American system where the burden of proof is initially on the Defendant in gender discrimination case, in the European system, the burden is on the Plaintiff. Thus, a more equitable burden of proof should be

established in the European system to alleviate the victim in these types of cases.

In the European Court of Justice, the Plaintiff has the burden of showing, in indirect cases, that a sexually neutral policy has a disproportionate impact (Teuling v. Bredrijfswereniging 1987 ECR 2497). The burden is then shifted to the Defendant who must justify this by objective reasons other than sex. The Plaintiff must then show that the explanation is not effective for the purpose, or that there is an alternative provision to accomplish it in a manner that has a less discriminatory impact (Teuling).

The European Court of Justice requires a showing of objective justification as a defense to sex discrimination. Article 119 of the Treaty of Rome sets out that Member States shall ensure the principle that men and women should receive equal pay for equal work (Kokott 1991:348). Equal pay without discrimination based on sex means that pay for work at time rates shall be the same for the same job. Otherwise, if there is a difference in treatment, it must be justified by objective factors other than sex discrimination.

Article 119 can preempt any inconsistent national provision. Therefore, the European Court of Justice pushes member countries into passing equity laws. It ruled its

prohibition of sex discrimination binds state authorities, and extends to contracts and collective bargaining agreements with different pay provisions, as *de facto* discrimination. If a provision is neutral on its terms, but factually disadvantages a sex, an employer bears the burden of justification. However, the national courts, which assess the facts, must determine whether there are objective factors. Therefore, the European Court of Justice declines to review the makeup of a sustainable justification.

Today, a council directive is under consideration, which would provide for a sharing of the burden of proof between Plaintiff and Defendant (Commission..., Burden...1996:1). Until now, a woman who alleged breach of the principle of equality had to bear the full burden of proving her case, even when certain facts were easier for her employer to establish.

The essence of the proposal is that the Plaintiff would be required to provide precise and consistent factual evidence of probable or presumable discrimination. The Defendant would then have to prove that there has been no infringement of the principle of equal treatment between men and women.

Currently, the European Court of Justice's case law on the burden of proof is not applied uniformly

throughout the European Community. Further, it has not had a pronounced impact on national legislation and judicial practice (Commission..., Burden...:1).

The European Community's legal system is often compared with the federal system of the United States (Daltrop:52). The basic doctrine of American law is the United States Constitution, as well as various acts, which are left to the Supreme Court to interpret and give meaning (Daltrop:53). By judicial review, the law in the United States has become an instrument for fulfilling the original intent of the Constitution.

In comparing Europe with the United States, we can see that the European Court of Justice is more activist in implementing equality by directing national courts to extend a favorable regime to disadvantaged groups (Kokott:348). The role of the European Court of Justice occupies a central role in the shaping of national law and in making Community law more effective.

The European Community is a political structure, which emerged out of a general act of will of heterogeneous states. It is ultimately dependent on statements of general principle. Therefore, Community law is the motor to enable the European Community to move toward its ultimate aim, the 'ever closer union' (Daltrop:53).

The European Commission's latest action program has several main components, namely a fair deal in rights at work involving equality legislation and court cases; better opportunities to earn a living involving the promotion of jobs, education and entrepreneurship; getting women in positions of power involving equal opportunities in employment; and community-wide networks involving training, expanding subjects in school and reinforcing a positive image of women (Commission..., Equal...:5).

Relations between the institutions of the European Community are based on partnership, cooperation and mutual dependence (Commission..., Serving...:28). The concern is to enhance the social, economic and cultural welfare of all citizens in an atmosphere of peace (Commission..., Serving...:28). This, thereby, advances the cause for gender equality in stamping out discrimination of any kind, including gender, through the effective use of laws and the courts.

REFERENCES CHAPTER 7

-Borchardt, Klaus-Dieter, The ABC of Community Law, Luxembourg: Official Publications of the European Communities, 1993.

-Brecher, Irving, Free at Last, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Commission of the European Communities, Burden of Proof in Sex Discrimination Cases, Brussels, 1996.

-Commission of the European Communities, Equal Opportunities for Women in the Community, Brussels, 1993.

-Commission of the European Communities, From Single Market to European Union, Brussels, 1992.

-Commission of the European Communities, Promotion of Positive Action, Brussels.

-Commission of the European Communities, Serving the European Community, Brussels, 1996.

-Costa v. ENEL (1964 CHLR 425).

-Council Directive on the Approximation of the Laws of the Member States Relating to the Application of the Principle of Equal Pay for Men and Women.

-Council Directive on the Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions (76/207/EEC).

-Council Recommendation on the Promotion of Positive Action for Women (84/635/EEC).

-Daltrop, Anne, Political Realities, Politics and the European Community, London: Longman, 1982.

-Duff, Andrew, Pinder, John, Pryce, Roy, Maastricht and Beyond, London: Routledge, 1994.

-Internationale Handelsgesellschaft, Case 11/70.

-Kelly, J.M., The Irish Constitution, Ireland: Leinster Leader, 1984.

- Kokott, Juliane, European Communities - Equal Pay for Men and Women - DeFacto Discrimination, American Journal of International Law, Vol.86, N.2, 1991, p.348.
- Maastricht Treaty, 1992.
- Mary Murphy and others v. On Bord Telecom Eireann, 1989.
- Nicoll, William, Salmon, Trevor, Understanding the New European Community, 1994.
- Smith, Murray, Free Trade and the European Experience, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.
- Teuling v. Bredrijfsvereniging (1987 ECR 2497).
- Treaty of Paris, 1951.
- Treaty of Rome, 1957.
- White, Gerry, Report of the Revision Group on the Treatment of Households in the Social Welfare Code, Administration, Vol.40, N.3, 1992.

CHAPTER 8 CONCLUSION

Through this dissertation, it is clear that the legal system with its laws and its courts are of primary importance in the fight for gender justice. The study has shown: feminism overall has positively influenced legislation and the court process in the pursuit of equality; women have made some inroads in the labor market, according to statistics, but there is still not wage parity or equal access to employment; equal value and wage solidarity are options in the continued fight against vertical and horizontal gender discrimination; and laws have been enacted internationally on the issue of gender equality, but the burden of proof required in court must be made easier for women to meet.

Further, the North American Free Trade Agreement falls short of expectations, since it does not provide for equity in employment nor for a court system to unify and bring the signatory countries into compliance. A common policy on equality in the region to safeguard human rights in employment and a powerful overseeing court, like the European Court of Justice, to enforce this legislation, are essential in order to rectify the historical imbalances between the sexes in North America. Therefore, NAFTA should be modified to reflect these important concerns, and even

more so with the possible expansion of signatory states to the agreement.

For its part, the European Economic Community has made important progress in the development of equal rights, most particularly in the access to employment and the right to equal pay for women. A partnership exists among the institutions of the Community, both as to the continued promulgation of legislation and its implementation by the institution with the power to make it comply, namely the European Court of Justice. However, as regards the burden of proof, the standard used in the European court system should be elevated to that used in the American court system to alleviate the heavy burden on women.

Even though much still needs to be done to correct the problem of gender discrimination, progress can be seen more visibly in the European Community. As much as the communities have experienced differences and as much as there are new concerns with the expansion of membership, they presently form a union committed to the eradication of gender inequality.

Gender rights legislation and court challenges are required in order to better improve the situation of women in the workplace. The desire is for equal social rights for all. Therefore, the law needs to be enforced by way of the

court to achieve greater gender equity, and to modify historical attitudes toward women, so that nations conform to certain standards.

There should be real freedom to choose one's amount of participation in the work force, in the pursuit of flexibility as to access to employment and a just remuneration. This must be done so that men and women can truly be on more equal terms.

The keys to the future both in Europe and in North America are the implementation and development of the law, the deepening in understanding of specific legal issues relating to employment discrimination in the courts, and the raising of the level of awareness of legal rights and obligations. As well, there needs to be a full employment policy for the integration of women in the labor market, the improvement in the quality of women's employment through education, training and management of resources, the reduction of barriers to women's access and participation, and the improvement in the status of women in society for a lasting progress and a change of attitudes (Commission..., Promotion...:4).

In addition, there needs to be a continuing exchange of experience and expertise on the international front for mutual benefit among all groups in order to best

serve the fight for gender justice (Commission of the European Community, Equal Opportunities for Women and Men 1995:2). We must all strive to promote and improve the situation of women through networks of awareness, in the raising of initiatives, the dissemination of information and the provision of support for projects (Commission..., Equal...:1).

The struggle must continued to bring about psychological, sociological and institutional changes to allow the two halves of the human race to feel equal and to recognize one another as being so (Commission..., Promotion...:7). Solidarity and cooperation are required for universal and global equality.

Sometimes I wish that I could no longer see all the pain, the hurt and the longing of my sisters, my brothers, my children and me as we try to be free. Sometimes I wish that my eyes hadn't been opened, for just one moment how sweet it would be not to be struggling, not to be striving, but just to sleep securely in our slavery. But now that I have seen with my eyes, I can't close them, because deep inside me somehow, I still know the road that you, my sisters, my brothers and I would have to travel. My heart would say yes, and my feet would say go. Still sometimes I wish that my eyes hadn't been opened. But now that they have, I'm determined to see that you, my sisters, you, my brothers, my children and I will be the free people that our God created us to be (Wyatt, Addie, 15).

The immortal words of the Rev. Martin Luther King Jr. in his struggle for civil rights can be applied to the struggle of gender rights:

I have a dream that one day every valley shall be exalted, every hill and mountain shall be made low, the rough places shall be made plain, and the crooked places shall be made straight and the glory of the Lord will be revealed and all flesh shall see it together. This is our hope....And when we allow freedom to ring, when we let it ring from every village and hamlet, from every state and city, we will be able to speed up that day when all of God's children...will be able to join hands and to sing in the words of the old Negro spiritual, 'Free at last, free at last; thank God Almighty, we are free at last'.

(Martin Luther King Jr., March on Washington, Aug. 28, 1963)

REFERENCES CHAPTER 8

-Commission of the European Community, Equal Opportunities for Women and Men, Brussels, 1995.

-Commission of the European Communities, Promotion of Positive Action, Brussels.

-Jordan, Bill, The Reform of Social Security, Administration, 1986, p.208.

-King Jr., Martin Luther, March on Washington, 1963.

-Wyatt, Addie, Public Policy Today: Its Effect on Poor Women.

BIBLIOGRAPHY

- Abramson, Joan, Old Boys New Women, New York: Praeger, 1979.
- Acker, Joan, Doing Comparative Worth, Philadelphia: Temple University Press, 1989.
- Action Travail des Femmes v. Canadien National 1987 1 S.C.R.
- American Constitution, 1776.
- American Federation of State, County and Municipal Employees v. Washington (770 F.2d. 1401 (1985)).
- American Nurses Association v. State of Illinois (783 F.2d. 716 (1985)).
- Andrew, Caroline, Life Spaces, Vancouver: University of British Columbia Press, 1988.
- Andry, Jacqueline Hunt, The Supreme Court Tightens the Reins on Heightened Scrutiny, Loyola Law Review, Vol. 35, 1989, p.267.
- Ang-Lygate, Magdalene, Desperately Seeking Sisterhood, London: Taylor & Francis, 1997.
- Argawal, Naresh, Pay Equity in Canada, Labor Law Journal, Vol.41, 1990, p.518.
- Arendt, Hannah, Rahel Varnhagen, New York: Harcourt Brace Jovanovich, 1957.
- Arendt, Hannah, The Human Condition, Garden City: Doubleday, 1959.
- Armstrong, Donald, Canada-U.S. Free Trade and Canadian Culture, in Riggs, A. R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.
- Asimakopoulos, A., An Introduction to Economic Theory: Microeconomics, Don Mills: Oxford University Press, 1978.
- Atkins, Susan, Women and the Law, Oxford: Blackwell, 1984.
- Axworthy, Lloyd, Free Trade, The Costs for Canada, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Bacchi, Carol Lee, Same Difference. Feminism and Sexual Difference, North Sydney: Allen & Unwin, 1990.

-Balthazar, Louis, Quebec's Policies Toward the United States, in Alfred O. Hero, Jr. and Marcel Daneau, Problems and Opportunities in the United States and Quebec Relations, Boulder: Westview Press, 1984.

-Barlow, Maude, Parcel of Rogues, Toronto: Key Porter Books, 1990.

-Board of Trustees of Can State College v. Sweeney (439 U.S. 24 (1978)).

-Bock, Gisela, James, Susan, Beyond Equality and Difference, Citizens, Feminist Politics and Female Subjectivity, London: Routledge, 1992.

-Borchardt, Klaus-Dieter, The ABC of Community Law, Luxembourg: Official Publications of the European Communities, 1993.

-Bradwell v. Illinois (83 U.S. 130 (1873)).

-Brecher, Irving, Free at Last, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Brecher, Irving, The Free Trade Initiative, On Course or Off, in Riggs, A. R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Brennan v. City Stores (479 F.2d. 235 (1973)).

-Briskin, Linda, McDermott, Patricia, Women Challenging Unions, Feminism, Democracy and Militance, Toronto: University of Toronto Press, 1993.

-British North America Act, 1867.

-Bullough, Vern L., The Subordinate Sex, Urbana: University of Illinois Press, 1973.

-Cameron, Duncan, Watkins, Mel, Canada Under Free Trade, Toronto, James Lorimer & Co., 1993.

-Campbell, Bruce, Free Trade, Destroyer of Jobs, Ottawa: Canadian Centre for Policy Alternatives, 1993.

-Campbell, Bruce, We Need Free Trade Abrogation to Rebuild the Nation, Ottawa: Canadian Centre for Policy Alternatives, 1992.

-Canadian Advisory Council on the Status of Women, Feminist Guide to the Canadian Constitution, Ottawa:1992.

-Canadian Bill of Rights, 1960.

-Canadian Charter of Human Rights, 1978.

-Canadian Charter of Rights and Freedoms, 1982.

-Canadian Human Rights Commission, Equal Dollars Make Good Sense, Ottawa, 1991.

-Cassells, Peter, Can Europe Solve its Job Crisis?, Administration, Vol.40, N.1, 1992.

-Charles, Nickie, Practising Feminism, New York: Routledge, 1996.

-Chartier, Armand, Franco-Americans and Quebec, in Alfred O. Hero, Jr. and Marcel Daneau, Problems and Opportunities in the United States and Quebec Relations, Boulder: Westview Press, 1984.

-Chorney, Harold, City of Dreams, Scarborough: Nelson Canada, 1990.

-Clark, Lorenn M.G., Lange, Lynda, The Sexism of Social and Political Theory, Women and Reproduction from Plato to Nietzsche, Toronto: University of Toronto Press, 1979.

-Clark, Lorenn, Women and Locke: Who Owns the Apples in the Garden of Eden, in Clark, Lorenn M.G., Lange, Lynda, The Sexism of Social and Political Theory, Women and Reproduction from Plato to Nietzsche, Toronto: University of Toronto Press, 1979.

-Clayton, Susan, Crosby, Faye, Justice, Gender and Affirmative Action, An Arbor: University of Michigan Press, 1992.

-Cockburn, Cynthia, In the Way of Women, Men's Resistance to Sex Equality in Organizations, Ithaca: ILR Press, 1991.

-Cohen, Gary L., Women Entrepreneurs, Perspectives, 1996.

-Coleman, Frank, Hobbes and America, Toronto: University of Toronto, 1977.

-Commission of the European Communities, Burden of Proof in Sex Discrimination Cases, Brussels, 1996.

-Commission of the European Communities, Employment in Europe, Brussels, 1995.

-Commission of the European Communities, Equal Opportunity for Women and Men, Brussels.

-Commission of the European Communities, Europe, Brussels, 1994.

-Commission of the European Communities, From Single Market to European Union, Brussels, 1992.

-Commission of the European Communities, Promotion of Positive Action, Brussels.

-Commission of the European Communities, Serving the European Community, Brussels, 1996.

-Commission of the European Communities, The Position of Women on the Labor Market, Brussels, 1991.

-Commission of the European Communities, Women's Information Service, Brussels, 1992.

-Convention on the Elimination of all Forms of Discrimination Against Women.

-Coppock, Vicki, The Illusions of Post Feminism, London: Taylor & Francis, 1995.

-Corning Glass v. Brennan (417 U.S. 188 (1974)).

-Costa v. ENEL, 1964, CHLR 425.

-Council Directive on the Approximation of the Laws of the Member States Relating to the Application of the Principle of Equal Pay for Men and Women.

-Council Directive on the Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions (76/207/EEC).

-Council Recommendation on the Promotion of Positive Action for Women (84/635/EEC).

-Courchane, Marsha, Redish, Angela, Women in the Labour Force, 1911-1986, in Allen, Robert, Rosenbluth, Gideon, False Promises, Vancouver: New Star Books, 1992.

-Cox, Archibald, Civil Rights, The Constitution and the Court, Cambridge: Harvard University Press, 1967.

-Cox, Archibald, The Role of the Supreme Court in American Government, New York: Oxford University Press, 1976.

-Cox, Oliver, Caste, Class and Race, New York: Monthly Review Press, 1970.

-Craig v. Boren (429 U.S. 190 (1976)).

-Creighton, Donald, The Empire of the St. Lawrence, Toronto: Macmillan, 1970.

-Crompton, Susan, Geran, Leslie, Women as Main Wage-Earners, Perspectives, 1995.

-Daltrop, Anne, Political Realities, Politics and the European Community, New York: Longman, 1982.

-Dandridge v. William (397 U.S. 471 (1970)).

-d'Aquino, Thomas, Truck and Trade with the Yankees, The Case for a Canada-U.S. Comprehensive Trade Agreement, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Davenport, Paul, L'Economie Politique du Libre Echange, Un Survol, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Davis, Lenwood, I Have A Dream, Westport: Negro University Press, 1969.

-Davis Gould, Elizabeth, The First Sex, New York: Putnam, 1976.

-Davis v. Passman (442 U.S. 228 (1979)).

-DeBeauvoir, Simone, The Second Sex, New York: 1974.

-Dinsmore, John, Elements d'une position du Québec dans les relations économiques avec les Etats-Unis, in Choix, Laval: Centre Québécois de Relations Internationales, 1975.

-Donovan, Josephine, Feminist Theory, New York: Continuum, 1993.

-Duff, Andrew, Pinder, John, Pryce, Roy, Maastricht and Beyond, London: Routledge, 1994.

-Easterbrook, W.T., Aitken, Hugh, Canadian Economic History, Toronto: Macmillan, 1976.

-Ely, J., Democracy and Distrust, Cambridge: Harvard University Press, 1980.

- Equal Employment Opportunity Commission v. Sears Roebuck & Company, United States Court of Appeals Seventh Circuit, 1988.
- European Charter of Fundamental Social Rights, 1989.
- European Economic Community Treaty, 1957.
- Eurostat, Statistics 1995.
- Eurostat, Statistics in Focus 1996.
- Evans, Judith, Feminist Theory Today, Thousand Oaks: Sage Publications, 1995.
- Evans, Mary, Introducing Contemporary Feminist Thought, Cambridge: Polity Press, 1997.
- Faucher, Albert, Lamontagne, Maurice, The History of Industrial Development, in Falardeau, Jean-Claude, Essays on Contemporary Quebec, Quebec: Les Presses Universitaires Laval, 1953.
- Federalist Papers.
- Firestone, Shulamith, The Dialectic of Sex, London: Jonathan Cape, 1971.
- Flax, Jane, Beyond Equality: Gender, Justice and Difference, in Bock, Gisela, James, Susan, Beyond Equality and Difference, Citizens, Feminist Politics and Female Subjectivity, London: Routledge, 1992.
- Flynn, Padraig, Defining the Gender Contract, 1996.
- Folch v. Canadian Airlines, 1992.
- Fox-Genovese, Elizabeth, Feminism Is Not the Story of My Life, New York: Doubleday, 1996.
- Fox-Genovese, Elizabeth, Feminism Without Illusions, Chapel Hill: University of North Carolina Press, 1991.
- Fox-Genovese, Elizabeth, The Birth of American Feminism, St. James: Brandywine Press, 1995.
- Fried, Morton, The Evolution of Political Society, New York: Random House, 1967.
- Friedan, Betty, The Feminine Mystique, Harmondsworth: Penguin, 1963.
- Friedan, Betty, The Second Stage, London: Sphere Books, 1983.

-Fry, Earl, Trends in Canada-U.S. Free Trade Discussions, in Riggs, A. R., Welk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Frontiero v. Richardson (411 U.S. 677 (1973)).

-Fudge, Judy, McDermott, Patricia, Just Wages, Feminine Perspective of Pay Equity, Toronto: University of Toronto Press, 1991.

-Garside Allen, Christine, Nietzsche's Ambivalence about Women, in Clark, Lorene M.G., Lange, Lynda, The Sexism of Social and Political Theory, Women and Reproduction from Plato to Nietzsche, Toronto: University of Toronto Press, 1979.

-Gerhart Barry, Gender Differences in Current and Starting Salaries, Industrial and Labor Relations Review, Vol.43, N.4, 1990, p.418.

-Gerhart, Barry, El Cheich, Nabil, Earnings and Percentage Female, Industrial Relations, Vol.30, N.1, 1991, p.62.

-Goesart v. Cleary (335 U.S. 464 (1948)).

-Gold, Michael, A Dialogue on Comparable Worth, Ithaca: Cornell University Press, 1983.

-Goshen, Erica, Structure of Female / Male Wage Differentials, Journal of Human Resources, Vol.26, Summer 1991, p.457.

-Government of Canada, The North American Free Trade Agreement At A Glance, Ottawa, 1993.

-Government of Quebec, Quebec and the North American Free Trade Agreement, Quebec: Ministere des Affaires Internationales, 1993.

-Grande Jensen, Pamela, Finding a New Feminism, Lanham: Rowman & Littlefield Publishers, 1996.

-Griffin Cohen, Marjorie, Free Trade and the Future of Women's Work, Manufacturing and Service Industries, Toronto: Garamond Press, 1987.

-Griggs v. Duke Power (401 U.S. 424 (1971)).

-Guindon, Hubert, Quebec Society: Tradition, Modernity, and Nationhood, Toronto: University of Toronto Press, 1988.

-Gunther v. County of Washington (452 U.S. 161 (1981)).

- Habermas, Jurgen, Between Facts and Norms, Massachussetts: MIT Press, 1998.
- Hamelin, Jean, Roby, Yves, Histoire Economique du Québec 1851-1896, Montréal: Fides, 1971.
- Hamelin, Jean, Histoire du Québec, StHyacinthe: Edisem, 1976.
- Hansen, Phillip, Hannah Arendt, Stanford: Stanford University Press, 1993.
- Harris, Richard, Some Observations on the Canada-U.S. Free Trade Deal, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.
- Hayes, Bernadette, Female Intergenerational Occupational Mobility Within Northern Ireland and the Republic of Ireland, British Journal of Sociology, Vol.38, May 1987, p.66.
- Hazledine, Tim, What do Economists Know about Free Trade, in Riggs, A. R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.
- Hegel, The Philosophy of Right, London: 1967.
- Hero, Alfred, Balthazar, Louis, Contemporary Quebec and the United States 1960-1985, Boston: University Press of America, 1988.
- Hogan, Richard, LeVoir, John, Covenant of Love, New York: Doubleday & Co., 1985.
- Horkheimer, Max, Adorno, Theodor, Dialectic of Enlightenment, New York: Herder & Herder, 1972.
- Hoyt v. Florida (368 U.S. 57 (1961)).
- Hughes, Patricia, Fighting the Good Fight, in Miles, Angela, Finn, Geraldine, Feminism, Montreal: Black Rose Books, 1989.
- Hume, David, Treatise of Human Nature, Oxford:1888.
- Hurtig, Mel, The Betrayal of Canada, Toronto: Stoddart Publishing, 1991.
- Innis, Harold, Staples, Markets and Cultural Change, Montreal, McGill Queen's University Press, 1995.

- International Covenant on Economic, Social and Cultural Rights.
- Internationale Handelsgesellschaft, Case 11/70.
- Jackson, Pauline, Worlds Apart, Ireland, 1986.
- Jacoby, Russell, The Last Intellectuals, New York: Basic Books, 1982.
- Jacoby, Russell, Social Amnesia, Boston: Beacon Press, 1975.
- Jagentowicz Mills, Patricia, Hegel and the Woman Question: Recognition and Intersubjectivity, in Clark, Lorene M.G., Lange, Lynda, The Sexism of Social and Political Theory, Women and Reproduction from Plato to Nietzsche, Toronto: University of Toronto Press, 1979.
- Johnson v. Transportation Agency (480 U.S. 616 (1987)).
- Jones, Robert, Agriculture in Lower Canada, 1792-1815, in The Canadian Historical Review, Vol.27, 1946, p.33.
- Jordan, Bill, The Reform of Social Security, Administration, 1986.
- Jung, Anees, Breaking the Silence, New York: Penguin Books, 1997.
- Kahn, Peggy, Equal Value / Comparable Worth in the U.K. and the USA, New York: St. Martin's Press, 1992.
- Kahn v. Shevin (416 U.S. 351 (1974)).
- Kanowitz, Leo, Benign Sex Discrimination: Its Troubles and Their Cure, Hastings Law Journal, Vol. 31, 1980, p.1379.
- Kanowitz, Leo, Women and the Law, The Unfinished Revolution, Albuquerque: University of New Mexico Press, 1969.
- Kaufman, Bruce E., How Labor Markets Work, Lexington: Lexington Books, 1988.
- Kelly, J.M., The Irish Constitution, Ireland: Leinster Leader, 1984.
- Kennedy v. CTP, 1992.
- King Jr., Martin Luther, March on Washington, 1963.
- Kirchberg v. Feenstra (101 S.Ct. 1195 (1981)).

-Klarman, Michael, Interpretive History of Equal Protection, Michigan Law Review, Vol. 90, 1991, p.213.

-Kokott, Julianne, European Communities - Equal Pay for Men and Women - DeFacto Discrimination, American Journal of International Law, Vol.86, N.2, 1991, p.348.

-Kouba v. Allstate (691 F.2d. 873 (1982)).

-Kremer, John, Attitudes Toward Women in Northern Ireland, Journal of Social Psychology, 127(5), 1987, p.531.

-Labor Canada, Equal Pay for Work of Equal Value, Ottawa, 1986.

-Lahey, Kathleen, Celebration and Struggle, in Miles, Angela, Finn, Geraldine, Feminism, Montreal: Black Rose Books, 1989.

-Lange, Lynda, Rousseau: Women and the General Will, in Clark, Lorene M.G., Lange, Lynda, The Sexism of Social and Political Theory, Women and Reproduction from Plato to Nietzsche, Toronto: University of Toronto Press, 1979.

-Lange, Lynda, The Function of Equal Education in Plato's Republic and Laws, in Clark, Lorene M.G., Lange, Lynda, The Sexism of Social and Political Theory, Women and Reproduction from Plato to Nietzsche, Toronto: University of Toronto Press, 1979.

-Lasch, Christopher, Haven in a Heartless World, The Family Besieged, New York: Basic Books Inc., 1977.

-Lasch, Christopher, The Culture of Narcissism, New York: W.W.Norton & Co., 1979.

-Lasch, Christopher, The Revolt of the Elites, Have They Cancelled their Allegiance to America?, Harper's, November 1994.

-Laun, Louis, U.S.-Canada Free Trade Negotiations: Historical Opportunities, in Riggs, A. R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Lavoie, Yolande, L'Emigration des Québécois aux Etats-Unis de 1840-1930, Editeur Officielle du Québec, 1981.

-Layton, Robert, Why Canada Needs Free Trade, in Riggs, A. R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

- Lee, Yong, Shaping Judicial Response to Gender Discrimination in Employment Compensation, Public Administration Review, Sept. 1989, p.420.
- Lipsey, Richard, Canada's Trade Options, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.
- Lisée, Jean-Francois, Dans l'Oeil de L'Aigle, Montréal: Boréal, 1990.
- Little, J.I., Nationalism, Capitalism and Colonization, Kingston: McGill Queen's University Press, 1989.
- Livingstone, David, Recast Dreams, Toronto: Garamond Press, 1996.
- Locke, John, Second Treatise, New York: 1963.
- Loewy, Arnold, Returned to the Pedestal the Supreme Court and Gender Classification Cases : 1980 Term, North Carolina Law Review, Vol. 60, 1981, p.87.
- Lorde, Audre, Sister Outsider, Freedom: The Crossing Press, 1984.
- Lyon, Peyton, CUFTA and Canadian Independence, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.
- Maastricht Treaty, 1992.
- Mackinnon, Catharine, Feminism Unmodified, Cambridge: Harvard University Press, 1987.
- Mackinnon, Catharine, Only Words, Cambridge: Harvard University Press, 1993.
- Mackinnon, Catharine, Toward a Feminist Theory of the State, Cambridge: Harvard University Press, 1989.
- MacLeod Burns, Steven, The Humean Female, in Clark, Lorene M.G., Lange, Lynda, The Sexism of Social and Political Theory, Women and Reproduction from Plato to Nietzsche, Toronto: University of Toronto Press, 1979.
- MacPherson, C.B., The Political Theory of Possessive Individualism, Oxford: Clarendon Press, 1962.
- Magna Carta, 1215.

-Maltz, Earl, Legislative Inputs and Gender-Based Discrimination in the Burger Court, Michigan Law Review, Vol. 90, 1992, p.1023.

-Mandel, Michael, The Charter of Rights and the Legalization of Politics in Canada, Toronto: Wall & Thompson, 1989.

-Marbury v. Madison (1 Cranch 137 (1803)).

-Marcil Lacoste, Louise, Hume's Method in Moral Reasoning, in Clark, Lorene M.G., Lange, Lynda, The Sexism of Social and Political Theory, Women and Reproduction from Plato to Nietzsche, Toronto: University of Toronto Press, 1979.

-Marr, William, Paterson, Donald, Canada: An Economic History, Toronto: Gage, 1980.

-Marx, Karl, Communist Manifesto, New York: 1955.

-Mary Murphy and others v. On Bord Telecom Eireann, 1989.

-Masters, Donald, The Reciprocity Treaty of 1854, London: McClelland & Stewart Ltd., 1963.

-McCarty, Claire, The International Aspects of Procedural Justice, Labor Law Journal, Vol.41, 1990, p.580.

-McCullough V. Maryland (4 Wheaton 415 (1819)).

-McDonnell Douglas v. Green (411 U.S. 796 (1973)).

-McGowan v. Maryland (366 U.S. 420 (1961)).

-McMahon, Gerard, Pay Inequality in the 1990s, Administration, Vol.40, 1992, p.97.

-McPhail, Brenda, NAFTA Now, Lanham: University Press of America, 1985.

-Meehan, Johanna, Feminists Read Habermas, New York: Routledge, 1995.

-Melvin, James, A Statement of Hope, The Essential Writings of Martin Luther King Jr., Washington: Harper & Co., 1986.

-Merrett, Christopher, Free Trade, Neither Free Nor About Trade, New York: Black Rose Books, 1996.

-Mexican Investment Board, Mexico Your Partner for Growth, Regulatory Reform and Competition Policy, Setting the Incentives for an Efficient Economy, Mexico, 1994.

-Michael M v. Superior Court (101 S.Ct. 1200 (1981)).

-Miles, Angela, Ideological Hegemony in Political Discourse, in Miles, Angela, Finn, Geraldine, Feminism, Montreal: Black Rose Books, 1989.

-Mill, John Stuart, and Taylor Mill, Harriett, Essays on Sex Equality, Chicago: University of Chicago Press, 1970.

-Minister of Industry, Canada Yearbook, 1997.

-Ministère des Affaires Internationales, de l'Immigration et des Communautés Culturelles du Québec, Commerce International du Québec, Etats-Unis, Jan-Juin, 1993-1994, Québec, 1994.

-Ministère des Affaires Internationales, de l'Immigration et des Communautés Culturelles du Québec, Commerce International du Québec, Etats-Unis, 1992-1993, Québec, 1994.

-Ministère des Affaires Internationales, de l'Immigration et des Communautés Culturelles du Québec, Repertoire des Représentations du Québec a l'Etranger, Québec, 1994.

-Montgomery Bowker, Marjorie, On Guard For Thee, Hull: Voyageur Publishing, 1988.

-Murphy v. Miller Brewer Co. (307 F.Supp. 829 (1969)).

-Nader, Ralph, The Case Against Free Trade, San Francisco: Earth Island Press, 1993.

-Neufeld, E.P., Financial and Economic Dimensions of Free Trade, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Nicoll, William, Salmon, Trevor, Understanding the New European Community, 1994.

-Nietzsche, Friedrich, Beyond Good and Evil, New York: 1966.

-Nietzsche, Friedrich, Ecce Homo and the Genealogy of Morals, New York: 1967.

-Niles, Thomas, Address, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-North, Arthur, The Supreme Court, Judicial Process and Judicial Politics, New York: Appleton Century Crofts, 1964.

-O'Brien, Mary, Reproducing Marxist Man, in Clark, Lorene M.G., Lange, Lynda, The Sexism of Social and Political Theory, Women and Reproduction from Plato to Nietzsche, Toronto: University of Toronto Press, 1979.

-Oliver, Michael, The Passionate Debate, Montreal: Vehicule Press, 1991.

-Olivier, Christiane, Jocasta's Children, The Imprint of the Mother, London: Routledge, 1989.

-Orr v. Orr (440 U.S. 268 (1979)).

-Papillon, Benoit, Bankruptcy Law, Free Trade and Economic Adjustments, Preliminary Considerations, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Pasqua Hospital, 1987.

-Pettman, Barrie, Equal Pay for Women, Bradford: MCB Books, 1975.

-Phillips v. Martin Marietta (400 U.S. 542 (1971)).

-Piori, Michael, Dualism and Discontinuity in Industrial Societies, Cambridge: Cambridge University Press, 1980.

-Plato, Republic, New York: 1968.

-Plyler v. Doe (457 U.S. 202 (1982)).

-Pope John Paul II, Centesimus Annus, Sherbrooke: Editions Paulines, 1991.

-Pyle, Jean, The State and Women in the Economy, Albany: State University of New York, 1990.

-Rado, Lisa, Modernism, Gender and Culture, New York: Garland Publishing, 1997.

-Raynauld, Andre, Looking Outward Again, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Razack, Sherene, Canadian Feminism and the Law, Toronto: Second Story Press, 1991.

-Reed v. Reed (404 U.S. 71 (1971)).

-Regina v. Oakes, 1986 1 S.C.R.

-Research and Advocacy of the Hull House Association, Women in Poverty, Report on a Conference about the Feminization of Poverty, 1982.

-Reskin, Barbara, Roos, Patricia, Job Queues, Gender Queues, Philadelphia: Temple University Press, 1990.

-Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Riggs, A.R., Velk, Tom, Canada-American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Ritchie, Gordon, The Free Trade Agreement, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Rothblatt, Martine, The Apartheid of Sex, New York: Crown Publishers, 1995.

-Rotsker v. Goldberg (101 S.Ct. 2646 (1981)).

-Rousseau, Jean-Jacques, Discourse on the Origin of Inequality Among Men, London: 1973.

-Rousseau, Jean-Jacques, Emile, New York: 1969.

-San Antonio Independent School Division v. Rodriguez (411 U.S. 1 (1973)).

-Sargeant, Georgia, Pay Equity: Lagging in Court, Gaining at the Bargaining Table, Trial, Vol.26, N.2, 1990, p.98.

-Schlesinger v. Ballard (419 U.S. 498 (1975)).

-Schwartz, Barry, Queuing and Waiting, Chicago: University of Chicago Press, 1975.

-Scott, Hilda, Working Your Way to the Bottom, London: Pandora Press, 1984.

-Shuaib, Susan, Courtesy of Europe, New Statesman & Society, Dec. 1988, p.25.

-Shultz v. Wheaton Glass (421 F.2d. 259 (1970)).

-Singh, L.P., International Concerns for Women's Rights.

-Skud, Tim, Free Trade, What Now for the U.S., in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Smith, Murray, Free Trade and the European Experience, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Snitow, Ann, A Gender Diary, in Joan Wallach Scott, Feminism and History, Oxford: Oxford University Press, 1996.

-Soldatos, P, Canada's Foreign Policy in Search of a Fourth Option: Continuity and Change in Orientation Towards the U.S., in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Spaulding v. University of Washington (740 F.2d. 686 (1984)).

-Spencer, Anne, In a Man's World, London: Tavistock Publishing, 1987.

-Soreman, Elaine, Comparative Worth, Is It a Worthy Policy?, 1994.

-Stanton v. Stanton (421 U.S. 57 (1975)).

-Statistics Canada, Canada at a Glance, 1996.

-Statistics Canada, Women in the Labor Force, 1994.

-Stevens, Paul, Reciprocity 1911: The Canadian Perspective, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1987.

-Stone, Frank, Removing Barriers to Canada, in Riggs, A. R., Velk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Surrey, David, Choice of Conscience - Vietnam Era and Draft Resisters in Canada, New York: Praeger, 1982.

-Tawney, R.H., The Acquisitive Society, New York: Harcourt, Brace & Co., 1920.

-Taylor v. Louisiana (419 U.S. 522 (1975)).

-Teuling v. Bredrijfsvereniging (1987 ECR 2497).

- Thompson, Mark, Le Syndicalisme Québécois dans le contexte Nord-Américain, in Choix, Laval: Centre Québécois de Relations Internationales, 1975.
- Tietjens Meyers, Diana, Feminists Rethink the Self, Boulder: Westview Press, 1997.
- Tietjens Meyers, Diana, Kindred Matters, Rethinking the Philosophy of the Family, Ithaca: Cornell University Press, 1993.
- Treaty of Paris, 1951.
- Treaty of Rome, 1957.
- United Nations Declaration of Human Rights.
- United Nations, Demographic Yearbook, 1996.
- United States Census, Statistical Abstract, 1997.
- United States Civil Rights Act, 1964.
- United States Declaration of Independence, 1776.
- United States Equal Pay Act, 1963.
- Van Lenning, Alkeline, Feminist Utopias in a Postmodern Era, Tilburg University Press, 1997.
- Velk, Tom, Riggs, A.R., The Men that Corrupted Everyburg, American Farmers and the Free Trade Initiative 1911, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.
- Velk, Tom, Riggs, A.R., The Ongoing Debate Over Free Trade, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.
- Violi, Patrizia, Gender, Subjectivity and Language, in Bock, Gisela, James, Susan, Beyond Equality and Difference, Citizens, Feminist Politics and Female Subjectivity, London: Routledge, 1992.
- Wallach Scott, Joan, Feminism and History, Oxford: Oxford University Press, 1996.
- Wallach Scott, Joan, Gender and the Politics of History, New York: Columbia University Press, 1988.

-Walsh, Brendan, Can Europe Solve its Job Crisis?, Administration, Vol.40, N.1, 1992.

-Warskett, Rosemary, Can a Disappearing Pie Be Shared Equally?: Unions, Women, and Wage 'Fairness', in Briskin, Linda, McDermott, Patrick, Women Challenging Unions: Feminism, Democracy and Militancy, Toronto: University of Toronto Press, 1993.

-Warskett, Rosemary, Political Power, Technical Disputes, and Unequal Pay: A Federal Case, in Fudge, Judy, McDermott, Patricia, Just Wages - Pay Equity, Toronto: University Of Toronto Press, 1991.

-Warskett, Rosemary, Wage Solidarity and Equal Value: Or Gender and Class in the Structuring of Work Place Hierarchies, Studies in Political Economy 32, 1990.

-Washington v. Davis (426 U.S. 229 (1976)).

-Watkins, Mel, Alternatives to Free Trade, Ottawa: Centre for Policy Alternatives.

-Watkins, Mel, The Political Economy of Growth, in Clement, Wallace, Williams, Glen, The New Canadian Political Economy, Kingston: McGill-Queen's University Press, 1989.

-Watson, William, The Draft Agreement, Cohabitation Worth a Try, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: (The Sequel) Historical, Political and Economic Dimensions, Montreal: The Institute for Research on Public Policy, 1988.

-Weisberg, D. Kelly, Women and the Law, Cambridge: Schenkman, 1982.

-White, Gerry, Report of the Revision Group on the Treatment of Households in the Social Welfare Code, Administration, Vol.40, N.3, 1992.

-White, Randall, Fur Trade to Free Trade: Putting the Canada-U.S. Trade Agreement in Historical Perspective, Toronto: Dundurn Press, 1988.

-Wickham, James, Industrializing Work and Unemployment, Ireland, 1986.

-Wigle, Randall, The Received Wisdom of the Canada-U.S. Free Trade, Qualifications, in Riggs, A. R., Welk, Tom, Canadian-American Free Trade: Historical, Political and Economic Dimensions, Montreal: The Institute for Research in Public Policy, 1987.

-Wollstonecraft, Mary, Vindication of the Rights of Women, London: Source Book Press, 1792.

-Wyatt, Addie, Public Policy Today: Its Effect on Poor Women.

-Yohalem, Alice, The Careers of Professional Women, Allanheld Osmun & Co., Montclair, 1979.

-Young, Robert, Canada-U.S. Free Trade, Economic Realities and Political Choices, in Riggs, A.R., Velk, Tom, Canadian American Free Trade: Historical, Political and Economic Dimensions, The Institute for Research on Public Policy, Montreal, 1987.