GENDERING THE NATION-STATE

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Equal Rights and Economic Roles: The Conflict over the Equal Rights Amendment in the 1920s

The vote achieved, former suffragists turned their attention to sex-based discrimination in the law. To some, the proper strategy, as in suffrage, seemed to be a constitutional amendment affirming equal rights; men and women would have to be treated under the law as equals and as individuals. In contrast, suffragists who had struggled to pass legislation shortening hours and improving working conditions for women in industry had achieved that goal only because the Supreme Court was prepared to regard women as a special class of workers in need of governmental protection because of their childbearing role. (See the discussion of *Muller v. Oregon* in Sklar's essay, p. 357.) An equal rights amendment (ERA) would invalidate sex-based labor laws, they feared, since comparable protection would not be extended to men. The ensuing debate was a critical one creating deep and lasting divisions. Unable to agree on a unified agenda for four decades, veterans of the first women's movement expended energy in internal conflict, thereby diluting their political effectiveness. Not surprisingly women's issues made little headway until the 1960s.

The debate over the ERA was critical not only because of its long-term consequences, but because it highlighted differing views within feminism of the social significance of gender and the meaning of equality. Does equality require that men and women have the "same" rights and be subject to the "same" treatment, or does equality require "different" treatment? How should the law treat the difference created by women's unique reproductive system? With these questions in mind, Nancy F. Cott carefully assesses the initial debate over the ERA, making clear the assumptions and limitations inherent in the arguments of each side.

Campaigning for ratification of the Equal Rights Amendment during the 1970s, feminists who found it painful to be opposed by other groups of women were often unaware that the first proposal of that amendment in the 1920s had likewise caused a bitter split between women's groups claiming, on both sides, to represent women's interests. The 1920s conflict itself echoed some earlier ideological and tactical controversies. One central strategic question for the women's rights movement in the late nineteenth century had concerned alliances: should proponents of "the cause of woman" ally with advocates for the rights for

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freed slaves, with temperance workers, or labor reformers, or a political party, or none of them? At various times different women leaders felt passionately for and against such alliances, not agreeing on what they meant for the breadth of the women's movement and for the priority assigned to women's issues.[1] The 1920s contest over the equal rights amendment reiterated that debate insofar as the National Woman's Party, which proposed the ERA, took a "single-issue" approach, and the opposing women's organizations were committed to maintaining multiple alliances. But in even more striking ways than it recapitulated nineteenth-century struggles the 1920s equal rights conflict also predicted lines of fracture of the later twentieth-century women's movement. The advantages or compromises involved in "multi-issue" organizing are matters of contemporary concern, of course. Perhaps more important, the 1920s debate brought into sharp focus (and left for us generations later to resolve) the question whether "equal rights"—a concept adopted, after all, from the male political tradition—matched women's needs. The initial conflict between women over the ERA set the goal of enabling women to have the same opportunities and situations as men against the goal of enabling women freely to be different from men without adverse consequences. As never before in nineteenth-century controversies, these two were seen as competing, even mutually exclusive, alternatives.

The equal rights amendment was proposed as a legal or civic innovation but the intrafeminist controversy it caused focused on the economic arena. Indeed, the connection between economic and political subordination in women's relation to men has been central in women's rights advocacy since the latter part of the nineteenth century. In the Western political tradition, women were historically excluded from political initiatives because they were defined as dependent—like children and slaves—and their dependence was read as fundamentally economic. Nineteenth-century advocates, along with the vote, claimed women's "right to labor," by which they meant the right for women to have their labor recognized, and diversified. They emphasized that women, as human individuals no less than men, had the right and need to use their talents to serve society and themselves and to gain fair compensation. Influential voices such as Charlotte Perkins Gilman's at the turn of the century stressed not only women's service but the necessity and warrant for women's economic independence. Gilman argued simultaneously that social evolution made women's move "from fireside to factory" inevitable, and also that the move ought to be spurred by conscious renovation of outworn tradition.

By the 1910s suffragists linked political and economic rights, and connected the vote with economic leverage, whether appealing to industrial workers, career women or housewives. They insisted on women's economic independence in principle and defense of wage-earning women in fact. Since the vast majority of wage-earning women were paid too little to become economically independent, however, the two commitments were not identical and might in practice be entirely at odds.[2] The purpose to validate women's existing economic roles might openly conflict with the purpose to throw open economic horizons for women to declare their own self-definition. These tensions introduced by the feminist and suffrage agitation of the 1910s flashed into controversy over the equal rights amendment in the 1920s.

The ERA was the baby of the National Woman's Party, yet not its brainchild alone. As early as 1914, a short-lived New York City group called the Feminist Alliance had suggested a constitutional amendment barring sex discrimination of all sorts. Like the later NWP, the Feminist Alliance was dominated by highly educated and ambitious women in the arts and professions, women who believed that "equal rights" were their due while they also aimed to rejuvenate and reorient thinking about "rights" around female rather than only male definition. Some members of the Feminist Alliance surely joined the NWP, which emerged as the agent of militant and political action during the final decade of the suffrage campaign.[3]

A small group (engaging perhaps 5 percent of all suffragists), the NWP grew from the Congressional Union founded by Alice Paul and Lucy Burns in 1913 to work on the federal rather than the state-by-state route to woman suffrage. Through the 'teens it came to stand for partisan tactics (opposing all Democrats because the Democratic administration had not passed woman suffrage) and for flamboyant, symbolic, publicity-generating actions—large parades, pickets in front of the White House, placards in the Congress, hunger-striking in jail, and more. It gained much of its energy from leftwing radical women who were

attracted to its wholesale condemnation of gender inequality and to its tactical adaptations from the labor movement; at the same time, its imperious tendency to work from the top down attracted crucial financial and moral support from some very rich women. When the much larger group, the National American Woman Suffrage Association, moved its focus to a constitutional amendment in 1916, that was due in no little part (although certainly not solely), to the impact of the NWP. Yet while imitating its aim, NAWSA's leaders always hated and resented the NWP, for the way it had horned in on the same pro-suffrage turf while scorning the NAWSA's traditional nonpartisan, educative strategy. These resentments festered into deep and long-lasting personal conflicts between leaders of the two groups.

Just after the 19th Amendment was ratified in August of 1920, the NWP began planning a large convention at which its members would decide whether to continue as a group and, if so, what to work for. The convention, held six months later and tightly orchestrated by chairman Alice Paul, brushed aside all other suggestions and endorsed an ongoing program to "remove all remaining forms of the subjection of women," by means of the elimination of sex discrimination in law.[4] At the outset, NWP leaders seemed unaware that this program of "equal rights" would be much thornier to define and implement than "equal suffrage" had been. They began surveying state legal codes, conferring with lawyers, and drafting numerous versions of equal rights legislation and amendments at the state and federal levels.

Yet the "clean sweep" of such an approach immediately raised a problem: would it invalidate sex-based labor legislation—the laws regulating women's hours, wages, and conditions of work, that women trade unionists and reformers had worked to establish over the past thirty years? The doctrine of "liberty of contract" between employer and employed had ruled court interpretations of labor legislation in the early twentieth century, stymying state regulation of the wages and hours of male workers. State regulation for women workers, espoused and furthered by many women in the NWP, had been made possible only by differentiating female from male wage-earners on the basis of physiology and reproductive functions. Now members of the NWP had to grapple with the question whether such legislation was sex "discrimination," hampering women workers in the labor market. Initially, there was a great deal of sentiment within the NWP, even voiced by Alice Paul herself, that efforts at equal rights legislation should not impair existing sex-based protective labor legislation. However, there was also contrary opinion, which Paul increasingly heeded; by late November 1921 she had come to believe firmly that "enacting labor laws along sex lines is erecting another handicap for women in the economic struggle." Some NWP affiliates were still trying to draft an amendment that would preserve special labor legislation, nonetheless, and continued to introduce equal rights bills with "safeguards" in some states through the following spring.[5]

Meanwhile women leaders in other organizations were becoming nervous and distrustful of the NWP's intentions. Led by the League of Women Voters (successor to the NAWSA), major women's organizations in 1920 formed a national lobbying group called the Women's Joint Congressional Committee. The LWV was interested in eliminating sex discrimination in the law, but more immediately concerned with the extension of sex-based labor legislation. Moreover, the LWV had inherited NAWSA's hostility to Alice Paul. The first president of the LWV, Maud Wood Park, still smarted from the discomfiture that NWP picketing tactics had caused her when she headed the NAWSA's Congressional Committee from 1916 to 1920.[6] Other leading groups in the Women's Joint Congressional Committee were no less suspicious of the NWP. The National Women's Trade Union League since the mid-1910s had concentrated its efforts on labor legislation to protect women workers. Florence Kelley, director of the National Consumers' League, had been part of the inner circle of the NWP during the suffrage campaign, but on the question of protective labor laws her priorities diverged. She had spent three decades trying to get state regulation of workers' hours and conditions, and was not about to abandon the gains achieved for women.[7]

In December 1921, at Kelley's behest, Paul and three other NWP members met for discussion with her and leaders of the League of Women Voters, the National Women's Trade Union League, the Woman's Christian Temperance Union, and the General Federation of Women's Clubs. All the latter objected to the new constitutional amendment now formulated by the NWP: "No political, civil or legal

disabilities or inequalities on account of sex, or on account of marriage unless applying alike to both sexes, shall exist within the United States or any place subject to their jurisdiction." Paul gave away no ground, and all left feeling that compromise was unlikely. Each side already thought the other intransigent, though in fact debate was still going on within the NWP.[8]

By mid-1922 the National Consumers' League, the LWV, and the Women's Trade Union League went on record opposing "blanket" equal rights bills, as the NWP formulations at both state and federal levels were called. About the same time, the tide turned in the NWP. The top leadership accepted as definitive the views of Gail Laughlin, a lawyer from Maine, who contended that sex-based labor legislation was not a lamented loss but a positive harm. "If women can be segregated as a class for special legislation," she warned, "the same classification can be used for special restrictions along any other line which may, at any time, appeal to the caprice or prejudice of our legislatures." In her opinion, if "protective" laws affecting women were not abolished and prohibited, "the advancement of women in business and industry will be stopped and women relegated to the lowest, worst paid labor."[9] Since NWP lobbyists working at the state level were making little headway, a federal constitutional amendment appeared all the more appealing. In November 1923, at a grand conference staged in Seneca Falls, New York, commemorating the seventy-fifth anniversary of Elizabeth Cady Stanton's Declaration of Sentiments, the NWP announced new language: "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction." The constitutional amendment was introduced into Congress on December 10, 1923.[10]

In the NWP view, this was the logical sequel to the 19th Amendment. There were so many different sex discriminations in state codes and legal practices—in family law, labor law, jury privileges, contract rights—that only a constitutional amendment seemed effective to remove them. The NWP took the language of liberal individualism, enshrined in the catchphrase of "equal rights," to express its feminism. As Alice Paul saw it, what women as a gender group shared was their subordination and inequality to men as a whole; the legal structure most clearly expressed this subordination and inequality, and therefore was the logical point of attack. The NWP construed this agenda as "purely feminist," that is, appealing to women as women, uniting women around a concern common to them regardless of the other ways in which they might differ. Indeed, at its founding postsuffrage convention the NWP leadership purposely bypassed issues it saw as less "pure," including birth control, the defense of black women's voting rights in the South, and pacifism, which were predictably controversial among women themselves.

The NWP posited that women could and would perceive self-interest in "purely" gender terms. Faced by female opponents, its leaders imagined a fictive or abstract unity among women rather than attempting to encompass women's real diversity. They separated the proposal of equal rights from other social and political issues and effects. Although the campaign for equal rights was initiated in a vision of inclusiveness—envisioned as a stand that all women could take—it devolved into a practice of exclusiveness. The NWP's "appeal for conscious sex loyalty" (as a member once put it) went out to members of the sex who could subordinate identifications and loyalties of class, ethnicity, race, religion, politics, or whatever else to a "pure" sense of themselves as women differentiated from men. That meant principally women privileged by the dominant culture in every way except that they were female.[11]

In tandem with its lobbying for an equal rights amendment, the NWP presented its opposition to sex-based labor legislation as a positive program of "industrial equality." It championed women wage-earners who complained of "protective" legislation as restrictive, such as printers, railroad conductors, or waitresses hampered by hours limitation, or cleaning women fired and replaced by men after the passage of minimum-wage laws. Only a handful of working-class women rose to support for the ERA, however.[12] Mary Anderson, former factory worker herself and since 1919 the director of the U.S. Women's Bureau, which was founded to guide and assist women workers, threw her weight into the fight against the amendment. Male trade unionists—namely leaders of the American Federation of Labor—also voiced immediate opposition to the NWP aims, appearing at the very first U.S. Senate subcommittee hearings on the equal rights amendment. Male unionists or class-conscious workers in this period put their faith in collective bargaining and did not seek labor legislation for

themselves, but endorsed it for women and child workers. This differentiation derived partly from male workers' belief in women's physical weakness and veneration of women's "place" in the home, partly from presumptions about women workers being difficult to organize, and also from the aim to keep women from competing for men's jobs. Male unionists tended to view wage-earning women first as women—potential or actual wives and mothers—and only secondarily as workers. For differing reasons women and men in the labor movement converged in their support of sex-based legislation: women because they saw special protection necessary to defend their stake in industry and in union organizations, limited as it was; men to hold at bay women's demands for equal entry into male-controlled union jobs and organizations.[13]

The arguments against the equal rights amendment offered by trade unionists and by such women's organizations as the League of Women Voters overlapped. They assumed that an equal rights amendment would invalidate sex-based labor laws or, at least, destine them for protracted argument in the courts, where judges had shown hostility to any state regulation of employer prerogatives. They insisted that the greatest good for the greatest number was served by protective labor laws. If sex-based legislation hampered some—as the NWP claimed, and could be shown true, for instance, in the case of women linotypists, who needed to work at night—then the proper tactic was to exempt some occupations, not to eliminate protective laws whole. They feared that state welfare legislation in place, such as widows' pensions, would also be at risk. They contended that a constitutional amendment was too undiscriminating an instrument: objectionable sex discriminations such as those concerning jury duty, inheritance rights, nationality, or child custody would be more efficiently and accurately eliminated by specific bills for specific instances. Sometimes, opponents claimed that the ERA took an unnecessarily federal approach, overriding states' rights, although here they were hardly consistent for many of them were at the same time advocating a constitutional amendment to prohibit child labor.

Against the ERA, spokeswomen cited evidence that wage-earning women wanted and valued labor legislation and that male workers, too, benefitted from limits on women's hours in factories where men and women worked at interdependent tasks. Before hours were legally limited, "we were 'free' and 'equal' to work long hours for starvation wages, or free to leave the job and starve!" WTUL leader Pauline Newman bitterly recalled. Dr. Alice Hamilton, pioneer of industrial medicine, saw the NWP as maintaining "a purely negative program, . . . holding down in their present condition of industrial slavery hundreds of thousands of women without doing anything to alleviate their lot."[14] Trade-unionist and Women's Bureau colleagues attacked the NWP's vision as callously class-biased, the thoughtless outlook of rich women, at best relevant to the experience of exceptional skilled workers or professionals. They regularly accused the NWP of being the unwitting tool (at best) or the paid servant of rapacious employers, although no proof of the latter was ever brought forward. They heard in the NWP program the voice of the ruling class and denounced the equal rights amendment as "class" legislation, by and for the bourgeoisie.[15]

Indeed, at the Women's Bureau Conference on Women in Industry in 1926, the NWP's opposition to sex-based labor legislation was echoed by the president of the National Association of Manufacturers, who declared that the "handful" of women in industry could take care of themselves and were not served by legislative "poultices." In this controversy, the positions also lent themselves to, and inevitably were colored by, male "allies" whose principal concerns dealt less with women's economic or legal protection or advancement than political priorities of their own. At the same conference the U.S. Secretary of Labor appointed by President Coolidge took the side of sex-based protective legislation, proclaiming that "The place fixed for women by God and Nature is a great place," and "wherever we see women at work we must see them in terms of motherhood." What he saw as the great danger of the age was the "increasing loss of the distinction between manliness and true femininity."[16]

Often, ERA opponents who supported sex-based labor legislation—including civic-minded middle-class women, social welfare reformers, government officials, and trade union men—appeared more concerned with workingwomen's motherhood than with economic justice. "Women who are wage earners, with one job in the factory and another in the home have little time and energy left to carry

on the fight to better their economic status. They need the help of other women and they need labor laws," announced Mary Anderson. Dr. Hamilton declared that "the great inarticulate body of working women . . . are largely helpless, . . . [and] have very special needs which unaided they cannot attain. . . ."[17] Where NWP advocates had before their eyes women who were eager and robust, supporters of protective legislation saw women overburdened and vulnerable. The former claimed that protective laws penalized the strong; the latter claimed that the ERA would sacrifice the weak. The NWP looked at women as individuals and wanted to dislodge gender differentiation from the labor market. Their opponents looked at women as members of families—daughters, wives, mothers, and widows with family responsibilities—and believed that the promise of "mere equality" did not sufficiently take those relationships into account. The one side tacitly positing the independent professional woman as the paradigm, the other presuming the doubly burdened mother in industry or service, neither side distinguished nor addressed directly the situation of the fastest-growing sector of employed women, in white-collar jobs. At least half of the female labor force—those in manufacturing and in domestic and personal service—worked in taxing, menial jobs with long hours, unpleasant and often unhealthy conditions, very low pay, and rare opportunities for advancement. But in overall pattern women's employment was leaving these sectors and swelling in clerical, managerial, sales, and professional areas. White-collar workers were fewer than 18 percent of all women employed in 1900, but the proportion more than doubled by 1920 and by 1930 was 44 percent.[18]

The relation of sex-based legislation to women workers' welfare was more ambiguous and complicated than either side acknowledged. Such laws immediately benefitted far larger numbers of employed women than they hindered, but the laws also had a negative impact on women's overall economic opportunities, both immediately and in the long term. Sex segregation of the labor market was a very significant factor. In industries monopolizing women workers, where wages, conditions, and hours were more likely to be substandard, protective legislation helped to bring things up to standard. It was in more desirable crafts and trades more unusual for women workers, where skill levels and pay were likely to be higher—that is, where women needed to enter in order to improve their earnings and economic advancement—that sex-based protective legislation held women back. There, as a contemporary inquiry into the issue said, "the practice of enacting laws covering women alone appears to discourage their employment, and thereby fosters the prejudice against them." The segregation of women into low-paid, dead-end jobs that made protective laws for women workers necessary, was thus abetted by the legislation itself.[19]

By 1925, all but four states limited workingwomen's hours; eighteen states prescribed rest periods and meal hours; sixteen states prohibited night work in certain occupations; and thirteen had minimum wage regulations. Such regulation was passed not only because it served women workers, but also because employers, especially large corporate employers, began to see benefits in its stabilization of the labor market and control of unscrupulous competition. Although the National Association of Manufacturers, fixed on "liberty of contract," remained opposed, large employers of women accepted sex-based labor legislation on reasoning about "protection of the race," or could see advantages for themselves in it, or both. A vice-president of Filene's, a large department store in Boston, for instance, approved laws regulating the hours, wages, and conditions of women employees because "economies have been effected by the reduction of labor turnover; by reduction of the number of days lost through illness and accidents; and by increase in the efficiency of the working force as well as in the efficiency of management." He appreciated the legislation's maintaining standards as to hours, wages, and working conditions "throughout industry as a *whole*, thus preventing selfish interests from indulging in unfair competition by the exploitation of women. . . ."[20]

While the anti-ERA side was right in the utilitarian contention that protective laws meant the greatest good to the greatest number of women workers (at least in the short run), the pro-ERA side was also right that such laws hampered women's scope in the labor market and sustained the assumption that employment advantage was not of primary concern to women. Those who advocated sex-based laws were looking at the labor market as it was, trying to protect women in it, but thereby contributing to the perpetuation of existing

inequalities. They envisaged wage-earning women as veritable beasts of burden. That group portrait supplanted the prior feminist image of wage-earning women as a vanguard of independent female personalities, as equal producers of the world's wealth. Its advocates did not see that their conception of women's needs helped to confirm women's second-class position in the economy. On the other hand, the ERA advocates who opposed sex-based "protections" were envisioning the labor market as it might be, trying to ensure women the widest opportunities in that imagined arena, and thereby blinking at existing exploitation. They did not admit to the vulnerabilities that sex-based legislation addressed, while they overestimated what legal equality might do to unchain women from the economic stranglehold of the domestic stereotype.

Women on both sides of the controversy, however, saw themselves as legatees of suffragism and feminism, intending to defend the value of women's economic roles, to prevent economic exploitation of women and to open the doors to economic opportunity. A struggle over the very word feminism, which the NWP had embraced, became part of the controversy. For "us even to use the word feminist," contended Women's Trade Union League leader Ethel Smith, "is to invite from the extremists a challenge to our authenticity." Detractors in the WTUL and Women's Bureau called the NWP "ultra" or "extreme" feminists. Mary Anderson considered herself "a good feminist" but objected that "over-articulate theorists were attempting to solve the working women's problems on a purely feministic basis with the working women's own voice far less adequately heard." Her own type of feminist was moderate and practical, Anderson declared; the others, putting the "woman question" above all other questions, were extreme and abstract. The bitterness was compounded by a conflict of personalities and tactics dragged on from the suffrage years. Opponents of the ERA, deeply resenting having to oppose something called equal rights, maligned the NWP as "pernicious," women who "discard[ed] all ethics and fair play," an "insane crowd" who espoused "a kind of hysterical feminism with a slogan for a program."[21] Their critiques fostered public perception of feminism as a sectarian and impracticable doctrine unrelated to real life and blind to injustices besides sex inequality. By the end of the 1920s women outside the NWP rarely made efforts to reclaim the term feminist for themselves, and the meaning of the term was depleted.

Forced into theorizing by this controversy, not prepared as philosophers or legal theorists, spokeswomen on either side in the 1920s were grappling with definitions of women's rights as compared to men's that neither the legal nor economic system was designed to accommodate. The question whether equality required women to have the same rights as men, or different rights, could not be answered without delving into definitions. Did "equality" pertain to opportunity, treatment, or outcome?[22] Should "difference" be construed to mean separation, discrimination, protection, privilege—or assault on the very standard that the male was the human norm?[23]

Opponents of the ERA believed that sex-based legislation was necessary because of women's biological and social roles as mothers. They claimed that "The inherent differences are permanent. Women will always need many laws different from those needed by men"; "Women as such, whether or not they are mothers present or prospective, will always need protective legislation"; "The working mother is handicapped by her own nature."[24] Their approach stressed maternal nature and inclination as well as conditioning, and implied that the sexual division of labor was eternal.

The NWP's approach, on the other hand, presupposed that women's differentiation from men in the law and the labor market was a particular, social-historical, and not necessary or inevitable construction. The sexual division of labor arose from archaic custom, enshrined in employer and employee attitudes and written in the law. The NWP approach assumed that wives and mothers as well as unencumbered women would want and should have open access to jobs and professions. NWP proponents imagined that the sexual division of labor (in the family and the marketplace) would change if women would secure the same rights as men and have free access to wage-earning. Their view made a fragile potential into a necessary fact. They assumed that women's wage-earning would, by its very existence, challenge the sexual division of labor, and that it would provide the means for women's economic independence—although neither of these tenets was necessarily being realized.

Wage-earning women's experience in the 1910s and 1920s, as documented by the Women's

Bureau, showed that the sexual division of labor was budged only very selectively and marginally by women's gainful employment. Most women's wages did not bring them economic independence; women earned as part of a plan for family support (as men did, though that was rarely stressed). Contrary to the NWP's feminist visions, in those places in the nation where the highest proportions of wives and mothers worked for pay, the sexual division of labor was most oppressively in place. To every child growing up in the region of Southern textile and tobacco mills, where wives and mothers worked more "jobs" at home and in the factory than any other age or status group—and earned less—the sexual division of labor appeared no less prescriptive and burdensome than it had before women earned wages.[25]

Critiques of the NWP and its ERA as "abstract" or "extreme" or "fanatical" represented the gap between feminist tenets and harsh social reality as an oversight of the NWP, a failure to adjust their sights. Even more sympathetic critics, such as one Southern academic, asked rhetorically, "Do the feminists see in the tired and haggard faces of young waitresses, who spend seventy hours a week of hard work in exchange for a few dollars to pay for food and clothing, a deceptive mask of the noble spirit within?" She answered herself, "Surely it is not an increasing army of jaded girls and spent women that pours every day from factory and shop that the leaders of the feminist movement seek. But the call for women to make all labor their province can mean nothing more. They would free women from the rule of men only to make them greater slaves to the machines of industry."[26] Indeed, the exploitation of female service and industrial workers at "cheap" wages cruelly parodied the feminist notion that gainful employment represented an assertion of independence (just as the wifely duties required of a secretary parodied the feminist expectation that wage-earning would challenge the sexual division of labor and reopen definitions of feminity). What such critics were observing was the distance between the potential for women's wage-earning to challenge the sexual division of labor, and the social facts of gender and class hierarchy that clamped down on that challenge.

Defenders of sex-based protective legislation, trying to acknowledge women's unique reproductive endowments and social obligations, were grappling with problems so difficult they would still be present more than half a century later. Their immediate resolution was to portray women's "difference" in merely customary terms. "Average American women prefer to make a home for husbands and children to anything else," Mary Anderson asserted in defense of her position. "They would rather fulfill this normal function than go into the business world."[27] Keeping alive a critique of the class division of wealth, protective legislation advocates lost sight of the need to challenge the very sexual division of labor that was the root of women's "handicap" or "helplessness." As compared to the NWP's emphasis on the historical and social construction of gender roles, advocates of sex-based protective legislation echoed customary public opinion in proposing that motherhood and wage-earning should be mutually exclusive. They easily found allies among such social conservatives as the National Council of Catholic Women, whose representatives testified against the ERA because it "seriously menaced ... the unity of the home and family life" and contravened the "essential differences in rights and duties" of the two sexes which were the "result of natural law." Edging into plain disapproval of mothers of young children who earned, protective legislation supporters became more prescriptive, less flexible, than wage-earning mothers themselves, for whom cash recognition of their labor was very welcome. "Why should not a married woman work [for pay], if a single one does?" demanded a mill worker who came to the Southern Summer School for Women Workers. "What would men think if they were told that a married man should not work? If we women would not be so submissive and take everything for granted, if we would awake and stand up for our rights, this world would be a better place to live in, at least it would be better for the women. ... "[28]

The onset of the Depression in many ways worsened the ERA controversy, for the one side thought protective legislation all the more crucial when need drove women to take any jobs available, and the other side argued that protective legislation prevented women from competing for what jobs there were. In the 1930s it became clear that the labor movement's and League of Women Voters' opposition to the equal rights amendment ran deeper than concern for sex-based legislation as an "entering wedge." The Fair Labor Standards Act of 1938 mandated wages and hours regulation for all workers, and the U.S. Supreme Court upheld it

in 1941; but the labor movement and the LWV still opposed the ERA. Other major women's organizations, however—most importantly the National Federation of Business and Professional Women's Clubs and the General Federation of Women's Clubs—and the national platforms of both the Republican [Party] and the Democratic Party endorsed the ERA by 1944.[29]

We generally learn "winners'" history—not the history of lost causes. If the ERA passed by Congress in 1972 had achieved ratification by 1982, perhaps historians of women would read the trajectory of the women's movement from 1923 to the present as a steady upward curve, and award the NWP unqualified original insight. The failure of the ERA this time around (on new, but not unrelated, grounds) compels us to see the longer history of equal rights in its true complexity.[30] The ERA battle of the 1920s seared into memory the fact of warring outlooks among women while it illustrated the inevitable intermeshing of women's legal and political rights with their economic situations. If the controversy testified to the difficulty of protecting women in the economic arena while opening opportunities to them, even more fundamentally the debate brought into question the NWP's premise that the articulation of sex discrimination—or the call for equal rights—would arouse all women to mobilize as a group. What kind of a group were women when their occupational and social and other loyalties were varied, when not all women viewed "women's" interests, or what constituted sex "discrimination," the same way? The ideological dimensions of that problem cross-cut both class consciousness and gender identity. The debate's intensity, both then and now, measured how fundamental was the revision needed if policies and practices of economic and civic life deriving from a male norm were to give full scope to women—and to women of all sorts.

Notes

1. An essential text on the mid-nineteenth-century split is Ellen Carol DuBois, *Feminism and Suffrage: The Emergence of an Independent Women's Movement, 1848–1869* (Ithaca, N.Y., 1978).

2. See Leslie Woodcock Tentler, *Wage-Earning Women: Industrial Work and Family Life in the U.S., 1900–1930* (New York, 1979), chap. 1, on industrially employed women's wages, keyed below subsistence.

3. On feminists in the final decade of the suffrage campaign, see Nancy F. Cott, *The Grounding of Modern Feminism* (New Haven, Conn., 1987), pp. 23–66.

4. For more detailed discussion of the February 1921 convention, see Nancy F. Cott, "Feminist Politics in the 1920s: The National Woman's Party," *Journal of American History* 71 (June 1984).

5. Paul to Jane Norman Smith, Nov. 29, 1921, folder 110, J. N. Smith Collection, Schlesinger Library (hereafter SL). See NWP correspondence of Feb.–Mar. 1921 in the microfilm collection "The National Woman's Party, 1913–1974" (Microfilm Corp. of America), reels #5–7 (hereafter NWP), and Cott, *Grounding*, pp. 66–74, 120–25.

In Wisconsin, prominent NWP suffragist Mabel Raef Putnam put together a coalition which successfully lobbied through the first state equal rights bill early in 1921. This legislation granted women the same rights and privileges as men *except for* "the special protection and privileges which they now enjoy for the general welfare."

6. Maud Wood Park, *Front Door Lobby*, ed. Edna Stantial (Boston, 1960), p. 23.

7. Historians' treatments of women's organizations' differing views on the ERA in the 1920s include J. Stanley Lemons, *The Woman Citizen: Social Feminism in the 1920s* (Urbana, Ill., 1973), pp. 184–99; William Chafe, *The American Woman: Her Changing Social, Economic and Political Roles* (New York, 1972), pp. 112–32; Susan Becker, *Origins of the Equal Rights Amendment: American Feminism between the Wars* (Westport, Conn, 1981), pp. 121–51; and Alice Kessler-Harris, *Out to Work: A History of Wage-Earning Women in the U.S.* (New York, 1982), pp. 194–95, 205–12. Fuller documentation of my reading of both sides can be found in Cott, *Grounding*, pp. 122–29.

8. "Conference on So-Called 'Equal Rights' Amendment Proposed by the National Woman's Party Dec. 4, 1921," ts. NWTUL Papers, microfilm reel 2.

9. NWP National Council minutes, Dec. 17, 1921, Feb. 14, 1922, Apr. 11, 1922, NWP #114. To the NWP inner circle Laughlin's point was borne out by a 1923 ruling in Wisconsin, where, despite the Equal Rights Bill, the attorney general declined to strike down a 1905 law which prohibited women from being employed in the state legislature. He likened the prohibition to an hours-limitation law, because legislative service required "very long and often unreasonable hours."

10. National Council Minutes, June 19, 1923, NWP #114. Before 1923, the ERA went through scores of drafts. Not until 1943 was the amendment introduced into Congress in the form "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex," modeled on the Nineteenth Amendment, which in turn was modeled on the Fifteenth Amendment.

11. Quotation from Edith Houghton Hooker, Editor's Note, *Equal Rights* (the NWP monthly publication), Dec. 22, 1928, p. 365. See Cott, *Grounding*, pp. 75–82.

12. The two most seen on NWP platforms were Josephine Casey, a former ILGWU organizer, suffrage activist, later a bookbinder, and Mary Murray, a Brooklyn Railway employee who had resigned from her union in 1920 to protest its acceptance of laws prohibiting night work for women.

13. Kessler-Harris, *Out to Work*, 200–5.

14. More extensive documentation of the debate can be found in the notes in Cott, *Grounding*, pp. 325–26.

15. Kessler-Harris, *Out to Work*, pp. 189–94, reveals ambivalent assessments of labor legislation by ordinary wage-earning women.

16. Printed release from the National Association of Manufacturers, "Defend American Womanhood by Protecting Their Homes, Edgerton Tells Women in Industry," Jan. 19, 1926, in folder 1118, and ts. speech by James Davis, U.S. Secretary of Labor, Jan. 18, 1926, in folder 1117, Box 71, Mary Van Kleeck Collection, Sophia Smith Collection, Smith College.

17. Mary Anderson, "Should There Be Labor Laws for Women? Yes," *Good Housekeeping*, Sept. 1925.

18. See Valerie K. Oppenheimer, *The Female Labor Force in the U.S.* (Westport, Conn., 1976), pp. 3, 149; Winifred Wandersee, *Women's Work and Family Values 1920–1940* (Cambridge Mass., 1981), pp. 85, 89.

19. Elizabeth F. Baker, "At the Crossroads in the Legal Protection of Women in Industry," *Annals of the American Academy of Political and Social Science* 143 (May 1929):277.

20. T. K. Cory to Mary Wiggins, Nov. 10, 1922, folder 378, Consumers' League of Mass. Coll., SL.

21. Ethel M. Smith, "What Is Sex Equality and What Are the Feminists Trying to Accomplish?" *Century Monthly Magazine* 118 (May 1929):96. . . . Mary Anderson, *Woman at Work: The Autobiography of Mary Anderson as Told to Mary N. Winslow* (Minneapolis, 1951), p. 168.

22. See Jean Bethke Elshtain, "The Feminist Movement and the Question of Equality," *Polity* 7 (Summer 1975):452–77.

23. This is the set of issues that preoccupied feminist lawyers in the 1980s. For a sense of the debate, see, e.g., Wendy Williams, "The Equality Crisis: Some Reflections on Culture, Courts, and Feminism," *Women's Rights Law Reporter* 7 (Spring 1982):175–200; and Joan Williams, "Deconstructing Gender," *Michigan Law Review* 87 (Feb. 1989):797–845.

24. Florence Kelley, "Shall Women Be Equal before the Law?" (debate with Elsie Hill), *Nation* 114 (Apr. 12, 1922):421.

25. Dolores Janiewski, *Sisterhood Denied: Race, Gender and Class in a New South Community* (Philadelphia: Temple University Press, 1985), pp. 30–32, 127–50.

26. Guion G. Johnson, "Feminism and the Economic Independence of Woman," *Journal of Social Forces* 3 (May 4, 1925):615.

27. Mary Anderson quoted in unidentified newspaper clipping, Nov. 25, 1925, in folder 349, Bureau of Vocational Information Collection, SL. Cf. Ethel Smith's objection that the NWP's feminism required that "men and women must have exactly the same things, and be treated in all respects as if they were alike," as distinguished from her own view that "men and women must each have the things best suited to their respective needs, which are not all the time, nor in all things, alike." Smith, "What Is Sex Equality?", p. 96.

28. National Council of Catholic Women testimony at U.S. Congress (House of Representatives) subcommittee of Committee on the Judiciary, hearings, 1925, quoted in Robin Whittemore, "Equality vs. Protection: Debate on the Equal Rights Amendment, 1923–1937" (M.A. thesis, Boston University, 1981), p. 19; mill worker quoted in Mary Frederickson, "The Southern Summer School for Women Workers," *Southern Exposure* 4 (Winter 1977):73. See also Maurine Greenwald, "Working-Class Feminism and the Family Wage Ideal: The Seattle Debate on Married Women's Right to Work, 1914–1920," *Journal of American History* 76 (June 1989):118–49.

29. For the history of the NWP in the 1930s and 1940s see Becker, *Origins of the Equal Rights Amendment*.

30. Jane L. Mansbridge's astute analysis, *Why We Lost the ERA* (Chicago, 1986), is essential reading on the failed 1970s campaign for ratification.