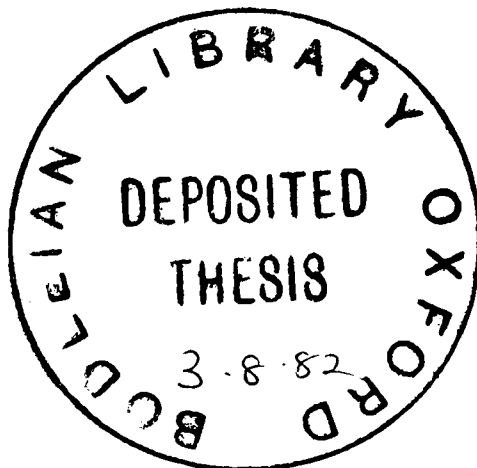


PUBLIC POLICY; EQUALITY OF EMPLOYMENT OPPORTUNITIES
FOR WOMEN IN BRITAIN AND AMERICA

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Submitted for the Degree of D.Phil.
Oxford University
Hilary Term 1982 TT

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This thesis is about the origins and implementation of the Equal Pay Act and Sex Discrimination Act in Britain. For historical and methodological reasons the subject is treated comparatively with similar American policies. British policy makers looked to the United States as an exemplar in this field. The thesis discusses one theory about innovation which predicts such a process. Accounts of policy formation and implementation are used as a method of comparing the general political processes of the two countries.

The first chapter introduces ideas about the study of policy and the pattern and timing of policy innovations. It also refers to early moves in the emancipation of women in Britain and America. Part I is about the origins of laws promoting equality of opportunity for working women. It deals with the problems the legislation was supposed to solve, the growth of interest in economic as well as political emancipation and with the actual provisions of the new laws. The emphasis is on Britain to which three chapters are devoted. Similar trends and events in America are dealt with more briefly in a single chapter. Part II discusses implementation in both countries, stressing the essentially political aspects of this process. That is to say, Chapters VI and VII consider the activities of the principle administrative agencies and departments and the courts.

The concluding chapter compares the different approaches of American and British institutions promoting equality in the light of variations in more general aspects of politics. Thus it attempts to contribute to the discipline of comparative politics.

PREFACE

This thesis is dedicated to my parents for their unfailing encouragement and to Mrs Thatcher whose jest that I give it up was an incentive to finishing it.

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I am also indebted to the Social Science Research Council for a three year Studentship award and for generously funding field work in Britain and the United States.

My visit to the United States was the occasion of immeasurable help and hospitality from countless individuals. Some are listed anonymously at the end of the thesis under 'sources'. By naming some here I ask others to accept my thanks through the following: A. Callan, D. and B. Colman, E. Durbin, M. Eisenstein, J. Goldstein, D. Green, F. Perman, R. Ratner, S. and R. Ross, B. Sheppard, T. Straub and S. and Z. Wing.

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INTRODUCTION

CHAPTER IINTRODUCTION(I) Reasons for the Research

This thesis is about the origins and enforcement of the Equal Pay Act (1970) and the employment provisions of the Sex Discrimination Act (1975) in Britain. Comparisons are made with similar laws in the United States, which, to some extent, were exemplars for British policy makers.

A study of this legislation is important, not only for historical reasons, but also because knowledge of the political processes involved raises some controversial theories of political change. The comparative dimension is also of interest for historical reasons and because comparison of policies across nations can be used as a development in comparative politics. From the historical point of view, there are three significant aspects. Firstly, laws about equality for working women represent a new stage in the history of women's emancipation. Secondly, policies on women's equality are closely connected to the whole question of civil rights. Two links in Britain are particularly important. One of these is that laws aimed at increasing specific forms of equality for specified groups marks a move away from the principle of universalism underlying at least some of the intentions behind the welfare state. Another is that innovations in legal concepts and institutional powers, introduced in the Sex Discrimination Act, became models for the 1976 Race Relations Act. The third aspect of historical interest is that the United States was an important inspiration to British policy makers in respect both of women and racial minorities. The last point leads into controversies in theories of political change. The two of most significance are the

electoral chain of command theory and the diffusion of innovation model. Although the contents of the British Equal Pay Act and Sex Discrimination Act may be seen as complementary,¹ legal reforms followed different patterns. Equal pay reform can be construed as confirming the electoral chain of command theory in so far as demands for change had been on the public agenda since the late 19th century. Inequalities of the type banned by the Sex Discrimination Act were of spasmodic interest to isolated groups, often regarded as freaks. It was not until the early 1970s that it became conventional to declare support for a moderate version of the demands of newly vocal women's liberation groups. In contrast to the slowness of responses by politicians to demands for equal pay, other types of discrimination were made unlawful rapidly. In both cases politicians were moved, not merely by public pressure, but also by knowledge that entry to the EEC would necessitate such reforms. That solutions, particularly in the case of the Sex Discrimination Act, were 'borrowed' from the United States provides an opportunity to test the diffusion of innovation model of political change. This model anticipates such 'borrowing', especially from the United States, in the field of civil rights.

Explanations of the pattern and timing of reform are discussed more fully later in this chapter. The 'diffusion of innovation' theory is, however, also a source of one of the major methodological concerns underlying this thesis.² This is that the theory compels consideration of policy implementation. It does so by predicting that this will be less effective on the political system that does the borrowing. Its invitation to demonstrate connections between patterns of innovation and legislative impacts merges with the growth within political science of

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1. The complementary nature of the acts is discussed in Chapters III and IV. The Equal Pay Act became a Schedule of the Sex Discrimination Act in 1975. The new legal concepts are described in Chapter IV and the powers of the Equal Opportunities Commission in Chapter VI.
 2. Walker, J, 'The diffusion of innovations among the American States', American Political Science Review (Sept 1969).

policy studies and the consequent end of the traditional severance of politics and administration. It is not only this re-connection that is important in policy analyses. Another central idea is that the study of all elements in making and implementing policy provides a better understanding of the political processes of a given country than accounts which emphasise, for example, single institutional components of the system. In some, but not all, respects the expectation that British policies for women's equality will be less effective than the American is borne out by research for this thesis. But more importantly, comparisons of policy formation and implementation are used to illuminate the general workings of political institutions in the two countries.

To set the methodological framework for the thesis, this chapter deals first in more detail with approaches to policy and comparative policy studies. This is followed by a plan of the thesis outlining how this particular policy study will be undertaken. The chapter then moves on to discuss the dynamics of reform. Here, theories of the pattern and timing of innovations are considered. Finally, the chapter provides a historical sketch of women's emancipation and introduces factors that precipitated government action.

(II) The Methodological Framework : Policy and Comparative Policy Studies

During the last fifteen years, policy studies have blossomed. One impetus was a concern for political science to be regarded as 'relevant' to the responsibilities of the modern state. Another was purely intellectual. This stemmed from a feeling that the more traditional ways of studying politics provided only partial explanations of political processes. For

example, analyses ended with the passage of legislation or concentrated too heavily on single components of politics like parties or pressure groups. The belief that traditional approaches to comparative politics were prey to similar, although more complex, limitations has in turn resulted in interest in comparative policy studies.

The new literature is radical in its analytic explorations. But even at its starting point - the very concept of policy - disagreement is rife. In the view of one writer, it is unlikely that there will ever be a shared definition.¹ This seems unnecessarily pessimistic. From an admittedly limited survey of the literature, it is possible to find enough of a common core to reach a minimal working understanding of the concept. Some proposed definitions refer to a process from problem recognition to solution,² 'guides to action',³ 'intentions',⁴ 'goal orientated actions',⁵ 'impacts',⁶ and 'outputs'.⁷ What these have in common, whether claiming to be partial or complete definitions, is the idea that policy is not a discrete action or decision. As a process leading from acknowledgement of a state of affairs to implementing a response to it, the concept of policy subsumes others like decisions, laws, administration, enforcement, etc. When described as 'public', policy refers to the engagement in all these activities by governments or quasi governmental bodies.

However, the literature also reveals a definitional problem that may not be amenable to consensus. This is the question of whether

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1. Leichter, H. A Comparative Approach to Policy Analysis: Health Care Policy in Four Nations (Cambridge University Press 1979), p 6.
 2. Rose, R. (ed) The Dynamics of Public Policy (Sage 1976), pp 10-14.
 3. Meehan, E.J. 'Philosophy and Policy Studies' in Nagel, S. (ed) Policy Studies and the Social Sciences (DC Heath & Co 1975), p 190.
 4. This is part of A. Ranney's definition. Political Science and Public Policy (Markham 1968), p 7.
 5. Leichter, op cit, p 6.
 6. Ibid, p 7.
 7. Anderson, J. Public Policy Making (Nelson 1975), p 5.

non-decisions, inaction and unintended consequences can be included in the notion of policy.¹ The view maintained in this thesis is that, if inaction in one issue area is intentional and stems from concern about other aims, a decision not to act must count as policy. For example, in Chapter III it is shown that official unwillingness to respond to demands for equal pay was at times explained by reference to other economic ends.

Likewise, the keeping of certain issues off the political agenda counts as policy, if doing so is consciously related to a conception of an ideal polity or society. Had Enoch Powell's view prevailed that it was improper for the law to guarantee rights other than the usual political and civil liberties and for Parliament to consider the question, this would have counted as a policy on economic rights. But, where external constraints inhibit decision making and when non-decisions and inaction are involuntary, these cannot be parts of a process described as an 'intention', 'guide to action' or a 'goal orientated action'. Nor can unintended consequences be part of policies for the same reasons; although any study of policy ought to consider them because of their feedback on implementation.

Analytical distinctions between stages in the policy process are made in more or less detail by most writers in the field. One of the most comprehensive is Rose's identification of initial state; the securing of a place on the agenda of political controversy; the making of specific demands; discussion of resources and constraints; the choosing of means; implementation; output; impact; and feedback revealing either increased stability or instability.² Up to this point, the new literature is good in that it emphasises political processes at all stages of policy.

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1. Smith, B.C. Policy Making in British Government (Martin Robertson 1976), p 13.
 2. Rose, R. (ed) The Dynamics of Public Policy : A comparative analysis (Sage 1976), pp 10-14.

A complex understanding can be built up of intricate relationships and inter-actions among governing and governed groups. By insisting that implementation is as important a part of politics and policy formation, the artificiality of the old separation of political science and public administration is revealed.¹ That the administration of the Equal Pay Act and Sex Discrimination Act is not merely a matter of routine is shown in Chapters VI and VIII.

But it is intended in this thesis to avoid what are argued here to be pitfalls in policy studies. These follow from some pursuits of the natural task of the social scientist; that is, making sense of society by developing categories and classifications to aid explanations or on which to base predictions. While some analysts, like Lowi, develop policy typologies closely related to the interests of political scientists (based on political relationships and the allocation of resources), others, like Rose, borrow concepts from the applied sciences.² These analogies are sometimes adapted in a way that appears to defeat the purpose of the original exercise. Heclo, for example, expands Rose's 'stage' and 'dynamic' policy models to produce the following 'clarification':

While comparative statics emphasises exogenous re-programming, sequence analysis tends to concentrate on endogenous changes. Oscillations at (t plus 1) are wholly contingent on serial location relative to the previous period/stage/sequence at time (t). If, for example, at time (t) the values attached to political resources, expenditure of resources and creation of new resources are R, E, C respectively, we might expect $R(t+1) = R(t) + C(t) - E(t)$.³

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1. One enduring feature of the 'end of ideology' thesis is that, whether or not its main assertion about the end of conflict over goals can be sustained, it was a spur to analysis of the points in society where conflict did still take place; that is in the administration of policy goals. The new approach also reconnects policy and politics, linguistically separated in English but not in other languages. Heidenheimer, A; Heclo, H; and Adams, C.T. Comparative Public Policy: the politics of social choice in Europe and America (Macmillan 1976), p 4.
 2. Lowi, T. 'American Business, Public Policy, Case Studies and Political Theory' World Politics, 6 (1964), pp 677-715.
Rose, R. op cit, Chapter 1.
 3. Heclo, H. in Rose, Ibid, pp 245-6.

Heclo concedes that, although this kind of formulation highlights the complexity of cycles and relationships in politics, it is difficult to operationalise difference equations in any politically meaningful way. Of course, there are dangers in conveying complex ideas in a language whose literary richness partly stems from its ambiguities; the author may not convey precisely what was intended. And it is part of the academic task to make a subject manageable while retaining precision. But one of the problems with this kind of attempt to do so is that it may convey nothing at all. Another is that it opens the door to pursuits that define conventional political activity out of policy making.

The latter point becomes more evident when, having dealt with the basic concept, writers go on to consider the purposes of studying policies. At least four of these can be identified. First, the formation and implementation of policy may be studied with the aim of understanding political processes and relationships in a given society.¹ In the second approach policy is studied either to make generalisations or to test them. Thirdly, policy analysis can mean the description and assessment of the use made by governments of techniques like operational research and cost benefit analysis.² And, fourthly, policy analysts may seek to evaluate the technical effectiveness of particular policies with a view to advocating change in specified directions.³

Subject to strictures about clarity and meaningfulness, I see no objection to the first three aims; indeed, they fall into the mainstream of political science. But the possible folly of the fourth is eloquently exposed by Lowi in his response to others who argue that, to raise the status of the profession, to apply social science to policy,

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1. The work of Banting is partly in the first category and partly in the second. Banting, K. Poverty Politics and Policy : Britain in the 1960s (Macmillan 1979).
 2. e.g. Gramlich, E. Benefit Cost Analysis of Government Programs (Prentice-Hall 1981).
 3. Foss, P. 'Policy analysis and the Political Science profession' in Nagel, S. (ed) *op cit*, pp 276-277.

it is necessary for political scientists to move beyond the boundaries of their discipline. Foss and Dye, for example, suggest that political scientists may have to become experts in culture, history and technology and be able to measure policy consequences in diverse fields of health, welfare, air pollution, income distribution, etc.¹ Lowi's view is that political scientists should not make their principle aim the answering of questions that would be better answered by econometricians, health experts, biologists or engineers.² But while ill-equipped to make technological judgements, political scientists can ask about whether policies in one area make it easier or more difficult for governments to act in the future; whether the new policy will increase access to the political system; whether the chosen enforcement system is the most appropriate; and so on. Lowi also points out that, if these kind of questions are neglected in favour of approaches designed to promote a particular kind of technological rationality, the political perspective is lost because rationality becomes a set of assumptions that defines the political as irrational.

This is not to say that political scientists should study policy making from a narrowly conventional standpoint or be uninterested in questions in other fields. Indeed, the very name of the discipline indicates a proper concern with public life widely defined. And the virtue of policy studies is the ambition to explain politics as completely as possible. The point at issue is the ordering of priorities and the use of language in attempts to do so.

Policy analysis has expanded recently into comparative studies. Sometimes comparisons^{are} made of different issues within a single political

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1. Ibid, pp 276-77. Dye, T. 'Policy analysis and political science: some problems at the interface' in Nagel, S. (ed) *ibid*, p 293.
 2. Lowi, T. 'What political scientists don't need to ask about policy analysis' in Nagel, S. (ed), *ibid*, pp 271-273; and Lowi, 'Public policy and bureaucracy in the United States and France' in Ashford, D. (ed) Comparing Public Policies (Sage 1978), p 193.

system.¹ Other comparisons are made between different communities.

Sometimes the point of interest is why two systems have different policies in the same issue area.² Or, as in this thesis, the presence of similar policy intentions in two societies is used as a dependent variable in order to compare more general political processes in Britain and America.

As in the case of single country policy studies, comparative analysis has grown out of the limitations of older approaches to comparative politics. Uncertainty that like was being compared with like in comparisons of formal institutions lead to a crude systems analysis. This kind of framework was in turn undermined on the ground that it leaves unexplained the very transformation of inputs to outputs that political scientists want to understand above all. Heclo, and others, including Rose, Hofferbert, King and Simeon,³ offer a number of justifications for studying policy comparatively. Their reasoning is, as it were, deductive and inductive. Rose, for example, argues that problems requiring public attention in different countries may be similar and that cross-national comparison serves as a substitute for controlled experimentation through which solutions can be deduced. There is also a sense in which variations in policy are deduced from hypotheses about different political institutions and ideologies. But, at the same time, it is pointed out that similar policy changes sometimes take place despite institutional and ideological differences. And the same writers also use variations within broadly similar policies to induce statements about different institutions and

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1. Goodin, R. 'Banana time in British politics', Political Studies (forthcoming).
 2. Heideheimer, A; Heclo, H; Adams, C.T; op cit, Chapter II. King, A. 'Ideas, institutions and the policies of governments: a comparative analysis' British Journal of Political Science (1973).
 3. Heclo, H. 'Policy Analysis', British Journal of Political Science (1972).
 Rose, R. 'Comparing public policy', European Journal of Political Research (1973).
 Hofferbert, R. The Study of Public Policy (Bobbs Merrill & Co 1974).
 King, A. op cit.
 Simeon, R. 'Studying Public Policy', Canadian Journal of Political Science (December 1976).

ideas and to 'make generalisations about politics'.¹

From the deductive point of view, if we start by assuming distinctive institutions and variations in democratic ideologies, we should expect to find different characteristics in Britain and America over, say, the sources of a particular innovatory idea, its definitional content, 'official' recognition of it, how it is enforced and with what impact. From the inductive standpoint, the value of equal opportunity policies is that, on the contrary, they fulfil Simeon's requirement of expressing similar definitions, intentions, and solutions from which wider generalisations can be made. It cannot be argued that there is some difference in the ends themselves that explain differences in issue recognition and implementation. Variations in these respects, therefore, will stem from more general political differences.

According to Walker and those who extend his study of American states to an international scale,² it is because politicians and administrators borrow too rapidly and thoughtlessly to consider such variations that different degrees of effectiveness occur. In institutional terms much of the history of the modern state is one of international borrowing or lending. The French prefectoral system, the 'Westminster' model and the Swedish Ombudsman, for example, have all been tried or imposed on other countries, sometimes effectively, sometimes not. All it may be possible to say is that transplanting institutions into different countries, or policies on to different institutions, may be risky; particularly the former. But from the point of view of the analyst, if not the citizen or practitioner of politics, the different developmental processes of transplants in new territories can be studied

1. Simeon, *ibid*, p 551.

2. Walker, *op cit*, pp 890-897. and
e.g. Moynihan, D. SSRC Newsletter to no 10 1970. He cites the inadequacy of European sociology for US race problems and warns against European adoption of wholesale US solutions to other problems.

with a view to comparing different political systems. •

It should be pointed out, however, that, according to some comparative policy analysts, political variables and the workings of 'black boxes' are unimportant in explanations of policy. Described by Danziger as the demographic approach, these studies correlate policy outputs with measures of socio-economic development.¹ One of the earliest proponents was Dye who claims that, in almost every policy area studied in different American states, the significance of political variables was negligible.² Such an approach is unsuitable for this study because of factors in both the formation and implementation of policy. First, there is a contradiction between the findings of Dye and those of Walker in his 'diffusion of innovation' research. The latter finds that part of the explanation for the presence or absence of particular policies is in the roles of politicians and administrators. It is, it will be recalled, his contention that their thoughtless 'borrowing' from one another explains varying degrees of effectiveness. But even if it is claimed that Dye's view is stronger than Walker's in explaining the existence of statutes, such a theory cannot easily account for issues raised in this thesis. While it is the case that two developed countries - Britain and America - have similar equal opportunity policies, the correlation does not and cannot explain why, for example, the Equal Employment Opportunities Commission appears to be taken more seriously by American politicians than the Equal Opportunities Commission by the British. Nor does it explain why American women's groups seem to be more integrated into the political system than their British counterparts. Nor does it explain why American judges have been less cautious than the British in interpreting the law. It is for its failure to make such linkages (and for its dubious

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1. Danziger, J. Making Budgets - Public Resource Allocation (Sage 1978) p 23.
 2. Dye, T. Politics, Economics and the Public (Rand McNally 1966), p 3; and Understanding Public Policy (2nd edition, Prentice-Hall 1975) Chapters 13 and 14.

mathematical foundations) that this approach has been most criticised.¹ Other economic determinists, like Marxists, would not accept the establishment of rough correlations as an explanation, but would try to specify the mediating processes.

It is comparing these linkages or mediating processes that makes comparative policy studies a healthy off-shoot of comparative politics. And it is analysing the reasons for different emphases in the workings out of British and American equal opportunity policies that contributes to a general comparison of politics in the two liberal democracies.

To summarise, although Lowi argues that political science has often been about public policy in the past, the new literature rightly stresses the need for a comprehensive approach that includes implementation. But policy studies by political scientists should consider essentially political questions (without ignoring other issues). And comparisons of policies undertaken by political scientists should also be used to compare political processes.

Consequently, this thesis deals with the forces that brought about and shaped the Equal Pay Act and Sex Discrimination Act. Thus the contributions of individuals, parties and pressure groups are considered on their own merits and in the contexts of other policy priorities facing governments and of interest among key actors in American anti-discrimination legislation. The thesis does not attempt the task of the economist or econometrician: that is, it does not present an original analysis of whether the structures of British and American labour markets have changed as a result of legislation. It, of course, refers to the works of other writers on this aspect; but the main focus of the section on implementation is a

1. Danziger, op cit, pp 24, 81-83.

comparison of the behaviour and political impacts of the British and American institutions created for or charged with the administration of equal employment opportunity policies. Although it is not a full-scale comparative study, explanations of differences are placed in the respective natures of 'hived off' agencies and their places in their wider political settings. How these matters are treated is outlined more fully in the following plan of the thesis.

(III) Plan of the Thesis

This introductory chapter concludes by providing some general background to the advent of equal pay and opportunity laws in Britain and America. It does so by referring to competing theories about how social change comes about in liberal democracies and it provides a brief history of the political emancipation of women which, simultaneously, gave women the opportunity to place other demands on the political agenda and yet appeared to stave off beliefs, except among a few groups, that further reforms were needed. The rest of the thesis considers in more detail a renewed interest in policies to promote equality at work as well as in public life.

The next three chapters are about Britain. Chapter II deals with the pattern of women's employment. This is necessary for two reasons. First, it expands on the background of changing practices that both raised expectations and created resentments. And, secondly, in any discussion of the efficacy of policy, it is necessary to show that there was a real problem to solve. Attention is drawn here to the views of economists that only part of the differences between women's and Men's employment can be explained by market forces. Chapter III deals with politics. It outlines the history of parliamentary and governmental

attitudes to women's employment rights and with the build up of the second wave of feminism. Chapter IV considers the passage of the Acts. This is set in the context of other reforming legislation and the chapter ends with a discussion of the relative influences of outside groups and other policy priorities facing governments. A briefer account of American practices and reforms is given in Chapter V. This is necessary because, if the problems in the United States were substantially different, then it could only be expected that solutions would work out differently. This chapter shows that women's employment patterns are not substantially different in the United States except that changes seem to take place about ten years before they do in Britain. The chapter refers to an interpretation of the law, initiated by the Equal Employment Opportunities Commission and confirmed by the courts, that was 'borrowed' by the British: indirect discrimination. One component of American law that is dealt with in this chapter is affirmative action which exists as a result of Executive Orders. This is an idea that was taken over only in minimal form by the British.

The second half of the thesis describes the behaviour of the enforcement agencies. Chapters VI and VII mainly deal with the Equal Opportunities Commission (EOC), courts and tribunals in Britain, and the Equal Employment Opportunities Commission (EEOC), courts and Departments of Justice and Labor in the United States. There are local offices in both countries which are not considered here. It is too early to say much about the recently established offices in Cardiff and Glasgow. The Northern Ireland Commission was set up under separate legislation. In the United States many states have their own institutions and the Federal EEOC has regional offices. To treat them all systematically is beyond the scope of this thesis, although references are sometimes made to the activities of some of them.

Although civil rights enforcement agencies have been wracked by internal disputes and criticised for mismanagement, the evidence presented in these chapters suggests that the United States agencies have made a bigger impact in politics than the British. Roy Jenkins, Home Secretary when the Sex Discrimination Act was passed, expected that the British EOC would also be a clearly visible, powerful law enforcement agency. As the American EEOC began ten years earlier than the British, one immediate possibility is that in ten years time the British EOC may also create more of a stir and that women's rights will also be in the mainstream of political discourse. This is the subject of the concluding chapter which does two things. First, it bears out, in some respects, the diffusion of innovation thesis that implementation is less effective in the 'borrowing' country but argues that, overall, it is probably undemonstrable. More importantly, it sets the different political impacts of the policies in their respective contexts. It therefore uses the policies to illuminate more general workings of politics in these two liberal democracies.

So far, discussion has centered on ideas about how to analyse policy, why it is useful to do so comparatively and how the task is undertaken here. It is now necessary to turn away from the Meta level and to consider competing theories of how and why actual policies come about.

(IV) The Dynamics of Reform; Theories about Change

Among the many accounts of how reforms occur, four 'ideal types' may be discerned. These are: a model of economic determinism; the 'ripe time' theory; the idea of an electoral chain of command and modified versions of it; and the 'diffusion of innovation' explanation.

Dye's non-Marxist economic determinant theory has already been described as being limited in respect of the intentions behind this policy study. But some version of a Marxist explanation for specific reforms might be borne in mind when considering the events outlined in the rest of this chapter and the thesis as a whole. Crudely put, one of the three relevant aspects of such an explanation is that subordinate classes in liberal democracies may be made to feel equal by the extension to them of political liberties already enjoyed by others. The second is that limited economic and social concessions may be made to secure legitimacy for the general regime. Thirdly, concessions may be made which stem from recognition in the state apparatus that the needs of the economic system require certain changes that could be construed as redistributing resources from the dominant to the subordinate class. The first of these seems compatible with the dissipation, described presently, of the women's movements in Britain and America after they gained the vote. This aspect and the second are, however, subject to the 'essentially contestable' nature of the debate about reform or revolution. Nevertheless, it will be observed that concessions in the form of anti-discrimination laws have had only small material results so far. The third aspect may be compatible with the circumstantial evidence provided by the coincidence of timing between pre-legislative changes in each of the two labour markets and the advent of reforms. Changes in the pattern of female employment in America are about ten years in advance of those in Britain; so, too, are legislative reforms. Of more direct relevance, it is noted in Chapters III, IV and V that some proponents of reform in both countries were explicit in their beliefs that industry needed a more rational distribution of the labour force, which could be

encouraged by equal opportunity policies. In Chapter VII, the view of a major American employer is reported that such policies have forced companies to overhaul their personnel systems and grievance procedures; a modernisation regarded as overdue. But, however superficially appealing, what has been outlined of this model must be only a starting point; for reasons similar to those used against Dye. There are differences in the two societies which can be explained only by reference to their respective mediating processes. And, if variations in these occur at the ideological and political level, feedback on to the material may be seen. This is discussed in the final chapter. However, it may be that even a sophisticated version of the model is inappropriate for the purpose of explaining changes in the position of women. This is because the model is essentially about class inequalities and whether or not these can be eliminated within a system of capitalism. The whole question of whether or not women constitute or are analogous to a subordinate class is hotly disputed and cannot be settled in this thesis. Nevertheless, class is an important factor in the comparison of the equal opportunity policies of the two countries. In Chapter III it is shown that feminism was believed in some British left-wing circles to be a diversion from the more important class inequality. As a result, espousal of the cause of economic rights for women was delayed even in the Labour Party, not all of whose members accepted the necessity of the class struggle. In Chapter IV, it is argued that it was the failure of welfare policies to cure class inequalities that encouraged exploration of the idea of special measures for special groups. However, in Chapter VIII, it is argued that one of the key differences in the impacts of equal opportunity institutions in Britain and America is that the general political structures of the former are based on the idea of the primacy of class politics, while

those of the latter reflect values of individualism and group pluralism. (Arguments in America about feminism being a diversion were made in the context of efforts to increase racial equality.)

(IV)(b) 'Ripe Time'.

Oakeshott's 'ripe time' theory is another that, even if persuasive in appearance, is difficult to operationalise.¹ His view is that society is composed of arrangements that are at once 'coherent and incoherent', forming a pattern that 'at the same time intimates a sympathy for what does not fully appear'. Politicians can make changes by exploring these sympathies or intimations when the time is right. The process of change cannot be abridged. It can only take place when anomalies in social arrangements press 'convincingly for remedy'. Thus, he argues, it is not the strength of abstract appeals to natural justice that explains the granting of female suffrage. Instead, it was realised that in 'all or most other important respects (women) had already been enfranchised'. The accuracy of this assessment of the legal position of women is debatable. It will be shown later in this chapter that judges, when ruling on what are surely 'important respects' - employment and education - did not consider women as persons until after they had been granted the right to vote. Nonetheless, that the slow march of the century before 1970 had produced a sense that anomalies between the positions of men and women had become intolerable, and that the 'time was ripe' for legislative recognition of this, finds some confirmation in the views of some politicians in their expressions of support for anti-discrimination laws. These are reported in Chapter IV.

1. Oakeshott, M. "Political Education" in Rationalism in Politics (Methuen & Co, London 1962), pp 124-133.

(IV)(c) Electoral Chain of Command

The most conventional explanation of political change in liberal democracies is the electoral chain of command model. This (and its modified versions which take account of parties and pressure groups as well as voters) is too well known to be rehearsed in detail here. Briefly, change is conceived of as a long drawn-out process starting with sporadic demands by individuals, carried forward by pressure groups and parties. Having become legitimate by attracting widespread support, the demands are translated by 'representative and responsible' governments into laws. A less conventional modification to the theory, which brings it curiously close to Oakeshott's conception, has been proposed by Donnison.¹ He adds that, during the gathering of momentum and implementation, issues and solutions became refined and redefined until, in a Kuhnian sense, a new paradigm is reached. This is not just a better way of looking at familiar ends, but a new way of perceiving society and the rights and duties of its citizens. The language and philosophical framework is not Oakeshottian but the processes described are not unlike 'explorations of intimations' and recognition of the importance of coherence where, once, incoherence did not matter.

Many reforms seem to fit the simple conception of the electoral chain of command. Female suffrage, for example, in Britain and America, took seventy years or more to travel from conception to execution. As shown in Chapter III, an equal pay campaign existed spasmodically in Britain for eighty years. The Abortion Law Reform Society was founded thirty years before the law was changed. And, to some extent, Donnison's

1. Donnison, D. 'Research on Policy', Minerva (October 1972), pp 520-523.

view is borne out by the probability that it is inconceivable to
 (IN BRITAIN AND AMERICA)
 anyone now that women should not have the vote. It might also be argued
 any consensus there is about working women is still a flimsy one and,
 as such, it and the continuing open conflict over the ethics of abortion
 indicate that society is, on these issues, in a period equivalent to
 Kuhn's revolutionary science.

What the three models discussed so far have in common is
 the idea that social change is likely to be a lengthy process. All of
 them indicate a potential role for the politically active but they differ
 in the emphasis they place on the possibility of action to abridge the
 process. For Marxists and Oakeshott the limitations are the conditions
 of the economy and ideology. The electoral chain of command theory
 attaches more significance to the freedom of politicians and voters to
 express preferences and have them translated into fact but still posits
 a long span. This is where the diffusion of innovation model departs
 from all three models so far discussed.

(IV)(d) Diffusion of Innovations

The 'diffusion of innovation' model arises from the observation
 that some reforms occur rapidly though preceded by almost no interest
 among voters or pressure groups. Its first exponent, Walker, argues
 that certain American states give the lead in specific issue areas
 and that politicians and administrators in other states copy their
 innovations with so little discussion that sometimes they even reproduce
 the typographical errors in the original statutes.¹ Elements of the
 same pattern appear at various levels in political systems. Although
 laws about women's equality at work were not deliberate copies of
 proposals to eliminate racial inequality, the outlawing of sex discrim-
 ination in employment was added to the American Civil Rights Act without

1. Walker, op cit.

either a mass campaign or explorations of 'sympathies' or 'intimations'.¹ This is discussed in Chapter V. Earlier in this chapter, the adaption of Walker's idea to an international scale was referred to. This appears to be corroborated by declared British interest in the American legislation and by the fact that an organised campaign for the British Sex Discrimination Act got underway only shortly before the passage of the law rather than gradually developing the momentum predicted by the electoral chain of command theory.

(IV)(e) The Question of Timing

One problem with Walker's formulation is that, although he identifies another pattern of change to account for rapid innovation, he does not explain why politicians borrow when they do. He is content to allow the matter to rest on the whims or fancies of decision makers. Nor do the other theories of change deal with the question of reasons and timing at a general level other than implicitly. As has been noted, in the first two of them decision makers are constrained by economic and ideological circumstances. In the third, it seems to be assumed that politicians act when they do because that is how a democratic system works. Goodin, however, noting that in any given system some reforms never emerge, or come about very slowly, while other changes occur almost by fiat, is not content to leave the existence of different speeds as a mystery.² He contrasts the rapidity in Britain of the licensing and withdrawal of thalidomide and the re-certification of the DC-10 with the longer processes over the same issues in the United States. And he compares British alacrity in these areas with dilatoriness on reforming the Official Secrets Act or the banning of tobacco products. But his argument is not that politicians are responding properly to the electors

1. See also Robinson, D. 'Two Movements in Pursuit of Equal Employment Opportunity', Signs (Spring 1978), p 414.

2. Goodin, op cit.

or that they have gauged correctly that the time is 'ripe' for some issues but not others. On the contrary, he suggests that a claim that the time is or is not right is a technique for manipulating public perceptions of what is possible in situations where particular configurations of powerful interest groups (but not classes) enable governments to act or prevent them from doing so. Thus, while all models of change may provide interesting insights into the processes of reform in general and women's rights in particular, if Goodin's questions are not also raised, accounts based on them may merely catalogue events leading up to changes instead of explaining them. The research for this thesis, however, suggests a possible extension to Goodin's ideas.

It is argued in this chapter and elaborated upon in Chapter IV that governments may act quickly not necessarily because of the configuration of interest groups and their relationships to the administration, but because of the pattern of policy imperatives facing them. Thus, although Barbara Castle saw women as a definable electoral constituency to be courted, she was alone in this. Other cabinet ministers of both Labour and Conservative governments were persuaded by this view only at the eleventh hour. Nor were they of one view about the centrality of women's equality in their system of values. But they did know that membership of the EEC would necessitate action in equal pay and opportunities. As a result they could be seen to be responding to pressure groups on issues that they would have had to tackle anyway.¹ Thus, an explanation of why particular changes come about at particular times must be an account of the inter-connections and coincidences of social attitudes and political priorities that may be at times only tenuously linked.

Because theories of social change involve both the slow march of time and 'proximate causes', this chapter concludes with a

1. Lest this seem too cynical a view, let it be noted that the same point has been made by M Rose with respect to reforms offered by the Labour government between 1974 and 1979 as part of the Social Contract with the Trade Union Congress. These, too, would have been imposed by the EEC. Seminar, Bath University, November 1981.

background historical sketch of the position of women before more directly related matters are discussed in the main part of the thesis.

(V) The Historical Background

Dissent from social and political arrangements for women has a long history, but, in both America and Britain, it gathered momentum in the late nineteenth and early twentieth centuries and again in the 1960s and 1970s. The franchise was extended to most women in 1918 in Britain and 1920 in the United States. Suffragists had been interested in economic as well as political emancipation but these economic demands, although they never disappeared entirely in either country, remained muted until the middle of the twentieth century. The women's movements in the two countries throughout the period at once show differences and cross-fertilisation in their positions and aims.

(V)(a) The First Wave of Feminism: Social and Political

Traces of feminism have been found to have existed in Britain in the seventeenth century and in Colonial America.¹ But it was the French Revolution and the spirit of the Enlightenment that spurred the first systematic analyses of the position of women. The Vindication of the Rights of Woman by Mary Wollstonecraft was published in 1792.

1. Randall, V. Women & Politics (Macmillan, forthcoming in 1982), p 122 of draft.

Ryan, M. Womanhood in America from Colonial Times to the Present (Franklin Watts Inc, 1975) pp 34-35. The following feminist poem may be of interest. It was written in 1703 by Lady Chudleigh.

Wife and servant are the same,
But only different in the name.

When she the word 'obey' has said,
and man by law supreme has made,

Fierce as an Eastern Prince he grows
And all his innate rigor shows.

Then shun that wretched state
And all the fawning falterers hate.

Value yourselves and men despise;
You must be proud if you'll be wise.

Reprinted by Bottomley, A.; Gieve, K.; Moon, G.; Weir, A. The Cohabitation Handbook (Pluto Press 1981), p 1.

Interest among less intellectual women is illustrated by a letter written in 1776 by Abigail Adams to her husband John in which she hoped that 'in his new codes of law, he would remember the ladies'. She warned that, if he did not, women were determined to 'ferment a rebellion' since they 'would not hold themselves bound by laws in which they had no representation.'¹ John Adams was incredulous that women were as discontented as slaves.² And when the 'new codes of law' became a Constitution that was an enlightened one for most white men, the lives of American women were regulated by codes based on Blackstone's Commentaries on the Laws of England.

The persistence in the United States of slavery meanwhile had different implications for feminist thought in Britain and America. English philanthropic women like Elizabeth Fry were opposed to slavery and in favour of public duties for women. But opposition to the legal position of slaves did not precipitate campaigns for female equality.³ However, the similarity of domestic laws governing the conduct of slaves and females was thrust upon American women by their day-to-day proximity. By the 1830s the obvious analogies were being drawn by a hundred or more female anti-slavery societies. In 1848, a convention was held at Seneca Falls attended by three hundred women and men, many of whom, like Elizabeth Cady Stanton, her husband, and Susan B Anthony were feminists and abolitionists. The Declaration of Sentiments drawn up at this convention was modelled on the Bill of Rights. Twelve supporting resolutions called for an end to all legal disabilities including suffrage and restrictions on rights to work.⁴

Until the Civil War, feminists and abolitionists continued to work closely. During hostilities, as in the twentieth century, women

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1. Cary, E; Peratis, K. Women and the Law (Natural Textbook Company/American Civil Liberties Union 1977) pp 1-2.
 2. Carey; Peratis, *ibid*, p 2.
 3. She did, however, use the word 'liberation'. Rose, J. Elizabeth Fry (Macmillan 1981).
 4. O'Neill, W. The Woman Movement: Feminism in the United States and England (Allen and Unwin 1969) pp 108-111.

took part in war work. But there were no rewards. To their dismay, the 14th Amendment of 1868, which extended the 'equal protection of the laws' to former slaves, specified in the Constitution for the first time political rights for male citizens. The women's movement split. Some argued, like English philanthropists, that there was a special role for women in social welfare matters which could be fulfilled with or without the right to vote. In Britain this line of thinking had fuelled campaigns in the 1860s to regulate conditions of work for women and children in factories; measures that were bitterly opposed by another 'small group of middle class women'.¹ Another example of 'social feminism' in England was Josephine Butler's campaign against legalised prostitution. In the United States the social and moral welfare of women was pursued by feminists like Jane Addams in the Progressive Movement. This strand of feminism concentrated on the education of working class women and, as in England, although much later, on the regulation of their conditions of work. In both societies, feminists were also involved in reforms of property laws to protect the rights of married women.²

The best known elements of the women's movements in both countries concentrated on getting the vote. This was evident in England as early as 1847, when what Randall describes as the 'first recognisable female suffrage pamphlet' was published by Annie Knight.³ The original Fawcett Society was formed in London in 1866 as the London Society for Women's Suffrage. But according to Randall, it was John Stuart Mill's failure to amend the 1867 Reform Act to cover women that sparked off a national campaign. More closely allied at first with a political party

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1. Letter from Beatrice Webb to Carey Thomas, President of Brynmawr College from 1894 to 1922. This letter is undated but Professor Norman Mackenzie who copied it to this author, estimates that it was written in March 1934.
 2. Randall, op cit, pp 125-6. Bruley, S. Women's Organisations in the UK, A Short History (National Council of Voluntary Organisations 1980) pp 1-3. O'Neill, op cit, Chapters II and III.
 3. Randall, ibid, p 123.

than its American counterpart, the British campaign was led by Emmeline Pankhurst whose husband was a leading Manchester Liberal. Later, feminists looked to the Labour Party for support and, failing to get it, some split off in 1904 into the militant Women's Social and Political Union (WSPU), engaging in a campaign of direct action and violence.¹ In the United States, two societies, in which Elizabeth Cady Stanton, Susan B Anthony and Lucy Stone played leading parts, concentrated after 1868 on the vote. American suffragists did not on the whole approve of the British resort to direct action. However, an English Quaker, Alice Paul, did introduce some militancy into the later stages of the campaign.²

Whether direct action or women's war contributions most influenced final decisions on the vote is a disputed matter.³ It may be that women's war efforts were seen in an Oakeshottian sense as 'already franchising them in another important respect'.⁴ Certainly the existence of female munitions workers and front line medical staff seems to diminish the strength of the opposition view; that the vote was a right properly conferred only on the defenders of the realm.⁵ Even if war work did not cause the granting of female suffrage, it was an influence on women's lives during the twentieth century. It was the occasion of a public enquiry into equal pay. And although women left the labour market in 1918, a precedent had been set. But, having won the vote, feminism as a movement temporarily declined.

Randall explains the rise and fall of the first wave of feminism in the following terms. Industrial capitalism, she argues, was the precondition for feminism⁶ because it at once released middle class

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1. One of Mrs Pankhurst's daughters, Sylvia, did not join the new wing but kept her feminism rooted in socialist concern for working class women in East London.
 2. O'Neill, op cit, pp 75-79.
 3. O'Neill, ibid, pp 83-88. Fulford, R. Votes for Women (Faber 1957) pp 298-99. Harrison, B. Separate Spheres. The Opposition to Women's Suffrage in Britain (Croom Helm 1978), Chapter X.
 4. Oakeshott, op cit, p 124.
 5. Randall, op cit, pp 122-124. This view is forcibly put in an anti-suffrage pamphlet in author's possession.
 6. Randall, op cit, p 124.

married women from many domestic responsibilities and confined them to inactivity to demonstrate the new found wealth of husbands. At the same time, diminished domestic production increasingly pushed single women into the labour market, either into a narrow range of socially acceptable occupations or into factories, depending on their class. But, as she also points out, politics during the same period developed along Lockean ideas of natural equality and individual responsibility. The inconsistency of not applying to all individuals a doctrine which allowed men to be physically or intellectually different yet morally equal was not lost on middle class women. Such discrepancies were, as already mentioned, particularly obvious to American abolitionists; although as Randall points out, there may have been elements who simply disliked the idea of allegedly inferior men having more rights than white women. This is probably most likely to have been so among Southern women whose representatives at the Convention of the General Federation of Women's Clubs refused to share a platform with a northern black delegate.¹

Although suffragists in the United States had once hoped to use their vote for recognisably social and feminist ends, the movement declined as disagreements grew over goals. Alice Paul and others tried to ensure that the National Women's Party adopted a variety of issues that were not necessarily 'feminist'. She pursued the issue of general equality for women by presenting annually from 1923 equal rights amendment proposals. Working class women were suspicious that she was seeking to attack protective legislation. Campaigners for protective laws had intended that men too would eventually be covered by them. By the 1970s many working women had been converted to Alice Paul's view that the laws were being used by employers to evade sex discrimination regulations.

In Britain female enfranchisement was followed by the logical step of the Sex Disqualification (Removal) Act which enabled women to stand

1. O'Neill, op cit, pp 50-52.

for Parliament. Successful women candidates became integrated into conventional party politics.¹ A few former suffrage societies broadened their aims to include equality in other spheres. These are referred to in Chapter III. But some prominent women like Beatrice Webb were cool towards the idea of no differentiation between the sexes at work. Her reasoning was similar to the anti Equal Rights Amendment lobby in America; that equal treatment was of interest only to middle class women and that the absence of protection would enable employers to exploit working class women.²

(V)(b) The Second Wave of Feminism: Equality at Work

The conditions for the renewal of feminism in both countries were provided by the Second World War. The 1918 exodus was not replicated; women stayed in the labour market after 1945. It has also been argued that the new wide availability of contraception for married women was significant in facilitating this.³ Nevertheless, the general picture of the period is one of anomalies. The British welfare state was regarded at first as promoting equality universally. Demands for equal pay in the public services finally succeeded in 1955. Dissenters from the idea that female equality had been achieved were regarded as freaks.⁴ Even before the first equal pay success, Lady Pakenham argued that there was no need for anyone still to call herself a feminist.⁵ Justice (now Lord) Denning, too, believed female equality had arrived, although he feared it marked the end of civilisation.⁶ At the same time ideas about child care went into reverse. The message of wartime propaganda films suggesting that children developed healthily without constant maternal attention

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1. In the 19th century the Conservative and Liberal Parties had created women's sections.
 2. Webb to Thomas, op cit.
 3. This is Firestone's view reported by Randall, V. op cit, p 127.
 4. Thelma Hunter, Manchester Guardian, 22.3.57.
 5. Lady Pakenham, Spectator, 16.1.53.
 6. Mr Justice Denning, The Times, 13.5.50.

was strongly refuted afterwards by psychologists. The professional view was that mothers should be urged to stay in the home.¹

These ideas were perhaps put even more forcefully in the United States where the suburban family was almost reified.² Feelings among women that the reality of home life did not live up to its idealised portrayal in books and advertisements were diagnosed as problems needing individual psychological re-adjustment.³

Contradictions in the position of women were not contained for long in either country. They broke out first in the United States. In 1963, Betty Friedan published the first edition of The Feminine Mystique where the source of discontent was described in a phrase that became famous: 'the problem with no name'.⁴ Her publishers did not expect the book to sell widely. But it touched a fuse and within weeks was a best-seller. After that, the coming together of a number of phenomena gave birth to the new women's movement in America. President Kennedy had set up a Commission on the Status of Women in 1962. Together with similar state commissions, it provided a network of women who were aware of the role strain placed on educated middle class wives and of the inequality of rewards for a growing number of unattached working women. The almost accidental way in which gender was included in the Civil Rights

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1. e.g. Bowlby in Childcare and the Growth of Love, linking mental retardation with maternal deprivation (Penguin 1953).
 2. Friedan, B. The Feminine Mystique (Penguin 1965).
 3. This is compatible with the views of political sociologists that any social failure in the United States is personalised instead of seen as a consequence of exogenous arrangements over which individuals have little control, e.g. S M Lipset, The First New Nation (Basic Books Inc 1963) pp 268-273.
 4. Friedan, B. op cit, Chapter 1.

Act, followed by unwillingness in the Equal Employment Opportunities Commission to take women seriously, was a catalyst in the formation of the National Organisation for Women. Civil rights groups gave rise to the younger branch of the women's movement. Analogies were again drawn between the position of women and blacks. And it was discovered that radical men could be as chauvinist as others.¹ Experience in civil rights and anti-Vietnam war groups at once spurred women to form their own and provided them with political skills.

While feminist issues were widely discussed in the early 1960s, organised feminism did not get under way until after the first legislative steps had been taken. Despite strife among its various factions achievements were won in the late 1960s and early 1970s. These are referred to in Chapters V and VII. Thereafter, rearguard actions became necessary as opposition to women's equality began to grow.

For Britain the second wave of feminism followed a different course, although it was influenced by American ideas. Chapter III shows that the number of women's groups increased in the middle of the 1960s. But, in contrast to the United States, militancy began to appear first among the working class. Chapter III describes the renewal of the trade union interest in equal pay. And Randall points out that a spate of female industrial action led to the creation in 1969 of the National Joint Action Committee for Women's Equal Rights.² This, she reports, attracted the interest of left wing groups looking for ways to mobilise the working class. The revival of a middle class feminism may be explicable by the reaching of a plateau of moderate gains in employment, unsurpassable without the removal of formal and informal barriers to a range of occupations.³

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1. Stokely Carmichael is reputed to have said that the only position for women was prone. Other insulting displays are documented in Freeman, J. The Politics of Women's Liberation (David McKay Co Inc 1975) pp 59-61.
 2. Randall, op cit, pp 132-133.
 3. Fogarty, M; Rapoport, R; Rapoport, R.N., Sex, Career and Family (Allen and Unwin 1971) pp 20-25.

As in the United States, new women's liberation groups grew out of the frustrations in radical political and peace groups. According to Randall, such women found that feminist arguments coming to Britain from America and West Germany provided a coherence for their inchoate resentments.¹

Unlike their equally fissiparous American counterparts, factions in the British women's movement did come together to some extent at the last moment to push for a Sex Discrimination Act. This is described in Chapter III. But it was not only in response to this short-lived pressure that governments finally approved by statutory proposals the idea of economic and social emancipation for women.

(V)(c) Official Attitudes to Women's Rights

Although there were pressing reasons to legislate on equal opportunities by virtue of EEC membership, official domestic ideas about women in 1970 and 1975 were, of course, a considerable advance on those of the nineteenth century. The contrast is clear if the views of the nineteenth century judges are considered.²

A supporter of John Stuart Mill in 1867 consoled him with the information that, under an earlier statute, all references in laws to males included females unless it were specified otherwise. During discussion of the Reform Bill, Disraeli made it clear that he hoped to rely on the

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1. Randall, op cit. A symptom of the American influence was the growth in Britain of dislike of forms of address that denoted women's relationships to men as wives or daughters. David Butler remembers hearing Ms for the first time in 1969. The private papers of Ms J Airey reveal that a campaign took place soon after this to persuade the Passport Office to allow women to use the prefix officially. Evidence of a more substantial American influence is Rowbotham's report that it was an American who suggested the holding of the first Women's Liberation Conference in Britain. Rowbotham, S. 'The beginnings of Women's Liberation in Britain', in Wandor, M (ed) The Body Politic (Stage I 1972) p 96.
 2. Much of the following three paragraphs comes from Sachs, A. and Hoff Wilson, J. Sexism and the Law (Martin Robertson 1978), Chapters I and II.

courts to confirm that females were neither males nor persons. A series of cases followed attempts by 5,000 female householders to register as voters under the new law that gave the vote to every man of full age, ~~OCCUPYING~~ a house and not subject to legal disability. The women's defence was that legal disability normally referred to lunacy, bankruptcy or imprisonment and could not mean femaleness unless it was also claimed that the whole population of women was criminal, bankrupt or insane. In these, related cases, and others dealing with rights to higher education and professional status, it became established that women were not persons but persons-with-legal-disabilities by virtue of being female. Excluding women from public duties, offices and higher education was described as a privilege; in some cases in compensation for their inherent weaknesses and in others as a reward for their moral superiority. In most proceedings, judges justified their conclusions by the absence of specific instructions from Parliament to do otherwise.

In the United States, female delicacy or superiority was also used as a reason to confine them to the private sphere. An odd definition of citizenship evolved. In 1874 it was asserted that women were undoubtedly citizens but that the right to vote was not a necessary characteristic of citizenship. This ambiguity in women's citizenship enabled challenges in 1908 to the constitutionality of protective laws to be withstood.

The granting of the vote in Britain gave the judges their Parliamentary instruction about the status of women. And in 1929, Lord Sankey finally put an end to the notion in the courts that women were not persons in the full sense of the word.

But official attitudes in both countries continued to embody elements of older ideas. Married women were still debarred from some pursuits in Britain in the 1930s because they were not allowed to enter

into contracts on their own initiative. Certain occupations remained closed and marriage bars operated in others. Hereditary women peers were not permitted to sit in the House of Lords until 1963. In both countries laws about social welfare and family matters continued to reflect the nineteenth century middle class division of life into the private sphere for women and the public for men.¹ Elements of this persist in Britain in public statistics and social security and tax arrangements.²

But changes have taken place too. In America party politicians began to flirt with the idea of economic and social rights for women in mid-century. The Republican Party publically endorsed the proposal for an equal rights amendment in 1940. The Kennedy Commission was supposed to scotch the idea of the need for an equal rights amendment. It did so. But it also recommended specific improvements for women.³ In so doing it encouraged Kennedy to bring in an Equal Pay Act quickly. Since 1964, liberal opinion has accepted women as a legitimate element of the civil rights lobby.

In Britain, the legislative climate surrounding the Equal Pay Act and Sex Discrimination Act was a liberalising one. A spate of reforms on social issues took place; for example, on homosexuality, abortion and divorce. The principle of anti-discrimination laws was established by

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1. Randall draws attention to the existence of these assumptions in welfare laws in Britain, op cit, p 98. In America many state laws about child custody, social security, jury service and criminal offences arbitrarily differentiate between males and females. That it would be more difficult for this to continue if a norm were set by the Constitution is part of the case by the ERA lobby. See Peratis and Cary, op cit, Chapter II.
 2. Equal Opportunities Commission Research Bulletin, No. 4, 1980.
 3. Report of the President's Commission on the Status of Women by the Committee on Private Employment, October 1963. Memorandum by K P Ellickson, Executive Secretary of the Commission: 'The President's Commission on the Status of Women: It's Formation, Functioning and Contribution'. Jan 1976. Walter P Reuther Library, Wayne State University, Michigan.

Race Relations acts and their limitations provided lessons for the framers of the Sex Discrimination Act. This context is discussed more fully in Chapter VI.

But for both the Equal Pay Act and the Sex Discrimination Act, the EEC was a precipitating factor that was absent, of course, in America. Article 119 of the Treaty of Rome requires equal pay for men and women doing the same work. It was originally added to the Treaty because France, with relatively well paid women, could not afford the competition of cheaper labour costs in other member states. The origins of Article 119 were not then inspired by the same idealism as the ILO Convention on Equal Pay for Work of Equal Value. But, unlike the Convention, the Article is binding.¹ The passage of the Equal Pay Act was preceded by an analysis of what would be entailed by accession to the Treaty of Rome. British provisions were more generous than those in Europe. But in 1975 the latter were brought into line with the ILO and it had become clear that member states would have to introduce guarantees of equality in the non-contractual conditions of employment. Details of these moves are discussed in Chapter IV. Since the only examples of this kind of legislation were in Eastern Europe and America, it is not surprising that a British government looked to the latter rather than the former for specific ideas.

A more detailed account of growth of interest among women and politicians in such issues follows in the next part of the thesis.

1. An editorial in the Daily Telegraph noted that if Britain became a member of the EEC she would be joining a group which had not so far defied the authority of the European Court of Justice on questions arising from the Treaty. 3.10.61.

PART 1 POLICY INITIATION IN BRITAIN

Women's Pay and Occupational Distribution in Britain before the
Equal Pay and Sex Discrimination Acts

(I) Introduction

There are two reasons for devoting a whole chapter to this aspect of the background to the Equal Pay Act and Sex Discrimination Act. The first is to complement the social and political changes referred to in Chapter I but to do so from a standpoint of particular relevance to the laws that are the subject of this thesis. The second relates to a general point in the study of public policy. This is the need to establish whether there is a real problem to be solved by a policy innovation. More specifically, it is necessary to show whether or not particular proposals are suited to situations that are to be changed. And when governments are criticised for borrowing innovations on the grounds that transplants do not thrive, it is necessary to establish, among other things, whether or not the initial problems were the same. The detailed account in this chapter and the briefer information on America in Chapter V show that their patterns of women's pay and employment are very similar. In each country, continuity and change are apparent in pay, occupational distribution and job segregation.

In 1605, an Oxford Assessor fixed the rates for female haymakers at half that for men.¹ The writer who uses this example does not report whether productivity rates were

1. Cited by Davies, R. Women and Work (Arrow 1975) pp. 27-28.

similarly different. Nor does Routh when he quotes the remarks of a late nineteenth century observer of women's wages¹. But in the second case, it is noted that neither the skill and intelligence required by the job, nor the aptitudes brought to it by an employee counted in the fixing of rates for women. Instead they were set at an arbitrary proportion of those for men. By 1966, two years after the TUC first called for government intervention to equalise the rates for men and women, about 10% of female employees were receiving equal pay. But most of these were professionals and, on the whole, women's average earnings from 1951 until 1971 remained a little more than half those of men. Hourly rates, which take account of the fewer hours worked by women, were about 60%.

Behind the fairly stable ratio of male to female earnings lie changes in work in general and in the working lives of women in particular. For the pre-industrial woman, the separation of home and work was less distinct. An outside haymaking job might be taken on; but home duties themselves included not only managing the household and kitchen garden but also cottage industries like baking, brewing, candlemaking, spinning and weaving. The industrial revolution removed these to the factory and working class women followed. Outwork became full time. By the mid-nineteenth century the proportion of women working was as high as in 1971². But for the rising middle classes, new wealth removed the home from above the workplace to the suburbs. To have a wife who did not work in partnership became a sign of wealth or status. By the end of the century, however, employment opportunities for single women in the non-manual sector began to grow, especially in office work. In the twentieth

1. Cadbury. Cited by Routh, G. Occupation and Pay in Great Britain (Cambridge University Press, 1965) p 99.

2. Hakim, C. Paper presented to the British Association for the Advancement of Science, September 1981.

century, women were called upon during both World Wars to take over the jobs of absent men. After the First War, women drifted out of the labour market. But after the Second, a long term change took place in the shape of the working population. Before the war, women had formed a fairly constant 30% of the total working population although their absolute numbers had been rising. After 1945, the labour force continued to expand and this expansion was largely made up by women, especially married women. Changes in the pattern of married life and child bearing mean that many of these women work for a few years after leaving school and return to the labour market in their early thirties where they stay for twenty to thirty years.

The increase in numbers of women working has not resulted in much interpenetration of occupations of either sex. There have been some shifts. For example, office work was once male. And there now are more male schoolteachers. But the degree, if not the pattern, of occupational segregation has remained constant. This is the case both between specific occupations and within broad occupational categories. Despite some interpenetration, women tend to predominate in paid occupations similar to their domestic responsibilities; for example, the service industries and the 'caring' professions. And within these categories they tend to be found in the lower paid levels; for example, more often as nurses than as doctors.

In the next section these trends are dealt with in more detail. This is followed by a review of explanations for these patterns. In conclusion, the chapter summarises the policy implications of such explanations.

Pay differentials can be considered from a number of viewpoints. For example, average earnings or hourly rates for either the same or different jobs can be compared. Or aggregate differences within occupational categories can be used. The last approach is used by Routh.¹

The following table, taken from his study, shows the proportion of average full time female earnings to those of men for seven broad occupational categories.²

Table 1 Women's averages as percentages of men's averages

	1913/14	1922/4	1935/6	1955/6	1960
1A Higher professional	**	**	**	(75)	(75)
1B Lower professional	57	67	69	72	72
2B Managers and administrators	(40)	33	38	54	54
3 Clerks	42	46	46	57	61
4 Foremen	50	57	57	61	59
5 Skilled manual	44	48	44	51	50
6 Semi-skilled manual	72	78	75	57	58
7 Unskilled manual	44	57	57	52	53
All (current weights)	54	57	56	50	54
All (1911 weights)	54	58	56	52	54
Unweighted average	50	55	55	58	58

(Routh's explanation of the composition of each category can be found at Appendix I.)

Taking the unweighted average of all classes, it appears that the relative position of women has improved slightly, but it should be noted that this is largely due to improvements in the clerical category; the position of semi-skilled women shows a marked deterioration.

Non-manual female employees have been the beneficiaries of legislative intervention in rates of pay although there is some dispute about the significance of this. As the above table.

1. Routh, op cit, p. 99.
2. Ibid, p. 105.

indicates, Routh found that there were so few women in the most senior professions, that little could be discovered about movements in their pay. However, in 1936/38 female general practitioners earned just over half of the amount earned by their male colleagues and about 78% in 1955. Women graduates in the lower professions were paid 55-60% of male rates. Trends towards equal pay were most notable in the public services, including the clerical grades, and teaching. Between 1913 and 1960 female teachers improved their position from 67.5% of male earnings to 90%, the final spurt arising from the statutory introduction of equal pay in the civil service and state schools between 1955 and 1963.¹ Routh, however, also notes that the trend towards equal pay in teaching has been accompanied by a widening of the differential between the salaries of ordinary teachers and headteachers. In this connection it should be noted that with the development of coeducation and comprehensive schools, most headteachers tend to be men.²

Creighton disagrees with Routh's analysis.³ In his account, the public sector was not in the vanguard for non-manual women. He argues that the few professional women that there were in the private sector already had equal pay; legislation providing it for female civil servants and teachers merely rectified an anomaly in the position of employed middle class women. However, most writers seem agreed that by 1966 only about 10% of women enjoyed equal pay and that these, with the exception of bus conductresses, were professionals.

At the beginning of the twentieth century, the only

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1. See Chapter III for an account of events leading to this.
 2. NUS Evidence to House of Lords Select Committee on Anti-Discrimination Bill 12.12.72. Minutes of Evidence and Proceedings (HMSO) p. 234.
 3. Creighton, W. The Development of the Legal Status of Women in Employment in Great Britain. Unpublished thesis presented to Cambridge University 1973.

female manual workers who escaped the arbitrary fixing of rates referred to in the introduction were in textiles. Skilled cotton operatives, in particular, were well paid by the standards of the time but the decline of the textile trade effectively removed this source of higher income for working class women. As Table 1 indicates, female semi-skilled earnings dropped sharply in proportion to male earnings; in the skilled category, fluctuations around 48% appear; and in unskilled labour women's earnings as a proportion show only a modest increase.

Routh's findings refer to average annual earnings. Thus they both exaggerate and conceal forms of inequality. In connection with the former, higher male earnings stem in part from the longer hours worked by men; about forty-five a week instead of an average of 38½ for women. But the point is concealed that where women do work overtime, their shift premia are smaller. In 1973, for instance, their overtime accounted for 3% of earnings, while the corresponding figure for men was 27%.¹

Post war Department of Employment figures analyse the differentials from both the average earnings and the hourly rates points of view. The following figures can be derived from their statistics for 1972.

<u>Table 2 Female Earnings as a Percentage of Men's: 1972</u> ²			
	Average weekly earnings	Average hourly earnings including overtime	Average hourly earnings excluding overtime
Full time manual	51.7	60.3	61.6
Full time non-manual	51	54.1	54
All full time	55.8	64.5	64.7

1. Mackie, L and Pattulo P. Women at Work (Tavistock Publications 1977) P.41.

2. Department of Employment Gazette, Dec. 1976, P.1396.

These figures are not strictly comparable with Routh's annual average earnings but the Department of Employment figures for average weekly earnings, compared with Routh's averages for all categories, indicate that not much has changed between 1913 and 1972.¹ Most writers seem agreed that between 1951 and 1971, the hourly rates of women remained fairly steady at about 60% of male rates. The higher figures for 1972 indicate some movement in some sectors in anticipation of the coming into operation of the 1970 Equal Pay Act. However, there are also reports that in some sectors the Act was anticipated by reorganising the distribution of females in the labour market through job evaluation, regrading, segregation, and by reducing the numbers of females employed.² It is worth noting that in the first year of the Equal Opportunities Commission in 1976, almost half of full time women earned less than £40 per week, as did 5.2% of male workers. At the other end of the scale ten times as many men as women earned more than £90 per week.³

Often inequality existed even where men and women were doing similar work but for different basic rates. A report by the Office of Manpower Economics includes a list of collective agreements effective in January 1970.⁴ One category of agreement covers those that specify lower rates for women in similar jobs or lower minimum earnings for women or those that specify a minimum only for women. The following table shows that out of 228 agreements examined, 156 of them were of this type:

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1. The low figure for non-manual females in the Department of Employment figures reflects the inclusion of low paid clerical work.
 2. Mackie and Pattullo, op cit, p.135.
 3. Equal Opportunities Commission Evidence to Royal Commission on Income Distribution and Wealth. Report based on that evidence (EOC 1977) p.7.
 4. Office of Manpower Economics, Equal Pay Report (HMSO 1972) p.67-83.

Table 3 Discriminatory and Non-discriminatory Agreements

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	Agreements		Rates		Agreements	
INDUSTRY	Non-discrim-inatory	Only male shown	Separate for women	Discrim-inatory*	Total agreements per industry	
Agriculture, Forestry				3	3	
Mining, Quarrying	3	5			8	
Food, drink, tobacco		1	1	17	19	
Coal & Petroleum Products	1				1	
Chemicals & Allied Industries				10	10	
Metal Manufacturing	2	1		1	4	
Mechanical Engineering	1	1		2	4	
Instrument Engineering	1	1		1	3	
Electrical Engineering				1	1	
Shipbuilding		1			1	
Vehicle Manufacture		1		1	2	
Metal Goods, Jewelry	1	3		11	15	
Textiles			1	22	23	
Leather and Fur	1	1		4	6	
Clothing, Footwear			1	9	10	
Bricks, Pottery, Glass	2	3	1	10	16	
Timber, Furniture		2		9	11	
Paper, Printing	1	1	4	8	14	
Other Manufacturing	1	1		5	7	
Construction	6	1		2	9	
Gas, Water, Electricity		3			3	
Transport, Communications	9	1		1	11	
Distributive Trades	2	1	1	25	29	
Professional & Scientific				1	1	
Misc. Services		1		9	10	
Public Admin, Defence		1	2	4	7	
Total of Types of Agreement	31	30	11	156	228	

* Separate rates for similar jobs, lower minimum for women, minima specified only for women.

What is striking about the list of discriminatory agreements is that it includes those occupations where, as it will be shown in the following section, women predominate; for example, food, drink and tobacco. Conversely, the list of non-discriminatory includes occupations where women are notable for their absence; for example, mining and quarrying. That women are concentrated in a few occupations that are also low paid helps to explain the aggregate differentials. Even in the professional sector, women are less likely than men to receive training and promotion which leads to a lower life-time earnings curve for them. The correlation between occupational concentration in the manual sector and low pay is shown in Table 4.¹ This should be borne in mind during the next section which examines occupational distribution.

(III) Occupational Distribution

A significant rise in the rate of female employment began in mid-century. Although the absence of census figures for 1941 make it difficult to demonstrate, it seems likely that the Second World War was an important influence. Censuses up to 1931 show that women constituted a stable 30% of the total working population during the early twentieth century. Figures provided by Routh and in Social Trends indicate that their share of the labour force was only a little above 30% even

1. Office of Manpower Economics, op cit, P.51.

Employment distribution in industry groups according to average weekly earnings of men April 1971.

Great Britain

Industry Group	Men A.W.E. (a)	% of all employment	
		Men	Women
	£	%	%
<u>The seven highest industry groups</u>			
Vehicles	34.9	6.8	2.3
Paper, printing, publishing	34.1	3.5	4.0
Coal and petroleum products	33.7	0.4	0.1
Shipbuilding, marine engineering	33.5	1.8	0.2
Bricks, pottery, glass, cement, etc	31.3	2.5	2.0
Metal manufacture	31.3	5.3	1.3
Transport and communication	31.2	11.2	2.6
Total		31.5	12.5
<u>The middle industry groups</u>			
Chemicals and allied industries	31.0	2.8	2.6
Mechanical engineering	30.8	7.9	3.6
Other manufacturing industries	30.4	2.0	3.3
Food, drink, tobacco	30.0	4.3	7.4
Electrical engineering	29.9	3.9	9.5
Metal goods not elsewhere specified	29.9	3.7	4.4
Mining and quarrying	29.6	4.8	0.1
Gas, electricity and water	29.6	2.7	0.3
Instrument engineering	28.7	0.7	1.3
Construction	28.5	10.9	0.3
Timber, furniture, etc.	28.2	1.7	1.1
Insurance, banking, finance & business services	28.0	0.9	0.7
Total		46.3	34.6
<u>The seven lowest industry groups</u>			
Textiles	27.4	3.1	9.7
Clothing and footwear	25.9	1.0	10.7
Distributive trades	25.6	5.0	5.1
Professional and scientific services	25.0	2.9	12.8
Public administration	24.5	4.6	3.6
Miscellaneous services	23.8	3.8	9.6
Agriculture, forestry, fishing	23.0	1.6	0.7
Total		22.0	52.2

Source: New Earnings Survey

(a) Average weekly earnings excluding those whose pay was affected by absence.

in 1951.¹ But Hakim calculates that the percentage of the female population working had already risen by that year.

Table 5²

Labour force participation rates 1901 - 1971

Per cent in each age group who are economically active*

	Men 15-64	All women 15-59	Married women 15-59
1901	96	38	10**
1911	96	38	10
1921	94	38	10
1931	96	38	11
1941	-	-	-
1951	96	43	26
1961	95	47	35
1971	92	55	49

1901-1971

proportional increase	-4%	+45%	+390%
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* 'Occupied' for 1901-1951, 'Economically active' for 1961-1971.

** Married, divorced and widowed women grouped together.

Source: Census reports for England and Wales.

1. Social Trends No.5 (HMSO 1974) P.15.
And Routh, op cit, P.15.

2. Hakim, C. Occupational Segregation Research Paper No.9 (Dept. of Employment 1979) P.3.

This table also highlights a spectacular increase in the participation rate of married women. The Ministry of Labour was already noting by 1958 that women were being attracted back into the labour market once they had reached the age of thirty and were likely to stay there for considerable periods. This is supported by Hakim's observations about the changed age structure of female workers.¹ In 1901, more than half of all working women were under 25 years old and three quarters less than 35. By 1951, there were as many female workers over 35 as there were under. Between 1951 and 1971 women over 35 rose to 60% of the female work force. This reflects changes in women's life cycles. New patterns of marriage and child bearing (facilitated by the wider availability of contraceptives) have been accompanied by the two-phase work profile noted by the Ministry of Labour. And many more single women work throughout life.²

Hakim points out that most analysts expected the larger participation rate of women to affect the distribution of men and women across occupations. But instead of a growth predicted by Routh of men and women doing the same work, occupational segregation has persisted. Segregation may be labelled as horizontal when men and women work in different occupations. It is vertical when both sexes work in the same broad occupational category but where each sex predominates in different levels. According to Hakim, the former has declined slightly in Britain while the latter has increased.³ Support for Hakim's conclusion is present in other sources of information about the destinations of women workers.

1. Hakim, *ibid*, P. 10-11.

2. *Ibid*, P. 8-10.

3. *Ibid*, P.43.

Routh's study reveals that before the war, women formed only a very small proportion of the upper reaches of the professions. Between 1931 and 1951, the numbers of women who became dentists, architects, accountants and solicitors went up. (In the last occupation, women were formerly debarred until the disability of married women entering into contracts was removed in the mid-1930's.) Even so, in none of these professions did they number more than 1,000. But, however small their numbers, women's participation rate did increase faster than that of men and caused some reduction in horizontal segregation. According to a more recent PEP study, women in these professions and in some others increased twice as rapidly as men in the inter-war period but levelled off after 1951.¹ The authors suggest that it was this post-war stagnation that sparked off the demand for anti-discrimination legislation. In the lower professions, women did relatively well before the war because of growing numbers of nurses, teachers, librarians, and social workers - occupations that traditionally drew on women. Horizontal segregation has been reduced by inroads made by men into nursing, teaching and social work.² But changes in the organisation of industry leading to a decline in the relative position of small businesses and proprietors in favour of managers and administrators have affected women adversely since they have not picked up in the expanding management category except in the retail trade, restaurants and hotels.

Clerical workers more than doubled as a proportion of the work force in the first half of the century. Another

1. Fogarty, M; Rapoport, R. and Rapoport, R. Sex, Career and Family (PEP, Allen and Unwin 1971)

2. Hakim, op cit, P.19.

notable feature of this category was the extent to which women were substituted for men. As this change took place, so did the nature of office work alter. Braverman points out that a nineteenth century male clerk would have been in charge of all operations within the office.¹ But the influx of women was accompanied by specialisation and routinisation. Book-keeping remained a male preserve while women became secretaries, copy-typists, filing clerks, and, nowadays, punch card operators. Many of these early office women were young and single.²

Females as a proportion of skilled manual workers fell in the inter-war period, the slack being taken up in the clerical and unskilled categories. As has been noted, the decline of the textile trade had an important effect on this category of female worker. The trend towards hairdressing and manicuring as skilled work for women was discernible by 1931. And Routh's list of chief skilled occupations for women for the period includes other service industries with which women are still associated.³ In semi-skilled work women moved into the distributive and retail grades as domestic service declined as a source of employment. Women kept up, however, their small share of agricultural work while the proportion of men fell. The female share of unskilled workers increased during the wars and the post-war trend where women formed one third of manufacturing workers was already noticeable in metals and engineering.

1. Braverman, H. Labour and Monopoly Capitalism (Monthly Review Press 1974).

2. Their remaining at home under the responsibility of their fathers and their poor pay gave rise to the idea that women worked only for 'pin money'.

3. Routh, op cit, P. 29-32.

Overall, the effects of interpenetration of occupations by either sex have not been striking. This is shown in the following table devised by Hakim.¹

Table 6

Occupational Concentration 1901 - 1971

Total number of occupations identified at each census		Proportion (%) of all occupations which have:			
		No women workers	70% or more women workers	A higher % of women workers than in labour force	A higher % of men workers than in labour force
1901	380	9	9	26	74
1911	475	13	9	27	73
1921	611	8	8	22	78
1931	591	8	8	23	77
1941	-	-	-	-	-
1951	587	6	11	28	72
1961	201	9	10	26	74
1971	223	2	12	26	74

Source: Population census reports for England and Wales 1901-1971.

Note: The number of jobs with no male workers is negligible: two in 1901, three in 1911, one each in 1921, 1931 and 1951, and none at all in 1961 and 1971. The all-female jobs in question are midwives, nursery nurses, and charwomen.

She explains that the

disappearance of occupations exclusive to one sex is counteracted by the fact that overall the likelihood of working in an occupation where one's own sex predominated (at 90 per cent or more of the work force, or even at 70 per cent or more of the work force) became proportionately greater for men.²

1. Hakim, op cit, p.23.

2. Ibid, p.23.

The persistence of vertical segregation within the classes of occupations is demonstrable from a number of sources. This was not expected by Routh in 1960 when he viewed the broad changes in the occupational population with optimism as far as women were concerned. He calculated that all occupational categories were being enriched by the post-war growth of female employment:¹

Table 7

Women as a percentage of each occupational class (description of classes at Appendix I) 1951, 1959

	1A	1B	2	3	4	5	6	7	All
1951	8.0	53.2	18.5	58.2	13.7	15.8	40.5	20.9	30.9
1959	9.5	57.8	20.1	62.4	14.9	15.2	42.2	22.7	32.9

Using data from the 1966 10% sample census, from the Department of Employment and from Baroness Seear's paper for the Donovan Commission, very roughly comparable figures can be obtained for 1961 and 1966:²

Table 8

Women as a percentage of each occupational class 1951 - 1966

	1A	1B	2	3	4	5	6	7
1951	8.0	53.2	18.5	58.2	13.7	15.8	40.5	20.9
1959	9.5	57.8	20.1	62.4	14.9	15.2	42.2	22.7
1961	8.1 ^a	61.9 ^b	2A 2B 26 6.2					
1966	8.9 ^a	60.5 ^b	30 7.4	63.0 ^c		18.4 ^d	42.2 ^d	22.9 ^e

a: if anything, these figures over-represent women since calculation was based on Seear's paper, which, unlike Routh, does not include authors, the clergy and senior members of the armed services;

b: similarly, these figures do not include air crew, artists, librarians, musicians, navigators and sportsmen. With the exception probably only of librarians, these are likely to be predominantly male occupations;

c,d,e: See next page.

1. Routh, op cit, P. 44-48.

2. Census data 1961 and 1966, Department of Employment Gazette Dec. 1976; Seear, N. Research Paper 11 for Royal Commission on Trade Unions and Employers' Associations, P. 2, 3.

c: 1968 figure: 51
d: manufacturing industries only;
e: classified as 'other' by Seear but since her table specifies
all other categories, this figure must be largely unskilled.

It should be stressed that these calculations are only roughly comparable but there does appear to have been less branching out than Routh had hoped for. Women are still predominately in the lower reaches of each of the two broad categories of manual and non-manual work. The figures for the highest professional category seem to bear out the PEP claim that the initial inroads made by women went into stagnation - although at a later date than that suggested by the authors.

Table 9 shows the concentrations of men and women at different levels within two broad occupational categories that correspond to Routh's classes 1A, 1B and 2B.

Among the administrators and managers, women are more likely to be in personnel than in sales or contracting. Of the professionals they are more likely to be nurses and para-medical staff than doctors; schoolteachers rather than university lecturers.

Table 4 on Page 44 also shows a division of occupations in the manual sector. Women are heavily concentrated in the lower paid occupations of textiles, clothing and footwear, and miscellaneous services. In the middle wage range, there is less disparity in overall proportions but men are concentrated in construction and mechanical engineering while women are in food, drink and tobacco and electrical engineering.

One feature common to both sectors is that the occupations where women are well represented are those which are an extension of their traditional domestic roles; for example, the personnel side of management, the 'caring'

Chemists, Physical and Biological Scientists	48,170	3,560	51,730	7	55,060	4,270	59,330	7
Accountants, Professional, Company Secretaries and Registrars	89,590	13,610	103,200	13	1,106,180	18,110	124,290	15
Surveyors, Architects	73,950	1,640	75,600	2	85,550	1,590	87,140	2
Judges, Barristers, Advocates, Solicitors	31,900	1,290	33,190	4	33,530	1,730	35,260	5
Social Welfare and Related Workers	21,610	19,360	40,970	47	24,130	26,190	50,320	52
Professional Workers (NEC)	25,620	14,270	39,890	36	31,820	15,380	47,200	33
Total	850,560	680,040	1,530,600	44	1,000,480	779,070	1,779,550	44

Source: Census of Population 1961 and 1966 (10% sample)

professions of nursing, teaching and social work, the making of clothes and the preparation of food and drink. Clerical and secretarial work where women predominate are also linked to domestic roles in that they may be described as supportive. Electrical engineering might be thought to be an exception but it is here that a stereotype of female dexterity operates strongly.

Women in both sectors are less likely to receive on-the-job training or promotion. In nursing, for example, although less than 10% of nurses are male, one third of senior posts are held by men. And, as already noted, modern trends in education have made it less likely that headships will be held by women. Clerical and secretarial work usually involve 'dead-end' jobs. In manual work, women are more likely to be in semi-skilled jobs even in some of the occupations where they are heavily concentrated:

Table 10¹ Women as a percentage of occupations 1966

Industry	Skilled %	Semi-skilled %
Food, drink and tobacco	16.7	51.9
Chemicals and allied industries	3.8	0.2
Engineering and electrical	1.9	44.2
Other engineering	1.4	28.8
Other electrical	3.5	58.8
Marine engineering	-	4.4
Vehicles	0.7	13.7
Manufacturing and metal goods	4.2	43.8
Textiles	45.1	62.0
Leather goods and fur	33.6	33.4
Clothing	83.1	97.0
Footwear	54.3	51.5
Bricks, glass and cement	3.7	8.1
Pottery	51.9	51.5
Timber and furniture	10.2	36.5
Paper and boardmaking	26.4	50.2
Printing and publishing	23.8	48.5
Other manufacturing	11.0	40.4
Total	18.4	42.2

1. Derived from Seear, op cit, P.3.

In general it can be seen that, except in three cases, women make up a higher proportion of the semi-skilled than skilled workers. Once again it appears that in the skilled occupations, women tend to be found in jobs with domestic links. But even in those occupations with high levels of skilled women, the proportions of the semi-skilled who are women are generally larger. Industries that require apprenticeships or offer on-the-job training tend to be predominantly male.

Despite the post-war trend for women to remain in the labour market for considerable periods, then, women in both sectors are likely to be found in those occupations with poor prospects and for which the individual is trained before entering the labour market. The rest of this chapter considers some of the explanations for this pattern of female employment.

(IV) Explanations for Pay and Occupational Distribution

Attempts to explain the reasons for pay and occupational differences between men and women fall into three broad categories. First, sociological approaches concentrate on the supply side by dealing with characteristics of women and employers' perceptions of them.¹ In this kind of analysis the structure of the labour market is seen as a product of the attitudes of individuals that constitute it. Secondly, some economists look for relationships between pay differentials and occupational distribution of men and women. This approach distinguishes between discrimination before and after entry into the labour market. As a result, factors like education and family arrangements that are primary in the first approach are exogenous to the second. However, developments on early models of post-entry discrimination now include more systematically the effects of social arrangements on pay and occupational distribution.² Finally, other economists claim that a division by gender of the labour market into primary and secondary sectors explains the pre- and post-entry behaviour of women and employers.³ Each approach has overlapping components and, hence, sometimes similar implications for a government wishing to modify the pattern of employment.

In their evidence to the Select Committee on the Anti-Discrimination Bill, the Confederation of British Industry and the Engineering Employers' Federation set out to

1. Hakim, op cit, P.46.

2. Chiplin, B. and Sloane, P. Sex Discrimination in the Labour Market (Macmillan 1976)

3. Barron, R. and Norris, G. 'Sexual divisions and the dual labour market' in Barker, D. and Allen, S. (eds) Dependence and Exploitation in Work and Marriage (Longman 1976) P. 47-69.

distinguish between sheer prejudice and reasonable discrimination to ensure cost effectiveness.¹ Their grounds for reasonable differentiation were that women were poorly educated in inappropriate subjects. This was possibly a result of bad careers advice; but they also thought that women had unsuitable innate attributes for developing certain skills, dealing with crises and fitting into work relationships. Family commitments and lack of ambition were, in their view, reflected in poor motivation, higher rates of turnover and absenteeism. In addition, physical differences were disadvantageous to women. And male employees would be reluctant to be supervised by women. As a result, investment in training women for higher paid jobs was a poor risk.

It is clear from education statistics that women are indeed not educated in industry oriented subjects. In co-educational secondary schools, it is usual for girls to study domestic science and for boys to have lessons in technical subjects. In some schools a common pattern is encouraged; but in 'O' level examinations in 1972, 138,000 girls entered for domestic subjects compared to 2,800 boys. For metal- and wood-work, there were 96,000 male entries and 300 female.²

When girls do study more scientific subjects, they tend not to go into physics and chemistry. The 1972 figures show that 164,000 girls took 'O' level biology compared to 88,000 boys. Conversely, 285,000 boys entered for physics and chemistry compared to 88,000 girls. Specialisation by gender across the arts and sciences in general continues at 'A' level.

1. Minutes of Evidence and Proceedings of House of Lords Select Committee on Anti-Discrimination Bill

2. Social Trends, op cit, P.12-15.

Table 11¹GCE A Level entries by broad subject area in England and Wales*

	<u>1962</u>		<u>1972</u>	
	boys	girls	boys	girls
Percentage of entries				
Arts -	25	57	26	54
- of which, modern languages	7	15	5	13
Science and technical subjects -	61	30	49	24
- of which, mathematics,	22	8	18	7
Social science and vocational subjects	14	13	26	22
Total entries (,000s)	184	86	279	188

* A similar pattern exists in Scotland.

In higher education, the proportions of men and women studying languages and arts are similar. But in science and social sciences there are about five times as many men as women. About three quarters of the latter qualify in education and ancilliary health subjects - usually from colleges of education and other specialist institutions. For those women who have suitable qualifications for medical schools a barrier has been the operation of a quota system which requires higher pass rates from female candidates.

The paucity of qualified young women in industrially oriented subjects is shown in the following figures for 1967:

Table 12²Men and Women on Advanced industrially orientated courses 1967

Advanced courses	men	women	Non-advanced courses	men	women
University 1st degrees			OND		
Engineering/Technology	1450	4	Engineering/Technology	4767	30
Science	2923	893	Science	338	82
CNAA 1st degrees			ONC		
Engineering/Technology	5177	25	Engineering/Technology	36118	218
Science	2031	299	Science	6779	2573
			Business/Commerce	12091	1871
HND			CGLI		
Engineering/Technology	7893	24	Engineering/Technology	418107	5207
Science	1484	242	Science	4525	1970
HNC			Social admin, business	6244	4643
Engineering/Technology	32943	80	Wholesale & Retail	3035	2808
Science	6343	1267			

1. Ibid, P.13.

2. Association of Teachers in Technical Institutions. Education, Training and Employment of Women and Girls.

All Advanced Courses	men	women
Engineering	50260	85
Building	11555	30
Metal Technology	2040	20
Science	18126	3119
Soc admin, business	46133	6129
Professional and vocational	8129	2831

It has already been noted that a bi-modal pattern of paid employment has developed among married women. This temporary departure from the labour market has been cited by Chiplin and Sloane as a difficulty for the equal treatment of women in certain occupations. They also argue that family life as presently constituted to some extent reduces the market value of women's labour. Examples of this include the need for married women who do not usually have the family car at their disposal, to find work near home and their comparative lack of freedom to move away for training and promotion. Employers commonly believe that domestic demands explain a higher rate of turnover and absenteeism among women than among men.¹

Connected with observations about women's education and family roles is the belief that women are particularly suited to the private sphere of personal relationships and emotions and that men are by nature at home in the collective world of work.²

Debates about the sociology and psychology of women will be discussed in connection with the dual labour market theories. In the meantime, it should be noted that economists like Thurow and Hakim have pointed out that these

1. Chiplin and Sloane, op cit, chapters II and III.

2. Falk, R. The Business of Management (British Institute of Management) quoted in the Guardian 10.8.81.

generalisations about women become a rule of thumb in decision making by employers.¹ Thurow argues that employers do not offer jobs but opportunities for on-the-job training. Investment in training will need to show not merely profit but the highest possible profit. Recruiting practices will reflect a perception that women as a class are a poor investment because of a lower attachment to the labour market. Hakim points out that the choice of sex as a screening device results from the particular history of the society concerned. Religious affiliation or race may be an equally readily identifiable device.

Thurow's model is supported in the British case by evidence published by the Royal Commission on Industrial Relations and Employers' Associations:

Table 13² Men and Women in Apprenticeships

	Men	% of Total	Women	% of Total	Total
<u>Apprenticeship for:-</u>					
Science & Technology	9630	98.9	110	1.1	9740
Draughtsmanship	17450	98.0	350	2.0	17800
Other technicians	12150	98.7	160	1.3	12310
Clerical & office work	3150	69.1	1410	30.9	4560
Other administration	3300	84.2	620	13.8	3920
Skilled craft workers	271650	98.0	5430	2.0	277080
Totals	317330	97.5	8080	2.5	325410

In 1972, a Labour Party study document pointed out that in 1970, as usual, 72% of female apprenticeships were in hairdressing and manicuring.³

Male employees also benefit more than women from day

1. Thurow, L. Generalising Inequality (Macmillan 1975) and Hakim, op cit.

2. Seear, N. op cit, P.6.

3. Discrimination Against Women, Labour Party Green Paper, 1972.

and block release schemes. In 1969, four times as many young men as women were on day release and twice as many on short training programmes.

A government survey revealed that most managers believed that men were more likely than women to be of suitable intelligence and emotional disposition to warrant training or promotion.¹

Another aspect of women as workers that is cited by employers as a limitation on their market value is protective legislation. Before 1975 the relevant laws were the 1936 Hours of Employment Act, the 1954 Mines and Quarries Act and the 1961 Factories Act. Restrictions on the hours of work and times of day during which women were permitted to work, the location of work and the type of tasks undertaken are also claimed to inhibit the training of women for skilled occupations.

While explanations of the type discussed above have been criticised for concentrating too much on the supply side, some economic analyses have been undermined for relying too heavily on demand factors. Out of this has arisen the more complex approach of Chiplin and Sloane.² They point out that in early economic models of discrimination, the phenomenon was described as existing where profits and wages are sacrificed to enjoy the commodity of discrimination. 'Pure' discrimination does not necessarily result in cost minimisation. (Sociological explanations on the other hand assume a search for cost effectiveness). Such theories predict lower pay for women when an employer has a 'taste' for sex discrimination and

1. Hunt, A. Management Attitudes and Practices Towards Women at Work (HMSO 1975).

2. Chiplin and Sloane, op cit, P.4.

segregation when the 'taste' comes from employees. Where there is competition from non-discriminating employers, both forms are expected to diminish. These models, developed to explain racial discrimination, have come to be regarded as too simplistic to explain sex discrimination. However, they may have some relevance; for example, employers claim that if unreasonable discrimination exists, it is the result of prejudice among male employees. But both pay differences and segregation have persisted despite, albeit imperfect, competition. More complex models like that of Thurow referred to earlier, try to analyse the inter-action of supply and demand. Chiplin and Sloane also do this.¹ In addition they analyse the workings of the factors outside the labour market in combination with relationships between pay differentials and occupational distribution. In other words they try to assess how much differences in pay are caused by differences in occupation and to what extent differences in both are connected with economically rational estimations of women's market values or with the free choice of women themselves.

Using New Earnings Survey data for 1974, they conclude that gross differences in pay for men and women in Britain are seldom the result of either unequal pay for the same work or of inter-occupational differences. The most significant relationship is the depressing effect on female earnings of vertical segregation within occupational categories. A micro-study by them within a firm reveals that 40% of the differentiation between the grading of women and men was inexplicable in terms of supply side factors.²

1. Ibid, chapter 3.

2. Ibid, chapter 8.

In 1974 the Equal Pay Act had been passed but enforcement was still voluntary. The Office of Manpower Economics reported improvements in women's earnings between 1970 and 1972.¹ Its effects on its own are, according to Chiplin and Sloane, likely to be limited. But given that they accept the two possible outcomes of 'tastes' for discrimination appear to persist, they accept that such an act was necessary. Because of their own findings, however, they believe that it must be complemented by legislation to weaken vertical segregation. In their view, the most productive use of labour in Britain may need to be based on some, if less, continued differentiation because of supply side factors.

Chiplin and Sloane do suggest, however, that social and economic behaviour in families may be changing. And they acknowledge that the existing operation of the labour market may discourage the acquisition of sought after skills by women or changes in their labour market attachments.²

The later point is central in segmented or dual labour market theories. Building on the work of other theorists, Barron and Norris apply the model to Britain.³ A dual or segmented labour market exists when there is a more or less pronounced division into higher and lower paying employment sectors and that mobility across the boundary is restricted. The characteristics of higher paying jobs in the primary sector include internal recruitment, stability and more definite career structures. In the secondary sector,

1. Equal Pay : First Report on the Implementation of the Equal Pay Act 1970 (HMSO 1972)

2. Chiplin and Sloane, op cit.

3. Barron and Norris, op cit.

jobs are poorly paid with few opportunities for training or vertical movement. Voluntary and involuntary dispensibility is high.

The division need not be between Manual and non-manual occupations but may well be expressed in vertical segregation. The reasons for segmentation are said to be to maintain stability and acquiescence in the essential primary sector. Readily identifiable characteristics like educational qualifications, race or sex form a cheap screening device for recruitment into each sector. Barron and Norris draw attention to a 'vicious circle' that results in workers taking on characteristics that go with jobs in the secondary sector, which, although not innate, are used to rationalise their confinement to that sector. Examples have already been mentioned; for instance, absenteeism, turnover, apparent lack of interest in acquiring skills before or after entering the labour market.

The degree of occupational segregation and the differences in pay between men and women are taken as signs of a dual labour market in Britain divided by sex. Such a view is also held by Seear. When discussing the Anti-Discrimination Bill, she told her fellow peers that:

The basic fact about the employment of women is that there are in reality two labour markets: one for men and one for women with a very small overlap area between them ... and it is well known that the customary women's jobs, with very few exceptions, are to be found at the bottom of the pile. ¹

Components of other explanations are relevant to the mechanism of division. Hakim points out that, in the

1. House of Lords Vol.329 Col.335.

segmented model, women's collective exhibition of discontinuous work profiles lead employers to treat all women as equally likely to move in and out of the labour market, thus debarring women's entry into many occupations in the primary sector.¹

This is central to Thurow's job competition model and important in Chiplin and Sloane's explanation. But the causal relationship is different. According to Barron and Norris, family arrangements are not objective supply side factors. Instead the family as presently constituted is a rationalisation for dividing the British labour market by sex rather than by some other factor. Since women expect to be treated differently because of their sex, they are discouraged from developing attitudes appropriate to the primary sector and not because they are inherently incapable of doing so.

If it is the case that women are thus discouraged, justification for it is provided by responses to a government survey on management attitudes. A majority of recruitment managers questioned in 1973 said that even where men and women were equally qualified, they would give preference to a male applicant in all occupations except catering, domestic and office work.²

The legislative implications of the dual labour market theory are discussed by Hakim.³ She points out that an equal pay law may not merely have little effect without an equal opportunity policy. On the contrary, compulsory equal pay for the same work could depress women's earnings still further. This is because to evade it, work might be reorganised

1. Hakim, op cit.

2. Hunt, op cit.

3. Hakim, op cit, P.48-50.

and jobs re-classified. This would increase the degree of vertical segregation identified both by Chiplin and Sloane and Barron and Norris as the most significant source of differences in earnings.

The assertion of Barron and Norris that the attributes of female workers in Britain are not innate but a product of perceptions of the labour market may be supported by cross-cultural comparisons. Hakim draws attention to other dual labour markets where women enter the primary sector easily.¹ Circumstantial confirmation for the model is present in some psychological and sociological debates about women in Britain. These also serve to modify some of the claims of the other types of explanation for different treatment discussed earlier in this chapter.

The controversies surround issues that are central to Barron and Norris's thesis; whether different aptitudes of men and women are innate or learned; whether training patterns, absenteeism and turnover rates accurately reflect poorer motivation or other factors; and to what extent allegations of unreasonable discrimination by male workers are well founded.

Psychologists point out that while more of one sex than the other show up at the extremes of mental and emotional characteristics, there is a large overlap. As a result, variations within one sex are larger than the variation between them. There are unresolved disputes about whether variations between the sexes are innate or learned at home, in school or at work.

Schools, the careers advisory service and the Department of Education have been criticised for not encouraging girls into a wider range of courses. Until recently, it was the policy of the Department of Education to be

1. Ibid, P.38-43.

more concerned about equipping boys' schools in the state sector with science laboratories. In mixed schools, girls tend not to be encouraged to think mathematically or scientifically. This tendency towards excessive traditional role definition by teachers leads to a self-fulfilling prophesy that girls are 'no good at maths and science'. This is, of course, not the case in all schools, especially those for girls only where, on the contrary, mathematics and Science are usually taught well by women teachers; but even in those where headteachers try to provide a high standard of mathematics and science, they report difficulty in finding suitable staff.¹ It seems that those girls who are keen to have a scientific career tend to have parents either in the same field or strongly supportive of their daughters' interests. The Department of Employment and Education claim that the careers advisory service is expected to be open-minded about hitherto unconventional careers for girls. But one study noted that careers advisors are unwilling to encourage girls into field where they are likely to meet frustrations.² Frustrations stemming from conventional attitudes were absent during the war, when women learned to do jobs that employers previously believed to be beyond their capabilities.³

Neither is the evidence about appropriate personality traits straightforward. Personality questionnaires indicate that men are on average more aggressive and women more passive. But again the evidence is not straightforward. Overlapping and learning are significant here too. Other

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1. Seear, N., Roberts, V., Brock, J. A Career for Women in Industry (LSE 1964)
 2. PEP Oral Evidence to H/1 Select Committee. Minutes of Evidence and Proceedings Anti-Discrimination (No 2) Bill 20.6.72 P.56.
 3. King, J. Manpower Paper No.10, Sex Differences and Society (HMSO 1975) chapters II-IV.

characteristics that emerge in research as being predominantly found in women - for example, flexibility, imagination - are - ironically, those which employers claim are most relevant in senior management.¹

Physical differences are the most obvious ones which seem to bear out the employers' case. Lack of brawn would not matter in most non-manual occupations but might be a justification for the exclusion of women from, say, engineering or building. But among manual occupations, modern technology is reducing the number of jobs whose main requirement is sheer strength. Obviously many heavy jobs remain and there are others which may require the periodic shifting of a load. But the use of gender as a cheap screening device means that women applicants, who may have the necessary physical capabilities, are unlikely to be judged on their individual merits. From the passing of protective legislation, the releasing of women from heavy labour has been seen as a sign of civilisation. But among some women a suspicion has arisen that protection denies capable women both the freedom to choose and access to higher paid jobs. Where technology has advanced unaccompanied by changes in practices anomalies can occur. For example, women may be debarred from operating large pieces of machinery (by agreement not by law) when these are now air-assisted, the smaller ones actually needing more effort.²

Statutory restrictions on the physical tasks that women can do are less constraining than might be supposed. Few industries are covered by restrictions on the weights women are allowed to lift. Where individual factories have such regulations, it is often because of union agreements whose rationale may be to protect male jobs. The difficulty placed on shift working by regulations about hours of work can be avoided by obtaining an exemption order from the Secretary of State for Employment. Applications for exemption

1. Ibid, chapters II-IV. 2. Observed by the author in a company that must remain nameless. Author told by an employer that most manufacturing companies now used technology to eliminate heavy work.

are rarely refused. The bans on women working underground and cleaning and maintaining machinery have been the most unavoidable restrictions. The conditions of employment on pregnant women are regulated while men do not enjoy protection from exposure to chemicals that might affect their reproductive capacities. Public and expert opinion on protective legislation is divided. TUC recommendations are that all employees, whether male or female, should be equally protected from the hazards of work.

The assertion that women are not interested in training is not borne out by official surveys. More than half the women covered by the 1965 Ministry of Labour survey said they would welcome training.¹ Another survey of graduate wives indicated that 48% of those not working would like to return to work but felt they would need some form of training.² It seems that if there were refresher training for a wider range of occupations, many more women would be attracted into a stable pattern of work. The training of women was described as essential for industrial health in the Donovan Report.³

Turnover and absenteeism as a measure of commitment to work also seem to be ambiguous. Department of Employment surveys confirm that overall turnover figures are higher for women and that until 1963 the most common reasons for women being with an employer for less than a year were connected with the family.⁴ However, it is not clear that differences are related to gender since turnover rates vary considerably among

1. Hunt, Survey of Women's Employment (HMSO 1968) P.158.

2. Manpower Paper 11, Women and Work: A Review P.36.

3. Report of Royal Commission on Trade Unions and Employers' Associations, op cit, para 90-93.

4. Manpower Paper 11, op cit, Chapter V.

occupations, age-groups and levels of responsibility. Surveys after 1963 find that a majority of women had been with the same employer for more than three years and that the proportion of those with more than ten years service increased rapidly with age¹.

It is worth noting in this connection that men are beginning to alter their pattern of loyalty to one employer, so far, without the corresponding penalties. Increasingly, young men do not stay long in their first few jobs. This is particularly noticeable in junior management. Concern was high enough in one chain of retail shops to lead to a decision to encourage wider management opportunities for women. Turnover in that group is now lower for women than it is for men.²

Levels of responsibility, occupation, job interest and age may also be more helpful than gender in explaining absenteeism. Among manual occupations generally, women lose more pay than men through absence. But taken together with non-manual occupations, the figure for women is much the same as that for men.³ The General Household Survey for 1971 shows only slight variations in the reasons for being absent. The same survey indicated that women tend to be absent for shorter periods than men; 57% of women were absent for less than a week compared with 53% of men. This difference arose almost entirely from shorter sick-leave periods for women.⁴

Department of Employment researchers found that absenteeism is connected with monotonous, low status and

1. Ibid,

2. Ibid,

3. Ibid, P.27.

4. Ibid, P.27.

poorly paid employment and that where women do work that is similar to men's, that has high status, etc., their absence rates are comparable.¹ This research is corroborated by findings from the Institute of Personnel Management. These show that absenteeism is a problem in clerical and operative grades but not in senior posts.²

The idea that women's earnings are not essential has lost much of any validity it had. Apart from single women, married women increasingly need their earnings if their families are to remain above what the government itself defines as the poverty line. As a result, it seems that working women make every effort to be at work even when children were ill or on holiday. A study of women workers in Bermondsey reveals a heavy dependence on a nearby network of family relationships.³ The absence of good, not merely any, childcare facilities was frequently mentioned as something that would discourage these women from working regularly.⁴ A PEP study confirms that decisions

1. King, op cit.
2. Minutes and Evidence of Proceedings. House of Lords Select Committee on the Anti-Discrimination Bill, op cit.
Ironically managers sometimes justify the employment of women in routine monotonous jobs because they allege they are better at them and more reliable than men. These also tend to be jobs which are not tied into a promotional structure for which training would be needed.
3. Jephcott, P., Seear, N. and Smith, J. Married Women Working (Allen and Unwin 1961) Ch IX.
4. The researchers found no evidence that the children of these families did worse at school or were more delinquent than other children, although the sources of information were such that they could not be absolutely certain of this (see reference to Bowlby in Chapter I).

by middle class women to work and commitment to it depend heavily on the availability of good childcare arrangements.¹

The question of reluctance to accept female supervision is discussed by Creighton. He points out that male fears of female competition in the labour market have a real base insofar as women competing for the same jobs at lower rates could lead to under-cutting and reduction in male employment.² This is said to have been at the root of the unanimous support given to the 1888 TUC resolution on equal pay. Another possible objection is that women are thought to be poor trade unionists, therefore undermining gains that men might make on their own. With notable exceptions, like the match girls and textile workers, women have been less militant than men. But structural factors may have more explanatory power than gender. Women tend to work in smaller plants, in service industries with shifting and seasonal workforces and in the junior levels of non-manual occupations. All of these are notoriously difficult to organise even where there are men. However, a large part of the absolute increase in union membership is accounted for by women. But they attend branch meetings less frequently than men and fall into arrears of subscription more often. It should be noted, however, that only a minority of men are active in running their unions and some of these may not always encourage women to participate. Union meetings may be held at times when it is

1. Fogarty, Rapoport and Rapoport, op cit.

2. Creighton, W. The Development of the Legal Status of Women in Employment in Britain. Unpublished PhD thesis submitted to the University of Cambridge, December, 1973, p.199.

inconvenient for women to attend. Even unions with large female memberships have suspiciously few female full time representatives or delegates. This is shown in the following table taken from Creighton:-

Table 14 Unions with the Largest Female Membership - 1971¹

Union	Total M'ship	% Women	Full time officials Total	Delegates Women	Delegates Total	1971 TUI Women
G & MWU	853,353	28.8	162	4	64	2
T & GWU	1,638,686	13.6	600	1	72	4
NUPE	372,709	59.4	90	1	25	2
USDAW	329,890	51.8	150	3		3
NALGO	439,887	38.3	80	3	48	8
AUEW	1,294,944	11.1	200	1	48	0
CPSA	184,935	66.0	17	0	31	7
NUTGW	117,573	85.5	48	9	16	2
CAWU	125,541	53.2	44	2	12	4
UPOW	209,479	25.0	12	1	13	3

CPSA - Civil and Public Services Association
 NUTGW - National Union of Tailors and Garment Workers
 CAWU - Clerical and Allied Workers Union
 UPOW - Union of Post Office Workers

An effect on behaviour similar to that posited in the dual labour market theory may operate here too.

Another more deep seated difficulty has been pointed out by Sennett and Cobb². This is that if a man's job is one which lacks status or does not add dignity to his life, he will try to make it worthwhile by thinking that he works for a dignified purpose; that is, to support and sustain his family, an institution that society values. If women devalue this by saying that they do not want this or can do it just as well themselves, then his *raison d'être* is under threat.

The Sennett and Cobb argument is one that particularly

1. Creighton, op cit, p. 488A

2. Sennett and Cobb. Hidden Injuries of Class

Cited by Best, M and Connolly, W. The Politicised Economy
 (D C Heath and Co 1976) pp82-83

applies to working class men. But it may not be universal. A study of women's work in Bermondsey revealed that working class husbands there thought it natural that wives should seek paid employment and not just for 'pin money'.¹ They were also prepared to help in the home so as to increase the family income in this way. Dunleavy has, however, pointed out that husbands who work in the public sector are more likely to think this way than those in the private sector.²

As a result of micro-studies of the type referred to in this chapter, at least doubt is cast on beliefs about female attributes and some support is given to the possibility that they are maintained to stabilise workers in the primary sector. In conclusion, it is necessary to summarise the policy implications that arise from both these studies and more general labour market theories.

(V) Policy Implications

What emerges first and foremost is that an equal pay policy must be accompanied by one on equal opportunities. This is clear in both Chiplin and Sloane's explanation and from dual labour market theories. Beyond that, the implications of economic theory are unclear. For Chiplin and Sloane, legislation must take into account the possibility of some continued differentiation. They argue that British policy does not do this. In contrast, the implication of Barron and Norris is that a pattern undifferentiated by gender is possible. Chiplin and Sloane believe this can only be done with much greater intervention into the structure of the family. Another possibility seems to be the removal of some of the costs of the

1. Jephcott, Seear, Smith, op cit, P.171.

2. Dunleavy, P. and Hope, K. 1974 Social Mobility Study, Nuffield College.

training of women from employers. This could be done by intervention in the pre-labour market education of women, although it is not clear that co-education on its own will help. This would need to be accompanied by careful curriculum planning and by the presence of 'role models' in the persons of women teachers in subjects at present dominated by men. Chiplin and Sloane do, however, suggest that the setting of norms in legislation may reinforce changes in women's education and family roles that may in any case be taking place.

Their interpretation of the legislation can be disputed. It can be argued that all the legislation does is to insist on equality of treatment for workers of equal values. It does not insist on the training of women in traditionally male occupations, although it facilitates this by banning discrimination in schools and enabling positive discrimination in training for either sex at work.¹

Whether a pattern of employment completely undifferentiated by gender or something less is the aim, it is clear that the device of using sex to screen applicants needs to be modified, if as rational a distribution as possible of person power is to be achieved. Thus legislative norms need to be firmly enforced and they need to be accompanied by the dissemination of information. Lagging stereotypes held by employers and employees need to be corrected. For example, information about the new work profiles of men and women, the links between types of occupation and turnover and absenteeism needs to be brought out. Once the circle is broken into demonstration effects might be expected to show up in the behaviour of employers and employees. Permeation of women and men into unconventional occupations should then increase.

But since a large proportion of the female work force is married and, to the extent that a broken work profile does matter, Chiplin and Sloane may be correct in recommending

1. See chapter IV.

a less differentiated pattern. If an outcome closer to Barron and Norris is required, then better childcare facilities are essential. At present public provision of pre-school childcare is patchy. Often it is still available only in those areas where it was required during the war. And its provision is still subject to ideological debate about whether it is a matter for the public or private sectors. But even if opinion is divided about whether childrearing is a private pleasure or collective investment, if public wellbeing requires the training and use of women in industrial occupations, then one of the instruments to that end must be public expenditure in this area.

This issue was not dealt with in the Equal Pay Act or the Sex Discrimination Act. Both of these were based on optimistic assumptions about the future of the economy. In the present situation, public expenditure of this type is seen by many as an unaffordable luxury. Consequently, the possibilities for change seem closer to those expected by Chiplin and Sloane (despite their interpretation of the legislation) than to those which follow from a dual labour market analysis.

The period that has been covered in this chapter in respect of women's work is also one during which governments were pressed to intervene in differences in pay and opportunity. The next chapter discusses the history of demands for equal pay in specified occupations and the working of these into concern for more general equality at work.

CHAPTER IIIParliamentary and Pressure Group Demands and Government Responses(I) Introduction

The passage of the Equal Pay Act was preceded by rumour that government proposals were defective in the respect discussed by Chiplin and Sloane¹; that is, that they were based on an incorrect analysis of the market value of female labour. It was said that, as a result, the costs of reform for employers had been underestimated². A contrary view, however, had been held for decades among individuals in and out of Parliament who believed that the practice of paying men and women differently could not be justified in terms of the market and that the differences could be removed only by legislation.

The close timing of the Equal Pay Act and Sex Discrimination Act and the economic analyses discussed in Chapter II suggest the possibility of seeing them as complementary. To some extent this is so; the latter, in principle, prevents evasion of the former. But both the history of the pressure for change and of governments' willingness to respond suggest that the issues are distinct. Pressure for equal pay was evident, if sporadically, for almost a century. Indeed, support for change was sometimes voiced in order to limit the recruitment of women. The 1970 Equal Pay Act can be seen as the culmination of the general application of the principle first granted for middle class women only in 1955. But while one women's group

1. Chiplin and Slone, op cit, chapter 9.

2. The Times, 3.10.69.

had equality of opportunity as well as pay in its charter in the 1920s and one female MP began to campaign for it in Parliament in 1968, wide-spread demand for an anti-discrimination law did not 'take off' until after the passage of the Equal Pay Act. Moreover, although this thesis deals only with the employment provisions of the Sex Discrimination Act, employment is only one of a wide variety of aspects of economic and social life covered by the law¹.

The Equal Pay Act conforms to the conventional view of political change in liberal democracies. In Chapter I it was pointed out that, in that model, change is seen as a long drawn-out process where demands begin at the grassroots, are carried forward through parties or pressure groups and, finally, having secured legitimacy by gaining widespread support, are responded to by policy makers. The process is likely to take decades. Pressure for female suffrage, for example, took at least fifty years to come to fruition. Chapter I also dealt with challenges to this conception of political change. These are based on observations of major social reforms that happen quickly without intense party and group activity. To some extent the advent of the Sex Discrimination Act fits in with these alternative ideas more closely than with conventional theories. It departs from the diffusion of innovation model in that there was pressure for an anti-discrimination law, although it began late in the day; that is, after the issue had been aired by intermediate policy leaders in the Houses of Parliament. Nor do senior policy makers - government ministers - appear to have changed their minds for fanciful reasons. The tardy but increasingly vociferous demands for change were assisted

1. Others are education, goods, facilities and services.

by two other pressures; the future of race relations and the obligations of membership of the EEC.

These general observations are discussed in more detail in the rest of this chapter and in the next. The next section of this chapter provides a short history of the main Parliamentary developments leading to the passage of the Acts. This is followed by a description of the activities of the actors posited in theories of social change; individuals, groups, parties and politicians. The chapter concludes with a summary of the main points of extra-governmental concern taken up by policy-makers. They are dealt with in more detail and in relation to other factors that encouraged them to legislate in the next chapter.

(II) Developments in Parliament and Government¹

The controversy over Ibsen's play about the limitations placed on women (The Doll's House) had hardly died after its first performance in London, when the question of the treatment of working women was raised at the TUC conference in 1888 and then in Parliament. Laws to protect women from the worst rigors of manual labour had already been hotly disputed on the grounds of whether or not they would restrict employment opportunities². But the question of equal pay was first raised in Parliament in 1896 when assurances were sought that male shorthand writers would be paid the same as women³. Six years later, two Labour Members of Parliament tried and failed to amend the Fair Wages Resolution to allow for equal pay for women⁴. Following the introduction of a number of bills on the subject from 1910, the McDonnell Commission on the Civil Service, appointed in 1912, considered women's pay and employment in the public services. It recommended that, since women were less efficient than men, their pay should be only approximately equal to take account of this. This justification for lower pay for women was discussed by a War Cabinet Committee on Equal Pay under the chairmanship of Mr Justice Atkins⁵. This enquiry stemmed from a wartime dispute over the payment of war bonuses by the Committee of Production to male, but not female, transport

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1. Much of the information in this section comes from unpublished D Phil thesis by W B Creighton, submitted at Cambridge University, December 1973.
 2. In 1870s and 1880s: described briefly in undated letter from Beatrice Webb to Carey Thomas, President of Bryn Mawr College, seen by author through the courtesy of Professor Norman Mackenzie.
 3. OR, 4th series, Vol 41, col 966, June 1896. Cited by Creighton op cit.
 4. OR 2, cols 415-485, 103-109. Cited in ibid.
 5. Report of War Cabinet Committee on Women in Industry, CMND 135, 1918.

workers in London. A detailed national investigation was called for in and out of Parliament. A majority of the Committee recommended equal pay for the same work but took the view that no solution was possible in occupations where either sex was excluded. But it was felt that the granting of equal pay in common areas might have repercussions in areas where outputs varied. Here they suggested pay proportional to productivity. But they were also exercised by the problem that male workers might be paid more because they had greater family responsibilities and larger demands on their incomes. Mrs Webb wrote a dissenting report, the substance of which appeared in a Fabian booklet, where she drew attention to problems in the definitions and justifications used¹; for example, she pointed out that not all men had families but were not paid less. Her own ideas about equality were so complex that it is difficult to decide whether she was in favour of equal pay or not. But she did recommend better training and, hence, better opportunities for women. These ideas, however, attracted little interest at the time, although the question of pay continued to be raised in Parliament.

In July 1918 Mr John Whitehouse (Liberal) tried to amend the Education Bill to give equal pay to women teachers employed by local authorities². Similar amendments were proposed by others in August 1919 to the Consolidated Fund Bill³. This was also the year of the Sex Disqualification (Removal) Act which eliminated legal

1. Beatrice Webb, The Wages of Men and Women: should they be equal? Fabian Society and Allen and Unwin, London 1919.

2. OR 107, Cols 1802, cited by Creighton, op cit.

3. OR 119, Cols 1211-5, 12.8.19. Cited in ibid.

barriers to the holding of public office by women. It therefore allowed women to become MPs, one consequence of which was the election of Viscountess (Nancy) Astor, (Conservative), a later proponent of equal pay. But it made an exception which for fifty years prevented women peers in their own right from sitting in the House of Lords. Nor did it provide machinery or redress or deal with continuing informal barriers.

Between 1918 and 1920, Major J Hills, (Conservative), asked the government on a number of occasions to apply the Atkins recommendations for equal pay for the same work or pay proportionate to output to the civil service and government contractors¹. The Prime Minister told him that no action would be taken until a committee of the Whitley Council for the Civil Service had reported on that matter. In 1920, Mr Baldwin, speaking for the Treasury, told him that the government had affirmed a belief in the right of women to hold public office by the Sex Disqualification (Removal) Act. Equal pay on entry to the civil service had been initiated. Different treatment after that, however, was to continue on the grounds that men had greater family responsibilities than women. Moreover, the government believed that the costs of more extensive change would be prohibitive. Major Hills and his supporters were not satisfied and a resolution proposed by him on 19 May 1920 for insisting on complete application was carried². When, by 1921, nothing had happened, Major Hills raised the issue again. This time he was informed by the Chancellor, Sir Robert Horne, that the government approved of the principle but that the country could not afford it³.

1. E.g. OR 116 Col 715; OR 117 Col 1811; OR 120 Col 277; OR 126 Col 2384.

2. OR 129 Cols 1539-1580.

3. OR 145 Cols 1890-1947.

Nevertheless, the question of equal pay was considered by the Tomlin Commission on the Civil Service between 1929 and 1931¹. Opinion was divided. Those against it used the old arguments. Those in favour again drew attention to the fallacy of the family responsibility argument and argued that it was to the cost of the country to fail to grant equal pay. This was because it was their view that women of the highest calibre would be discouraged from public service because of the lack of equal pay. In 1935 the question of general application of equal pay was raised again for the first time since 1918 by Colonel Clifton Brown (Conservative) who proposed its introduction first in the civil service and later elsewhere². This time the government denied belief in the principle as well as stressing the problems of cost and differential efficiency. The Parliamentary Secretary to the Minister of Labour, Duff Cooper, stated that the government would not incur expenditure or pledge themselves to a principle which was represented in the House and country by 'a slogan which the government did not believe to represent the facts'³.

The next year Miss E Wilkinson (Labour) reminded the House that the government had accepted the principle in 1920 for the civil service. She was supported by other MPs, including former suffragist Mr Pethwick Lawrence (Labour), Miss E Rathbone (Independent) and Conservatives Colonel Clifton Brown, Miss Florence Horsbrugh and Lady Astor. W S Morrison, for the Treasury, took the usual way out: the costs would be too high.

1. Royal Commission on the Civil Service CMND 3909.

2. OR 302 Cols 2211-47, cited by Creighton op cit.

3. OR 302 Col 2247, ibid.

But he added that since equal pay was not normal in the private sector, there was no need for it in the public. Unlike Duff Cooper, who had referred to demands in the country, Morrison believed there to be very little public support for equal pay. There was some confusion about whether Miss Wilkinson's motion had been carried or lost. In the end, it seemed that the government had a majority of 15. In view of the strength of feeling a further statement was promised. When it came, however, it was included in a general discussion of confidence which the government won with a majority of 216¹.

The question was deflected again in 1944 by being made an issue of confidence. Mrs Thelma Cazalet-Keir (Conservative), with a majority of one, amended the Education Bill to give equal pay to publically employed teachers². Mr R A Butler argued that equal pay for teachers should be part of a general debate on equal pay. And Mr Churchill succeeded in getting her amendment deleted by equating its deletion with a vote of confidence in the government. However, several other motions were laid before the House in 1944 calling for action in equal pay in the public services. These were not debated. But a Royal Commission was appointed to look into the matter³.

After a much criticised delay, enquiries began with limited terms of reference. No powers to make recommendations were given to the Commission. Hence, much of its report, published on 6 November 1946, dealt with how to identify those areas where the work of men and women could be said to be the same. Training and opportunities were mentioned only insofar as they affected the supply of and demand for women workers.

1. Vol 310 Cols 2017-96.

2. OR 310 Cols 2444-2566.

3. OR 398 Cols 1356-90, *ibid*.

Three of the four women on the Commission dissented from the majority by stressing that low earnings were the result, not of lower efficiency, but of exclusion. The majority again referred to different responsibilities and introduced the idea that perfect justice of reward was incompatible with an economic system which depended on flexibility. Flexibility could be maintained only through inequality. But they did feel that 'sheer prejudice' could be broken down through full employment. In June 1947, the Chancellor, Mr Dalton, re-affirmed the government's belief in the principle of equal pay; but he re-iterated the view that costs and practical considerations prevented its application.¹ He believed that if the civil service led, industry would be forced to follow. These were still the official views in the summer of 1948. In July Mr Glanvil Hall of the Treasury told an MP that:

The government cannot take steps towards introducing equal pay for men and women in the civil service so long as the considerations in the White Paper on Personal Incomes, Costs and Prices (CMD 7321) continue to apply.²

In 1950 the Whitley Councils again made representations to the government, but in June 1951 the new Chancellor, Mr Gaitskell, rejected the idea of equal pay in the civil service for the same reasons as his predecessor³. In 1952 the TUC added its weight to the Whitley Councils and, when their representations failed again, a parliamentary campaign began to gather strength. Mr Cyril Bence (Labour) reminded the House of the 1920 resolution and pointed out that, since the time for implementation was never regarded as right, women would have to resort to direct action⁴. Miss Irene Ward

1. OR

2. OR 454 Col 1539

3. OR 489 Cols 526-9, cited by Creighton, op cit

(Conservative), also a leader of the extra-parliamentary campaign, supported him. Mr John Boyd-Carpenter, for the Treasury, again referred to costs. Two months later, on the 6th May 1952, Charles Pannell (Labour) and an all-party group that included Irene Ward, Alice Bacon, Mr Clement Davies (whose wife was active outside parliament) and Mrs Barbara Castle (prime author of the 1970 Act) moved a private members resolution in favour of a single rate for the job and equal pay for equal work¹. Pannell's arguments were; that practices in other employment sectors were irrelevant to the civil service, given the nature of administrative work; and that the significance of the family responsibility argument was diminished by the growth of the welfare state. The resolution was carried without a division. But the government had argued again for no action on grounds of cost and repercussions in the private sector. These reasons were also used when Pethwick Lawrence (now Lord) raised the issue in the Upper House in February 1953².

Charles Pannell and Irene Ward were the pivots linking the parliamentary and extra-parliamentary campaigns, the latter reaching it zenith in 1954. This will be discussed in the following section. But two of its consequences for Parliament were the delivery to the House of Commons of two petitions bearing more than one million signatures and a flurry of inspired pre-budgetary parliamentary questions. Soon afterwards Mr Douglas Houghton (Labour) introduced a Private Members Bill for equal pay in both the public and private sectors³. Just before its second reading, the

1. OR 500, Cols 1765-1857

2. OR (House of Lords) 180 Cols 353-389

3. OR 524 Cols 1903-4, cited by Creighton, op cit.

Chancellor announced that he would reconvene talks with the Whitley Council with a view to a phased introduction of equal pay into the civil service¹. Agreement was finally reached in 1955 for its introduction into the non-industrial grades over a period of seven years. This was followed by similar arrangements for publically employed teachers and local government officials.

The predicted repercussions in the private industrial sector began to be felt in 1961 when the TUC asked the government to take steps to comply with the ILO Convention on Equal Pay for Work of Equal Value and pointed out that, should Britain join the EEC, equal pay for the same work would be required under Article 119 of the Treaty of Rome. Mr John Hare, Minister of Labour, told the TUC that equal pay in industry was not a matter for Parliamentary intervention but for industrial negotiation. Ratification of the ILO Convention and Article 119 would take place when conditions were right and when necessary². In 1963, Lady Summerskill (Labour) tried to get the House of Lords to intervene by agreeing to an industrial charter for women granting equal pay and better training³. In the same year a resolution was passed at the TUC Conference demanding legislative action and in 1964 the new Labour Government set up an interdepartmental committee to consider the matter under the chairmanship of the Minister of Labour, Mr Ray Gunter. But in May 1965, he wrote to George Woodcock, General Secretary of the TUC, that equal pay raised such

1. OR 526 Col 211, cited *ibid*.

2. Letter to Anne Goodwin, TUC Economic Committee, NCCL file 140/5.

3. The Times 20.6.63.

complex economic and social issues that the government could not, during a pay norm of $3\frac{1}{2}\%$, urge industry to introduce it¹. A month later, the Parliamentary Secretary to the Minister of Labour assured the TUC that all election pledges, including equal pay, would be fulfilled but that there were still four years of Parliament in which to do so². To this end, a tripartite study group was set up in 1966 but by the middle of 1967 deliberations had become deadlocked over definitions and costs³. At the end of the year the Parliamentary Secretary, Mr Roy Hattersley, announced that it would not be possible to introduce equal pay during the existing economic situation but that action would be taken when circumstances improved. He also stated that, for the time being, a study had been commissioned to consider the costs in particular industries and that departments were to prepare a paper on the implications of the Treaty of Rome⁴.

In the meantime questions were asked in each Parliamentary session about ratification of the ILO Convention and the progress of talks with the CBI and TUC. In 1968, Mr Christopher Norwood (Labour) tried to hurry things along by introducing a Private Members Bill on equal pay⁵. Mr Keith Speed (Conservative) intervened in the debate on prices and incomes policy to seek special provision for pay rises for women⁶; and Mrs Joyce Butler (Labour) asked the Prime Minister to mark the 50th anniversary of female suffrage by bringing in an anti-discrimination law⁷. But the most

1. NCCL file 140/5.

2. Report of the TUC Women's Conference, 1966.

3. Daily Telegraph, 12.7.67.

4. Daily Telegraph, 7.12.67 and 11.12.67.

5. NCCL files

6. OR 767 cols 479-532.

7. OR 760 Col 64.

immediately important event was the replacement of Mr Gunter by Mrs Castle at the Ministry of Labour.

Talks with the CBI and TUC began again. The CBI believed that the study of costs underestimated what some employers would face and both sides of industry were unhappy about the compromise definition of equal pay devised by Mrs Castle. Nevertheless, the general principle of equal pay finally became law in 1970.

It seemed though that the government was unwilling to intervene in the non-contractual elements of women's employment. Mrs Castle told Mrs Butler that she was 'not interested' in introducing an anti-discrimination clause into the Equal Pay Act.¹ And Mrs Butler had felt quite isolated in her aim from either Parliamentary or party colleagues.² But during the passage of the Equal Pay Act, Mr Robert Carr, from the Conservative benches, had argued that it would be ineffective without a law protecting women's access to employment.³ The 1974 elections returned more MPs who were interested in the wider aspects of women's rights at work.⁴

But it was a longer standing Labour member, Mr William Hamilton, who was responsible for the next major event. Lucky in the Private Members Ballot, he agreed to take on Mrs Butler's Bill.⁵ The debate on its second reading took place on the 28th January 1972. Only a year before Mrs Butler's Bill had been deferred for lack of interest in a second reading. This time the situation was different, although the government seemed unaware of the change. Catcalls and

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1. C. Callender, The Development of the Sex Discrimination Act 1971-75, unpublished dissertation presented to the University of Bristol, p 31.
 2. Ibid, pp 8-30.
 3. OR 795 Cols 933-937.
 4. Callender, op cit, p 31.
 5. Sponsors in 1972 & 1973 included: E Bishop, F Corbett, L Jeger, J Lestor, C Pannell, S Summerskill, R King Murray, P Archer, D Houghton, R Short, J Butler (Labour); J Quennell, E Kellett Bowman, J Knight, J Vickers, J Fooks (Conservative).

hisses from the public galleries greeted the Home Office Minister, Richard Sharples, when he said that women were best fitted in employment to extensions to their domestic role¹. Mrs Castle, previously 'uninterested' in such a law, bitterly attacked Robert Carr for 'having nailed his colours so ardently to the mast of feminine equality and not resigning from a government so reactionary as to produce Sharples' speech'². But the most effective opponent was Mr Ronald Bell MP, who had prolonged an earlier debate, limiting the time available before four o'clock for Mr Hamilton's bill. Because circumstances limited debate on the latter to less than was customary, the Speaker would not consent to a second reading. Members of Parliament angrily demanded a revision of the rules that allowed a single member to thwart the wishes of a majority - a majority estimated by Mr Hamilton as '95% of a House unusually crowded for a Friday night'³. Nothing followed in the Commons. Richard Sharples, however, was removed from the Home Office for not having gauged the change in Parliamentary opinion and for causing embarrassment to the government⁴.

However, a month earlier the peers had given a second reading to an almost identical bill introduced by Baroness Seear (Liberal). The angry scenes in the House of Commons were not repeated. There was opposition but a majority agreed to send the Bill to a Select Committee which sat for over a year. Not all of its members began by being convinced of the need for legislation.

1. Tweedie, J. Guardian, 13.3.72.

2. OR 830 Col 1838.

3. OR 830 Col 1844.

4. Interview with member of the then government. On a personal note, unconnected with this thesis, Richard Sharples' next post brought tragedy. As Governor of Bermuda he was assassinated.

But the evidence considered by the Committee made them of one mind in the end. The evidence, particularly of Dr Margherita Rendel, Sonia Fuentes of the Equal Employment Opportunities Commission and Catherine East, a distinguished public figure in the United States, revealed the first interest in the relevance of the American example that was to be of significance in the eventual government proposals¹. The hearings in general led to various amendments to the Bill to widen its scope and strengthen enforcement procedures.

On the 2nd February 1973, Mr Hamilton tried again to introduce a Bill in the House of Commons. Once more Speaker Selwyn Lloyd ruled that the bill would have to go down because it had not been discussed long enough (filibustering in an earlier bill had been orchestrated again with this in mind). This time there was uproar in the Opposition benches and in the public galleries². The question arose as to whether the government would grant extra time. In the end the Labour Whip, Robert Mellish, rose to guarantee the bill half of a Supply Day³. The Bill finally got its second reading on the 14th February 1973, when it was also sent to a Select Committee⁴. The decision to send the Commons Bill to Committee was regarded by Mr Hamilton as a delaying tactic since the relevant evidence had already been gathered in the Lords. The Commons Committee therefore published a brief report quickly to coincide with the final report from the House of Lords. The latter was published in June 1973 and

1. Minutes of Evidence and Proceedings of House of Lords Select Committee on the Anti-Discrimination Bill 1971-1972.

2. Women's Report, Vol 1, Issue 3, Feb/March 1973.

3. OR 850 Col 1886.

4. OR 851 Col 1415.

contained recommendations that considerably strengthened Baroness Seear's original bill. As a result of evidence heard about women's employment, race relations legislation and American equal opportunity policies the committee extended the bill to cover education; discrimination on the grounds of marital status; to limit permissible exemptions; and to improve enforcement procedures. They also considered how to make protective legislation compatible with the new proposals¹.

In the meantime however the Conservative government were preparing a volte face on the question of legislative intervention. Instead of relying on the passage of the two bills to Report Stages and Final Readings, they announced in May 1973, through the press, that they would in addition introduce their own proposals². In November 1973 a consultative document was published called 'Equal Opportunities for Men and Women', to fill in gaps alleged to be absent from the evidence already gathered. The eventual Equal Opportunities Commission was christened in this document. But the resemblance to either Private Members proposals or later Labour proposals stopped there. The Conservatives were clearly hoping for an enforcement body with narrow jurisdiction relying on persuasion, particularly in education, rather than sanctions to secure compliance with the law. In Baroness Summerskill's view, their proposals were an election ploy to obtain women's votes with 'the minimum sacrifice to male prestige'³.

Criticised by many women's groups, it probably would not have succeeded as an election ploy. In any case, the

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1. Second Special Report from the Selection Committee on the Anti-Discrimination Bill (HL) Session 1972-73.
 2. The annoyance of the House of Lords Select Committee at the manner of this announcement can be seen on OR (House of Lords) 342 Cols 606-664.
 3. Callender, op cit, pp 14-15.

Prime Minister set the terms of the February 1974 election around the single issue of 'Who governs?'. The electorate did not give a clear answer but the Labour Party took over and, on 23 July announced an intention to legislate on women's rights¹. A second election took place to consolidate the position of the Labour government and in September 1974, a White Paper on equal opportunities was published². During the winter the Home Secretary, Roy Jenkins, and his adviser, Anthony Lester, visited the United States where they discussed their hopes to eliminate race and sex discrimination in Britain. In March 1975, the government bill was published. The White Paper had taken account of 'the Select Committee findings, the experience of earlier race relations laws and the views of many individuals and groups'. The Bill was stronger in some respects than the White Paper as a result of the discussions in America; of particular importance was the introduction of a new idea of indirect discrimination³. It was weakened in that the burden of proof was partly shifted back onto the complainant. Details of the contents of the Bill are discussed in Chapter IV. Largely unchanged, it became law at the end of International Women's Year in December 1975.

The discussion so far has been confined to high-level activities. What follows is some assessment of contributions from outside Parliament and a description of some of the linkages between Parliamentary campaigners and outside groups. These contributions range from helping to get women's rights on to the political agenda to having a hand in the shaping of legislation. This exercise entails

1. OR 877 Cols 1296-1306.

2. Equality for Women, CMD 5724 (HMSO 1974).

3. Nandy, D, 'Equal Opportunities for Women', Seminar Oxford University 1979.

consideration of individuals, political parties, sectional economic groups, and 'cause' groups.

(III) Individuals

This section need not be exhaustive; important individuals have already been mentioned and will be so again. The reasons for dealing briefly with them here is that they created bridges between government and Parliament and extra-parliamentary groups.

In the period leading up to the first round of equal pay, two Members of Parliament stand out¹. Miss Irene Ward, also a member of the Fawcett Society and the British Federation of Business and Professional Women was prominent in the Equal Pay Campaign Committee. Mr Charles Pannell led the Equal Pay Coordinating Committee.

The former committee, chaired by another MP, Mrs Thelma Cazalet-Keir, through its affiliated groups and overlapping memberships, linked at least thirty women's societies and professional associations to the parliamentary campaign. Mr Pannell's committee was a bridge between Parliament and the trades unions.

Miss Ward has been described as 'an unusually outspoken and persistent prodder of front benchers even when her party is in office'². Her doughty character was particularly evident in her fights for women's rights. Once, to demonstrate the fallacy of an official justification for not employing female librarians in the House of Commons, she entered the Chamber waving the supposedly too heavy

1. This is the impression gained from the files of the Fawcett Society and the National Council for Civil Liberties.

2. Potter, A. 'The Equal Pay Campaign Committee: A Case Study of a Pressure Group', Political Studies (February 1957), p 51.

library steps. Ordered to leave the Chamber, she was welcomed soon afterwards with a standing ovation at the Conservative Women's Conference.

Mrs Barbara Castle was the heroine of the second round of equal pay. Where her predecessor had signally failed to reach agreement with the TUC and CBI, she devised a solution to the main problem of definition. Neither side were happy about her compromises but they acquiesced. But she also had to badger her cabinet colleagues. Crossman, with obvious irritation, refers in his diaries to her 'shoving this through without consideration to others' because she thought it would be 'immensely popular' in the country in the forthcoming election¹. Not long before, it had been noted that equal pay would give her 'a place in Labour history as secure as Nye Bevan; that legislation was long overdue (since) the government was behind public opinion of which 70% was in favour; and that her Bill would be one of the most popular for a long time'². Although she seems to have had no close links with any women's groups, it was, according to Edith Summerskill, only because there was a woman at the Department of Employment that there was an Equal Pay Act at all³.

Nevertheless, she disappointed Mrs Joyce Butler, one of the most tireless proponents of a wider anti-discrimination law, by not being willing to include such a clause in the Equal Pay Act⁴. The National Executive Committee seemed more willing than the Cabinet or the Parliamentary Party to consider either equal pay or wider aspects of employment. In 1967, Mr E Leadbitter MP

1. Crossman, R. Diaries of a Cabinet Minister, Vol III (Hamish Hamilton and Jonathan Cape) pp 27, 790.

2. Covernote, Sept 1969.

3. OR (House of Lords) 310 Col 137.

4. Callender, op cit, p 31.

succeeded in getting the NEC to initiate an enquiry. Over a period of twelve years he had come to be convinced that women were treated as 'second class citizens in economic, social and legal matters'. In asking the NEC to set up a study group to examine the effects of law on women, he received applause from Margaret Drabble and Brigit Brophy¹. But, according to Callender, Mrs Butler felt isolated in her interest in 1968 when she first tried to introduce a Private Members Bill². It seems that a reference in the Queen's Christmas broadcast in 1967 to the position of women inspired her. But she found that few women's groups or Members of Parliament had any concrete ideas. A notable exception was Edward Bishop. Every year from 1968 Mrs Butler and Mr Bishop tried to get a Private Members Bill through. Despite Mr Leadbitter's success, they had some difficulty in persuading their own party of the justness of their cause³. It was not until the 1974 elections that they found a critical mass of kindred spirits among MPs⁴. But in 1971 Mr Bishop formed a small Parliamentary equal rights 'ginger group' which met with outside groups to discuss the contents of their bill⁵. It was almost by accident that William Hamilton was the sponsor of the successful bill. He and not anyone in the ginger group was lucky in the ballot and agreed to lend his support.

Baroness Seear came to be interested in women's employment through her academic research in personnel management. This convinced her that discrimination existed and was not only unjust but also economically irrational⁶. According to one observer, she is

1. Guardian, 6.7.67.

2. Callender, op cit, pp 7-8.

3. Interview with J Gould, Secretary of National Labour Women's Advisory Committee 1977.

4. Callender, op cit, p 31.

5. Letter from Mr Bishop to Fawcett Society, March 1971.

6. Seear, N. Seminar University of Bath, Autumn 1980.

to feminists the equivalent of Marx to Marxists¹. It was consideration of her bill that brought outside groups close to the centre of the policy process and which convinced the government of the need for, at least, minimal intervention. She was strongly supported by Baroness Summerskill. Both women, like many other interested Members of Parliament over the period, had personal connections with outside groups. Lady Seear and Mrs Lena Jeger (Labour) belonged to the Fawcett Society; Lady Summerskill was also a member and had belonged to the Six Point Group. Joan Vickers (Conservative) subscribed to the Fawcett Society and the Status of Women Committee. Irene Ward belonged to the British Federation of Business and Professional Women and the Fawcett Society.

Overlapping memberships were also common outside Parliament. Dr Margherita Rendel, for example, who gave evidence to the House of Lords Select Committee on behalf of the British Federation of University Women, had also written a Fabian booklet on the subject, was part of the Labour Party Study Group, encouraged the National Council for Civil Liberties to take up women's rights and participated in campaigns by the Fawcett Society and the Equal Pay and Opportunity Campaign². It was she who introduced the Select Committee to the American example and suggested they receive evidence from appropriate American women.

So far as the government's sex discrimination proposals are concerned, an important individual is Anthony Lester. Now a Queen's Counsel, he was then a political adviser to the Home Secretary, Mr Roy Jenkins. Together with other Labour lawyers he had

1. Davies, R. The Times, 5.8.72.

2. NCCL files / Fawcett files.

campaigned within the party for the adoption of race relations laws in the 1960s. He knew a great deal about American civil rights laws. The Home Secretary, too, was committed to eliminating race discrimination and although originally cautious on equal pay, became committed to applying 'race-relations-type' legislation to women. Callender was told by Mrs Butler that if he 'sometimes needed pushing' he was the driving force behind the Sex Discrimination Act¹. He was assisted in the process by Dr Shirley Summerskill, known to share at least some of her mother's views.

(IV) Parties

That all parties have women's sections is a consequence of the growth of mass party organisations in the late 19th century. In chapter I it was shown that it took some time for either Liberals or Conservatives to allow women to participate in politics in any other way. By the time women got the vote, the Labour party was beginning to eclipse the Liberals. One of the most striking features about attitudes to economic emancipation for women is the almost complete identity of responses (described in the first part of this chapter) by Conservative and Labour governments. The striking aspect of support for the elimination of differences in the treatment of women and men is that it cuts across party lines.

The Liberal party, on the other hand, sometimes accused of hedging on the suffrage issue, cannot be criticised on equal pay and opportunities. Through the Women's Liberal Federation, and

1. Callender, op cit, p 16.

in particular through Dame Margaret Corbett Ashby, the party was linked with many other groups in attempts to secure economic and social gains for women from the 1920s onwards. Using the 50th anniversary of the first female suffrage Act, Jeremy Thorpe joined with Renee Short in 1968 to ask the Prime Minister to mark the occasion by granting equal pay. His request was greeted with gales of laughter and a comment from Emanuel Shinwell that this was a mere tactic to increase the size of his party¹. Lady Seear, sponsor of the House of Lords Anti-Discrimination Bill that allegedly convinced the Conservative Government of the need for legislation, is a Liberal Peeress at the centre of a network which was as impressive as Dame Margaret's.

Signs of interest in intervention in the Conservative Party came from the Conservative Women's Reform Group in 1949. Their report, described as 'unexpectedly radical', accepted the idea of equal pay, the admission of women to the House of Lords and recommended reforms in the law to end the treatment of women as children in factories and promote the training of women as in the war². One of its members, Viscountess Davidson, argued that it would be important for the Conservative Party to promise in the next election to remove anomalies in all of these fields. She felt the government should set an example in equal pay by paying a rate for the job, recommended as an aim for wage negotiators in the Conservative's Industrial Charter of 1947³. But these demands had little immediate impact in the upper reaches of the party in respect of non-industrial public servants. In 1968 Edward Heath established a committee to consider how best to modernise laws about

1. The Times, 3.4.68.

2. Guardian, 16.3.49.

3. Viscountess Davidson, Daily Telegraph, 16.3.49.

women, their work and their families¹. After that change proceeded quite rapidly. Two years later, most Conservatives supported the Equal Pay Bill, subject to suggestions for amendments that are discussed in the next chapter. One wanted to go even further than Mrs Castle. Although Mr Robert Carr referred rather sneeringly to Mrs Castle's 'crusade', he, like Mrs Butler, claimed the Bill would not work unless it contained a clause banning discrimination in recruitment². Only Mr Ronald Bell and Mr Philip Holland defended the rectitude of non-intervention because of the proper scope of the law and because they believed the market determined rewards equitably³.

Despite changes in their own party, party leaders seemed taken aback by the indignation at Richard Sharples' reasoning against William Hamilton's bill in 1972⁴. Although he was removed from office, ambiguity in party policy remained. A Conservative MP, Mrs Sally Oppenheim, was a co-sponsor of Mr Hamilton's bill. Mrs Thatcher had joined in the welcoming of the Equal Pay Act⁵. But, as Secretary of State for Education, she left the House of Lords Committee on the Anti-Discrimination Bill in no doubt that she believed there to be no discrimination in education and, hence, no need for legislation⁶. Other party leaders, however, claim to have been convinced by the Select Committee findings. Conservative members of it changed their minds between 1972 and 1973 and the government announced in May 1973 that intervention would be considered⁷. Both the background philosophy of non-intervention and

1. The Cripps Committee, Fair Share for the Fair Sex, 1969.

2. OR 795 Cols 933, 936.

3. OR 795 Cols 956-967, 979-985.

4. Interview with member of Conservative government.

5. OR 795 Col 1019.

6. Minutes of Evidence and Proceedings of Select Committee on Anti-Discrimination Bill (HL) 1971-2, 1972-3.

7. OR (House of Lords) 342 Cols 606-664.

the new ambiguity of attitudes were reflected in their consultative document¹. It covered employment and education. But while cases of employment discrimination could be decided in tribunals no machinery of enforcement was suggested for education. The Equal Opportunities Commission was envisaged as a relatively powerless body whose findings and recommendations need not be acted upon by employers or governments.

Despite the much greater regulatory thrust of Labour's Equal Opportunities Commission, few Conservative MPs tried to fundamentally undermine it. Some business sponsored amendments are discussed in the next chapter. But few eyebrows were raised at the idea of indirect discrimination and there was general acceptance of the idea that it was right to use the law to modify behaviour and hence, it was to be hoped, change attitudes. Of course there was some opposition at the time, particularly from Mr Enoch Powell and Mr Ronald Bell, which has grown with rising unemployment and distaste for non-departmental bodies. But in 1975 only two Conservative MPs voted against the Act.

When Labour came to office at the end of the Second World War, the party attracted some opprobrium for its similarity to Conservatives on equal pay and, indeed, for being less radical than the wartime Conservative Women's Reform Group. Given the place of equality in socialist theory, the attitude of the party was, on the face of it, surprising. But it is less so if Douglas Houghton was correct when he observed that unfortunately Labour distrusted feminism, seeing it as a conservative diversion². This fear has certainly been evident in parties and groups further to the left in Britain and other

1. Equal Opportunities for Men and Women, Home Office, 1973.

2. Houghton, D. Labour Weekly, 1963.

countries¹. It has some substance if a contrast is noted between the class basis of parties on the one hand and on the other the cross-class nature of the category of women and the cross-party alignments for laws to promote female emancipation. But leaders like Gaitskell were undogmatic on the primacy or necessity of class conflict and yet still opposed equal pay on grounds of cost. One left-wing MP, Fenner Brockway, proposed in 1952 a Human Rights Bill that would eliminate all forms of discrimination. But few members of his party bothered to support him. In Crossman's account of a Cabinet meeting where Mrs Castle's bill was considered, ministers appear to have been divided by whether equal pay was an essential element of socialism or completely unnecessary².

Attitudes about general anti-discrimination laws began to change in the 1960s; for racial minorities first. Equal pay for women was introduced to the manifesto for the first time in 1963 but its application subordinated to other economic aims until 1970. Little interest was shown in the Parliamentary party in general principles of no discrimination against women. But as a result of Mr Leadbetter's success in the NEC a discussion paper produced by a study group was sent out to all women's sections of the party in October 1967. It and responses to it formed a report debated at the National Conference of Labour Women in April 1968³. Discussion covered work, education, family and social security matters. An interim report on Women and Social Security was published in March 1969⁴. But it was not until November 1972 that the Group published its general findings including those on employment as an Opposition Green Paper⁵. This was at least four years after individual members had begun asking questions on the issue. Some of these individuals, including Joyce Butler, Millie Miller, Anthony Lester and Margherita Rendel, were members of the study group. But, until

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1. Rowbotham, S, Segal, L, Wainwright, H. Beyond the Fragments (Merlin) p 35.
Freeman, J. The Politics of Women's Liberation (David McKay) p 60.
 2. Crossman, op cit, p 627.
 3. Discrimination Against Women, National Labour Women's Advisory Committee, Report presented at 45th National Conference of Labour Women, Llandudno, 2-4 April 1968.
 4. Towards Equality: Women and Social Security, Interim Report of Labour Party NEC Study Group on Discrimination Against Women, March 1969.
 5. Opposition Green Paper, Discrimination Against Women, Labour Party, November 1972.

late 1972, discrimination against women was not officially in the party agenda. Mr Bishop and Mrs Butler had started their parliamentary ginger group. But they and others in the group, including Betty Lockwood, then Women's Officer and Secretary of the Women's Advisory Committee, had to persuade senior colleagues to accept their recommendations and to publish them as a Green Paper¹. But, as in the Conservative party, change, once started, proceeded quickly. It was agreed that the Green Paper be submitted to the House of Lords Select Committee as Official Labour Party evidence. Its recommendations were that the law should deal with employment and related matters, goods, facilities and services (including education) and advertisements indicating an intent to discriminate. It was thought that enforcement should be carried out by a statutory body stronger than the Race Relations Board, with recourse, if necessary, to the courts. Support was given to proposals from the Race Relations Board for scrutiny of the employment practices of companies in contract to the government and for the government to set an example by taking positive steps to promote equality in the civil service. In the beginning of 1973, Parliamentary party officials saved William Hamilton's Bill from going down a second time. The lack of action taken by the Conservative government on the Select Committee's recommendations was deplored by the 1973 Labour Women's Conference and later that year the Women's Advisory Committee drafted detailed comments on the Government's consultative document reiterating the Green Paper recommendations. The following year, in February 1974, equal opportunities, other than pay, became part of the Labour Party's election manifesto.

1. Gould, J. op cit

(V) Extra-Parliamentary Groups

The literature on pressure group politics classifies groups broadly into two types: sectional economic groups and 'cause' groups¹. In this policy area the sectional economic groups are business and labour. In principle, the latter might have more closely resembled the cause groups on this issue than it actually did until quite late in the day. For reasons that will be discussed the TUC's attitudes to women's rights at work have been ambivalent. And in terms of its relationship with the government over the content of equal pay and opportunity legislation, it has followed the usual pattern of a sectional economic group. The 'cause' groups in this policy area are a myriad of shifting and overlapping groups that are often difficult to pin down. Before an attempt is made to do so, employers and trade unions will be discussed.

(V) (a) Employers

In the 19th and early 20th century, employers were quite explicit to trade unionists and the Atkins Committee that, if forced to pay women at the same rate as men, they would not employ them. Most public discussion of the question after that focussed on women in the public sector. As a result, employers in the private sector, were not forced to set out their case. However, their interests were not unprotected. As already indicated, government spokesmen sometimes argued against equal pay in the public sector on the grounds that it would have unwelcome repercussions in the private.

The reasoning behind original opposition was related

1. E g Finer, S. Anonymous Empire (Pall Mall) 1966

to the heavy nature of manual work, protective legislation, and different family responsibilities. These reasons remained, although eventually it has had to be conceded that brawn is of diminishing importance in modern industry. As the general application of the principle of equal pay began to seem inevitable by the second half of the 1960s, the main concern of employers was to draw attention to the costs of implementation and to keep the definition as narrow as possible.

The CBI succeeded in getting the government to agree to an enquiry into costs in 13 selected industries, especially those employing a high proportion of female labour. The report, which took two years to complete, was never published in full and created a breach between members of the CBI officially consulted by the government and other employers. It was stated publically that estimates of costs varied from 2% - 13% in particular industries with an estimated average 5% on the total wage bill. According to the industrial correspondent of The Times, other employers thought that these figures substantially underestimated the real costs and that the CBI had colluded with the government and TUC to suppress information about the bases of these estimates, from what was, in any case, a poor and unrepresentative sample¹.

The CBI maintained the general employers position on the question of definition. Adoption of the idea of equal pay for the same work, similar to the then wording of Article 119 of the Treaty of Rome, would have strictly limited the effects of an Equal Pay Act,

1. Corina, M. The Times, 3.10.69.

given the extent of occupational segregation. Employers were unsuccessful here, but they did not have to give way entirely to the TUC's preferred definition.

Unhappy about examples of costs, having lost on the definition, the last resort of employers was to delay implementation. A series of meetings were held with Mrs Castle in the autumn of 1969 in order to persuade her to delay implementation until the economy was on a sounder footing¹. In this they were partly successful. Unwilling to delay the passage of the Act, Mrs Castle, against the wishes of the TUC, agreed that compliance should be made voluntary for the first five years. A safeguard against too slow progress was built into the Act. The Secretary of State for Employment could introduce an interim Order-in-Council requiring women's wages to become 90% of men's by a certain date.

Some progress was made in the first two years. But allegations of deliberate evasion and unsuccessful calls for the Order-in-Council were made by many groups. For example, it was reported that the British Paper Box Federation was circulating recommendations for evading the Act which included changing the content of jobs before 1975, increasing segregation and exploiting possible loopholes in provisions relating to long service and overtime bonuses.²

Part of employers' objections to equal pay and to provisions of the Sex Discrimination Act which made some evasion tactics unlawful were that legal restrictions imposed on the employment of women made them less valuable. These limitations, discussed in

1. Guardian, 18.9.69.

2. Women's Report, Vol 1, Issue 3, 1973.

chapter II, covered the hours during which women could work, rest periods, exclusions from certain tasks involving lifting, jobs which involved the cleaning and maintenance of machinery and those which involved working underground. In 1967 the CBI called for the abolition of these protective laws and Mrs Castle raised the issue with the TUC in 1969¹. Eventually some amendments were made in the Sex Discrimination Act and a duty placed on the EOC to review the whole question.

But it was not only statutory factors that concerned the CBI in their reaction to wider anti-discrimination legislation. In their evidence to the House of Lords Select Committee, employers referred to characteristics, allegedly specifically female, that made it difficult to treat them equally with men. These attributes have already been discussed in chapter II. It will be recalled that they include higher rates of turnover, absenteeism, lack of ability to put emotions aside, etc. Only one organisation, the Institute of Personnel Management, rejected arguments about innate characteristics and, indeed, were unhappy about the special provisions allowed for personnel-type jobs in the final Sex Discrimination Act².

No Member of Parliament seemed willing to speak whole heartedly on behalf of employers during the passage of the Act. But some amendments were proposed to limit the effects of the Act in specific situations; for example, in the employment of women on board ship. These are discussed in the next chapter.

1. Daily Telegraph, 10.9.69.

2. Fawcett Society file

(V) (b) Trades Unions

Trade unions attitudes to women's rights at work and legal intervention on the issue are ambiguous. The TUC itself does not have a clean record within its own bureaucracy. Miss Ethel Chipchase (until recently Women's Secretary of the TUC and Equal Opportunities Commissioner), always concerned about equal pay, had to fight first for it in her own organisation. The first TUC resolution of equal pay was passed unanimously in 1888. It was proposed by a woman, Clementina Black, and carried mostly by men. But it was passed for reasons inimical to women's employment. The resolution called for equal pay for the same work and men voted for it knowing that this would mean women could not undercut men because employers had said they would not employ them at the same rate. Fear of undercutting may also have lain behind TUC evidence to the Atkins Committee. Here they argued for a single rate for the job to prevent any 'less able' person from being employed for less than the going rate. Employers argued that equal pay would drive women out of jobs because they are less able. But the unions' justification was that they would be driven into jobs where they were better than men. The renewed incursion of women into the labour market during the Second World War was a contributory factor to agreements between employers and unions on equal pay. War-time demands for equal pay satisfied two interests. Male unionists whose jobs were taken over by women were concerned to protect their own positions and rates for the end of hostilities. And women preferred not be exploited. The President of the engineering union told the 1943 Women's Conference that 'the system which allows women to be brought into industry as "cheap labour" and uses them with the double effect of exploiting them

and undermining men's rates has left its scars on all of us'¹. The engineers went on to press for nurseries and special leave arrangements for child birth. When the Equal Pay Campaign began in the 1940s, the Amalgamated Engineers were involved, together with the engineering technicians, mineworkers, transport workers, the distributive and allied workers, post office engineers, and scientific workers, in lobbying for a phased introduction of equal pay. Other groups were perhaps professional organisations rather than trade unions and included organisations of insurance workers, civil servants, teachers and women public health officers². They were demanding its immediate introduction.

Both the TUC and some affiliated unions made overtures in the next few years. The TUC put its weight behind the Whitley Council recommendations for equal pay in the public sector. After that it was relatively silent until 1961 when it asked the government to take steps to ratify ILO Convention 110 and in 1963 specifically asked for legislation to create the necessary conditions³. In the same year the TUC Women's Conference drew up a Charter for Working Women calling for progress on equal pay and opportunities in jobs, apprenticeships and training. The Conference was particularly concerned with the problems of occupational segregation⁴. Direct action was not recommended until it appeared clear that the government would continue to subordinate the issue to other economic aims.

1. Jeffreys, J. The Story of the Engineers (Lawrence and Wishart) pp 56-7.

2. NCCL file 16/11 and Potter, op cit.

3. Report of TUC Women's Conference 1966.

4. NCCL file 140/3.

Nevertheless, its stance did not satisfy some unions.

In 1956 at the conference of Transport Salaried Staffs a representative of the National Union of Railwaymen stated that women had heard too many words and seen too little action on the issue¹. In 1963 the Shipbuilders and Engineering Workers Unions set up a committee under John Boyd to press for higher gradings for skilled women². And the Transport and General Workers Union inaugurated an 'intensive female recruitment drive'³. In 1964 the Amalgamated Union of Engineering Workers committed itself to the idea of equal pay in three years⁴.

The beginnings of a more noticeably militant phase from 1968 were evident in 1965 when Ray Gunter postponed government action and the TUC general secretary made it clear that industrial action would be supported⁵. Such a course had already been advocated in a series of articles in The Sun on 'The Wasted Sex' and was supported by David Ennals in Tribune. In 1966, the TUC Women's Conference reiterated sharp criticisms of government tardiness on equal pay. In 1967 a national union of women workers was formed to work for better treatment⁶, possibly because of a feeling that official TUC policy had not been firm enough. Certainly by 1968 feelings were running high. A successful strike by women at Fords which held up £50m worth of

1. NCCL file 66/1.

2. Catholic Citizen, Aug/Sept 1963.

3. Ibid.

4. Daily Herald, 1.5.64.

5. NCCL file 140/3.

6. Daily Telegraph, 12.7.67.

exports took place, the women marching on the House of Commons, and was reported to have stirred the government into renewed action¹.

Strikes also took place at Vauxhall and Rolls Royce. In November Mrs Castle promised that equal pay would be a reality in seven years².

Later in that month there were angry scenes at the TUC conference on equal pay when TUC leaders were accused of having been hoodwinked for too long by the government. More strikes were threatened unless women were not immediately paid at the male minimum. A National Joint Action Committee was founded by the Vehicle Builders Union and a deputation left the meeting to lobby MPs. A rally was held in the spring of 1969 in Trafalgar Square, attended by an estimated 30,000 people.

Despite the renewed tripartite discussions, there were more equal pay strikes in 1969 in Skelmersdale, Manchester, Coventry, and Dundee. TUC leaders were reluctantly coming to terms with the government's views on definition and implementation. Mrs Castle stood firm on the two compromises that she felt would secure consent on the part of employers. But after the Act was passed, slowness at voluntary compliance was the occasion of TUC demands for an Order-in-Council and then grassroots militancy when the demands failed. A particularly successful strike occurred at Hawker Siddley and this was followed by several others. According to the press, 1973-74 was a year of an unprecedented number of strikes by women, many of which were explicitly about equal pay³.

1. Morton, J. New Society, 8.8.68.

2. Allen, M. The Times, 6.11.68.

3. Ibid.

Although the Working Women's Charter of 1963 had covered more than equal pay, the main focus of demands until 1973 was this question. But in 1973, the Union of Shop Distributive and Allied Workers reactivated its other demands calling for government intervention on the non-contractual aspects of employment. The TUC also prepared evidence for the House of Lords Select Committee. But there were problems. General anti-discrimination proposals re-opened the question of protective legislation in a more far-reaching way. A simple rate for the job or equal pay for work of equal value begged questions about whether or not women were allowed to do certain kinds of jobs. Some women's groups believed protective legislation was being used as an unjustifiable reason to pay women in general less than men. But the TUC could not agree to the repeal of such legislation because of their view that this would lead to exploitation. Ideally, the TUC hoped for general legislation covering men and women restricting the hours they worked and controlling the environment in which they did.

The other problem was that enforcement was proposed by both the Select Committee and then the Labour Government through industrial tribunals. Since they had been set up, they had become linked to the National Industrial Relations Court. The reforms which created the NIRC had so soured government/TUC relations that in 1973 it was official union policy to boycott government institutions that sought to regulate what the TUC saw as part of collective bargaining.

However, maintaining a separate position on these points, the TUC did present evidence favourable to the general tenor of the Anti-Discrimination Bills and cooperated with other groups, particularly the NCCL, which shared its views on protective legislation,

to encourage government action. They were consulted by Roy Jenkins in the preliminary stages of the Sex Discrimination Bill and were particularly interested in ensuring trade union involvement in proposed conciliation processes. By this time, tribunals were on the whole back in favour as the previous governments industrial relations innovations were repealed. The TUC was much concerned that the burden of proof should be the same in a sex discrimination case as it was under Labour's Trades Unions and Labour Relations legislation; that is, removed from the complainant on to the employer. Successful at first, this in the end was modified as the result of counter suggestions from the Scottish Law Office.

In general the indicators of trade union attitudes are contradictory. I have already suggested that in some cases the impetus came from grassroots rather than leaders. It can also be argued that once the leaders got the rhetoric right, much opposition came from the rank and file. Allen explains the beginnings of interest with anti-discrimination legislation in terms of the realisation that new technology would increase the number of jobs requiring the 'female characteristic' of manual dexterity at the expense of traditionally male occupations¹. But one of the early proponents of a better deal for skilled women, the AUEW, has not been in the forefront of insisting on proper enforcement². In 1967, Mr T Jackson of the Post Office Workers Union, denied help to women seeking establishment in the male postman grade. In 1973-74, while some TUC leaders were working for a Sex

1. Ibid.

2. See chapter VI.

Discrimination Act, an engineering union official told the Select Committee on Expenditure that he did not approve of women working. It was reported that he believed part of the explanation of football violence to be 'greedy mothers working'¹. And, in places where neither lack of conviction nor principled objections to legal interference in collective bargaining appear, there are substantial pockets of complete ignorance of the law².

(V) (c) 'Cause' Groups

In this section the roles of other groups that actively sought to promote legislation are considered. Most of the conventional pressure group literature downplays women as effective political actors. Even as late as 1970, when he might have been confounded by the evidence, an eminent American historian was still purveying the view that women were not 'natural joiners' because their biological characteristics meant they could not function in groups concerned with public issues³. This kind of theory is often used to explain the low rate of female participation in trades unions referred to in chapter II. So far as politics are concerned, Richards notes without the theoretical implications of necessity, that women's lobby groups fail because women are inexperienced in dealing with politicians⁴. That the impact of women's groups is low is to some extent borne out by the British evidence in employment between 1918 and 1970. But it has to be

1. Daily Express, 3.5.74.

2. Snell, M. 'The Equal Pay and Sex Discrimination Acts: Their impact in the work place', Feminist Review, No 1, 1979.

3. Cited by Elshtain, J. 'Moral Woman and Immoral Man: A consideration of the public-private split and its political ramifications', Politics and Society 1974, p 460.

4. Richards, P. Parliament and Conscience (Allen and Unwin) p 205.

remembered that the overlap, already mentioned, between Members of Parliament and outside groups was important in focussing attention on equal pay in the 1940s and 1950s. Pressure groups were being effective in this respect when one of their members wore a pressure group hat in Parliament. Evidence in the United States suggests that inefficiency does not follow from innate characteristics but is diminished as the practice of participation among women increases¹. The proposition that women are not natural joiners, even if they are not always efficient, is difficult to sustain in the face of the numbers of women's groups that there are in 20th century Britain. That some of them deliberately chose not to be 'efficient' in what are conventionally regarded as politics is sometimes overlooked by writers on pressure groups.

In 1972, the Central Office of Information published a booklet on 'Women in Britain' which listed over two hundred organisations wholly for women or with women's branches. This represented a large increase in preceding decades. But even in 1964 it was reported that three million women were active in 120 national groups. 1966 to 1967 was, according to The Sunday Times, a year of startling growth in women's societies². In a 1964 report³, it was suggested that only 15 could be described as 'feminist', all of which had similar aims to emancipate women in all spheres of life; occupational, economic, social, moral and legal. These were generally the remains of the suffrage movement. But a younger women's movement also came into being in the eight years between 1964 and 1972. This arm of feminism is concerned

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1. For example, according to US Department of Labor 'civil rights legislation works for women because they make it do so'. Interview, Washington 1978.
 2. Sunday Times, 11.6.67.
 3. Barr, J. New Society 17.12.64.

with equality but does not necessarily follow the rules described in conventional pressure group literature. In 1970 the first Women's Liberation Conference was held in Oxford where a resolution to support legislative reform was only narrowly accepted. Appendix II at the end of this thesis lists about 50 organisations involved in one way or another in the campaigns for equal pay and sex discrimination legislation.

Doubts about the effectiveness of women's groups toward these aims were expressed in one of the articles referred to above¹. Attention was drawn to the proliferation of bodies with similar aims determined to maintain their own structures and activities. It was pointed out that methods were amateur, petitions being presented too late and complaints formulated too vaguely. It has already been noted that Mrs Joyce Butler certainly claimed to find few people to turn to who had any concrete ideas. The realisation that proliferation and vagueness were dissipating efforts finally lead Virginia Novarra of the Fawcett Society to try to develop a coherent strategy and coordination with other groups to get an Act in the 1970s. The Fawcett Society became something of an umbrella organisation in the latter stages of the campaign, with Parliamentary links through the all-party group on equal rights and with Women's Liberation through the Women's Lobby. The National Council for Civil Liberties, having been prodded by members in the mid-1960s, also acted as a direct lobby and an umbrella group.

The difficulties of tracing the impact, let alone the activities, of such an amorphous collection of groups are enormous. In one account of the stances of major interest groups, promotional

1. Barr, op cit

groups are specifically excluded for this reason¹. The information that follows here comes very largely from the files of the two umbrella organisations. This has revealed much of the activities of the other groups linked to them and has been supplemented by interviews with individuals involved and their unpublished papers.

When equal pay was first raised in Parliament, most women's groups were still trying to gain the vote. As noted in chapter I, however, some nineteenth century women were concerned with equal rights at work. They were dismissed by Beatrice Webb as a 'little group of professional women' who were opposed to any regulation of the conditions of work, even manual, which did not apply to men. Other women were more concerned 'to improve the conditions of women's work in factories and workshops' concentrating on women because it was 'impracticable to get identical legislation for men'². The protectionists were successful and eventually, so were the suffragists. However, several suffrage societies, like the Fawcett Society (then the London Society for Women's Suffrage) and the Women's Freedom League transformed themselves into organisations aiming at the full emancipation of women. Others, like the Six Point Group (1921), were founded with this in mind. During the 1920s and 1930s they circulated Members of Parliament and sent out election questionnaires about equal pay, appointments to public bodies and remaining legal barriers to equality of treatment in the home and employment³.

1. Coote, A. and Hewitt, P. in Work and the Family, Moss, P and Fonda, N (eds), Temple Smith, London, 1980.

2. Undated letter from Beatrice Webb to Carey Thomas, op cit.

3. Fawcett Society, Press cuttings and files.

During the Second World War the main campaign was to gain equal compensation for men and women who were civilian casualties.

This campaign was led by Mrs Mavis Tate, Lady Astor MP, Edith Summerskill, and Caroline Haslett of the British Federation of Business and Professional Women (founded 1933). Out of its success arose a campaign for equal pay in the public services.

The Equal Pay Campaign Committee was formed after a meeting in the Albert Hall on 28th September 1943 when women were told that the government could do nothing on equal pay. At least thirty organisations affiliated, including the Six Point Group, the Women's Publicity and Planning Association and the Fawcett Society. Through various societies, about four million women were represented. In the beginning it was decided that the Campaign Committee would direct attention to public opinion. Partly with this in mind and partly to raise funds, recitals were given by Sybil Thorndike between 1949 and 1952. Thousands of pamphlets about discrimination and the position of politicians were circulated. Over £4,000 was spent in 1950 on a fifteen minute film produced by Miss Jill Craigie¹ entitled 'To be a woman'. It was shown at many meetings in Britain and abroad through the UN Commission on the Status of Women². Members who were MPs were to get on with the Parliamentary side of the Campaign as they saw fit. This was behind Thelma Cazalet-Keir's amendment to the Education Bill, successful at first and later turned into an issue of confidence by Churchill. According to one report it was because of the immediate pressure at this point from inside and outside Parliament that the Royal Commission was set up in 1944³.

1. Later married Mr Michael Foot.

2. Potter, op cit, pp 54-55.

3. Falkener, M. The British Federation of Business and Professional Women: An Appreciation

The Campaign Committee immediately arranged to help women's organisations prepare evidence for the Commission. Dissatisfaction with both its slow start and its final report were the causes of a series of mass meetings in the Central Hall between 1944 and 1946. Speakers at these meetings included Thelma Cazalet-Keir MP, Irene Ward MP, Edith Summerskill, J P Mallalieu MP, Megan Lloyd-George MP, David Eccles MP, Mrs E N White, TUC, Mrs Cresswell, Mayor of Poplar, Mrs Clement Davies, Vera Brittain, and Mrs Corbett-Ashby, active in many societies, Liberal candidate and Vice President of the Women's Liberal Federation¹.

Mass meetings continued when the government appeared unwilling to respond to the report of the Commission. Resolutions were passed and sent to the government, the Opposition, London County Council, the Association of County Councils, the TUC and the British Confederation of Employers. All resolutions recommended a single rate for the job. Parliamentary candidates were lobbied in the 1950, 1951 and 1955 elections. One hundred and twenty one of them indicated willingness to help². Delegations called on the Minister of Labour and the Chancellor of the Exchequer between 1951 and 1954. According to one account, there was little formal cooperation between the Campaign Committee and Mr Pannell's Equal Pay Coordinating Committee which covered the large mixed-sex unions³. This was because the latter was suspicious of smaller groups aimed at organising women separately. It was believed, however, that the existence of the Campaign Committee goaded its rival into taking women's rights seriously. Suggestions for

1. NCCL file 16/11.

2. Potter, op cit, pp 55-6.

3. Ibid, p 60.

token equal pay strikes were unsuccessful in the Campaign Committee. Potter points out that its members lacked the 'economic power' of the Coordinating Committee¹. Both groups delivered petitions to the House of Commons on Equal Pay Day on 9th March 1954. The Coordinating Committee had collected more signatures but the Campaign Committee stole the show. Its petition was delivered by Irene Ward in a three horse-drawn carriage driven by the man who had always conveyed Mrs Pankhurst and Millicent Fawcett about their suffrage business.

Although the Campaign Committee attracted a good deal of publicity, the government's agreement in 1955 to grant equal pay in the civil service was more like the recommendations of the Coordinating Committee in that a phased introduction was proposed. The Campaign Committee had hoped for the immediate introduction of equal pay into all public services. As a result, some of its affiliates refused to attend a celebration dinner at the Savoy on 10th November². But for the next few years, there was little further action. When an equal pay campaign began again in the 1960s, it was mainly among trades unionists. Campaigns for the elimination of other forms of employment discrimination did not take on a mass character until the 1970s. But there were a handful of attempts to keep the broader issues alive in the 1950s.

For example, groups, including the NCCL, protested when marriage bars began to be re-introduced in the tobacco industry, banks and the post office. The Six Point Group held meetings

1. Ibid, p 62.

2. NCCL file 16/11.

in 1952, 1954 and 1956 about the UN Commission on the Status of Women and the government's failure to take steps to ratify the UN Convention on the Rights of Women. They were also concerned with the general attitude of United Kingdom Representatives at the United Nations on questions about women. At one of these meetings in 1956 with Dame Lucille Sayers, UK Representative to the UN, it was revealed that the government believed any further application of equal pay ought to arise from industrial bargaining. When publicising this, the Six Point Group also called for mechanisms to ensure that companies in contract with the government treated men and women equally¹. In 1962 Thelma Cazalet-Keir tried to activate interest in the wider aspects of women's equality at work by writing to the newspapers about the lack of equal opportunities for women in the civil service and public bodies like the BBC². But a year later Dee Wells was expressing disappointment at the lack of action by women's groups on equal opportunities³. Also in 1963 Dr Margherita Rendel and two Oxford members of the National Council for Civil Liberties tried to prod the Council into taking up women's rights. They were warned that this would be unlikely to happen⁴. In the event they succeeded, although it was not until the 1970s that a permanent women's rights section was established in the Council.

In the same year the Status of Women Committee

1. NCCL file 16/11.

2. The Times, 15.3.62. One writer points out that Mrs Cazalet-Keir occupied a very secure place in 'the establishment' which meant that her letters to The Times were regularly published. Potter, op cit, p 62.

3. Herald, 31.1.63.

4. NCCL to M Rendel, 21.8.63.

coordinated a lobby to defeat a bill proposed by Lord Balneil that would have removed from women the right to choose for themselves when to return to work after childbirth¹. The Six Point Group was working on a bill that would mean that absence from work due to pregnancy would be treated by absences for health reasons; that would rectify the shortage of nurseries; and introduce a more imaginative approach to part time work. They were also working on the elimination of barriers against women in the Stock Exchange, engineering, the Church, the foreign service, senior management and education posts and apprenticeships². Lady Summerskill had been a member of that group but had resigned in the 1950s because of its criticisms of western policies towards Formosa and Korea. However, she introduced a bill to the House of Lords covering similar objectives through an industrial charter for working women³. None of these had much immediate impact. In 1964 women's groups, like the TUC; concentrated on persuading the government to implement its election pledge on equal pay. Responses were non-committal, admitting the pledge but arguing that much detailed analysis would need to be done before specific proposals could be announced⁴.

However, 1964 to 1965 was a year of increased publicity for the position of women. Although the Society for the

1. The Woman Journalist, Spring 1963.

2. NCCL file 66/1. These aims were given weight by the Reith Lecturer, Professor Carstairs in the winter of 1962-63. His argument about women in British society was that ~~their~~ supposed equality had little reality. The Sunday Times, 21.1.63.

3. The Times, 20.6.63.

4. Letter from Private Secretary to Prime Minister to the Fawcett Society, 2.12.64.

Protection of Utter Femininity had been formed in 1962 because 'equality had gone too far'¹, it was argued in 1964 that 'everyone was talking about women' because it had not gone far enough². Reports were drafted and published in 1964 and 1965 by the Liberal Party, the Over 40 Association, the Women's Employment Federation and the NCCL, all of which basically said the same thing. These were widely commented upon in the press³. In April 1965, The Sun carried a series of articles on the position of women and reported a response of thousands of letters from women who wanted to get involved⁴. In March 1965, the Six Point Group held a conference to conquer differences among groups and 'to blast off a new campaign to accomplish things that feminists have worked for unsuccessfully for years - especially equal opportunities and rewards, the treatment of unmarried mothers and equality of taxation'⁵. Women's groups were heartened by the TUC's renewed interest in equal pay⁶ and in 1966 many of them formed an alliance, including the Six Point Group, the Status of Women Committee, the Suffrage Fellowship, the Association of Headmistresses, the British Federation of Business and Professional Women and the National Council of Married Women, in order to produce a set of election demands on equality at work, in social security and in taxation. But despite all the reported activities, the Women's Information and Study Centre took the view that while there were signs of a more organised drive

1. Delaney, S. The Sunday Times, 16.12.62.

2. Stone, R. Daily Worker, 12.3.64.

3. NCCL file 100/50.

4. Ibid.

5. Daily Telegraph, 17.3.65.

6. Fawcett Society files.

to eliminate inequality, there was still a good deal of confusion and even apathy.

In 1967 the Fawcett Society tried to bring order to the confusion. A conference was held on Women in a Changing Society. It was attended by eleven unions, twenty other groups, and various foreign experts¹. Perhaps because told by one of its speakers, Dr O MacGregor of London University, that the women's movement had to broaden its class base, the society soon afterwards advised women to join trade unions and to strike, if necessary, for equal pay². Other groups, spearheaded by the NCCL, tried to thwart one trade union leader, Tom Jackson, in his opposition to allowing equal opportunities in the post office³. Hunt's report of women workers, sponsored by the Department of Employment, lent weight, according to one commentator, to the demands for equal pay, if not opportunities⁴.

In the following year Mrs Butler made her first attempt to get at these non-contractual elements of employment. Her experience, discussed earlier, confirms the pessimism of the Women's Information and Study Group. But in the same year the British Federation of Business and Professional Women published a booklet entitled Justice or Prejudice in which specific proposals for an anti-discrimination board were suggested. The year was both Human Rights Year and the 50th Anniversary of female suffrage. To

1. Sunday Telegraph, 2.4.67.

2. Daily Telegraph, 12.7.67.

3. NCCL file 88.

4. Some of its findings are referred to in chapter II. The comment on it appeared in the Observer, 10.12.67.

celebrate, the Fawcett Society organised a conference on 11th November which brought together a variety of groups and individuals with an interest in women's employment. They included Barbara Castle, Robert Carr, Lady Summerskill, David Basnett (ironically representing the TUC Women's Advisory Committee), Anne Mackie (CBI Committee on the Employment of Women and its Working Party on Equal Pay), Lady Seear, Margaret Allen (economics correspondent of The Times), and Pauline Pinder (PEP research project on women's employment)¹.

Members of the Fawcett Society and other women's groups attended the rally organised by the National Joint Action Campaign in Trafalgar Square in the Spring of 1969. Its purpose was to demonstrate the need for action on all fronts but emphasis was on equal pay with messages of support for the equal pay strikes that were taking place in various northern cities. The wider issues were taken up by an actress, Diane Hart, when she set about founding a national women's party. But, although Una Kroll stood as candidate for the Women's Rights Party in Sutton and East Cheam, this was not a tactic that could work as easily in Britain as it has on occasion in America². The NCCL was taking a more conventional approach by expressing alarm that the government's equal pay proposals would contain nothing about the non-contractual elements of employment³.

All the same, there appears to have been something of a hiatus on these issues between 1968 and 1971. Renewed activity in the older women's movement seems to have been spurred by the

1. Fawcett Society files.
 2. See chapter VIII.
 3. NCCL file.

formation by Mr Bishop and Mrs Butler of the Parliamentary ginger group on equal rights which met with the Fawcett Society, other groups and unions in March 1971 to discuss Mrs Butler's bill¹. Several amendments covering educational endowments, the powers of the proposed anti-discrimination board and advertising were suggested by the Fawcett Society². When Mr Hamilton agreed to take on Mrs Butler's Bill in the next session, Mr Bishop again wrote to the Fawcett Society urging women's groups to support him³.

The new radical women's movement had in the meantime been attracting national attention. During the late 1960s Women's Liberation Workshops were started. They drew attention to problems such as the lives of women in high rise housing, the poverty of creche facilities and low pay among unorganised women workers. Consciousness raising groups were formed, although as Randall points out, this was less common in Britain than in America. Randall also argues that Women's Liberation and the increasingly militant unionised women workers fuelled one another's efforts at direct action⁴. Attitudes to political reform were, however, mixed. It was only by a slim majority that it was agreed in 1970 to support campaigns for legislative changes. In the winter of 1971-72, the Women's Lobby, part of Women's Liberation, began to cooperate with the Fawcett Society to provide a bridge between the two broad wings of feminism.⁵

1. Mr Bishop to the Fawcett Society, op cit.

2. Letter from Fawcett Society to Mr Bishop, 26.3.71.

3. Undated Fawcett Society note.

4. Randall, op cit, chapter V.

5. Fawcett Society files.

The Women's Lobby circularised a note about the Bill explaining why it should be supported and organised a public meeting to discuss it. On the day of debate (28th January 1972) angry hisses from the public galleries greeted the Home Office Minister's rejection of the idea of change and objections to this and Ronald Bell's filibustering were taken up on the women's pages of the national newspapers¹. The Fawcett Society set about an assessment of what to do next. One result was the formation in conjunction with the Women's Lobby, of a national newsletter, Women's Report, which made its first appearance in January 1973. This two monthly periodical with a high circulation kept many women informed about the activities of a wide variety of groups, the unions, the parties and government².

In the meantime, Lady Seear's bill had gone to its Select Committee and groups got together to coordinate their evidence. Callender estimates that over 50% of the Committee's evidence came from women's groups³. To coordinate it, five conferences were held in June 1972 including one on the 28th organised jointly by the Fawcett Society and Women in the Media. Eighty organisations attended and were addressed by Lady Seear, Shirley Williams, Joan Bakewell, Margaret Corbett-Ashby and Joyce Butler. Delegations visited 10 Downing Street to support the bill. The Fawcett Society and Women in the Media each presented evidence to the Committee and the Fawcett Society followed up that of Dr Rendel by writing to the Committee to express strong support of her views⁴. Betty Lockwood (Women's Secretary of the

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1. E g Tweedie, J. Guardian, 13.3.72.
 2. Fawcett Society Annual Report 1972-3.
 3. Callender, op cit, p 32.
 4. Fawcett Society Annual Report, op cit.

Labour Party and Chairman of the National Joint Council of Working Women's Organisations) was worried by evasions of the Equal Pay Act because of the absence of an anti-discrimination clause. In November 1972 she wrote to the Fawcett Society requesting joint action¹. At the end of the month, a workshop was held with the Fawcett Society, the Parliamentary group and others including Ms Lockwood. On the agenda were the powers of an anti-discrimination board, the protection of complainants, damages and rewards, promotional activities of the board, compliance by government contractors and strict control of exceptions to the law².

In the first month of 1973, the main concern of women's groups was not the next round of an anti-discrimination bill but the question of an Order to ensure more rapid progress towards equal pay. The Fawcett Society, the National Joint Council for Working Women's Organisations and the Status of Women Committee were among those who wrote to the Secretary of Employment. Replying, Mr Chichester-Clark reminded the Fawcett Society that the government was in any case committed to equal pay by 1975³. Lady Seear, for the Fawcett Society, persisted over the next few months but was disappointed⁴; no Order was promulgated.

In the meantime a lobby was organised around Mr Hamilton's second attempt at a Private Members Bill. Women in the Media, with easy access to communication channels organised a mass meeting at Caxton Hall, the old suffrage venue, to coincide with the second reading on 2nd February. When information was relayed from the

1. Lockwood to the Fawcett Society, 15.11.72.

2. Private papers of Ms J Airey.

3. Robin Chichester-Clark to Lady Seear, PO 4497, 10.1.73.

4. E g Lady Seear to R Chichester-Clark, 9.5.73.

House of Commons that the bill was about to fail again, three hundred women marched to Downing Street to protest¹. When debate resumed on 14th February, Sally Oppenheim MP was jeered from the gallery when she announced that, although she had supported the Bill, she wished to dissociate herself from women's liberation. Cheers, however, rang out when the Bill got a second reading.

Because it was felt in some quarters that the Select Committee were being used to delay legislation, extra-parliamentary activity was stepped up. On 10th March 1973 on International Women's Day, two thousand people marched from Hyde Park to Trafalgar Square. Six women and one man were arrested. On 31st March the Status of Women Committee held a well-attended conference on equal pay and opportunities². Women's Liberation began to collect signatures on a petition demanding immediate action³. This was delivered by Mr Raphael Tuck (Labour) to the House of Commons in November. In the summer of 1973 the Fawcett Society set up a working party to publicise the need for speedy implementation. After the publication of the Conservative consultative document, Equal Opportunities for Men and Women, three hundred groups and individuals responded. From November 1973 to January 1974 detailed criticisms were published by both the NCCL, which by then had a full time women's rights section, and the Fawcett Society. Most of the NCCL objections to the government's proposals were shared by other groups. For example, it was felt that the scope was too narrow; the exclusion

1. NCCL Annual Report, 1973.

2. Fawcett Society Annual Report, op cit.

3. Private papers of Ms J Airey.

of small firms was too generous; enforcement procedures were inadequate, relying too heavily on discredited tribunals and granting too few powers to the EOC; and there were, in general, too many loopholes. These were the views, too, of the Runnymede Trust, the Six Point Group, the National Union of Teachers, Women in the Media, the National Joint Council of Working Women's Organisations, Women in Parliament and Una Kroll. Views diverged, however, over protective legislation, the NCCL being opposed to its repeal and the Fawcett Society suggesting that such laws should be gradually removed¹.

The last point was included in a report prepared throughout 1973 and circulated in the spring of 1974, setting out aims and tactics for the Society and other groups². In February 1974 the Fawcett Society Anti-Discrimination Committee argued that the Fawcett Society was well placed to coordinate pressure on the new Labour government to maintain its interest in early legislation. As a result the Society initiated an inter-organisational committee which met in July to prepare for the forthcoming government statement. About thirty organisations attended³, although some of them were not wholehearted about working together because of divergences on protective legislation⁴. But there was a large amount of agreement on the proper

1. Fawcett Society files.

2. 'What Next?' Virginia Novarra, Summer 1973 - Spring 1974, Fawcett Society.

3. Including Fawcett Society, NALGO, Soroptimists, Women in the Media, Women's Liberation, National Advisory Centre for Careers for Women, Women's Group on Public Welfare, Royal College of Midwives, National Union of Students, National Union of Journalists, National Labour Women's Advisory Committee, Women's Liberal Federation, National Federation of Business and Professional Women's Clubs, National Federation of Women's Institutes, National Union of Townswomen's Guilds, Conservative Party Women's Advisory Committee, Institute of Qualified Personal Secretaries, National Society for One Parent Families, Women's Gas Federation and Young Homemakers, Women's Engineering Society, Women's Report, Union of Women Teachers.

4. Betty Lockwood (Labour Women's Advisory Committee and National Joint Council of Working Women's Organisations) was one who said that she could not campaign on the basis of the whole of 'What Next?'.

scope of anti-discrimination legislation, the powers of any enforcement board, the need for legal aid for individual complainants, and for affirmative action to positively promote equality. A committee was set up to coordinate the group's activities of which Mrs Millie Miller MP subsequently became chairman. A resolution was passed and sent to the Home Secretary¹:

that this meeting urges Her Majesty's government to bring forward without delay legislation to make discrimination illegal in education, training, employment, membership of trades unions and professional bodies, pensions, goods, facilities and services, mortgages, hire purchase, housing, advertising, tax and social security.

The resolution also called for a strong enforcement body that could initiate legal action with or without complaints and the encouragement of affirmative action to promote equality.

In the meantime, the NCCL had also been preparing for the advent of concrete proposals. From the beginning of the year conferences had been held in London, Nottingham and Cardiff. The one in London was attended by five hundred people and included the participation of thirty trades unions, twelve trades councils, women's liberation workshops, women's groups and students. In May, a model bill was published and widely circulated².

When the government's outline of proposals was published in late July, newspaper comments ranged from seeing the proposals as a vote winner in the next election to the view that they were a waste of time. The Sun described them as a Bill of Rights for Women³, while the Express thought the Home Secretary would be better employed

1. Fawcett Society file.

2. NCCL files.

3. The Sun, 24.7.74.

trying to discover the perpetrators of the bombing of the Tower of London¹. The Daily Telegraph believed there to be little demand for statutorily enforced equality and that most people would regard legislation as an unacceptable reduction in freedom². The Times 'cautious welcome'³ was shared, although for different reasons, by pressure groups. The Women's Liberal Federation issued a statement saying that proposals were all right as far as they went. The NCCL was worried about the exclusion of small firms, pensions and about reliance on industrial tribunals. Both the Fawcett Society and the TUC were bothered about the exclusions of pensions and social security. The CBI refused to comment⁴. The All Party Equal Rights Group felt that it would be necessary to 'keep the Home Secretary on his toes'⁵. The NCCL met Shirley Summerskill (Home Office), John Fraser (Department of Employment) and departmental officials almost immediately to discuss the contents of the proposals using their own Model Bill to make recommendations about enforcement mechanisms, private clubs, and affirmative action⁶.

A White Paper was published in September and the Inter-Organisational Committee met again to respond to the Home Office invitation to comment⁷. Both the NCCL and the Inter-Organisational

1. The Express, 24.7.74.

2. The Daily Telegraph, 24.7.74.

3. The Times, 24.7.74.

4. The Guardian, 24.7.74.

5. Fawcett Society file.

6. NCCL file.

7. Home Office press release, 6.9.74.

Committee believed that the drafters of the White Paper had taken some notice of earlier criticisms. But the latter initially listed twenty two points of interest and later sent a fourteen page document with over forty points of criticism to the Home Secretary. These included suggestions for tightening wordings to avoid loopholes, criticisms of permitted exemptions, disappointment that tax and social security were excluded, disappointment that there was nothing on positive discrimination, and disquiet about many details of enforcement. The Committee members were particularly uneasy about the proposal to enforce the education provisions through the Secretary of State for Education. They were also 'dismayed' that a complainant would have to prove an intention to discriminate. Their comments on protective legislation brought all groups into line since they stated that it should not be repealed but extended to men¹. The views of the Inter-Organisational Committee were generally shared by other groups, including the NCCL, Women in the Media, and the newly formed Equal Pay and Opportunities Campaign. The last seems to have been the only other group to ask for the discriminatory effect of an action rather than a proven intention to discriminate to be a crucial factor in whether an unlawful act had been committed².

As drafting got well under way after the October election the Inter-Organisational Committee urged affiliated members to lobby the Home Office to produce a bill as quickly as possible and made standby arrangements with Parliamentary contacts in case of delay³. The Fawcett Society wrote to Roy Jenkins to emphasise points previously made about

1. Fawcett Society files.

2. Ibid.

3. Inter-Organisation notice in Fawcett Society files.

marital status, intention to discriminate, exceptions and exemptions¹.

At his invitation the group met Shirley Summerskill on 6th December to expand upon written comments². In February 1975, Roy Jenkins was guest of honour at a Fawcett Society dinner for International Women's Year where he again assured the audience that the criticisms of various groups had been studied with care. But he warned that full equality could not be brought about in the forthcoming Sex Discrimination Bill. On the one hand, family arrangements would still militate against full equality and, on the other, he disliked the idea of positive discrimination because it would be difficult to formulate without eroding the very principles on which the legislation would be based.

But a month later the bill was published and did provide an enabling clause facilitating but not compelling a limited amount of positive discrimination in training for either sex under certain conditions. In April the NCCL and the Inter-Organisational Committee prepared their comments. The latter produced a long document in which it was stated that many of their original points had been met. They particularly welcomed the inclusion of the idea of indirect discrimination stemming from acts not necessarily intended to be discriminatory. According to a participant, however, this was not included as a result of British women's groups but on American advice³. Women's groups were still disappointed about

1. Fawcett Society to Jenkins, 30.10.74.

2. Fawcett Society files.

3. Interview July 1977.

exemptions and felt that the exceptions allowed on the grounds of occupational qualification were too broad. Moreover, many details of enforcement still worried them, particularly in connection with the absence of legal aid at tribunals and the lack of opportunity for women's groups to assist individual complainants to present cases. Of special concern was the reversal of the original placing of the burden of proof on employers¹. This point also caused the NCCL considerable anxiety. It was noted that the precedent set by the Trades Unions and Labour Relations Act was reversed. The NCCL shared concern about the denial of legal aid as a result of the intention to enforce employment cases through tribunals and not courts. They were, however, pleased about a strengthening of a procedure whereby the EOC would issue non-discrimination notices and about the small shift in the idea of positive discrimination. The NCCL went on to prepare a memorandum on points of concern for consideration by the Bill's Standing Committee². The groups affiliated to the Inter-Organisational Committee also continued to try to get amendments passed during various stages of the Bill. These efforts will be referred to in the next chapter and set in the context of other pressures on the government.

1. Fawcett Society files. It will be recalled that this change came about as a result of advice from the Scottish Law Office.

2. NCCL files.

CHAPTER IVThe Passage of Legislation on Equal Pay and Opportunities(I) INTRODUCTION

The preceding chapters have been an account of the status of women and of the growth of sympathy towards the idea of using legislation to guarantee equality at work. The first section of this chapter finishes this part of the story by describing the passage of the Equal Pay and Sex Discrimination Acts and by including references, where possible, to the extra-parliamentary sources of proposals and amendments. Because, by the nature of things, one set of events follows another it is tempting to see a chronological description as causal explanation. Thus, the build-up of demands for equal treatment followed by laws guaranteeing it might be construed as an expression of liberal democracy working as intended in normative theory. Such a view would be re-inforced by Mrs Castle's estimation that an equal pay law would be 'enormously popular in the country'¹; by Mr Hamilton's observation that a 'mass lobby' wanted an anti-discrimination law²; and by Mr Jenkins' statement that the innovations in the Sex Discrimination Bill stemmed from the criticisms of the White Paper made by many women's and other organisations³. But an obvious puzzle about the story is the question of why governments took so long to legislate on equal pay but introduced a Sex Discrimination Act comparatively rapidly. In this chapter, an attempt is made to explain why governments, on the one hand, became able to respond and, on the

1. Crossman, op cit. p 627.

2. OR 849 Col 1851.

3. OR 889 Col 513.

other, were also forced to do so.

To do this it is necessary to go beyond the growth of sympathy for this specific issue in parties and pressure groups. While the trends discussed earlier are relevant in that they provided sufficient causes for government action, other important sufficient and necessary causes are to be found in factors only tangentially related to women. Mrs Butler was edging towards these when she told Callender that the attributes of new Members of Parliament elected in 1974 made a difference¹. But the differences began earlier than that and found expression first in race relations laws and other reforms of the 1960s on moral issues. Together with changing attitudes about what it was proper for the law to do, was the development of what might be coined 'the logic of the Welfare State'. These factors are expanded on later in this chapter. The issue of race is symbiotic with sex discrimination. On the one hand, it created a precedent for a principle that could be extended to other readily definable groups. But, on the other, it is sometimes alleged that ideas for future race relations reforms needed to have a 'trial run' first. This, it is argued, was provided by introducing what were expected to be controversial concepts into the Sex Discrimination Bill. Be that as it may, it is clear that in bringing in equality laws for working women, governments had in mind what would be entailed by entry to or continued membership of the European Economic Community. This chapter concludes with a discussion of these obligations and their implications.

1. Callender, op cit, p 33.

(II) The Equal Pay Act¹

In contrast to the enthusiastic turnout to greet the granting of equal pay in the civil service, Mrs Castle opened the Second Reading debate on the Equal Pay Bill in February 1970 in an almost empty House. Those members who were present were, she said:

..... witnessing another historic advance in the struggle against discrimination.²

She reminded the House that previous governments, both Conservative and Labour, had acknowledged the justness of the principle but had failed to legislate because of three problems: definition, enforcement and economic difficulties. She then outlined her solutions.

The TUC's preference for the ILO definition of 'equal pay for work of equal value' and the CBI's for the then EEC version, 'equal pay for the same work', were rejected. The first was considered too vague and unenforceable and the second too restrictive. Instead, the government sought to identify specific situations and perscribe specific remedies. So where work was the same or broadly similar (differences could be small and frequent or large but infrequent) or had been rated as equivalent under a job evaluation scheme, equal pay could be claimed.

She explained why tribunals had been chosen as the means by which claimants could obtain redress. These had been set up in 1965 to deal with industrial training levies and, later, with redundancy payments and selective employment tax. They were thought

1. Second Reading Debate, OR 795 Cols 913-1038.

2. OR 795 Col 914.

to be ideal machinery for dealing with equal pay because they were experienced in employment matters, they included workers' representatives, and they sat in various centres throughout the country. They were, therefore, speedy, informal, and accessible. As a result individuals would not be discouraged, as they might by formal, cumbersome and expensive court proceedings, from making claims. The lessening of the ordeal for an individual, inexperienced in court procedure, was referred to again as a reason for placing on an employer the burden of proof that differences of pay related either to practical or material differences in the job or the holder of it.

Protection of the individual was invoked again to justify giving power to the Employment Secretary to refer individual cases to tribunals or collective agreements specifying different rates for men and women to the Industrial Arbitration Court. Mrs Castle noted that her proposal for the immediate raising of women's rates to the lowest male rates was in line with a resolution carried by the first Women's Liberation Conference earlier that year.

The Secretary of State tried to pre-empt criticisms based on costs. She said that government estimates of costs averaged out at $3\frac{1}{2}\%$ of the annual wage bill but in some industries could vary upwards to 32%. For this reason it was proposed to allow industries five years to move towards equal pay voluntarily. The TUC had asked for two years and the CBI five. The government also believed that, in an expanding economy, women could be employed more productively and costs therefore absorbed. Should voluntary progress be slower than expected, provision was made to enable the Secretary

of State to require certain progress by the end of 1973.

In the course of her speech, Mrs Castle referred to the controversy over protective legislation. While noting that she always gave exemption applications reasonable consideration, she stated that the future of these laws would be discussed as a separate issue with employers and trades unionists.

For the Opposition, Robert Carr welcomed the Bill. He stated that his party would 'wish to support any measure which sensibly completes the process which the Conservative Government started on such a large scale between 1955 and 1961'. He also argued that:

It is a legitimate function of the law to put on record the judgement of the community about what is fair and reasonable. It is also a legitimate function of the law in practical terms, because the law does form opinion and influence behaviour.¹

His welcome was somewhat hedged with qualifications about detailed points about too rigid a timetable and the Secretary of State's powers of intervention. But he also complained, and here he and other Conservatives were at one with feminists on the Labour back benches, that the Bill was insufficiently radical. His criticisms and those of others, were that the Bill did nothing to prevent job segregation or to ban discrimination in promotion and training, etc. He also thought the enforcement would be more effective under a special anti-discrimination board.

Few members expressed outright opposition.

Predictably, one who did was Mr Ronald Bell (Conservative), noted also for objections to race relations legislation². He tried to stop the Second

1. OR 795 Col 932.

2. OR 795 Cols 913, 956-68.

Reading Debate first and then warned rather than demanded that the Bill would lead to sex discrimination legislation. He was astonished that his own front bench spokesmen appeared to be asking for this. Unlike analysts referred to in chapter II, he had no doubt about turnover and absenteeism rates in female employment. His argument was, that since there were no legal impediments to equality of reward, the market must reflect the truth that women were less valuable than men to employers. Mr Enoch Powell was present but did not speak: only Mr Edward Taylor (Conservative), claiming to welcome the Bill, argued in such a way as to support Mr Bell¹.

Members on both sides suggested that the government was placing too much reliance on job evaluation, stressing that it was an inexact science and subject to arbitrary decisions². Mrs Renee Short and Mrs Lena Jeger, supporters of the Bill and women's rights in general, asked the government to set a decisive lead by awarding equal pay immediately to female industrial public servants³. With some prescience, in the light of the implementations of the Act, Mr Fred Lee (Labour) asked for, and got, government assurance that tribunal judgements would apply to jobs and not to individuals⁴.

No serious amendments were successful in Committee. Attempts were made to make the timing of implementation more flexible and to make discrimination in recruitment and other aspects

1. OR 795 Cols 1010-1015.

2. E g Holland, P. (Conservative) OR 795 Cols 979-985, and Short, R. (Labour) OR 795 Col 988.

3. OR 795 Cols 969-970, 986-987.

4. OR 795 Cols 952- 1032. Subsequent methods of compliance with tribunal decisions have not always followed the pattern described to Mr Lee. See chapter VI.

of employment unlawful¹. An attempt was made in Committee to eliminate special provisions for the armed services. The government indicated that they would look favourably at a more carefully worded amendment². The issue was solved at the report stage when the government introduced its own amendment³. TUC views were expressed through Mr Albert Booth who proposed a number of amendments to emphasise and protect the trade union role in negotiation and conciliation. He also proposed the inclusion of pensions⁴. Some of his amendments were defeated and others withdrawn on the promise of consultation with the TUC. Leaders of the TUC were happy with the concessions they obtained but felt they would have got more had Mrs Castle been in less of a hurry. One of Mrs Castle's reassurances that tribunals would be encouraged to appoint women members has caused anxiety because it is felt that such appointments will be made at the expense of union rather than employer representatives⁵.

The only substantial change to the bill was the new clause on the armed services. By the time the Third Reading was moved, it was late and few members were present to witness what two of them described as the 'historic occasion' of the passing of a 'momentous Bill'⁶. There had been a handful of divisions over amendments and the emptiness of the House was taken as a further mark of the absence of party-political

1. OR Standing Committee Cols 135-157, 3.3.70; 298-318, 12.3.70; 319-350, 17.3.70.

2. Ibid. 162-167, 3.3.70; 346-350, 17.3.70.

3. OR 800 Cols 505-511.

4. Ibid. Cols 572-576, 719-721, 725-730, 736-746.

5. Chipchase, E. The Application of Equal Pay. Note prepared for 1977 TUC Women's Conference, paras 67-69.

6. Glover, Sir D. (Conservative) OR 800 Col 765.
Lee, F. (Labour) OR 800 Col 762.

controversy on the issue. Sir Douglas Glover, an opponent of Mrs Castle's in the 1945 election, was moved to peroration:

It is one of the glories of Britain that when ... the mood is right, the fundamental agreement within society manifests itself. We sometimes forget ... that, despite all the dreadful rows we have across the Floor, there is far more fundamental agreement on what sort of society we want ... than there is division between the parties.¹

Its passage through the Lords was equally harmonious². No important new points were raised and during a short Committee stage the only change was the insertion of a new clause, as promised in the Commons by Harold Walker, Parliamentary Under-Secretary in the Department of Employment, to allow the Industrial Arbitration Court to give advice on agreements and wage structures during the year preceeding the effective date of the Act³.

This section ends with a summary of the main provisions of the Equal Pay Act. The Act provides for equality in terms of a contract of employment. It requires that a woman (or a man) be treated no less favourably than a man (or a woman) in all contractual matters if she (or he) is employed in the same or broadly similar work in the same or an associated establishment; or where her job (or his) has been given an equal value under a job evaluation scheme. The Act covers all constituent parts of pay, including bonuses, holiday pay, waiting time and overtime rates. It deals with individual cases, discriminatory collective agreements and wages regulations orders in all establishments

1. Glover, Sir D. OR 800 Cols 765-766.

2. Second Reading OR (HL) 310 Cols 121-163. Committee of Whole House OR (HL) 310 Cols 1063-1085.

3. OR (HL) 310 Col 1084.

in Great Britain, including the Crown, the Police and Armed Services, although enforcement procedures vary for the latter. There are two main avenues of enforcement. Individuals may make claims through industrial and employment appeals tribunals. Here a woman has to show that her work is the same as or broadly similar to that of a man in her establishment or an associated one. If there are differences it is for the employer to show that they are of practical importance. The difference in pay may also relate to a material difference between the two employees - for example, qualifications or length of service. Again it is for the employer to prove that there is a genuine material difference not based on sex¹. If a claim is upheld by a tribunal, arrears of pay can be awarded for up to two years. Discriminatory collective agreements can only be remedied by the Central Arbitration Committee (formerly the Industrial Arbitration Court). Only the employer, trade union or Secretary of State for Employment can refer cases to this body. Arrears of pay can only be awarded by the CAC from the time of referral. Since the Act was amended to become part of the Sex Discrimination Act, the Equal Opportunities Commission is empowered to investigate complaints of discrimination in pay as well as in other matters.

(III) The Sex Discrimination Act

During the debate on equal pay, Mrs Castle said she expected six million women out of eight and a half million female workers to benefit directly from the Act². These were women engaged

1. This aspect has become clouded in implementation. See chapter VI.

2. OR 795 Col 928.

in jobs similar or equivalent to those of men. In chapter II, it was reported that economists thought that by 1974 very few women were earning less than men because of practices unlawful under the Equal Pay Act¹. But some restructuring of work to avoid the Act legally did take place in ways expected by Hakim in situations where an equal pay policy is not accompanied by one on equal opportunities². One method of avoidance is to limit recruitment or promotion to particular jobs to one sex only so that incumbents cannot compare themselves with a member of the other sex. These and other practices are unlawful under the Sex Discrimination Act. But the Act does a little more than ban discriminatory practices. It also makes some concessions to the idea of promoting a labour force undifferentiated by gender. These concessions are smaller than hoped for by women's groups. Nevertheless, tightening up of original provisions to eliminate discrimination and the inclusion of some promotional elements in the Act are there partly because of outside pressures. The main changes in government proposals took place between the publication of the White Paper and the Bill³; that is, before debate in the House of Commons. Attempts were made during the parliamentary stages to give extra strength to these provisions, but, on the whole, these were unsuccessful.

The changes were as follows. The definition of discrimination was extended. The bill proposed to define differentiation on grounds of marital status

1. Chiplin and Sloane, op cit, p 47.

2. Office of Manpower Economics, First Report on the Implementation of the Equal Pay Act, HMSO 1972; and Hakim, op cit, pp 49-50.

3. Home Office, Equality for Women, CMD 5724, HMSO 1974; and Sex Discrimination Bill HMSO 1975.

in employment as discriminatory. The important idea of indirect discrimination was added. This means that applying a sex-neutral rule, which has the effect that a majority of members of one sex cannot comply and where the rule had no bearing on performance, would be regarded as unlawful discrimination even if there were no intent to discriminate. An example would be a requirement that all applicants for a teaching post be over five feet ten inches tall. Another additional practice defined as discriminatory in the Bill was victimisation of a person bringing a case under the Act. The Bill, unlike the White Paper, enabled positive discrimination. This means that where one sex has not traditionally been found in a particular occupation, members of that sex could be treated favourably in training schemes for it. The exemption allowed for small firms was reduced from those of ten to those with five employees. And the size of exempted partnerships came down from eight to five. The powers of the Equal Opportunities Commission were increased so that injunctions could be taken out against persistent discriminators. For individuals seeking redress, the Bill introduced the idea of compensation for injured feelings in addition to the usual compensation for loss of earnings, etc. One change that was introduced at this stage was weaker than the proposal in the White Paper. This was that the onus of proof, placed originally on the employer, reverted to the complainant. To counteract the weakening of the position of the complainant special

provisions were introduced to assist an aggrieved person to obtain information about his or her situation.

In his discussion of women's interest groups, Richards argues that at the most they 'air grievances'¹. The Home Secretary's explanations of these changes, however, suggest that they did more than that in this case. In his Second Reading speech he said that:

... there are at least two important respects ... which go further than did the September White Paper because we have been persuaded of the validity of the criticisms ... made in these respects by many women's and other organisations.²

The principal two respects were indirect discrimination and positive action. All of the groups under the auspices of the Fawcett Society's Inter-Organisational Committee had asked for these. So, too, had the National Council for Civil Liberties. The Under-Secretary of State for Employment, Mr John Fraser also named as sources the 'Trade Union Congress, the Institute of Personnel Management, and the Labour Party'³. Other respects in which the Bill met outside criticisms were the inclusion of marital status, victimisation and damages for injured feelings. Again, these had been pressed for by the Fawcett Society and the Inter-Organisational Committee, the National Council for Civil Liberties, the National Labour Women's Advisory Committee, the Equal Pay and Opportunities Commission, Women in the Media and the All Party Equal Rights Group⁴. Dr Rendel, a member of many of these groups and of others, had personally raised these issues in her evidence to the House

1. Richards, op cit, p 205.

2. OR 889 Col 513.

3. Callender, op cit, p 21.

4. Fawcett Society and NCCL files.

of Lords Select Committee¹.

But Richard's view is confirmed to some extent by the perceptions of one participant in the drafting of the bill who argues that the ideas of indirect and positive discrimination were included mainly because of information from the United States². The Fawcett Society files show that this was a demand of women's groups³. But Callender points out that the American influence existed too. She cites the remark of the Under Secretary of State for Employment, Mr John Fraser, that 'It is quite right to say that the Home Secretary has been moved by some of the things he learned when he was there' (in the United States).⁴ Pressures from women's groups over the onus of proof were ineffective. Several, including the National Labour Women's Advisory Committee, the National Joint Council of Working Women's Organisations, the National Council for Civil Liberties, the Fawcett Society, Women in the Media, and the Status of Women Group, had all hoped that employers would have to show they had not discriminated⁵. This would have been compatible with the onus of proof in other employment legislation. Their defeat, according to Callender, was a result of advice from the Scottish Law Office⁶.

During the five and a half hours of debate on the Second Reading, members on both sides were congratulatory. The Conservatives, with few exceptions, could not oppose the principle; Mr Carr, himself, had criticised the Equal Pay Act for not containing these

1. Minutes of Evidence and Proceedings of Select Committee on Anti-Discrimination Bill (HL) 1971-72, 1972-73, pp 98-100.

2. Interview July 1977.

3. Memorandum to Home Secretary, Fawcett Society files.

4. Callender, op cit, p 21.

5. Fawcett Society and NCCL files and OR 893 Cols 1476-1477.

6. Callender, op cit, p 21.

these kinds of provisions. They were reduced, therefore, to nit-picking over details and to arguing over where emphasis should be laid. Typical of the cross-party agreement on principle was the statement by Sir Ian Gilmour (Conservative), that it was right to use the law to shift attitudes by changing what was permissible practice:

It is a huge relief to find a piece of legislation which is not designed to undermine what the last Conservative Government did but is designed to build on what we achieved ...
 ... A country which considers itself just and democratic cannot afford to institutionalise prejudice against half the population, particularly when it is almost broke.
 Legislation is necessary, because it affects the climate of opinion ...¹

On what might have been expected to have been controversial, unintended discrimination, comments at this stage were requests for clarification and further examination in Committee. Only Mr Bell and Mr Powell acted as standard bearers for an older view of what it was proper for the law to do. Both argued that since there were no legal impediments to women doing whatever they wanted to, there were no extra rights which government could confer on them. It was inconceivable to either of them that the market would not by itself reflect changing attitudes or that it would give different rewards for identical services². But both, it seemed, were speaking against the power 'of an idea that had found its time'; when the House divided, only five members voted against the Bill³.

1. OR 889 Cols 525-528.

2. OR 889 Cols 539-544, 587-594. *attributed to Poincaré*

3. Mrs Williams used this *quote* when speaking in favour of Mr Hamilton's Bill in 1973. OR 849 Col 1868. Those who voted against the motion for Second Reading were Conservatives and Ulster Unionists: Mr Ian Gow, Rear-Admiral Morgan-Giles, Mr William Ross, Mr H McCusker and Mr Enoch Powell. Two other opponents, Mr Ronald Bell and Mr Ivor Stanbrook, were tellers.

Controversy did arise in the Standing Committee meetings between 22nd April and 20th May . Sir Ian Gilmour tried, without success, to remove the concept of indirect discrimination and to modify the notion of victimisation in order to guard against frivolous or malicious complaints¹. Attempts were also made to amend details of the Bill. Conservatives, for example, sought to restrict the impact of the Bill on employment. They tried to increase the size of the employment establishments covered from those with five employees to those with twenty-five. They tried to get exceptions for employers of women whose work was governed by sections of the Factories Act and they tried to reduce employers liability for the actions of an agent². Labour MPs, on the other hand, tried to make these sections more stringent by tightening up the exceptions allowed under a clause making exceptions where sex was a genuine occupational qualification (for example, recruiting a woman to act a female part in a play). They also tried to reduce the size of partnerships covered still further to those with three partners³.

Labour and Conservative members of the Committee joined forces to try to ensure that half the Commissioners on the EOC would be women. Sir Ian Gilmour and Mr M Allison (Conservative) voted with Labour members. The chairman for the day, Mrs Lena Jeger (Labour) used her casting vote against the amendment⁴.

About half the amendments considered were put forward by the government and, being technical or drafting amendments,

1. OR Standing Committee B 2.4.75

2. Ibid, 29.4.75, 15.5.75 and 8.5.75.

3. Ibid, 29.4.75, 1.5.75.

4. Ibid, 13.5.75.

did not alter the substance of the Bill. One government amendment that did do so was a new exception allowing employers to differentiate between men and women in recruitment or promotion to posts involving overseas travel in countries where the laws and customs prevent either sex (usually women) from performing the job effectively¹. This was added as a result of representations from the Confederation of British Industry. The government was defeated on four substantive matters. Two of these amendments originated from a Labour member of the Committee and two from Conservatives.

Mrs Millie Miller (Labour) introduced a new clause in the goods, facilities and services section of the Bill to enable political parties to continue to have women's sections². Her other success was an amendment to the clause on Trades Unions to exempt organisations providing a service for one sex which were counterparts of similar bodies for the other sex³. Effectively, this exempted the National Associations of Schoolmasters, Schoolmistresses, Assistant Schoolmasters and Assistant Schoolmistresses. Her object was to prevent women from being excluded from high office in any new, merged organisations.

Conservatives, supported by the Royal College of Midwives, the British Medical Association and Labour women on the Committee succeeded in overruling the government's proposal to use the Bill to amend the Midwives Act and to allow men to enter the profession⁴. The other Conservative victory was on the question of protective legislation. Sir Ian Gilmour tried to secure exemption for

1. Ibid. 1.5.75.

2. Ibid, 15.5.75.

3. Ibid, 1.5.75, 6.5.75.

4. Ibid, 6.5.75.

employers covered by the relevant laws. Failing in this, he then succeeded in making additions to a Schedule of the bill dealing with repeals. His additions were sections of the 1961 Factories Act, the 1954 Mines and Quarries Act and the 1936 Hours of Employment Act¹.

Except for the first, these defeats were modified either at the Report Stage or in the House of Lords. Miss Joan Lestor, Parliamentary Under Secretary for Education, moved the deletion of Mrs Miller's trade union amendment². Her grounds were that there was no reason for treating the teaching unions differently from others and that women could not ask for equality and special protection. This drew angry responses from MPs, including William Rees-Davies (Conservative), who had been on the Select Committee which had recommended separate arrangements. He pressed for a division which the government won by 129 to 112, although some of its own back benchers voted with the opposition³. A compromise was later reached in the House of Lords. Mr David Owen, then Minister of Health, put the government's case for male midwives, arguing that the Committee amendment went against the spirit of the bill and that, in any case, government proposals were that male midwives should be strictly limited to centres where women would have a choice of attendant⁴. Again, the government won in division and later agreed to compromise in the House of Lords.

The government asked the House to overturn Sir Ian Gilmour's amendment about protective legislation on the strength of a

1. Ibid, 20.5.75.

2. OR 893 Cols 1515-1520.

3. Ibid, Cols 1527-1530.

4. Ibid, Cols 1543-1554.

requirement laid on the Equal Opportunities Commission to review these regulations and because the government were now insisting that this be done by 1978¹. Mr John Fraser, Department of Employment, agreed that it seemed ridiculous that women who operated certain machines were not allowed to clean or maintain them. On this particular aspect, he promised to provide an amendment in the House of Lords. The House of Commons was reasonably satisfied with this, although Mr Alison pointed out that these restrictions prevented women from being recruited into skilled occupations and that it was unfortunate that this would still be the case until after 1978. Miss Jo Richardson (Labour), who had voted with the Conservatives in Committee on the grounds of freedom of choice, said that she would now vote with the government because of the review and its time limit. In the end, the government amendment was not pressed to a division².

Through government initiative, points of detail were added that strengthened the bill. One of these extended the applicability of the Act to cover cases where there was no vacancy at the time of application for a job³. At first, this was greeted **as ludicrous** but it **was** explained that the intention was to get at practices which were detrimental to applicants for, for example, articulated clerkships. It was normal for aspiring articulated clerks to write all through the year to enquire about posts. The usual response would be to reply that letters would be kept until a vacancy arose. The purpose of the amendment was to prevent letters from one sex being destroyed on the basis of sex alone.

Another amendment relating to recruitment was

1. Ibid, Cols 1579-1587.

2. Ibid, Col 1587.

3. Ibid, Cols 1500-1501.

designed to get at the 'old boy' network¹. In this context, there might be no specific victims of the method of recruitment since a person of a particular sex might never hear of a post or think of applying. It was proposed that the Equal Opportunity Commission be empowered to investigate such practices and, if necessary, issue non-discriminatory notices. To counteract this extension of EOC powers, other sections of the Bill dealing with the collection and disposal of information connected with an investigation were tightened.

Other government amendments at Report were responses to anxieties expressed during earlier stages. These included new clauses on exempting voluntary bodies and on communal accommodation. Alterations were also made to the part of the genuine occupational clause that dealt with living-in posts². This had been raised by Mr Alison in Committee as a result of representations from the General Council of British Shipping. The government also met a request from Mrs Maureen Colquhoun to make an addition to what was to be considered as unlawful discrimination by vocational training bodies³.

A number of Private Members' amendments and new clauses were either withdrawn or not pressed to division after explanation or on the basis of further consideration. The most substantial of these covered the definition of discrimination, employment, education, the role of the Equal Opportunities Commission and enforcement procedures.

In the first category was a proposal that victimisation be extended to cover blacklisting by credit companies⁴. This was later met.

1. OR 893, Cols 1429-1441.

2. Ibid, Cols 1441-1443, 1444-1446, 1501-1506.

3. Ibid, Col 1533.

4. Ibid, Cols 1495-1500.

In the second category, Miss Richardson drew attention to American Contract Compliance regulations and suggested a similar provision for Britain¹. Such a provision had been hoped for by groups outside Parliament and had been recommended by them to the House of Lords Select Committee on the Anti-Discrimination Bill. The government reply was that she had taken insufficient account of the problems that would arise if government contracts were withdrawn, especially in areas of high unemployment. In any case, the Equal Opportunities Commission could, if it chose, investigate firms that were government contractors. Conservatives argued for two alterations in government exemptions. Again they tried to get at the size of partnerships, arguing that allowing single sex partnerships could be an advantage to women². Mr David Lane (Conservative) tried to get an exception that would allow male university colleges to discriminate in recruitment in favour of female teaching staff for a limited period if they were going co-educational³. He pointed out that this happened in the United States. The government, however, was not happy about the working of this form of positive discrimination in America and argued that appointments should be made clearly on the basis of merit. Miss Lestor promised to discuss the government point of view further elsewhere if Mr Lane so wished.

In the education category, Miss Richardson expressed anxiety about exemptions for single-sex establishments and wanted to have a time limit placed on their freedom from the Act⁴. She was

1. Ibid, Cols 1478-1482.

2. Ibid, Cols 1507-1515.

3. Ibid, Cols 1447-1452.

4. Ibid, Cols 1561-1566.

told that the government thought this would place too heavy a burden on them and that, in any case, assumptions in curricula and availability of courses were more important in determining future roles. Mrs Helene Hayman (Labour), supported by Mr Lane, tried to secure the insertion of an enabling clause that would allow educational trusts, previously open to one sex only, to open their facilities to the other sex¹. This was acceded to later in the Lords. Special amendments were proposed to require the Equal Opportunities Commission to review particular issues². The government's view was that this was unnecessary since the EOC could undertake these activities if it were thought helpful.

On enforcement a number of suggestions were made which covered both individual cases and EOC activities. A fairly lengthy debate was initiated by Miss Richardson in order to restore the White Paper provision on the burden of proof³. In doing so she spoke for extra-parliamentary groups in favour of a strong bill. She argued that the bill as it stood placed too heavy a responsibility on a complainant facing an employer with larger resources and greater expertise. She argued that, in criminal law, the woman would be deemed innocent until proven guilty. This seems a spurious argument since under the Sex Discrimination Act it would be the employer who 'stood accused'. Nevertheless, as she pointed out, in the Trades Unions and Labour Relations and Equal Pay Acts, the onus of proof was shifted to the employer. She was supported by other MPs who reminded the House that the bill departed from the

1. Ibid, Cols 1568-1571.

2. Ibid, Cols 1574-1579.

3. Ibid, Cols 1467-1478.

White Paper on this point and from the preferences of various experts and interest groups¹. Dr Summerskill replied that the government had met the point to the extent that when damages were assessed it would be for the employer to prove that he had not intended to discriminate. Mr Fraser also defended the government against the charge that they had ignored the plight of the inexpert complainant when he discussed the provisions for help for aggrieved individuals². These allowed for the use of special forms which the complainant could send to an employer suspected of discrimination. Some members were worried that the use of these forms in subsequent judicial proceedings might conflict with the normal rules of evidence³. The government later made some alterations in the Lords to cover this. Also on enforcement, Miss Richardson tried to get a minor extension to the length of time allowed during which proceedings could be brought but was told that the courts already had discretion to allow for the situation she had in mind⁴.

Some outright defeats were suffered by friends and foes of the bill in the House of Commons. One was a failure to narrow the clause dealing with the clergy⁵, although a compromise was reached unexpectedly in the House of Lords. A proposal that the Equal Opportunities Commission be compelled to devise codes of practice for employers and others was defeated in a division⁶. Mr Bell, speaking

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1. She was supported by Mrs Colquhoun who cited the National Labour Women's Advisory Committee, the National Joint Council of Working Women's Organisations, the National Council for Civil Liberties, the Fawcett Society, Women in the Media, the British Sociological Association Working Party on Women's Rights and the Status of Women Group. OR Cols 1476-1477.
 2. OR 893, Col 1603.
 3. Ibid, Cols 1598-1608.
 4. Ibid, Cols 1608-1609.
 5. Ibid, Cols 1536-1542.
 6. Ibid, Cols 1483-1491.

for the five members openly against the bill began from the premise that it should not be there at all and continued by proposing amendments to completely undermine or eliminate all important clauses¹. His Conservative colleague, Mr Ivor Stanbrook, argued that because of the government's amendments, this 'Draconian measure' was even worse than it had been at Second Reading². On the other hand, not all those in favour of the principle of legislation were satisfied that the government had gone far enough. Mr Colquhoun, speaking strongly for the other feminist Members of Parliament, told the House that they had 'wanted to make (the bill) less of a shabby window-dressing for this hideous International Women's Year ...'³

The Second Reading debate in the House of Lords took place in July 1975. The bill was welcomed. Stated reservations were either about minor irritations or that the measure did not go far enough. The House seemed in accord with the view of Lord Gardiner that 'there could be no rational argument against the claim that there should be equality of opportunity for women'⁴. The one exception was Lord Monson, a cross-bencher formerly an under-secretary in the Commonwealth Relations Office who strongly opposed the bill, describing it as 'profoundly anti-libertarian' with all the hall-marks of 'American earnestness ... and ... Puritanism'⁵. Like Mr Bell, he argued that its real purpose was to control people's minds and that it was proper for legislative reform to arise only when natural changes

1. Ibid, Col 1611.

2. Ibid, Col 1459.

3. OR (HL) 862, Cols 95-192.

4. Ibid, Col 124.

5. Ibid, Col 146. Lord Monson said that he could say this since, being half American, he was saying it of himself.

had taken place in how society thought. In support of his argument, he drew heavily on an unnamed woman journalist who was against the bill and on the work of a Cambridge professor whose research on hormonal changes in women under stress¹ was later publicised in tabloid newspapers. Lord Monson also claimed to have had met no one who, in private, agreed with the bill.

None of his colleagues admitted holding this view at any point in the proceedings. But the Committee Stage did move slowly and Lord Gardiner had to remind the House that at the rate they were going, the bill would be lost - perhaps for decades². Lord Beaumont (Liberal) suggested that this argument was specious since legislation ought to be judged by its quality rather than by the speed at which it was produced. It has been suggested that concern with quality was used as a pretext by opponents of race relations legislation in order to delay its progress in the House of Lords³. But during the Sex Discrimination Bill, a good deal of debate was initiated by life-long champions of women's rights, like Joan Vickers and Irene Ward. And there were clear attempts by a number of peers to dissociate from themselves Lord Monson. Viscount Colville, for example, in a House usually noted for its politeness, described him as a 'caveman'⁴.

No important arguments were raised during any of the other stages in the House of Lords that had not been discussed already.

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1. Lord Monson did not name him. But the popular press did when they reported Professor Ivor Mill's findings that women in demanding occupations produced hair on chest and face.
 2. OR (HL) 862 Cols 1070-1071.
 3. Discussion at Nuffield College 1977.
 4. OR op cit, Col 176

Most amendments were put forward by the government to resolve earlier controversies. Few substantial changes were made by either supporters or opponents. One amendment was adopted despite an unwilling government. It was proposed by Baroness Seear. This change reduced the time allowed to the Secretary of State for Education between investigating a complaint and initiating court proceedings¹. It was a small change - four to two months - but a bigger victory than it appears. Pressure groups were suspicious of the Department of Education and keen for stricter control of it. During the House of Lords Select Committee hearings and throughout the passage of the Sex Discrimination Bill it had become clear that departmental officials were unwilling to have education included in the law at all.

Unsuccessful objections to the bill were similar to those raised in the House of Commons. Baroness Seear wanted to make it more difficult for an employer to avoid the charge of indirect discrimination². Baroness Stedman raised the question of onus of proof³. Baroness Vickers, supported in particular by Baroness Seear, wanted to narrow the exceptions allowed under the genuine occupational qualification clause and to delete the government amendment that allowed discrimination in recruiting for certain overseas posts⁴. She also tried to have included a version of government contract compliance⁵. Attempts were made again to reduce the size of partnerships from six to three to ensure that

1. Ibid, Cols 1377-1382.

2. Ibid, Cols 1016-1020.

3. Ibid, Cols 1023-1024.

4. OR (HL) 863 Cols 979-985.

5. OR 862 Cols 1386-1390.

medical practices were covered¹. Another effort was made to allow a limited positive discrimination in the appointment of women to teaching posts on male colleges². On the sections dealing with the EOC, Lord Houghton also, although half heartedly, tried to ensure that half the Commissioners would be women³. The question of a statutory duty on the EOC to issue codes of practice was again raised in the Lords⁴. As an opponent of the bill, Lord Monson did not go as far as Ronald Bell. Instead of attempting to eliminate the whole of the education sections, for example, he limited his proposal to trying to extend protection for single-sex institutions⁵. None of these amendments succeeded.

Government amendments were responses to earlier anxieties about attempts to compromise on severe disagreements. Among the former was an extension of the bill to cover public appointments and army cadets⁶. Miss Richardson's request for victimisation to cover blacklisting was met⁷. So was Mrs Hayman's suggestion for an enabling clause for educational trusts⁸. And the wording for the genuine occupational qualification clause was clarified⁹. The section on help for aggrieved individuals was reworded to take account of criticisms in the Commons that it would conflict with the normal rules of evidence¹⁰.

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1. Ibid, Cols 1065-1072.
 2. Ibid, Cols 1135-1140. And OR (HL) 863 Cols 998-1004.
 3. Ibid, Cols 1359-1362.
 4. Ibid, Cols 1358-1376.
 5. Ibid, Cols 1168-1169. And OR (HL) 863 Cols 1243-1247.
 6. OR 863, Cols 1278-1282.
 7. OR 862 Cols 1021-1022.
 8. Ibid, Cols 1411-1415.
 9. Ibid, Cols 1024-1026.
 10. OR (HL) 863, Cols 1261-1263.

Other amendments were mostly technical or clarificatory. The controversial matters were single-sex unions, exemptions for political parties, the clergy, midwives and protective legislation.

In arguing against Mrs Miller on exempting single-sex trade unions, the government had said that consideration might be given to the idea of reserving places in a merged union for members of both sexes. During further discussion in the House of Lords, however, the government agreed to exempt the teaching unions until January 1978¹. After that each of the four concerned might continue to exist but must open its membership to both men and women. The government also agreed to postpone the effects of the bill on political parties for a period of ten years².

On the clergy the main worry was that the clause excepted the employment of women if this went against religious doctrines or the susceptibilities of 'any of its followers'. Baroness Seear wanted the latter proviso left out³. But the Bishops pointed out that this placed them in an embarrassing situation since, by that time, the Church of England had decided that female members of the clergy were not incompatible with doctrine. Nevertheless, a substantial minority of lay-followers were against their ordination. A compromise was reached by altering the proviso to 'significant number of its followers'⁴.

In connection with male midwives, the government was

1. OR 862 Cols 1073-1093 ; 1164-1166; 1420-1428; OR 863 Cols 1248-1250.

2. OR 862 Cols 1180-1190; OR 863 Cols 1266-1276.

3. OR (HL) 862 Cols 1115-1135.

4. OR 863, Cols 1241-1242.

assisted by Viscount Colville who tabled an amendment that was accepted. This allowed for a limited entry of men to the profession and permitted the government to alter the numbers at later dates if it appeared that the idea of male midwives was becoming more widely accepted.¹

On protective legislation, the government introduced its promised amendment on the maintenance of machinery. This was less far-reaching than expected since it allowed women to clean and maintain unfenced machinery only. The question of moving machinery was to be reviewed by the Health and Safety Commission.²

The bill received its Royal Assent in November 1975. A summary of its provisions follows. In scope and potential they are more sweeping than allowed for by Mrs Colquhoun's criticism of them. The Act complements the Equal Pay Act by dealing with the non-contractual elements of employment. In addition it bans discrimination in education and the provision of goods, facilities and services. It created the Equal Opportunities Commission, an institution with novel powers of enforcement. It does not cover pensions, taxation, social security or maternity.³

The first part of the Act defines what is to be regarded under the rest of it as unlawful discrimination. This includes

1. OR 862 Cols 1141-1164. OR 863 Cols 1288-1292.

2. OR 862 Cols 1436-1443. OR 863 Cols 1292-1293.

3. The absence of these issues caused dissatisfaction. But the government believed that the complexities of these matters would irretrievably lengthen the passage of a bill they were anxious to see become law. Nandy, D. Seminar Oxford University 1979.

direct discrimination, where a person is less favourably treated on grounds of sex (or marital status as well as in employment); indirect discrimination, where a substantial proportion of one sex are unable, to their detriment, to comply with an apparently neutral rule, applicable to both but not related to performance of a job; and victimisation, where a person thought to be seeking redress under the Act is unfairly treated.

The sections dealing with employment cover those areas excluded from the Equal Pay Act; for example, recruitment, promotion, training, and transfer in British establishments of six or more employees or partners. Certain exceptions are allowed: for example, where one sex is a genuine occupational qualification for reasons of authenticity or where personal or welfare services may be provided more effectively by persons of a particular sex. Exceptions can also be made where an employer cannot reasonably be expected to provide separate accommodation or when the job involves work done outside the United Kingdom in a place where law and custom would make it difficult for a person of one sex to do that job effectively. Some types of employment - the armed services, ministers of religion and midwives - are treated separately and less stringently.

Pressure or instructions to discriminate by, say, an employer to an agent such as a personnel officer are unlawful under the Act, as are advertisements for jobs covered by the Act which do not make it clear that persons of either sex may apply. It is also unlawful for trade unions, professional associations, public and private employment and training agencies to deprive one sex of membership or access to services. There are some exceptions which allow for limited positive

discrimination. Unions which have hitherto been restricted to one sex may, until they merge with the counter-part for the other sex, reserve special seats in their organisational structure for members of the excluded sex. And, in training, either employers or public bodies may discriminate in favour of one sex if members of that sex have not hitherto been employed in occupations to which that training leads.

In education, discrimination in the admission of pupils and students is unlawful except under special provisions for single-sex establishments. Affecting mainly the private sector, these allow exemptions for schools educating one sex only or, for exceptional reasons, a small number of the other sex or which are funded by private endowments specifying one sex or the other. However, trustees are enabled, but not compelled, by the Act to seek alterations to the terms of such endowments. Schools, previously open to one sex only, which are in the process of becoming co-educational may, for the time being, differentiate in their treatment of male and female applicants. A positive duty is placed on local authorities to provide equal access to courses and facilities in the public sector.

The sections on the provision of goods, facilities and services include the provision of professional services, banking and credit facilities and insurance (unless a difference in treatment is based on clear actuarial evidence). This part of the Act also bans discrimination in the disposal of premises (with exceptions for small dwellings), the provision of hotel accommodation, recreational facilities, entertainment, transport and travel. Political parties are included in this section, as are voluntary bodies. But they are specified exceptions to enable them to continue, for the time being, to provide special provisions for members of one sex.

Remedies for unlawful practices can be sought by individuals and by the Equal Opportunities Commission. Individuals have

access to industrial tribunals and the Employment Appeals Tribunal for employment matters, and to the county courts for goods, facilities and services. Complaints about education may eventually go to court but, in the first instance, they must be made to the Department of Education and Science.

The EOC can assist aggrieved individuals if their cases are complex or involve important principles. Some discriminatory actions can only be taken up by the Commission. These are 'victimless' cases: for example, where a discriminatory practice meant that no person could ever put herself or himself in a position where she could be a complainant. Similarly, advertising does not involve a particular victim and here again only the EOC can initiate proceedings.

The Commission may also undertake formal investigations into particular industries, companies or services. If discrimination is found, a non-discrimination notice can be served, backed up by a court injunction, requiring it to cease. The EOC has powers to monitor the firm concerned to prevent persistent discrimination. Recommendations and reports arising from such investigations must be made available to the public.

Other functions are conciliatory and educative. Informal collaborative investigations may be carried out and research undertaken into how best to promote equality and into the problems faced by working women. The Commission may also grant funds to other bodies for this purpose. The EOC, itself, is required by government to review the working of the Acts, of protective legislation and to advise governments about the implications for female equality of tax and social security regulations.

The chronology of the advent of the Equal Pay Act and the Sex Discrimination Act having been established, it is now necessary to consider them in the light of themes raised in Chapter I. These are the relative strengths of theories about the course of political change in liberal democracies which differ in the emphasis they place on the attitudes of citizens or voters and the autonomy of politicians. Another question that was raised was why politicians seem to be receptive to some societal concerns at some times and deaf to them (or to other issues) at other times. In the following section it is argued that a number of political strands of direct and indirect relevance converged to facilitate, and even compel, the passage of these two Acts.

(IV) FACTORS, OTHER THAN WOMEN'S PRESSURE GROUPS, WHICH INFLUENCED THE ADVENT OF REFORM

Equal Pay had been on the public agenda for many years, and the idea of an anti-discrimination law for a comparatively short period. As chapter III and the preceding parts of this chapter indicate pressure groups did influence the content of both acts. The established economic interest groups, in particular, were involved in the formulation of the Equal Pay Act. In the Sex Discrimination Act, women's 'cause' groups were as influential. They did do more than 'air grievances'. They contributed to demonstrating that discrimination existed during the hearings on Private Members Bills and to the changes that took place between the White Paper and the Bill. In both Acts, once the proceedings got to the Parliamentary stage, government intentions, on the whole, prevailed. But in any discussion of reform, it is necessary to consider why governments choose to 'hear' public demands for change; and why they do so at particular times. In the case of policies banning sex discrimination there are two broad areas that need to be discussed. The first is a change in the attitudes of policy makers and Members of Parliament, not specifically about the status of women, but about the proper scope of the law. This provided an atmosphere that facilitated the passage of the Sex Discrimination Act in particular. The second factor, which has been referred to before in chapter I, is the existence of pressures (not from women) forcing governments to take advantage of both the growth of extra-parliamentary interest in equal pay and equal opportunities, and the facilitating atmosphere within Parliament. Attitudes about the law and the influence of the Treaty of Rome are dealt with in the rest of this chapter.

(IV)(a) Attitudes of MPs to the Use of the Law

The decade of the 1960s is known for its 'permissive' legislation; the abolition of capital punishment, and reform of the laws dealing with homosexuals, abortion and divorce are some examples. In the same period, the first anti-discrimination legislation was also enacted. This was, of course, to deal with racial discrimination.

The passage of these measures reveal two common features. One is evident in all comparable measures of reform and this is the role of back bench Members of Parliament; their relations with pressure groups and the extent to which alliances between MPs cut across party lines. The second feature relates to anti-discrimination legislation of the 1960s and 1970s. Generally, commentators on these laws discuss whether or not the law can be used to change attitudes. What is less frequently mentioned is that the laws themselves reflect a change in attitudes among law makers about the proper function of the law itself. A fully fledged debate about the law and morality had already taken place between Hart and Devlin.¹ The issue between them was whether the state should seek to preserve the conventional moral fabric of society or reflect the realities of behaviour of minorities when it did not impinge upon the susceptibilities of others. It is a different change that is relevant to equal opportunity policies. It is the question of the propriety of state guarantees of economic and social rights and, in particular, of the extension of these to specified or readily identifiable groups. Here again, acceptance cuts across party lines.

Members of Parliament

In connection with the first observation, Walkland tells us that until the early nineteenth century 'great social and economic changes' were brought about piecemeal by the accumulation of private

1. Hart, H. Law, Liberty and Morality (OUP 1963).

legislation.¹ But by the 1860s, the Public General Act had become the favoured method of initiating social reform. Twentieth century private Members have little influence on the initiation, if not modification, of most policies. They may air matters of concern under the Ten-Minute Rule or they may be used, and even assisted, by governments to promote legislative change on controversial issues. Mr Steel's Abortion Bill would fall into this latter category. But, in confirmation of Richards' point that on some types of issue governments may not move without backbench pressure,² it is noteworthy that all the major 'permissive' reforms were preceded by flurries of Private Members' Bills, bi-partisan interest, and lobbying by extra-parliamentary groups. The abolition of capital punishment, homosexual and divorce law reforms are some examples. On racial discrimination, Mr Fenner Brockway promoted several bills. And on sex discrimination, private bills were presented annually for five years.

Cross party alliances partly reflect changing attitudes in both main parties to questions of conscience. Until some years after the war, leaders in both parties were either afraid or contemptuous of allowing private members a free hand in such matters. On the Labour side, unity had long been regarded as necessary if the party were to succeed; permission to vote according to conscience might be used to make speeches that were highly critical of important government policy. Conservative leaders tended to be less sensitive to this sort of thing. Critical Conservative back benchers might find themselves in trouble more often with their constituency parties than with leaders in Westminster. One leader, Winston Churchill, however, believed that private member initiatives should be discouraged. He thought that it should be made difficult 'for

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1. Walkland, S. The Legislative Process in Britain (Allen and Unwin), pp.13-16.
 2. Richards, P. 'Private Members Legislation', in Walkland, S. and Ryle, M. (eds) The Commons in the 1970s (Fontana), p 127.

all sorts of happy thoughts to be carried to the Statute Book by private members'.¹

The divorce, abortion, homosexual, equal pay, sex and race discrimination reforms mark a change in parliamentary attitudes to major social questions and this change has been attributed to the advent of a Labour administration in 1964.² But active supporters of most of these reforms included members of the House of Lords and Conservatives, albeit few leading members of the Party. Several Conservative women put their names to Mr Hamilton's anti-discrimination bills. Other writers use a sociological explanation which has some validity but to which there are exceptions. Richards, for example, draws attention to a correlation between age and type of education of members on both sides of the House and dispositions towards reform.³ Rush states that younger and intellectual, but non-Oxbridge, members tend also to be reformers. Although he does not name them, he argues that members with this type of background are more often Labour than Conservative, but Conservatives with these characteristics also usually favour reform. Rush points out that the House of Commons is now dominated by new, if not young, members - elected since the 1960s.⁴ Only two members of the House in 1975, John Parker and George Strauss, were in the House before the war.

Members of Parliament like Mrs Short fit in with this kind of explanation. She had supported other social changes of the period, including abortion. Mr Lane, closely involved with race relations, had hoped that laws about race and sex might be combined.⁵ But 'liberals'

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1. Richards, P. Parliament and Conscience (Allen and Unwin), pp 27-29, 197.
 2. Pym, B. Pressure Groups and the Permissive Society (David & Charles), p 111.
 3. Ibid, Chapter 6.
 4. Rush, M. 'The Members of Parliament', in Walkland and Ryle, op cit, Chapter 2.
 5. OR 889 Col 598.

were discriminating in their support for particular measures. Nor were they all young or new Members of Parliament. Among those who differentiated was Mrs Knight (Conservative) who actively opposed Mr Steel's Abortion Bill for moral reasons but supported Equal Pay and Mr Hamilton's Anti-Discrimination bill. Mrs Oppenheim was a sponsor of Mr Hamilton's bill but became a member of Mrs Thatcher's government whose election was seen by political commentators as one marking a move to the right. Among the older reformers were hereditary peers and those who, after a lifetime of public service had been raised to the peerage. Lord Amulree and Lord Arran had campaigned for abortion and homosexual law reform and they supported equal pay and sex discrimination legislation. Lord Houghton had promoted more liberal attitudes towards contraception and was enthusiastic about women's rights. Lord Gardiner had campaigned for votes for women and the abolition of capital punishment. Lord Letherland had, apparently, always put into practice his belief in the equality of women. Some of his newspapers' war correspondents, he pointed out, were women, one of whom was the first allied reporter to cross the Rhine.¹ Baronesses Bacon, Ward and Vickers, while consistently interested in reforms for women had been Members of Parliament before the period of change noted by Richards and Rush. Baroness Summerskill, while supporting some 'permissive' legislation, had opposed divorce law reform describing the new divorce act as a 'Casanova's Charter'.²

While sociological explanations appear weakened by the facts that reformers on sex discrimination were neither necessarily

1. OR (HL) 862 Col 158.

2. She had, however, let it be known that she would drop her opposition if Mr Bishop's Private Members Bill on Matrimonial Property had been passed. Richards, P. op cit, pp 143, 152. The passing of the Sex Discrimination Act was something of a triumph for the Summerskills, since the Baroness's daughter, Dr Shirley Summerskill, was responsible for a good deal of the work on it in the Home Office.

reformers in other fields nor all new Members of Parliament, they are not undermined completely. Firstly, it will be recalled that Mrs Butler found a more favourable climate after the 1970 election. And, secondly, there was an almost complete consensus about the rectitude of the aims of the Equal Pay Act and Sex Discrimination Act. Part of this agreement may stem from shared beliefs, not only about women's rights, but also about the place of research in political decision making. Rush suggests that Members of Parliament with the characteristics that allegedly make them more open to 'permissive' reforms are also keener in basing legislation on expertise in a particular field. For this reason they tend to favour the greater use of Select Committees. Richards, however, points out that the referral of a bill to a Committee may be used as a way of postponing Private Members' legislation.¹ But it has been suggested that, in race relations, a Select Committee may have been used to collect evidence necessary for specific proposals but to which the Home Office has been unable or unwilling to attend.² It has also been suggested that public sympathy may be more forthcoming for evidence that appears to emanate from sources independent of the government and its bureaucracy.³ It was shown in Chapter III that Mr Hamilton, among others, believed that the use of a Select Committee on Anti-Discrimination in the House of Commons was a delaying tactic. But it was also the case that individuals in both Houses and the government were persuaded by the evidence of the Select Committee in the Upper House that legislation was necessary.

Focussing on the attitudes of individuals or groups of individuals may contribute to an understanding of politics between

1. Richards, P. op cit, pp 23-26.

2. Rose, E. and Associates. Colour and Citizenship: A Report on British Race Relations (Institute of Race Relations and OUP), Chapter 6.

3. Ibid.

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1959, the year in which capital punishment was abolished, and 1975.

But, because of some of the anomalies discussed above, it is necessary to look for further grounds which brought back-benchers to the fore in conscience issues and facilitated the passage of anti-discrimination laws. It is suggested here that these grounds, which may be labelled 'structural imperatives', include the British systems of party and government and constraints on the philosophical underpinnings of the welfare state.

(IV)(b) Structural Imperatives; Parliament

None of the moral reforms mentioned so far could be described as class legislation. In a system of rotating majorities for parties that are traditionally class parties, governments will have built in majorities on class issues. But this is not so on matters like homosexual reform. Because of dissidence in its own ranks and because more voters are likely to be upset than voters gained, governments cannot afford to respond to appeals from minority pressure groups on moral issues. This opens up a new role for the back bencher as an alternative target for the lobbyists, especially if he or she is of a reforming disposition. In the same way, Select Committees may become another forum for the expression of opinion by the affected minority. That so many reforms in the 1960s and early 1970s have been non-class issues may have enabled the House of Lords (which does not have to appeal to class based constituencies) to become more significant. Usually thought of as a revising chamber, it took on a progressive air on some of these issues. No controversial legislation of the moral reform type was impeded by the peers between 1965 and 1970.¹ Indeed, the Homosexual and Abortion Reform Bills passed there first. In the field of anti-discrimination proposals, Baroness Seear's Bill, identical to Mr Hamilton's,

1. Richards, P. 'Private Members' Legislation' in Walkland and Ryle, op cit, p 119.

got its Second Reading and was committed to a Select Committee in the same sessions that the Commons talked his out.

So far, attention has focussed on the reasons for bi-partisan back bench interest and prominence in certain types of issue. But, given that reference has been made also to a system of government by alternating class-based parties, it is necessary to consider why such governments should present legislative proposals which are not necessarily either minority or conscience matters but which, like them, are not class issues.

(IV)(c) Structural Imperatives; Government Initiatives

There are more women than men in the total population of Britain, but the law banning sex discrimination takes a similar form to those making discrimination against racial or religious minorities unlawful. The Equal Pay Act has a class element in it, insofar as Mrs Castle wanted working class women to have the same rights as professional women in the public sector, but since very few women of any class were paid equally, its effects cross classes. Whether aimed at racial minorities or women, making discriminatory economic and social treatment of them unlawful is equivalent to guaranteeing rights to groups that are immediately identifiable, not by class, but by innate characteristics.

The idea that social and economic welfare should be considered as being in the same category as the basic human rights to life and liberty guaranteed by the State is fairly new in Western political thought. The addition of rights to a minimum wage and social security to the usual civil rights to vote and form associations, etc. in the United Nations Charter of Human Rights was made to enable the Soviet Union to ratify it. Whether or not the two sets of rights have the same status is still being discussed by philosophers.¹ In Britain the

1. A useful summary of the main points of the debate can be found in Watson, D. 'Welfare Rights and Human Rights', Journal of Social Policy No 1, 1977.

development of a limited idea that women had some fundamental economic right equivalent to men found expression in the Married Women's Property Act. So far as universal welfare is concerned, Liberal reforms of the early twentieth century fall somewhere between Victorian notions of charity to the deserving poor and the idea that all citizens have a right to a certain level of welfare. The assumptions behind the machinery created after the Second World War are closer in spirit to the United Nations Charter because they acknowledge that a duty is placed on the state to make available universally certain services and economic assistance. The mechanisms through which some types of assistance may be received, however, are often criticised for being too heavily tinged with older ideas about the necessity to distinguish between who merits it and who does not.

In its ideal form, welfare legislation is applicable to all equally regardless of the situations of individuals. This is the concept of universalism. The provision of national education and health services are like this. But usually, welfare laws depend on knowledge of levels of welfare. However, as Sen has pointed out, information about persons other than their levels of welfare is inadmissible.¹ When welfare information available to governments is vague or limited - as it must be, Sen argues, if the concept is to retain the idea of anonymity - guaranteeing welfare becomes almost as expensive as it would be in its ideal form. As a result, a need to identify particular characteristics as signposts for distribution becomes strong. According to Sen, equality then becomes defined not by general welfare but by particular kinds of equality - for example, income, wealth, education -

1. Sen, A. 'On Weights and Measures: Informal Constraints in Social Welfare Analysis', Econometrica No.7, October 1977.

for readily identifiable groups like immigrants, ethnic minorities or women.

In respect of the British welfare state, concern with the cost of welfare has been particularly evident in the 1970s. But in the previous decade, anxieties about the ineffectiveness of welfare legislation rose to the surface. Optimism like that of Mr Pannell, referred to in Chapter III, about the wellbeing of families was exploded by the discovery that pockets of appalling poverty still existed, particularly in the inner cities.¹ National politicians were also forced to realise that racial minority groups gained little from the public provision of health services, housing and higher education. From the middle of the 1960s there was a convergence of resource problems, worries about effectiveness and a mood in the House of Commons which at once compelled and facilitated a logic leading the welfare state from the universal to the particular and towards laws for the economic and social wellbeing of the inhabitants of specified areas or citizens of specific types. Changing attitudes to the law in Parliament and government are revealed in the history of race relations legislation. A brief summary of the relevant points is provided here.²

In early discussions of race relations, there was no notion that the law might be used to guarantee economic and social rights. It was almost universally assumed that legal equality was sufficient and that, since immigrants were legally equal, they had no relevant special characteristics for which government should take responsibility. Indeed, to pick out a group and treat its members unequally or favourably was considered dangerous. Early in the 1950s one academic had recommended

1. Eg. see Coates, K. and Silbers, Poverty, The Forgotten Englishman.

2. A useful account of the events leading to race relations laws is provided by Rose, E. op cit.

legislation to ban racial discrimination in economic and social affairs, but it was not until local authorities had to grope towards ad hoc solutions to social and economic problems that the need for a different approach began to be felt at the centre. The first review of policy that moved away from the application of universal rules was undertaken in 1965. It did not refer to the dangers of unequal treatment. On the contrary, it accepted the idea that special measures to secure social rights for special groups was not merely justified but necessary. And in 1967 the first comprehensive analysis of the role of the law in combatting discrimination was made in the Street report.¹ The authors of this report thought the law should be used primarily to create a climate of opinion that would eliminate discrimination. In their view, it should be used in the last resort to seek out and punish discrimination. Nevertheless, they recommended novel powers of enforcement for the Race Relations Board.

If anything was, in Mrs Williams' words, an 'idea that had found its time', it was the view that it was proper for the law to protect particular and readily identifiable groups in this way. The trend was continued, not initiated, by the Equal Pay Act and culminated in the Sex Discrimination Act. The Sex Discrimination White Paper expressed the view that non-legal disadvantages were legitimate matters for government concern. It was noted that while racial and sexual discrimination were not identical

1. Street, H., Bindman, G., and Howe, G. Sponsored by the Race Relations Board and the National Committee for Immigrants, PEP 1967.

problems, certain consequences had common features which the law could help to eliminate by banning anti-social practices, by providing remedies, and, through changing behaviour, indirectly reducing prejudice. The events leading to the Sex Discrimination Act were occasions for assessing the Race Relations Board. Both private members and Ministers wished to avoid the pitfalls of race relations laws that forced the Board to take in all complaints with the ensuing scorn at their pursuit of frivolous cases and intolerable delays in investigating worthy ones. It has already been mentioned that a cynical explanation for the existence of the Sex Discrimination Act was that it was to be solely an experiment for the 1976 attempts to resolve the shortcomings of the old race relations laws. This cannot be substantiated, although one national newspaper hinted at it¹. However, it is the case that the Act was consciously used, without sinister overtones, as a model for the 1976 Race Relations Act². Mr Jenkins noted that 'one day the laws and institutions for both forms of discrimination would be merged'³.

Both the Equal Pay Act and the Sex Discrimination Act may have been part of a 'logic of the Welfare State'. But the timing of these particular symptoms of it are related to what would be entailed

1. Daily Telegraph 12.11.75.

2. Rendel, M. Seminar, Bedford College, 1980. The new concepts in the Sex Discrimination Act apparently went through much more easily than expected, leaving the government with the impression that more could have been proposed successfully. (Interview with participant in drafting.) However, this possibly lulled them into a false sense of security since concepts like indirect discrimination aroused a good deal of controversy in debates on the Race Relations Bill in 1976.

3. OR 877 Col 1298.

by membership of the European Economic Community.

(IV) (d) The External Pressure of EEC Membership

European interest dates back to the Treaty of Rome, Article 119 of which is about equal pay for the same work. In the summer of 1961, the then six member states agreed on a three stage programme of implementation. It was reported that the French were insisting on legislation within each member state to avoid competition from other member countries with lower labour costs¹. At that time the Conservative government in Britain was trying to negotiate entry. It was thought that Mr Heath would state Britain's willingness to accept the principle, but its preference for leaving the matter to collective bargaining. This was expected to be enough to avoid holding up negotiations but not satisfactory for a full member². The EEC programme of implementation was strict. By June 1962 disparities in pay were not to be greater than 15%, by 1963 10% and by the end of 1964 pay was to be exactly the same.

The force of EEC requirements was much greater than the ideals expressed in United Nations declarations on the rights of women and in International Labour Organisation Conventions on Equal Pay and Opportunities. Despite many appeals to the government to ratify these international agreements, it remained possible to respond by saying that Britain was not ready to do so. But the EEC provisions included the intention to send questionnaires to government employers and trades unions to ascertain progress. In addition, a member state of the EEC refusing to implement its directives could be brought before the European Court of Justice. Expulsions could follow although violations

1. Daily Telegraph 31.10.61.

2. Ibid.

would probably have to be widespread for this. Although there were no intermediate enforcement steps that could follow an unfavourable ruling from the Court, it was noted at the time that members had never defied it¹.

The probing on equal pay experienced by Mr Heath and Mr Butler in 1961 and 1962, continued during Mr Wilson's government. And it was reported that the government was worried about the possibility of a ruthless application of the rules of the Treaty of Rome². In chapter III it was noted that part of the delay in reaching firm proposals on equal pay was occasioned by a special study of the European implications. In the end, the British Act was more generous than would have been required then by the EEC. It was a compromise between Article 119 and ILO Convention 110. Later, however, a Directive, issued in 1975, extended the definition to 'work to which equal value is attributed'³. The British Act has now been deemed inadequate for the new EEC formulation⁴.

By the early 1970s, it was clear that the EEC were considering action on the non-contractual elements of employment too. This led in January 1974 to a Social Action Programme which encouraged member states to promote equal opportunities for women.⁵ Soon afterwards Britain's continued membership was in the balance. But by this time the possibility of a Directive, with all its incumbent compliance steps, was being discussed. The British government got off the mark quickly

1. Ibid.

2. Ibid, 26.4.66.

3. Council Directive 75/117 Official Journal of the European Communities 19.2.75.

4. European Communities Commission Background Report ISEC/B16/79.

5. Resolution of 21st January 1974.

because its Sex Discrimination Act was passed three months before the issuing of the Directive in February 1976¹. (This Directive also required member states to review their protective legislation.) The debate on the Directive, however, had been held in April 1975, before the Second Reading of the Sex Discrimination Bill. In the European Parliament, a British Conservative, Lady Elles, was the rapporteur. Other European Conservatives, unlike Mr Bell, argued that it was to their shame that Eastern Europe had set the lead on women's economic equality². The Directive, of course, contains no suggestions about specific ways in which such a lead might be followed. It was pointed out at the time that there was a lacunae of examples and that there were only the untried suggestions of the British private members bills³.

It is hardly surprising that a British government should not look to Eastern Europe for detailed guidance about how to enshrine women's rights in legislation or to enforce the law. But between the publication of the White Paper and the Sex Discrimination Bill, the Home Secretary and his advisor had, it will be recalled, visited the United States. Both Mr Jenkins and Mr Lester had extensive knowledge of and admiration for the Kennedy-Johnson civil rights reforms⁴. Their visit was primarily in connection with race relations policy, but while

1. Council Directive 76/207 Official Journal of the European Communities 14.2.76.

2. E.g. Mr Dykes, 'Debates of the European Parliament' 29.4.75, p 59.

3. Ibid.

4. Rose, E. op cit, p 514.

there they also discussed their sex discrimination proposals. Senior American judges suggested to them that restricting the bill to intentional, direct discrimination would emasculate its impact. In their view, the focus of the bill should be on the effects and not on their motives. It seems that reflection on this advice and on the fact that effect is a common European legal concept lead to the appearance in the bill of the concept of indirect discrimination¹.

Other concepts that owe their inclusion to the European Directive and American advice as much as to women's groups are the limited version of positive discrimination and ideas about victimisation² and damages to feelings.

Because of these similarities and because the similar policies in two countries can be used for the purposes discussed in chapter I, the next chapter is a shorter American version of the matters discussed for Britain in chapters II to IV. Implementation in both countries is discussed from chapter VI.

1. Interview July 1977 .

2. A version of victimisation had appeared in the Rent Act but is unusual in British law.

PART 2 POLICY INITIATION IN THE UNITED STATES

CHAPTER V

Working Women and Legal Intervention in the United States

(I) INTRODUCTION

This chapter begins by showing that women's pay, their pattern of employment and preparation for the labour market before legislation was similar in America and Britain. There were however some differences; for example, the female participation rate rose faster and the bi-modal work profile became normal ten years earlier in the United States. Occupational concentration has been a little less marked in America, but the broad pattern of segregation is similar to that in Britain. The middle section of this chapter deals briefly with the growth of interest in Federal intervention in pay and opportunities in the United States. The two countries exhibit similarities and contrasts in these respects. It is not clear, for example, that nineteenth century trade union interest in equal pay had the same foundation as the TUC Resolution of 1888. But, as in Britain, Federal reform came about after a long period of gestation; and also about ten years sooner. First signs, however, could have no British counterparts, since these took place in State legislatures. The American women's movement between the wars and immediately after the Second World War was either preoccupied with other issues or hardly existed. A handful of women tried to secure an equal rights amendment. And 'officially recognised' women contributed to the advent of the Equal Pay Act in 1963. But the inclusion of women in the 1964 Civil Rights Act did not come about as a result of what, in America as well as in Britain, is conventionally regarded as the usual pattern of social reform. Associations like the National Organisation

for Women (NOW) did not exist before 1964, although it and other groups later influenced extensions and amendments to the original law.

On the other hand, some individual feminists worked energetically to ensure that women continued to be included in Title VII of the Civil Rights Bill during its lengthy and controversial debates in Congress.

Their roles will also be discussed in the middle section of this chapter.

In conclusion, the relevant sections of the Civil Rights Act, related Executive Orders and Amendments passed in 1972 will be outlined.

(II) Pay

Trends in pay for women are similar in America and Britain. Before the Second World War, American women earned between 50% and 60% of men's pay, even where the same work was being performed¹. By 1939, the gap for one group, social workers, had narrowed to 84%. But even in New York, which had an Equal Pay Act, disparities could still be as wide as the 50% to be found among finishers in the paper box industry. If anything, the situation for white women deteriorated between 1945 and 1963, the year of the Federal Equal Pay Act. The position for women from ethnic minorities was worse in absolute terms although their position relative to both minority and white men improved a little during this period. These trends are shown below:

TABLE 15
Median wages of salaries of year-round full-time workers by sex and race:
1939, 1960-1963

Year	As % of white men			As % of minority men	
	White women	Minority women	Minority men	White women	Minority women
1939	60.8	23.0	45.0	135.1	51.2
1960	60.2	41.9	66.9	90.0	62.6
1961	59.2	39.5	66.0	89.6	59.9
1962	59.8	37.8	63.1	94.8	60.0
1963	59.3	37.7	65.4	90.7	57.7

Source: US Department of Labor ²

The figures for all women in different major occupational groups, however, show quite wide variations across occupations:

1. Chafe, W. 'Looking Backward in Order to Look Forward' in Kreps, J (ed) Women and the American Economy (Prentice Hall 1976) p 13.
2. 1975 Handbook on Women Workers Bulletin 297 (US Department of Labor) p 156.

TABLE 16

Women's median wages or salaries as percentage of men's by selected major occupational group, 1962-1964

Selected Major Occupational Group	1962	1963	1964
Professional, technical	66.1	64.8	64.3
Managers, administrators (except farm)	57.8	55.2	55.5
Clerical workers	68.6	67.7	66.2
Sales workers	43.6	39.0	40.4
Operatives	59.4	57.4	57.8
Service workers (except private household)	51.8	57.5	53.7

Source: US Department of Labor ¹

Some similarity to Britain can be found in the United States in the relation between pay and occupational distribution. Although many American women are clerical workers where the pay ratio is shown in table 16 to be comparatively favourable, there are more women than men among sales and service workers where the pay differentials are largest. The pattern of female employment is discussed in more detail in the next few pages.

(III) Participation Rates and Occupational Distribution of American Women

Before the Second World War the female labour forces in both Britain and America changed slowly. But while British women remained a steady proportion of the employed population, female workers in America increased their share from 18.1% in 1900 to 25.4% in 1940. In both countries the war had long term effects on women's employment. By 1970 women workers came to form a similar proportion of the labour forces in both countries:

1. 1975 Handbook on Women Workers, op cit, p 130.

TABLE 17

Working women in Britain and the United States, 1950-1971

	1950-1951		1970-1971	
	Totals	% of Labour Force	Totals	% of Labour Force
US	17.9m	29.1	31.3m	38.1
UK	7.0m	31.0	9.2m	37.8

Sources: US Dept of Labor¹UK Central Statistical Office²

As in Britain, the main source of the increase is married women. Before the war, American women workers were either single, middle class white collar workers who held jobs until marriage, or they were poor, single or married, working in factories or domestic service. Unlike Britain, the bi-modal work profile became normal quickly. According to Hakim, it was coterminous with the increase in participation by married women and was clearly established by 1950³. However, it began to undergo change in a way that is as yet hardly noticeable in Britain. A sharp rise has been seen in the United States in the participation rate of mothers aged 20 to 24 years old with children under six⁴. Higher female participation rates have been accompanied by a reduction in differences between women in minority and majority ethnic groups. In 1948, 31.3% of white women worked and 45.6% of women from ethnic minorities. By 1974, the aggregate difference was marginal, although variations occurred by age and occupation⁵.

Since the Civil Rights Act some inroads have been made by women into traditionally male jobs, sometimes at a faster

1. 1975 Handbook on Women Workers, op cit, p 11.

2. Social Trends Nos. 1 & 2, Central Statistical Office 1970, 1971.

3. Hakim, op cit, p 13.

4. 1975 Handbook on Women Workers, op cit, p 1.

5. Ibid, pp 41-45.

rate than in Britain. These will be referred to in chapters VI and VII.

But over the twentieth century, the occupational destinations of women in both countries have been similar. In his observations of America

Tocqueville found sex roles equal but different:

In no country has such constant care been taken to trace out clearly distinctive lines of action for the two sexes and to make them keep pace with one another but in pathways that are always different.

American women never manage the outward concerns of the farm or conduct business or take part in political life ... or perform the rough labour of the field ... no families are so poor as to form an exception to this rule.

The Americans have applied to the sexes the great principle of political economy which governs the manufacturers of our age, by carefully dividing the duties of men from those of women in order that the great work of society may be the better carried on.¹

The industrial revolution in America had effects like those in Britain. The cottage industries carried out by women of farming stock were removed to factories. Textile manufacturing became an important source of paid employment for women, particularly in New England, even for educated women.

During the Second Reconstruction and the new wave of immigration in the 1890s, the female manual labour force changed. Teaching and nursing opened up as female careers for the middle class, and manual occupations became the preserve of black and immigrant women. Although office work expanded as a source of employment for women during the twentieth century, a pattern dividing work into men's

1. Tocqueville, A de. Democracy in America (Vintage Books) Vol 2 pp 222-223.

and women's spheres continued, as in Britain. In 1920 and in 1940, only 12% of women workers were professionals. Less than 3% were, for example, lawyers or architects. Although 80% of school leavers in 1940 were women, only forty five cities out of 2,853 had female superintendents¹. Similarly, women factory workers rarely became supervisors.

Occupational differentiation continued after the Second World War. Women's share of selected occupations in 1950 and 1960 is shown below:

TABLE 18

Employment of women in selected occupations: 1950-and 1960

Occupation	Women as % of all workers in occupation	
	1950	1960
<u>Professional, technical</u>		
Accountants	14.9	16.4
Engineers	1.2	0.9
Lawyers, Judges	4.1	3.3
Physicians, Osteopaths	6.5	6.8
Registered Nurses	97.8	97.6
Teachers - Colleges, Universities	22.8	21.3
Teachers - others	74.5	71.6
<u>Managerial, administrative (except farm)</u>		
Bank Officials, Financial Managers	11.7	12.2
Buyers, Purchasing Agents	9.4	17.7
Food Services	27.1	24.0
Sales Managers, retail trade	24.6	28.2
<u>Sales</u>		
Representatives, wholesale, trade	5.2	7.3
Clerks, retail	48.9	53.7
<u>Clerical</u>		
Bank Tellers	45.2	69.3
Bookkeepers	77.7	83.4
Cashiers	81.7	78.4
Office Machine Operators	81.1	73.8
Secretaries, Typists	94.6	96.7
Shipping Clerks	14.3	8.6

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1. Chafe, op cit, pp 12-14.

Table 18 (contd)

Occupation	Women as % of all workers in occupation	
	1950	1960
<u>Craft Workers</u>		
Carpenters	0.4	0.4
Mechanics	1.2	1.1
Printing	11.8	11.0
Bakers	12.2	15.9
Window Dressers	32.6	46.2
Tailors	19.8	20.0
Upholsterers	8.3	10.0
<u>Operatives</u>		
Assemblers	Not Available	43.7
Dressmakers	97.1	96.7
Laundry, Cleaning	67.7	71.3
Transport, Bus Drivers	2.6	9.8
<u>Service Workers</u>		
Private Household	94.9	96.6
Food	61.6	70.0
Health	74.6	81.5

Source: US Dept of Labor¹

Some of the information in chapter II, brought together with figures for America, provides a broad comparison between women workers in the two countries:

TABLE 19

A comparison of women workers in Britain (1966) and America (1960)

Occupation	Country	Women as % of all workers in each occupation
Accountants	US	16.4
Accountants, Company Directors, Registrars	UK	15.0
Physicians, Osteopaths	US	6.8
Medical Practitioners	UK	18.0
Registered Nurses	US	97.8
Registered Nurses	UK	91.0
Teachers-Colleges, Universities	US	21.3
Teachers, Universities	UK	13.0
Teachers, other	US	71.6
Teachers, other	UK	58.0

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1. Perspectives on Working Women: A Databook. Bulletin 2080 (US Dept of Labor) pp 10-11.

Table 19 (contd)

Occupation	Country	Women as % of all workers in each occupation
Engineers	US	0.9
Engineers - Civil, Structural, Municipal	UK	0.2
Engineers, mechanical	UK	0.4
Engineers, electrical	UK	0.5
Clerical Workers	(US	67.5
Clerical Workers	(UK	55.2 (1976)
Electricians	(US	0.7
	(UK	1.9-3.5
Toolmakers	US	0.6
Skilled craft apprentices	UK	2.0
Hairdressers, Cosmetologists	US	91.8
	UK	72.0% of female apprenticeships

Sources: US Dept of Labor¹
 UK Census, Seear, EOC,²
 Labour Party.

In many of the occupations listed above the proportion of women are similar for both countries, particularly in those usually described as extensions of the female domestic role. One quite substantial difference is that the distribution of teachers across different levels of the profession varies between the two countries. A second, perhaps surprising, contrast is that Table 19 shows that the proportion of doctors who are women is three times larger in Britain than in the United States. On the whole, however, the segregation of occupations by sex has diminished, according to some analysts, at a faster rate in America than in Britain.³ Nevertheless, it is clear that even in 1960 occupations were still divided into 'men's jobs' and 'women's jobs' in a pattern not dissimilar from Britain. Moreover, any deconcentration

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1. Perspectives on Working Women, op cit, pp 10-11.
 2. See pp 48-56 & EOC Annual Report 1977 p 74.
 3. Hakim, op cit, p 37.

that did take place followed, according to Hakim, a course similar to that in Britain; that is, that men moved into 'female' occupations while women did not enter traditionally male jobs. Hakim quotes Gross's observation that 'sexual segregation in occupations is considerably more severe than racial segregation'¹. However, since the publication of Gross's analysis, some, albeit small, changes have taken place which will be discussed in chapter VII.

(IV) EDUCATION AND TRAINING

This chapter continues by considering preparation of American women for the labour market through education. As in Britain, this was a reason often invoked by employers for differentiating between male and female workers.

One interesting contrast between women in Britain and America is that it was much more common for nineteenth century American women to be educated, despite the fact that there were almost no professional avenues open to them. In the 1840s, Tocqueville noted that American women were educated to think for themselves. But he also noted that this was a corollary of the strict conditions of marriage imposed upon them. American girls were educated, not for independence, but so that they could use their reason to chose husbands with whom they could willingly submit to the laws and mores of marriage².

Despite early female education and despite efforts to better the morals of working class women made by middle class sisters in the Progressive movement, there was still room for

1. Ibid.

2. Tocqueville, op cit, pp 209-211.

improvement half a century later. The 1974 figure of 72% for working women who had received higher education is impressive. By that year a larger proportion of women than men had completed high school and a smaller proportion were in the poorly educated group¹. But this was part of a steady improvement that had taken place over the preceding twenty years. The same period saw a reduction in differences between women of ethnic minorities and white women. The proportion of minority women completing high school and going to college became almost as high as for white women.

Although in 1974 more men than women enrolled in college, the number of female students grew from the Second World War. But the higher the qualification earned, the less likely it is to be won by a woman. The numbers of women taking bachelor, masters, doctoral or professional degrees doubled or trebled between 1961 and 1971. But while they were almost half the graduands in the first two categories for 1971, their shares of the second two were 14% and 6% respectively. Most women study a fairly narrow range of subjects. Non-degree awards for women are mainly in nursing, dental hygiene, secretarial and commercial subjects, data processing and public service subjects. Of bachelor degrees conferred on women, most were in education, sociology, history, foreign languages and health. Although improvements in the rate of women studying medicine, law and engineering have occurred since 1964, these have been small. As a result, figures for 1970 to 1971 still give a reasonable picture of the different

1. 1975 Handbook on Women Workers, op cit, chapter IV.

university education of men and women:

TABLE 20

Degrees conferred on women by selected fields of study 1970/1971

	Female % of degrees conferred in particular field		
	Batchelor	Master	Doctorate
All fields	43.5	40.1	14.3
Agriculture & natural resources	4.2	5.9	2.9
Agric. & environmental design	12.0	14.1	8.3
Biological sciences	29.3	33.8	16.3
Business & Management studies	29.3	3.9	2.8
Communications	35.3	34.6	13.1
Computer Sciences	13.6	10.3	2.3
Education	74.4	56.2	21.2
Engineering	0.8	1.1	0.6
Fine & applied art	59.7	47.4	22.2
Foreign languages	74.8	65.4	38.0
Health (excluding medicine)	77.2	55.4	16.5
Letters (English)	61.0	57.5	23.5
Library sciences	92.0	81.3	28.2
Mathematics & statistics	38.1	29.3	7.8
Physical sciences	14.0	13.4	5.6
Psychology	44.7	37.2	24.0
Public affairs & services	49.1	48.8	24.2
Social sciences	37.0	28.5	13.9

Source: US Dept of Labor¹

Table 20 also shows that at doctoral level, although many fewer degrees are conferred on women, concentration is less marked. Degrees in law, medicine and dentistry are classified separately in the United States. The female share of these subjects taken together is very small; about 6.0%. This accounts for the lower proportions of women in these professions than is the case in Britain².

1. Ibid, pp 204-207.

2. Ibid, p 208. The enrollment figures in the United States have, however, been rising rapidly. See chapter VII.

Another difference is that while men and women in Britain are evenly distributed in languages and arts, there is a tendency for American women to be overrepresented in these subjects. American women do a little better than British women in the social sciences. But in both countries they are underrepresented in physical sciences, business studies and engineering. And American and British women are over-represented in education and ancillary health subjects.

It seems likely that an even higher degree of segregation was present in vocational training before equal opportunities legislation. This kind of education may be provided through apprenticeships arranged by trades unions or employers or by Federally funded training schemes. National figures for apprenticeships are not available. But a Department of Labor study of Wisconsin reveals features present in 1970 that resemble those in Britain¹. The high concentration of women into training for traditionally female jobs is evident in the following table:

TABLE 21		Wisconsin women apprentices by trade, March 1970	
Women apprentices		Percent of all female apprentices	
Cooks	45	11.5	
Cosmetologists	324	82.4	
Barbers	10	2.5	
Lithographic strippers	6		
Lithographic cameramen	2		
Florists	1	3.8	
Watchmakers	2		
Archtectural draftsmen	1		
Printers	1		
Bakers	1		
Totals	393	100.0	

Source: US Dept of Labor²

1. Women in Apprenticeship - Why Not? Manpower Research Monograph No 33
US Dept of Labor.

2. Ibid. - 2

Although national figures are not known, it is thought that about one third of the nation's female apprentices are to be found in Wisconsin. Even so, they represent only 4% of the Wisconsin total, despite that State's innovating role in local legislation on equal employment opportunities and despite its reported shortages of skilled labour. The authors of the study attribute the poor showing of women in apprenticeships to poor careers advice; ignorance in government agencies supposed to assist individuals in becoming apprentices; beliefs held by employers about suitable work for women; and their unawareness that women in their factories already do 'dirty' and 'heavy' work¹. An intensive three year programme followed this analysis. Its results are discussed in chapter VII.

The keystone of Federal Training programmes is the Manpower and Development Training Act of 1962 administered centrally until 1973. In that year the Comprehensive Employment and Training Act devolved responsibility to State, city and county governments. The schemes included in these devised under President Johnson's the Great Society Program like the Neighborhood Youth Corps and the Job Corps. The scheme used most for women was the Work Incentive Program, originally devised to make male heads of household employable. As its female enrollments increased, it attracted criticism for creating job opportunities for women that continued the same narrow range of low paid, semi-skilled work².

As in Britain, inappropriate education was a widespread reason given by employers for differentiating between men

1. Ibid, pp 7, 8.

2. Ibid, pp 15-16.

and women. This, and other explanations, also common in Britain, were reported by President Kennedy's Commission on the Status of Women in 1963¹. For example, employers were reported to believe that men resented female supervision; that women saw themselves as temporary workers and, hence, could not be considered for training or promotion; that women's preferences and characteristics caused higher rates of turnover and absenteeism; and that protective legislation made them a poor training investment. Prolific refutations of these beliefs have emanated from the government itself as well as from academic sources. And the courts have now eliminated most protective legislation that applies to one sex only²

As in Britain, male attitudes to female colleagues may be related to the social-psychological factors discussed in chapter II. And they may reflect the observation that few women are in trades unions. Low female membership is likely to have been a consequence of the type of employment where women predominate; as in Britain, service industries and office workers are difficult to organise.

Women workers showed their capacity to be militant in the early textile mills and again in the 1890s and 1920s. But it was only after the Second World War that an expansion of female unionisation began. The International Ladies Garment Workers Union was, of course, always predominantly female. But now women belong in large numbers to unions including those covering electrical workers, retail clerks, communications workers and State and local government employees. But thirty nine unions still have no women members.

1. The President's Commission on the Status of Women. Report of the Committee on Private Employment, pp 34-39.

2. See chapter VII.

However, even in unions with high female memberships, women rarely serve on their governing bodies. For example, only one woman served on the board of the International Ladies Garment Workers Union before 1940. In 1972 women were still only 7% of board members in general¹.

Interest among male trade unionists in women's rights seems to have been stronger in the late nineteenth century than in most of the twentieth. This will be discussed more fully in the next section which expands upon references made in chapter I to the history of demands for equal treatment.

(V) History of Demands for Equality for Women

The relationship between the movements for female suffrage and the abolition of slavery has already been discussed in chapter I. It is important, for the purpose of this chapter, to stress that the women's movement was not solely concerned with the vote. The Seneca Falls Declaration gave equal weight to the idea of economic emancipation through the elimination of all barriers to female employment. However, the issue of female suffrage was of sufficiently greater significance than anything else to split the women's movement when the 13th and 14th Amendments did not, after all, apply to women as well as former slaves. But both conservative and radical wings of the women's movement continued to combine feminism with an

1. 1975 Handbook on Women Workers, op cit, pp 76-78.

interest in broad questions of economic and social policy. This may have been a consequence of the observation of Tocqueville, and others, that American women, even those in manual occupations, were educated better than those elsewhere¹. Education, however, did not necessarily lead to liberation on social questions. By 1900, the Club movement was virtually the women's movement. And although Club women sometimes seemed radical, their interest in social policy had conservative underpinnings². For example, many of their policy demands stemmed from a fear of the dilution of the American 'way of life' by immigrants from Southern Europe. The General Federation of Women's Clubs even left female suffrage out of its aims until the twentieth century to avoid losing the support of conservative women!

On the other hand, the smaller radical element of the women's movement continued its involvement in the conditions of working women. Before the 1842 strikes had taken place among women workers in the textile mills about the working conditions and the right to form combinations, the Lowell Reform Group annually petitioned Congress about working conditions (as well as the abolition of slavery). After the Civil War, when women remained in occupations opened to women by the war, such as sales, teaching and nursing, the National Labor Union Convention held its first meeting in 1868 and called for an improvement in working women's rights³. Friction in the

1. Tocqueville, op cit, pp 209-211; and O'Neill, W. The Woman Movement (Allen and Unwin 1969) pp 44, 45.

2. O'Neill, op cit, pp 33-54.

3. Improvements in rights and conditions also included leisure time pursuits. The Women's Protective League, for example, founded educational settlements in New York and Boston for working women. Prestigious colleges like Barnard and Bryn Mawr offered special courses for them. Carey Thomas, one of the Principals of Bryn Mawr, was an ardent advocate for an Equal Rights Amendment. See letter from Beatrice Webb to Carey Thomas, op cit.

Convention between feminists and unionists was, however, evident; Susan Anthony was unseated as a delegate to it in 1869 because she was thought to be against organised labour. But in the same year the Knights of Labor was formed and, among its expressed aims, was equal pay for blacks and women¹.

No view has been discovered that suggests their espousal of equal pay had the same rationale as the male support for the TUC resolution of 1888. However, by 1894 it was the case that female employment was rising at the expense of men, to some extent. Male cigar-makers were being replaced by women who could operate new machines. On the other hand, men's share of the textile industry was increasing to the detriment of women. That the stance of the Knights of Labor should be taken at its face value is supported by the fact that, in 1886, they created a women's department to investigate 'the abuses to which the other sex is subjected by unscrupulous employers' and 'to agitate the principles which our Order teaches on equal pay'².

What was to become the American Federation of Labor was founded by Samuel Gompers in 1886. He supported the agitations of Progressive women for protective legislation. Unlike some proponents of protection who wanted both sexes to be shielded from the hazards of work, Mr Gompers was against equality of treatment. In 1921 he told women seeking more equitable treatment from employers and trades unions, that his organisation would discriminate against any 'nonassimilable race'³.

1. O'Sullivan, J. and Gallick, R. Workers and Allies (Smithsonian Press 1975) p 11.

2. Ibid, p 13.

3. Chafe, op cit, p 14.

His federation comprised skilled craftsmen whose unions were closed to women. But, ironically, some of them depended on women as organisers and picketters. Industrial relations in the 1890s were bitter. The Federal government intervened for the first time to protect employers' property in mines, ironworks and on the railways. The most celebrated female picketters of the time was Mary Harris Jones. During the 1890s she was an organiser for the mineworkers union (which barred female members until 1973). She and female colleagues picketted and drove away blackleg labour during the most violent upheavals of the decade. She went on to try to organise non-craft workers into the International Workers of the World¹.

The National Trade Women's League was formed at the Boston convention of the AFL in 1903. It was a coalition of middle and working class women and its aim was to support strikes predominantly by women about better conditions for women. The League supported the shirtwaisters who went on strike in New York in 1909. The strike resulted in the formation of the International Ladies Garment Workers Union which, in the 1960s, disaffiliated from the AFL-CIO because of the latter's weakness on equal rights for women. The First World War brought many more women into the labour market and there were some wartime measures to promote equal pay. But many female workers were displaced afterwards and it was the Second War that was to have a more lasting effect on female employment.

Apart from Alice Paul's efforts, referred to in

1. Unskilled workers were eventually organised in to the Confederation of Industrial Organisations.

chapter I, to secure an equal rights amendment, the period between the granting of female suffrage and the Second World War was an arid one in all sections of the women's movement. Working women continued to support male strikers in the 1920s. But Miss Paul's rejection of protective legislation and her espousal of an equal rights amendment divided women. Class loyalty was stronger than that of gender, despite remarks like that of Mr Gomper. Middle class women were diverted by the relaxation of sexual mores in the 1930s. Free love, seen by some nineteenth century feminists as liberating, had been viewed by Charlotte Perkins Gillman to be a dangerous illusion. Her prediction of its outcome is confirmed by an historian's summing up of the dominant ideology of the 1930s; 'a woman's place was at home and in the bed'¹. The wartime efforts to dispell this orthodoxy succeeded. In 1943, three quarters of the women in war work said they would continue to work outside the home when hostilities ended. The return to idealising family life took place quickly. Public opinion polls of the 1950s revealed no questioning of the sexual division of labour. Mr Adlai Stevenson in his address at Smith College in 1955 told graduating women that their role was 'to influence man and boy' through the 'humble role of housewife'². Earlier in this chapter it was shown that women were going out to work in growing numbers in this period. The discrepancy between illusion and reality was shown up dramatically by Betty Friedan. But, despite the hitherto unexpressed dissatisfaction and the changing pattern of

1. O'Neill, op cit, p 95.

2. Chafe, op cit, pp 7,20.

employment, the provision for women in the Civil Rights Act owes little to social agitation. However, the earlier pressures described in this chapter were not without effect on the question of equal pay.

For racial and religious minorities, government initiatives seem to have appeared first at the Federal level. For women, perhaps because of their involvement in Progressivism which worked mainly in the States, innovations in protection or the promotion of equality seemed to have started in State Legislatures.

Both State and Federal legislation falls into three types: minimum wage laws; regulations about fair employment practices, and legislation specifically aimed at ending discrimination¹.

Minimum wage legislation to improve the pay of women and young people has a chequered history. Many women's groups and elements of the Progressive Movement adopted this cause along with demands to restrict the numbers of hours at work. The first legislation specifying a minimum rate for women was passed by the State of Massachusetts in 1912. By 1923, fourteen other States, the District of Columbia and Puerto Rico had similar Acts. But the District of Columbia law was ruled unconstitutional on the ground that it contravened the liberty of contract. Similar rulings followed in other States. In others the laws became inoperative because of inactivity by enforcement agencies and low appropriations to them. Interest in these laws revived during the Depression and, in 1937, the Supreme Court reversed its earlier decision about constitutionality in the District of

1. Most of the following information is in the 1975 Handbook on Women Workers, op cit, chs VI and VII.

Columbia. By 1938, the year of the Federal Fair Labor Standards Act, twenty two States had minimum wage laws. The Federal Law, among other things, set minimum rates for men and women. The National Labor Relations Board was charged with enforcement. Of State laws, only that in Oklahoma covered men as well as women until the Civil Rights Act. Other provisions and enforcement procedures varied from one State to another and seven had no such legislation at all.

Public attention was focussed on equal pay rather than minimum wages for women during the First World War for female workers in occupations normally filled by men. Equal pay was the stated policy of the National War Labor Board. After the war, this policy was continued in the States of Michigan and Montana both of which passed Equal Pay Acts in 1919. For twenty five years they were the only States with equal pay laws. The Second World War brought renewed interest in equal pay and ten other States passed laws either during the war or soon afterwards. By the time of the Federal Equal Pay Act of 1963, twenty two States had already legislated in this area; and two others had clauses in their Fair Employment Laws banning discrimination in pay. Most other States followed the Federal example after 1963; the exceptions are five southern States: Alabama, Louisiana, Mississippi, North Carolina and Texas. (Texas, however, bans discrimination in pay in the public sector.)

Other forms of discrimination against women were banned in Fair Employment legislation in two States before the Civil Rights Act: Hawaii and Wisconsin. Racial discrimination was banned by the laws of twenty five States. In forty States sex discrimination in employment has been decreed unlawful. The exceptions are again mostly southern States.

The first Federal anti-discrimination legislation was the Pendleton Act of 1883 which reformed the Civil Service and banned discrimination on the grounds of religion. President Roosevelt's New Deal included efforts to end discrimination in employment on religious and racial grounds in federally funded projects. The Fair Employment Practices Commission and the National Labor Relations Board were set up at this time, the latter given jurisdiction over minimum wages and the former over discrimination in employment by defence contractors and in federally funded employment and training. President Truman extended their coverage in 1948 and, for the first time, made discrimination by unions unlawful. Presidents Truman and Eisenhower both tried to improve the working of these regulations (none of which banned sex discrimination) but no adequate enforcement machinery was ever introduced.

The idea of affirmative action, which is described later in this chapter, was introduced for the first time by President Kennedy in 1961, when he called on employers to take positive steps to increase career prospects for racial minorities. The Fair Employment Practices Commission was given powers to require compliance reports from government contractors, to terminate contracts and to recommend legal action against offending companies.

Some pressure had been put on the government to ban sex discrimination too. Miss Paul's Equal Rights Amendment was proposed annually from 1920, although it rarely reached the floor of the House. Its implications for female employment were controversial

because it would supersede minimum wage and maximum hours legislation. Alternative courses were sought that would avoid this controversy. Demands were made for commissions to investigate the problems of women in employment. Several bills were presented by Congressmen Cellar, McDonnell and Clayton-Powell to the House during the 1950s which were supported by Catholic women, Jewish women and trades unions who were unhappy with the idea of an equal rights amendment. These bills varied in scope and in proposed methods of enforcement. Congressman McDonnell's bill was the only one to get through the lower chamber but was defeated by filibuster in the Senate.

Shortly after President Kennedy's inaugural speech, his Commission on the Status of Women was set up. According to one observer, its purpose was not primarily egalitarian but the Commissioners gradually shifted from a task aiming at the most rational use of skilled labour to the idea of promoting equality for itself.¹ Katharine Ellickson, Executive Secretary of the Commission, describes the Commission as a product of the growing concern about frustrations met by women in the labour market and of the realisation of policy makers that, although there was no organised pressure from women, election candidates increasingly had to have programmes that appealed to them.

Ms Ellickson and Ms Esther Petersen, whom Kennedy had appointed Director of the Women's Bureau, were both

1. Ellickson, K. The President's Commission on the Status of Women: Its Formation, Functioning and Contribution. Unpublished paper 1976. Walter P Reuther Library, Wayne State University, Michigan.

active trade unionists who had tried but failed to persuade the AFL-CIO into endorsing equal opportunity policies. Ms Ellickson had helped to promote Congressman Celler's bills in the 1950s. Because of the protective legislation controversy in the equal rights amendment, the two women wanted the enactment of a constructive plan, 'including a Commission that would overcome discrimination and would be an alternative to the ERA'¹.

A suggestion for a Presidential

Commission was made in February 1961 by Ms Ellickson to Ms Petersen. One week later, on the 28th February, the issue was raised in a meeting between Ms Petersen and women trades unionists. The idea was taken up by the Secretary of Labor whose first justification to the President for the proposal was that it would be a constructive alternative to 'the futile agitation about the ERA'². President Kennedy later committed himself to supporting the ERA but Ms Ellickson claims that this arose from an unauthorised alteration to his speech by a pro-ERA member of his staff. The Commission's desire to overcome the ERA controversy was accompanied by a wish to transcend party politics. Labour women identified themselves with President Kennedy's victory but the Commission was to be bi-partisan. Eleanor Roosevelt was chosen to lead it because she was 'an outstanding American symbol of humanitarian accomplishment' for Republicans as well as Democrats.³

President Kennedy gave his full support to the Commission, not only directing Federal government departments and

1. Ibid, p 67.

2. Ibid, p 3.

3. Ibid, p 7.

agencies to assist it but also instructing them to review their own practices and procedures affecting female employment. The Commission's employment recommendations, made in 1963, were modest.¹ Their investigations led the Commissioners to urge the rapid introduction of a Federal equal pay law because of widespread inequality of pay for comparable work even in those States which had their own legislation. They recommended the establishment of a Presidential Committee on Merit Appointments in private and public employment. But with one dissenter it was thought that compliance should be voluntary for the time being except in cases of persistent and wilful non-compliance. No 'cease and desist' authority, like that of the National Labor Relations Board, was thought necessary. The report called for further research into part-time work, turnover, absenteeism, and the emotional characteristics of women. The keeping of a list of qualified women was suggested. The Commissioners also thought that the United States Employment Service Agencies should pay particular attention to promoting equality². In addition, the establishment of interdepartmental and citizens advisory committees were recommended to act as clearing houses for research and information.

These committees were set up and various States established their own Commissions all of which generated research and discussion. The Equal Pay Act of 1963 was accelerated. But no action was taken on the Commission's other recommendations. Women were not included in President Kennedy's Civil Rights proposals. That eventually women were included in Title VII of the Act was a result of a curious

1. President's Commission on the Status of Women. Report of the Committee on private employment.

2. Had later Executive Orders required this, some local attempts, described in chapter VII, to improve compliance by government contractors would not have been necessary.

combination of circumstances.

Conventional theories of social reform are superficially supported by Ms Ellickson's observation that parties needed to appear favourable towards women; by the discussion generated by committees and commissions; by Betty Friedan's claim to feel that she was in tune with 'something much larger than herself'¹; and by her invitations to address underground feminist groups. But although her book was a best seller by 1964, general indications of the potential interest in women's rights was so small the year before that her publishers refused to print more than a few thousand copies. Moreover, women who were later as active as she in feminism, were at that time involved in other things, especially the black civil rights movement. In contrast to the large public involvement over the question of civil rights for racial minorities, only three individual women and one group took part in ensuring that the Civil Rights Act would ban discrimination against working women. Women did attend the 1963 hearings on the first proposals but their evidence stressed the banning of racial discrimination. Women in the American Association of University Teachers specifically opposed the inclusion of discrimination on the grounds of sex to avoid diluting the bill. President Kennedy's proposals, which were for racial minorities only, were introduced to the House by Congressman Cellar in June 1963 and the Hearings on his (and others) proposals lasted twenty two days². Employment opportunities were covered in Title VII. Other sections dealt with voting, public accommodation, public facilities, education, federally assisted programmes. Under Title VII an Equal Employment Opportunities

1. Friedan, B. It Changed My Life (Dell 1977) p 39.

2. Legislative History of Titles VII and XI of Civil Rights Act of 1964.

Commission was proposed to investigate complaints of discrimination. Enforcement was to be the responsibility of individuals or the Commission through the courts. When President Johnson succeeded President Kennedy, he gave special priority to civil rights for 1964. In the beginning of that year, the Rules Committee cleared the bill for House action and between 31st January and 10th February ten amendments were made to Title VII. For women, the most important one was tabled by the Virginian Congressman Smith. This added sex to the list of characteristics that could not be discriminated against in employment. With very different motives, the moderate Democratic Congresswoman Martha Griffiths from Michigan supported him¹.

Congressman Smith claimed to be serious about equal rights for women. His real intention was to break the liberal civil rights coalition in order to protect southern interests against a comprehensive law. A suggestion that sex be included could have split the liberals into two groups; those who would go all out for no amendments whatsoever, and those who would take his suggestion seriously. If the southerners did not get what they wanted in the Congress, then the inclusion of women could create difficulties for the bill in Senate. If his tactics failed and the bill became law, implementation would be impeded by an unwanted extra burden of enforcement.

Martha Griffiths' position was entirely different. She had been one of the most persistent proponents of

1. Orfield, G. Congressional Power: Congress and Social Change (Harcourt Brace Jovanovich 1975); and Robinson, D. 'Two Movements in Pursuit of Equal Employment Opportunity' Signs (Spring 1979)

legislation for women and had wide knowledge of discrimination. It had been her intention all along to try to add sex to Title VII. She had not raised the issue during the Hearings because she thought she would get a better reception on the floor of the House¹.

With a pretence of sincerity, Congressman Smith opened his speech for the amendment by referring to an alleged letter from a constituent about the shortage of marriageable men². Laughter spread until Congressman Cellar, for the 'no amendment' liberals said the proposal had to be rejected. He cited a letter from Esther Petersen in which she claimed that such legislation would not be to the best advantage to women. He argued that the States were opposed to the amendment but said his main objection was that it would obscure the purpose of the bill and endanger its passage. Congresswoman Griffiths tried to save the amendment by showing that black women would have smaller redress for wrongs than black men. Women of both parties began to speak on her side. Only one did not. This was Congresswoman Green who felt the amendment would clutter up the bill. Congressman Smith succeeded in splitting women from the 'no amendment' liberals. Nevertheless, the women carried other liberals and the amendment passed by 168 votes to 133. Two days later, the whole bill passed by 290 votes to 130. It then went straight to the floor of the Senate instead of to the Senate Judiciary Committee. The Senate civil rights coalition was lead by Hubert Humphrey who had the support of the Leadership Conference, black organisations, the church, organised labour, Americans

1. Freeman, op cit, p 53

2. Legislative History, op cit, p 3213.

for Democratic Action and the American Civil Liberties Union. The opposition was lead by Senator Richard Russell with the Republican leader, Everett Dirkson and a few female moderate Republicans somewhere in the middle.

The expected filibuster came and went on for five hundred hours, lasting over eighty three days. For fifty seven of those days, normal Senate business was stopped. During the weeks of discussion, Betty Friedan and the Women's International League for Peace and Freedom constantly lobbied to maintain the provision for women in employment. Eighty seven amendments were tabled and, eventually, a new bill was drafted by Senators Dirkson, Mansfield, and Humphrey in collaboration with the Attorney-General, Robert Kennedy, and the Justice Department¹. It is said that a Presidential aide, Ms Carpenter, was instrumental in securing acceptance by the administration of women's employment rights². The important changes to Title VII of the new bill were: that State jurisdiction should be deferred to where there was legislation already; the EEOC should not, after all, have the right to bring individual suits; the Justice Department, not the EEOC, should litigate in 'pattern and practice' cases; and the possibility of duplications of reporting on compliance progress was eliminated.

When the substitute bill was introduced early in June, moves to a cloture vote began. Sixty seven votes to cut off further discussion were needed. In the end, seventy one voted in favour of cloture, including one Senator brought in a wheelchair and who died shortly afterwards. The bill itself passed by 73 votes to 27.

1. Ibid, pp 3003-3049.

2. Robinson, op cit

One of its architects, Senator Dirksen, wavered over the female provision of Title VII. A fellow Republican, Margaret Chase Smith, knew that he had been planning to try for its deletion on the floor. She privately told him that she would oppose him and persuade other Republicans to do the same¹. In the end, all he did was to ask if women would be treated favourably as a result of their inclusion; but he did not press when given a somewhat unsatisfactory answer. The question of how the Act would work for women was not discussed at all during any of the public debates. When the Senate bill was sent to the lower House there was no Conference between them. The bill was accepted in toto. At the signing ceremony on 2nd July 1964, President Johnson's remarks were couched entirely in masculine terms with no reference to women.

If southerners thought that the banning of discrimination on the grounds of sex would successfully overload the enforcement machinery, the 'no amendment' liberals became equally sanguine about the relative fates of women and blacks under the Act. Both groups were right and wrong about its consequences. The southerners were right about the overloading of the machinery. The liberals were right for a few years. The young EEOC at first acted on the assumption that women were included as a joke and that its responsibilities to them were minimal. But they did not predict the sudden rise of well organised women's groups frustrated by the EEOC's failure to take them seriously. Indeed, the liberals' initial fears that too much of the EEOC's energies would be taken up with allegations of discrimination against women appears to be borne out by the changing distribution of complaints

1. Friedan, It Changed My Life, op cit, p 113.

received by the agency. Ironically for the South many of the strengthening amendments which they tried to keep out of the original bill have been re-installed at the instigation of women. More detailed discussion of these aspects can be found in chapter VII. This chapter ends with a brief description of the provisions of the Equal Pay Act, the relevant sections of the Civil Rights Act, and subsequent Executive Orders and Amendments.

(VI) The Provisions of the Legislation¹

(VI) (a) The Equal Pay Act of 1963 (Effective 11th June 1964)

This Act amended the requirement of the Fair Labor Standards Act for minimum rates for women and men by banning differences in pay based on sex. To begin with it applied to the same workers as those covered by minimum wage legislation. To meet criticisms that this protected too narrow a class of workers, it was amended in 1972 and 1974 to cover broad categories of workers in private and public employment. Under the Act, employers must pay the same wages to women as to men if they work at the same occupation, under similar conditions, or if they do work requiring equal or substantially similar skill, effort ^{or} responsibility. Differences are permissible if they are based on merit, seniority or extra productivity under a piece-work system. These exemptions are similar to those classed in Britain as

1. The main sources for this section is the Handbook on Women Workers, op cit, chapter VI; and Player, M. Federal Law of Employment Discrimination (West Publishing Co 1976); and Peratis and Carey, op cit,

material differences.

The development of case law has had consequences which are also found in the British legislation. Work does not have to be identical. Differences in duties can be discounted if employees of the better paid sex rarely have to do them; or if they are minor tasks; or if employees of the other sex also have extra, although different, tasks to do. In the United States, it has been ruled that the obligation to do shift work does not justify an extra difference in pay over and above the shift premium. This is not dealt with in the British legislation and case law has been confused, although it seems now to be similar to the United States. The notion of indirect discrimination, a result of the Civil Rights Act, has been grafted by some American courts on to law on equal pay. It is not a legal avoidance for employers to make use of an apparently neutral rule (such as all employees in a certain grade being obliged to do overtime and to let a few women into that grade) to justify paying most female employees less. A British plaintiff in a case where the grading system was manipulated to allow smaller payments to women probably would have to fight under the Sex Discrimination Act and not the Equal Pay Act. Other case law in the United States with similarities to Britain is that of differences between male and female rates of pay which must be resolved by putting the lower rate up to the higher and not the other way around. Compliance in the United States was the responsibility of the Wage and Hour Division of the Department of Labor between 1963 and 1979. Individuals could file complaints with the Department either for themselves or on behalf of a group. To avoid

retaliation, complaints could be made anonymously. The administration officer in the Department would investigate the complaint and attempt informal conciliation. In the event of failure, the individual could file a suit in court. The Department itself could initiate investigations without complaints and often did so automatically when reviewing companies for other breaches. Again the Department was required to try to negotiate a settlement but, if unsuccessful, could file a suit. Under President Carter's Civil Rights Reorganisation Project, responsibility has been moved to the Equal Employment Opportunities Commission as one step in a phased plan to transfer enforcement of all aspects of equality in employment to that agency. Sanctions for each breach of the Act are stronger in America than in Britain. In both countries, the employer can be required to pay up to two years back pay. In America, if the discrimination in pay is 'wilful' this may be extended to three years to compensate for damages to feelings. In Britain, compensation for damaged feelings can be claimed only under the Sex Discrimination Act. A 'wilful' discriminator in the United States may also face a fine of \$10,000 and two such convictions could lead to six months imprisonment.

(VI) (b) Title VII of the Civil Rights Act of 1964 (Effective from 2nd July 1965)
amended by Executive Orders 11246, 11478 and by the Equal Employment
Opportunities Act of 1972.

Together these laws cover most employees in private employment, in State and local government, and in bodies receiving Federal funds. The original 1964 Act applied to private

employers of not less than one hundred employees during the first year; and thereafter twenty five. (A later amendment reduced the operative number to fifteen.) The Act makes it unlawful for an employer to refuse, on grounds of race, colour, religion, national origin, or sex, to hire, to discharge, to discriminate in compensation, terms, conditions, privileges of employment, or to segregate or classify employees in such a way as to deprive them of opportunities. Employment agencies are banned from refusing to refer potential employees on the same grounds; nor may labour unions exclude, restrict, segregate or expel their members on the same grounds. Employers and unions are not allowed to discriminate in offering apprenticeships and on-the-job training. The Civil Rights Act allows for exceptions where sex could be shown to be a bone fide occupational qualification, (BFOQ); in religious institutions; in cases of national security; and where an individual was a member of the Communist Party. Different treatment is also allowed in cases of merit or different rates of productivity. In the original Act, it was stated that, except in the case of Indians in enterprises near Indian Reservations, nothing in the Act could be construed as warranting preferential treatment on account of an imbalance. This problem has become confused by Executive Orders which will be discussed later. Other unlawful practices include retaliation by an employer, union, or employment agency against an individual known to be bringing a charge. Advertisements expressing preferences for one sex or nationality, etc. over another are also unlawful except where there is a bone fide occupational qualification. The British provisions of 1975 were similar in scope,

except that the Sex Discrimination Act also bans discrimination on the grounds of marital status; does not exclude members of the Communist Party; and allows but does not insist on preferential treatment in the training of one sex for jobs previously done by the other.

The Civil Rights Act created the Equal Employment Opportunities Commission (EEOC), a bi-partisan body whose commissioners are appointed by the President. At first, the EEOC could only investigate individual complaints and conciliate. Its powers to investigate were circumscribed where State institutions already existed and it was not allowed to file suits itself. If its investigations showed cause in individual cases, it was for the plaintiff to file suit. The EEOC could, in such cases, submit *amicus curiae* briefs to investigate patterns and practices of discrimination without individual complaints but in these cases power to litigate rested with the Department of Justice. The EEOC did not and still does not have the 'cease and desist' authority of the National Labor Relations Board which is similar to the British Commission's power to issue a non-discrimination notice. This has always been a controversial issue in the United States since the Department of Justice did not have to follow EEOC recommendations to litigate. An amendment allowing the EEOC to go to court on behalf of individuals in private employment was passed as a compromise. This can have as large an impact as the British Commission's power to investigate and issue a non-discrimination notice. The reason for this is that individual cases can become 'class-action' suits which may cover large numbers of employees.

The EEOC has similar powers to the British

Commission to collect evidence and is liable to corresponding penalties for breaches of confidentiality. Other bodies, like the Civil Rights Commission and the Department of Labor may also carry out research. The EEOC can issue guidelines on employment practices which are not mandatory but are treated seriously by the courts. The British EOC, too, may issue either guidelines or codes of practice; the latter would be admissible as evidence in a court of law.

Important statutory amendments affecting private employment have been mentioned already: the reduction of the size of firms covered; the granting of power to the EEOC to litigate. Changes affecting the public sector resulted from the Presidential decisions and will be dealt with shortly. For the private sector critical development took place in the courts. The wording of the Civil Act suggests that an action is discriminatory only when it is intended to be so. But, in an important case, *Griggs V Duke Power Company*, the Supreme Court decided that the aim of legislators had been to end the detrimental impact on racial minorities of arbitrary conditions imposed by employers whether or not they had intended to discriminate. This was the origin of the idea that it was not necessary to look for improper motives and that 'neutral rules' were discriminatory if they were unrelated to job performance and had a disproportionate impact on a particular group. These principles became part of the general case law under the Civil Rights Act and influenced the most important change in British government thinking between the publications of the White Paper and the Sex Discrimination Bill.

Enforcement of the principle of non-discrimination

for State, local and Federal employees was left in the Act to the departments concerned and the Department of Justice. But in August 1969 the President reduced the leeway allowed to the Federal Civil Service Commission. Executive Order 11478 insists that Federal agencies draw up affirmative action plans to rectify past discrimination. Under the 1972 Equal Opportunities Act, the Civil Service Commission became obliged to provide remedies to individuals (reinstatement of promotion with back pay where appropriate) similar to those available to private employees. At the same time, the Commission was instructed to monitor its affirmative action programmes. As a result of President Carter's comprehensive review of civil rights laws and institutions, it was planned to remove the duties of the Federal Civil Service Commission to the Equal Employment Opportunities Commission.

(VI) (c) EXECUTIVE ORDERS 11246 AND 11375

The Executive Orders with the most widespread significance are numbers 11246 and 11375. These outlaw discrimination by contractors to the government and require them to take positive steps to rectify imbalances caused by past discrimination. The first was an aspect deliberately left untouched by British government because of the location of contractors in areas where unemployment was potentially high.¹ The second aspect was touched upon only by the British in the clause permitting positive discrimination in certain training. Modesty was deliberate because of disquiet in Britain over implementation in America. In the United States, many employers are affected; contractors, sub-contractors; and those involved in projects assisted by Federal funds or loans, including universities. Trades unions are not directly subject

1. Mr Callaghan's government, however, later announced the contracts with companies breaching pay guidelines would be broken. This happened with Ford Motor Company.

to the Orders, but contractors are not allowed to cite union policies as a reason for avoidance of obligations. The first Order excluded building contractors; nor did it cover sex discrimination. Both aspects were dealt with by the second. But the first set the pattern. As indicated earlier in this chapter, the idea of contract compliance had existed since the 1940s, but without further implications. Now contractors are required to

take affirmative action to ensure that applicants are employed and employees treated during employment without reference to race, colour, religion, national origin or sex. Such action shall include, but not be limited to, employment, upgrading, demotion, transfer, advertising, lay-off, pay and other compensation, and training.

Contractors with fifty or more employees and whose contracts are worth more than \$ 50,000 are required in addition to develop affirmative action plans to remove underutilisation of previously excluded groups. A brief description of the philosophy of such plans follows this outline of the contents of the Executive Orders.

Responsibility for enforcement was placed originally on the particular contracting departments under the guidance of the Office of Contract Compliance (OFCCP) in the Department of Labor. It now resides in the Department of Labor, although the application of sanctions remains in the hands of the contracting departments. Complaints may be filed by individuals with the OFCCP within 180 days of the alleged breach. The OFCCP can investigate itself or refer the matter to the EEOC. It is the OFCCP's responsibility to monitor and evaluate compliance plans and to develop regulations and guidelines.

The OFCCP requires written details of how the problem is to be solved and conducts reviews of potential contractors employment practices as well as those of companies already in a contractual relationship.

If the breach is not rectified, the OFCCP may recommend to the contracting department that the contract be suspended during hearings; that it be cancelled; or that the contractor be debarred from entering into agreements with any government department. It is also empowered to publish the names of the companies and unions in breach of contract. It may also recommend that either the EEOC or the Attorney-General file suit against the offending parties.

(VI) (d) AFFIRMATIVE ACTION PLANS

As a result of challenges to the outcomes of affirmative action plans, the most famous of which were brought by Mr Defunis and Mr Bakke against universities¹, it has come to be believed that the plans are quota systems which allow specified groups more favourable treatment than others. This was not the intention of policy makers. Their aim was to ensure that as complete a pool as possible of qualified people would be considered as potential recruits.

President Kennedy was first to coin the phrase. Although he spoke of positive steps to promote equality, the Fair Employment Practices Commission dealt primarily with remedies such as back pay, to redress the rights of individual unfairly treated workers. In recent years it has come to be thought that discrimination is not primarily an individual problem but a set of deeply imbedded

1. Discrimination in the admission of students to educational institutions is unlawful, not under the Civil Rights Act, but by Title IX of the Education Act. However, staff and students of universities are included in Executive Orders requiring affirmative action.

practices that place barriers to the employment of whole groups. Consequently, the idea has taken on a new meaning. It now entails comprehensive plans to identify and remove those barriers. The recommended form of such plans was outlined by the Office of Contract Compliance Programs in Revised Order No 4 (1970). In this Order, an affirmative action plan is defined as:

a set of specific and result oriented procedures to which a contractor commits himself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures is inadequate. An acceptable affirmative action program must include an analysis of areas in which the contractor is deficient in the utilisation of minority groups and women, and further, goals and timetables to which the contractors' good faith efforts must be directed to correct the deficiencies, thus to achieve prompt and full utilisation of minorities and women at all levels and in all segments of his work force where deficiencies exist.

In determining whether there is underutilisation, the contractor should consider the local population; the extent of unemployment in the affected group compared to the total work force in the area; the availability of skilled members of the affected group; the availability and promotability of members of the group already in the company; the existence of suitable training institutions; and the degree of training the company can offer. In determining goals the contractor should consider involving staff at different levels in the decision-making process. Measurable and attainable specific goals should be set with timetables for completion, taking into account possible expansion,

turnover or contraction of staff. Goals and timetables with supporting data should form part of the contractors' written affirmative action programme. The supporting data should include, but not be limited to, progression line charts, seniority rosters, applicant flows, and rejection ratios. Affirmative action programmes should also include full mechanisms for internal review and reporting and for the dissemination of information to employees, unions, local schools and community action groups interested in equality for women and minorities. If goals are not met detailed analysis must be made to reveal the reason for failure.

This is not supposed to be a quota system. In a good plan, efforts are made to find women or members of minority groups who are also the best persons to employ. This means extensive recruitment in schools and universities instead of accepting employees through the 'father-son' system, by word of mouth, or at meetings of professional associations. The many allegations that places are reserved for members of the affected group without regard for their qualifications will be discussed in chapter VII.

This chapter ends with a brief reference to the enormous^{NESS} of anti-discrimination laws and regulations in the United States. For example, laws other than those described deal with the admission of students to educational institutions, pensions and safety at work. The employment rights of pregnant women, however, is still be debated in the courts. This contrasts with the limited protection for pregnant women in Britain, provided by the Employment Protection Act.

Altogether, there are almost two hundred

pieces of legislation and, until 1978, innumerable institutions which deal with the rights of women at work. In addition, various States also have their own laws. Enforcement has been hampered by the confusion this proliferation generates for the protected class and for employers. Dissatisfaction lead to lobbying by pressure groups to close loopholes and action by President Carter to rationalise the institutions. These issues will be discussed in chapter VII, which deals with implementation.

PART 3 IMPLEMENTATION IN BRITAIN AND THE
UNITED STATES

CHAPTER VI

Introduction to Part III and Implementation in Britain

(I) Introduction

In chapter I, it was noted that an important element of policy studies is the emphasis placed on implementation. It was argued that the reasons for this are twofold. Firstly, a more complete picture of politics is provided by analyses that go beyond the passage of legislation. This reflects the observation that policy is not merely a discrete decision. The other point made was that the administering of policy is not necessarily the neutral process implied by the separation of political science and public administration. Chapter I referred, too, to disputes about what it means for a political scientist to study policy implementation.

So far as the subject of this thesis is concerned, a thorough analysis of changes in pay and occupational distribution after the passage of legislation requires the techniques of an economist. The question of whether changes in these respects can be attributed wholly to legal reforms or whether they would have occurred anyway is difficult to answer with certainty - for either an economist or a political scientist. An estimation might be made by looking at countries, otherwise similar, with no equal pay or opportunity laws. Such a counterfactual approach has been employed by an economist on the question of equal pay¹. As a result of his analysis of sixteen industrialised countries, he tentatively

1. Moroney, J. 'Do Women Earn Less Under Capitalism?' Economic Journal September 1979, pp 601-613.

speculates that inequality of pay between men and women may persist more strongly in those societies with vigorous traditions of common law; and less strongly in those with clear conceptions of civil or public law. On the face of it, his coupling of persistent inequalities in the United States, where there is a strong sense of constitution, and in Britain, where there is no 'declared and safeguarded general principle'¹ of human rights, is puzzling. But in both countries the day-to-day lives of women have been governed by similar systems of common law. And, in both societies, major changes in judicial views on the political rights of women came about only as a result of unambiguous direction from political leaders. The primacy of politicians over judges on the issue of suffrage was referred to in chapter I.

It would seem, therefore, that clear statutory guidance on women's employment rights is necessary at least to accelerate changes in female work patterns in both Britain and America. It is also important that institutions created or charged by the law to implement the norms expressed in the law carry out their responsibilities as intended. And the examining of whether institutions do this is a task fully in the scope of political science. In addition, if, as it has been argued, implementation is a political process, we can expect to find relevant interest groups trying to contribute to it. Consequently, this chapter and the next, while referring to the developments in the pay and occupational distribution of women, concentrates on the behaviour of the institutions and groups that are supposed to accelerate the process of change. The rest of this chapter deals with these aspects of policy implementation in

1. Scarman, L. 'Public Administration and the Courts' Public Administration Vol 57 (Spring 1979) p 5.

Britain and chapter VII with the United States.

(II) Post-Legislative Patterns of Women's Pay and Employment in Britain

Voluntary compliance with the Equal Pay Act

began quite quickly. Improvements continued after the Act became enforceable by the Equal Opportunities Commission and industrial tribunals. But in 1978 a decline set in. These movements are shown in the following table:-

TABLE 22

Average gross hourly earnings of women as % of men's, excluding the effects of overtime, 1970-1980

1970	1973	1974	1975	1976	1977	1978	1979	1980
63.1	66.8	67.4	72.1	75.1	75.5	73.9	73.0	73.5

Source: New Earnings Survey 1970-1980¹

The initial improvements stem from the equal payments granted to women doing the same (or very similar) work as men. The peak of 1977 reflects the findings of Chiplin and Sloane that very few full-time female employees engaged on work like that of men now receive lower pay². In addition, the section of the Act requiring equal pay for work rated as equivalent by a job evaluation scheme, while used less frequently, has resulted in some increases in equity for women³. Improvements between 1975 and 1977 were encouraged not only by the newly compulsory nature of the Act, but also by the existence of a pay policy that protected gains permitted by it⁴.

1. Reproduced in Fifth Annual Report 1980. EOC June 1981, p 70.

2. Discussed in chapter II.

3. Glucklich, P. Report on LSE Project on Equal Pay. Equal Pay and Opportunities Campaign: Summer Report, July 1978.

4. Mackie, L. Guardian 27.7.78.

That full equality did not occur and that women's pay as a percentage of men's declined after 1978 is a consequence, in part, of inadequacies in the equal pay law itself and, in the main, of practices that contravene the Sex Discrimination Act. One of the difficulties of the Equal Pay Act is that under the section dealing with like work, it is necessary for a female plaintiff to have a man with whom she can compare herself. Another is that the job evaluation section does not make schemes with discriminatory measurement factors unlawful unless a case is proved. A third is the extent of occupational segregation. As the economists referred to in chapter II expected, the Equal Pay Act contributed to some increase in occupational segregation as employers and unions reached agreements on grading structures that changed job titles, added more content to men's jobs, or moved women onto jobs where there were no men. Some job evaluation schemes were manipulated to ensure that women's jobs did not emerge among the more highly paid grades¹.

Although the Sex Discrimination Act bans discrimination in recruitment, grading, promotion and training, its effects have not been dramatic. In 1978, it was observed in the Sunday Times that

the next time you ask for a plumber ... or a roofer ... , it is quite possible that when you open the door, the figure in overalls will be a woman.²

The report went on to say that a growing number of women were joining the construction business as a result of the Sex Discrimination Act. But

1. Glucklich, op cit

2. Hodgson, M. Sunday Times Colour Supplement, 29.10.78, p 109

the change, in fact, was very small. Women as a percentage of men in this industry increased from 6.8% in 1975 to 7.6% in 1980¹. The largest gains made by women were in medicine. By 1979, 30% of doctors were women². A small gain was made in management. But this indicates the continuation of intra- as well as inter-occupational segregation as personnel management accounts for most of the improvement in this general category³. In its Annual Report for 1980, the Equal Opportunities Commission states that:

All the available information about women's position in the labour force points to their being concentrated in industries and occupations which are largely female; this has remained so since 1975.⁴

An enquiry funded by the Commission and the SSRC reported in the same year that the occupational distribution of women still correlates closely with the division between low and well paid work. For example, more than three quarters of employers hire men exclusively as sales managers, scientists, firemen and supervisors⁵.

Although most firms reported to the EOC that they pursued policies of equality only 3% in 1981 could produce documentary evidence of them⁶. To a large extent, differential patterns of recruitment and promotion seem to follow from beliefs among employers that they are free to ignore the Sex Discrimination Act. In 1978, managers in almost 84% of a small sample of firms admitted to specifying

1. Annual Report 1980 EOC op cit p 63.

2. Owen, L. The Observer, 4.2.79, p 39.

3. Ibid.

4. Annual Report EOC, op cit, p 63.

5. Research carried out by IFF Research Ltd. Reported in Employment Gazette Department of Employment, November 1980, p 1144.

6. EOC Press Notice M45, 7.7.81.

sex to local job centres, turning people down on grounds of sex, applying neutral rules unrelated to the job but discriminating in effect, and denying requests for training according to sex¹. When asked why they thought so few women rise to senior positions or do skilled work, most employers believed the explanations to be that women were not career conscious². More employers thought this in 1979 than they did in 1973. Those who also thought that society's attitudes and traditions were important disincentives were more numerous in 1979 than in 1973. But fewer employers referred to breaks in working lives, unreliability or male prejudice. Many fewer believed the problem to be one of deliberate discrimination.

Fewer employers in 1979 than in 1973 thought that women had less chance than men to be trained appropriately. Some industrial training boards have begun to make efforts to train women in occupations previously dominated by men. This will be discussed more fully later in the chapter. But overall, the Equal Opportunities Commission finds very little change between 1975 and 1980 in the pattern of education or training either before or after entry to the labour market. Few employers have taken advantage of the enabling clause of the Sex Discrimination Act that permits positive discrimination in training for occupations where one sex is absent.

Women's groups, the Equal Opportunities Commission and the TUC have shown interest recently in positive action of this and other types. The trades union movement has taken some time to become active in connection with the Sex Discrimination Act. In 1975 the TUC

1. Glucklich, op cit.

2. IFF Research Ltd, op cit.

issued a model equal opportunity clause, recommending it be written into all union agreements with employers. But few unions did much about it at first. Female membership of unions, however, grew rapidly between 1974 and 1980, particularly in COHSE, NALGO, NUPE, and TASS. TASS and the unions of tobacco workers and allied shops staffs have been among the most active in promoting women's rights from the advent of the new law.

Although employers referred in larger numbers in 1979 than before to discouraging societal attitudes and although trades unions were slow to act on the Sex Discrimination Act, the attitudes of women workers have changed during the 1970s. While the argument that in periods of unemployment men should have priority remained powerful, the number of women who give high priority to their own paid employment increased significantly. In 1971, two out of three working wives considered themselves as housewives first and employees second. In 1977 half of them saw themselves as working women who also ran homes¹. A Gallup Poll commissioned by Woman's Own in 1979 indicates that women are work-minded. Four out of five working mothers said they would work even if they were millionaires². In 1981 a survey of Woman readers revealed 'widespread and popular support' for improving the equality laws³.

If the attitudes of women and some trade unions have changed during the last five years, it seems odd that employers increasingly attribute continued segregation to social attitudes. This

1. Walters, M. Sunday Times, 27.2.77.

2. Owen, L. Observer, 4.2.79.

3. Press Notice M41, 2.7.81.

is all the more so when changing norms have the stamp of political approval and institutions exist to persuade the unconverted and to punish them for disobeying the law. Consequently, the next part of this chapter describes how the institutions have gone about their duties.

(III) The Equal Opportunities Commission

When he created the Equal Opportunities Commission, Mr Jenkins thought he had established a powerful body 'to enforce the law in the public interest'¹. He believed his government's brainchild to be superior to both the older Race Relations Board with its unworkable remedial procedures, and the body proposed by the Conservatives which had powers to secure change only through persuasion and conciliation. Mr Jenkins placed long term strategic responsibilities on the Commission. Enforcement for individuals may, but need not, be part of its responsibilities; individuals also have right of direct access to tribunals and courts.

The strategic duties of the Commission are described in the Act as follows:

- (a) to work towards the elimination of discrimination (that is; in employment and related matters, education and training and in the provision of goods, facilities and services)
- (b) to promote equality of opportunity between men and women, generally, and
- (c) to keep under review the workings of the Equal Pay and Sex Discrimination Acts and, when so required by the Secretary of State or otherwise think it necessary, draw up and submit to the Secretary of State proposals for amending them.²

A specific task delegated to the Commission is a

1. OR 889 Col 522.

2. Sex Discrimination Act, HMSO, 1975, Section 75.

review of Protective Legislation required by the EEC of member states. As it was pointed out in chapter V, social security, taxation, pensions and nationality were excluded from the Sex Discrimination Act. Nevertheless, the Equal Opportunities Commission is expected to advise governments about their impact on women.

In order to fulfill its strategic and enforcement responsibilities, the Commission has a number of powers at its disposal. It has the conventional authority and resources to undertake its own research. It can also use other bodies and outside experts to help clarify problems and policy options. It can undertake informal and formal investigations in almost any area it chooses from single firms (or public authorities) to whole industries or occupations. Informal investigations are something like research projects and have no immediate legal implications. However, under the Race Relations Act the Equal Opportunities Commission became empowered to issue Codes of Practice for employers. It was expected that these would be the fruits of research projects and informal investigations. If, after being laid before Parliament, no objections to them are received the Codes acquire the status of being admissible as evidence in a court of law. Formal investigations are more like judicial enquiries. Witnesses and documents can be subpoenaed. If a finding of discrimination is made, a notice backed up by a court injunction can be issued requiring the discrimination to cease. The Commission may recommend how this might best be done and it can monitor for five years after proceedings to ensure that no discrimination continues. The respondent is protected by various

quasi-judicial procedures including some relating to right of reply, and by rules about the confidentiality of information gained in the course of an investigation.

Individuals may, but need not, look to the EOC for help in securing remedies. The Commission may offer assistance where individual circumstances warrant it or for strategic reasons¹; that is, where important principles and precedents are involved. The assistance may range from straightforward advice, help with reading a settlement by conciliation and to providing Counsel at tribunal, in court, in the House of Lords or in the European Court of Justice².

In certain forms of discrimination where there may be no identifiable victim - in cases of advertising, pressure of instructions to discriminate - the EOC and only the EOC may initiate proceedings.

The headquarters of the Commission are in Manchester. This location was controversial. The official explanation at the time was that discrimination particularly affects working class women and that, since accessibility is important, the Commission should be in the north where there are more working class women than elsewhere. Others believed that its location was a concession to the demands of the time for decentralisation or devolution. The totally cynical argued that this move got it safely distant from the other London-based organisations and departments with which close relations would be needed for effectiveness³. However, from the beginning, a small office was maintained

1. Sex Discrimination Act, Section 75.

2. If agreed upon in advance, one plaintiff may represent several specified others. In principle, this means that the Commission may be involved like its American counterpart in 'class action' suits. However, American class actions usually cover many more individuals than is possible under this aspect of British law. Thus, in scope, if not in procedure, they are closer to the British formal investigation.

3. Report of seminar: A New World for Women. Women in the Media 1977.

in London and others were opened in Cardiff and Glasgow.

The Commission must have between eight and fifteen part-time Commissioners, a full time Chairman and deputy. The full Commission meets once a month. In between, various permanent committees and ad hoc working parties look after specific aspects of the Commission's work. Until 1979, three of these covered corresponding sections of the Act; Employment, Education and Training, Goods, Facilities and Services, the Assistance and Monitoring and Advertising Committees do as their names suggest. The Section 54 Committee has come about as the Commission has increasingly funded outside research. Working parties deal with particular issues like Mature Women Returning to Work, Regional Structure, Job Evaluation and investigations into Tameside Education Authority and Electrolux.

The full complement of the Manchester staff is about 180 divided into departments corresponding to the different sections of the Act and dealing with publicity, general policy, library and information services. A few specialist staff service each working party. The Commission is financed from a grant-in-aid from the Community Services (Home Office) vote. In 1976-77 this was just under £1m; for 1977-78 nearly £1½m, and for 1978-79 just over £1½m. The 1979-80 grant topped £2m.¹ The largest amount of expenditure is on staff salaries, followed by rates, rent and maintenance. Commissioners' expenses and the administrative costs account for quite a lot, but for less than research and publicity. Legal services account for almost the

1. Third, Fourth and Fifth Annual Reports, 1978, 1979 and 1980. EOC, 1979, 1980, 1981.

smallest portion of its expenditure. Unlike a number of other non-departmental bodies, its accounts are inspected and audited by the Comptroller and Auditor General.

To some extent distribution of expenditure reflects the Commission's analysis of its priorities and the appropriate methods for pursuing an equal opportunity strategy. It also relates to governmental expectations of its main areas of activity.

During 1976, the Commission understandably believed their most urgent task to be to identify as precisely as possible the main problems and the appropriate policy options¹. Although the Chairman told the Fawcett Society in the middle of that year that the Commission would use its powers and sanctions to the full, other audiences were told that it would not be in the public interest or in the interest of women to rush into using enforcement powers². Although financial allocations in 1979 reflect Conservative preferences for persuasion and cooperation, the opinion in the Commission has shifted to become more in favour of using legal powers and strengthening weaknesses in the law. But the Commission's allocations to research and publicity have increased fivefold since 1976, particularly during Mrs Thatcher's government. In 1979 to 1980 about £500,000 was spent on these activities. Some of it is spent on internal projects. These included surveys of advertising practices, and of five hundred firms and trades unions to discover precisely what forms discrimination takes; to find out how much is known about legal obligations; and how better practices and procedures might be developed. The findings of such surveys

1. First Annual Report 1976, EOC May 1977, pp 4-5, 12-13, 37.

2. Fawcett Society Files; Press Notice EOC 12.6.76; and Annual Report 1976, op cit, p 5.

were used for guidelines to employers, and, with the fruits of discussion with other bodies like ACAS, became the basis of a draft Code of Practice. Research has also been carried out into related areas like child care, pensions, taxation and new technology. The Commission provided evidence for Enquiries into Income Distribution and Wealth, the National Health Service, Legal Services and Appointments to Public Bodies. A good deal of human and financial resources were expended on the controversial issue of protective legislation. Some research for this came from outside the Commission. By 1979 outside bodies and individuals were receiving about three quarters of the research budget. The London School of Economics, for example, was sponsored by the Commission and the Department of Employment to examine the impact of the Acts in small firms employing mostly women. The EOC now has a joint panel with the Social Science Research Council for projects in specific areas like job evaluation, segregation, training opportunities, etc. Individuals receive grants to consider, for example, the training of girls in subjects where boys usually predominate at school and college. A register of research has been established; a research bulletin is published regularly; and the Commission is developing a sophisticated library service.

Most of the Commission's research has been published, some in the form of discussion documents, both to inform and to seek out opinion. Large responses were received to its publications on taxation and pensions. By 1981 approximately forty publications of

substance had been issued. Among the most important for working women were those dealing with taking cases to tribunal; child care facilities; the impact of new technology on work predominately done by women; job sharing, protective legislation; retraining and returning to the labour market; and job evaluation¹. Other attempts to inform people of their rights and duties have included the distribution of pamphlets through citizens advice bureaux, job centres, local offices of ACAS, local offices of government departments, unions and places of employment. Twenty thousand of these were sent out almost immediately. A newspaper campaign was carried out in 1977 which elicited 5,000 enquiries. The Commission now distributes its own EOC News. Grants have been given to other bodies like the National Council for Civil Liberties, the Rights of Women the Women's Research and Resources Centre, to inform women and trade union officials about the law and to train them in using it. These activities were stepped up when the LSE research revealed that widespread ignorance still existed in 1978.

Much less use has been made by the Commission of its legal powers and the use of sanctions. A deliberate decision was made in the beginning not to issue Codes of Practice. The public explanation was that Commissioners were 'very conscious that busy managers and trade union officials have had to come to terms with a great deal of complicated legislation over recent years'². The possibility that private reasons might have been different is discussed in chapter VIII. However, following consultations in 1979, a draft code on good equal opportunity policies and

1. 'How to prepare your own case for an Industrial Tribunal', EOC Oct 1979.

'Setting up a work place nursery' EOC Dec 1979. 'Fresh start' EOC May 1979. 'Information technology in the office' EOC Sept 1980. 'Job evaluation schemes free of sex bias' EOC April 1981. 'Job sharing' EOC Aug 1981. 'Health and safety legislation. Should we distinguish between men and women?' EOC Sept 1979.

2. Annual Report 1976 EOC para2

procedures was published early in 1981 with an invitation for further comments¹. Another on job evaluation schemes is in the pipeline. Interest in job evaluation was quickened as the Commission came to see occupational segregation as the major impediment to equality. But although this began seriously in 1978, the job evaluation committee met infrequently and did not produce a guide until April 1981².

The Commission's record of formal investigations is poorer than was expected by the architects of the Act. Originally, it was hoped that at least one and possibly five investigations would be carried out each year³. The first foray was into Tameside Education Authority. The finding that no discrimination was practiced was controversial. Whether or not the verdict was an accurate one, it is the case that difficulties preceeding it spilled over into other areas. The experience made Commissioners cautious of embarking on other investigations rapidly. The main problems were the difficulty of proving points in ways that would stand up in British law courts and the enquiry's heavy drain on specialised staff. The Commission did not willingly initiate its second investigation into Electrolux Ltd. Instead, they were nudged into it by Mr Justice Phillips, Chairman of the Employment Appeals Tribunal, in what became something of a 'cause celebre'. The background to the case is described by Ashdown-Sharp⁴. After separate male and female pay structures became illegal under the Equal Pay Act, the company introduced two new gender-free grades; 10 and the less well paid 01.

1. Code of Practice for the Elimination of Sex Discrimination and the Promotion of Equality of Opportunity in Employment, Consultative Draft, EOC Jan 1981.

2. EOC Press Notice M60, 21.4.81.

3. Interview.

4. Sunday Times, 20.2.77.

The 1300 male employees were classified as 10s. All the women were put in grade 01. The local branch of the AUEW accepted the new arrangement because it carried a pay rise for most women. The outcome was that all women were paid the same. A female shop steward, Anne Hutchison, previously on a higher rate than the majority of women, believed the deal to contravene the Equal Pay Act because she thought that differences between her work and that of men in her department but in a different grade were insubstantial. The Bedfordshire industrial tribunal agreed with her and she and six other women were awarded equal pay. When another claimant failed, the company appealed against Ms Hutchinson. By the time of the next hearing two hundred and twenty other applications had been initiated. Mr Justice Phillips upheld the first decision, but, since the impending avalanche of claims could not lead to 'a coherent wage structure', he suggested the Commission intervene.

Because it appeared that the grading practices and justifications for different payments might have contravened the Sex Discrimination Act as much, if not more than, the law on equal pay, the Commission gave wide terms of reference to its investigating team. The investigators included two regular Commissioners, one from each side of industry, and was lead by Lord McCarthy, an outside expert on industrial relations. The Chairman of the Equal Opportunities Commission, Mrs (now Baroness) Betty Lockwood, was optimistic about how long the investigation would take. She told a reporter on World in Action that she hoped it would be completed in a few months¹. The investigation, however, which began in the beginning of 1977, was still not over by the end of 1978.

1. 'Equal Pay Today Tomorrow', World in Action, 2.3.77.

Once again, slender human resources proved a difficulty. The Commissioners had many other commitments and few members of staff could be spared to work full time on the enquiry. Moreover, the terms of reference were as large as the team was small. And again, problems arose over how to demonstrate the existence of discrimination, possibly intuitively obvious, but unsupportable by evidence that would be admissible in court. In the end the company itself almost admitted discrimination in pay by announcing new proposals which, in effect, conceded the principle of equal pay for the period between the start of the investigation and the announcement¹. Thereafter, pay was to be determined by the grades within which individuals found themselves as a result of a job evaluation scheme carried out jointly with the unions and some women workers. Thus, the company settled its equal pay dispute for itself, with the incentive of having the EOC breathing down its neck. The Commissioners issued a non-discrimination notice on equal pay in August 1978² requiring what was in any case taking place. All sides were satisfied on equal pay at its simplest level. But they were not all happy with the outcome of the job evaluation scheme and the specification of characteristics needed for individuals to be recruited or promoted into higher paid grades. Ms Hutchinson described the new scheme as a 'con trick'³. But the Commissioners have not yet announced whether or not they have evidence of contraventions of the Sex Discrimination Act.

While the investigation at Electrolux was underway, criticisms of the Commissioners' choices of priorities were mounting;

1. Tribune, July 1978; Guardian, 17.11.78.

2. Third Annual Report 1978, EOC 1979, p 16.

3. Tribune, July 1978. The misgivings of others were reported in the Guardian 17.11.78.

inside the Commission and outside. In July 1977 it was reported that staff agreed with outside criticisms 'that the EOC (had) dismally failed to make itself known to (or) respected by the public'¹. Contrasts were drawn with the new Commission for Racial Equality which had initiated two formal investigations in its first six months². Resignations were threatened unless the Commission committed itself to a more rigorous programme of law enforcement, particularly in employment³. By the end of 1977 it was clear that Commissioners had reassessed their use of powers available to them⁴. During 1978 they decided to investigate the Society of Graphical and Allied Technicians 'in respect of less favourable membership conditions for women and pressure on employers to discriminate'⁵. This was followed in 1979 with decisions to examine certain employment practices in the Leeds Permanent Building Society, the appointment of women in the Sidney Stringer School and Community College in Coventry and the North Gwent College of Further Education⁶. In 1980 two further formal investigations were announced; one into redundancy provisions in the British Steel Corporation at Shotton and the other into the provision of mortgages by the Provincial Building Society⁷.

Having in mind the difficulties experienced in Tameside and Electrolux, the terms of reference for the latest six investigations have been drawn as concisely as possible. Judicial procedures, however, still seem to be troublesome. Two of the bodies under scrutiny

1. Guardian, 11.7.77.

2. The Times, 30.12.77.

3. Guardian, 11.7.77.

4. The Times, 30.12.77.

5. Third Annual Report 1978, EOC 1979, p 16.

6. Fourth Annual Report 1979, EOC 1980, p 10.

7. Fifth Annual Report 1980, EOC 1981, pp 7-8.

are causing delays by making the most of rules about right of reply¹.

During the same period of a more vigorous policy on investigations, the Commissioners also increased their activities in individual cases. Earlier it had been argued that the National Council for Civil Liberties did more than the Equal Opportunities Commission in training and advising people on how to use the law². The official EOC guide, referred to above, to taking cases to court or tribunal was in the pipeline for about four years. Three drafts by the legal section in 1976-1977 failed to gain the approval of Commissioners. The final version was not published until 1979. Resources devoted to assisting individuals and monitoring the outcome of their cases as a proportion of total expenditure has increased. Clarifying the law is important, not just for the individuals concerned, but for strategic reasons as judges and tribunal chairmen deliver verdicts at odds with one another and the law. The Commission has also been involved in significant submissions to the European Court. Important judicial decisions will be discussed more fully later in this chapter. After five years of experience of the law and of test cases the Commission has drawn up a list of proposed amendments to the Equal Pay and Sex Discrimination Acts. Early in 1981 the Home Secretary was asked to 'find the earliest possible time for placing the proposals before Parliament'³. In doing this the Commission was making suggestions that had been on the agenda of women's groups for a number of years. Their convergence is discussed later in the chapter.

The Commission has always taken the view that

1. Interview

2. Guardian, 11.7.77.

3. EOC Press Briefing, 16.1.81.

if discrimination and inequalities are to be eroded, concerted efforts by all government agencies and departments are necessary. This view, coupled with its obligations to advise governments on pensions, taxation, and social security, has meant that Commissioners have had continuing discussions with, for example, Chancellors of the Exchequer, the Departments of Employment and Health and Social Security, the Home Office, the Manpower Services Commission, the Central Arbitration Committee and the Advisory Conciliation and Arbitration Service. The outcomes of approaches to these institutions have varied in the extent to which they have satisfied Commissioners. The overtures made in connection with advice on general policies towards women will be discussed in chapter VIII. Those which deal most directly with women's employment are dealt with below.

(IV) Departments and Agencies Dealing with Training and Employment

In 1974, the Department of Employment commissioned a study of the implementation of the Equal Pay Act. This was set up in the London School of Economics under the direction of Baroness Seear. After the creation of the Equal Opportunities Commission, the Commission became a joint sponsor and the two bodies maintained close links in analysing the effects of both Acts and in monitoring tribunal applications¹. Cooperation with the Department over research has continued and the findings of projects are usually publicised by it as well as the Commission. However, the Commission was reported to be

1. First Annual Report 1976, EOC 1977.

'disappointed' by the reception given in the Departments of Employment and Education to its 1977 proposals for action on training school leavers for new employment destinations¹. Except for changes to the system of grants for married women students, relations with the Department of Education and training agencies have continued to be unsatisfactory. The EOC was especially displeased that the Training Service Agency did not take more advantage of the special provisions of the Sex Discrimination Act that allow positive action to encourage women to acquire new skills². The Training Service Agency is part of the Manpower Services Commission, which, in general, appears to have been a source of dissatisfaction. In May 1978, the EOC was represented on a working group in the Manpower Services Commission to consider innovations for young women in the Youth Opportunities and Special Temporary Employment Programmes. But in the Annual Report for 1980, the EOC made the following statement:

While welcoming the mutually beneficial liason with the MSC over the past five years, and the initiatives taken by the TSD and some ITBs, the Commission's (EOC's) response (to the MSC review of the Employment and Training Act of 1973) expressed disappointment that the MSC had not adopted a more coordinated and planned programme for increasing training opportunities for women³

1. Guardian 11.7.77.

2. Second Annual Report 1977, EOC 1978.

3. Fifth Annual Report 1980, EOC 1981, p 14.

(V) Other Enforcement Agencies

According to the Commission, the development of the draft Code Of Practice for Employers was the product of useful consultations with extra-government groups, the Central Arbitration Committee and the Advisory Conciliation and Advisory Service. However, unofficial reports of the general stances of these two official agencies suggest that while the former may be acting decisively, the latter is obscuring the rights of women at work.

From the beginning the CAC was severe on employers who sought to avoid the ban on separately listed male and (lower) female rates of pay by simply relabelling the grades in a 'unisex' manner and leaving the wages attached to the grades as they were before 1975. Although charged with the duty to eliminate structures overtly labelled male and female, the Committee stated that it did 'not take the legalistic view that, because the rate looks unisex, it must be'¹. In 1977, the Equal Opportunities Commission congratulated the Committee for continuing to be 'quick to note attempts by companies to pass off discriminatory pay structures as being equitable'². But by 1979 it was clear that inadequacies in the Equal Pay Act were limiting the Committee's effectiveness. One example is that it is difficult for the CAC to examine agreements when neither employers nor unions are willing to refer to the Committee. An amendment allowing the Equal Opportunities Commission to do so has been proposed³.

In contrast it has been reported recently that ACAS

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1. 'The Application of Equal Pay', Paper for TUC Women's Conference 1975 pp 4-5.
 2. Second Annual Report 1977, EOC 1978, pp 22-23.
 3. Fifth Annual Report 1980, EOC 1981, p 10.

often works against the interests of women who seek redress under the "equality laws". Rather than helping them, it aims to stop them pursuing their claims to a tribunal hearing.¹

The first duty of ACAS is, in fact, to try to assist in the obtaining of a settlement without going to tribunal. The author of the above quotation interviewed eighty two individuals who had withdrawn tribunal applications on the advice of an ACAS conciliation officer. But only half of them felt that advice received from ACAS had been 'at all helpful'. Most of the others had been given inaccurate advice or information. Nineteen withdrew with no settlements and others with 'derisory' ones. Despite instructions to officers to inform individuals as a matter of course about the Equal Opportunities Commission, only one did so.

(VI) The Courts and Tribunals

As it was explained in chapter V, industrial tribunals were thought to be more suited than the courts for equal pay cases and applications brought under the employment sections of the Sex Discrimination Act. In 1976 an Employment Appeals Tribunal was created to harmonise tribunal rulings arising from employment laws. Judges of Court of Appeal standing preside. After that the appeal hierarchy reverts to the conventional; the Court of Appeal and the House of Lords. Cases involving possible conflict between British and European Community now are referred to the European Court. Allegations of

1. Gregory, J. 'The Great Conciliation Fraud', New Statesman, pp 6-7.

discrimination in other areas covered by the Sex Discrimination Act - education, goods, facilities and services - are in the jurisdiction of the county courts. Between 1976 and the end of 1979 the distribution of applications across each judicial level (except the county courts) was as follows:

TABLE 23

Completed Applications

Year	Industrial Tribunals		Employment Appeals Tribunal		Court of Appeal		House of Lords		European Court of Justice	
	EP	SD	EP	SD	EP	SD	EP	SD	EP	SD
1976	1,742	243								
1977	942	261								
1978	454	195	22	8 (+ 3 covering both)	4	2				
1979	263	180	8	8	3	4	1			
1980	91	181	4	12	1	3	2		*	3
TOTALS	3,292	1,060	12	20	8	9	3			3

*Two of these had been heard by the end of 1980 but judgement was still awaited.

Source: Equal Opportunities Commission¹

There are two striking aspects to table 23.

First is the much larger numbers of equal pay cases in tribunals than those brought under the Sex Discrimination Act. Secondly, the number of equal pay cases heard has declined dramatically. The numbers of sex discrimination cases have also declined, though at a slower rate. These trends may reflect in part the views already referred to in that the Equal Pay Act has now been used as far as it can be. But there are other factors. The most important of these is the low rate of success experienced by plaintiffs which has probably discouraged new applications. Often applications may

1. First - Fifth Annual Reports 1976 - 1980, EOC 1977 - 1981.

be withdrawn because of private settlements. But when hearings are fully completed complaints are more often dismissed than upheld. During 1976 to 1980 industrial tribunals dismissed 1,045 equal pay applications and 294 sex discrimination cases. 847 equal pay and 141 sex discrimination claims were upheld. During 1979 and 1980 the Employment Appeals Tribunal allowed or referred to other courts the appeals of seven employees and eight employers. Appellants whose cases were dismissed were twelve employees and four employers. In the Court of Appeal, between 1978 and 1980, of employee appellants, three appeals were allowed or remitted and four dismissed. Eight appeals from employers were allowed or remitted and three dismissed. In the House of Lords one employee appeal was rejected and another referred to the European Court of Justice. The Law Lords declined¹ to hear one celebrated application from a man in respect of different times of departure for male and female employees.

The other factor discouraging initial applications and may influence the chances of favourable outcomes is the problem of representation and legal assistance. The original advantages in this respect of the tribunal system have diminished¹. Regional tribunals have lost their original benefits of speed of remedy and informality. Byrne and Lovenduski point out that case loads rose from a few hundred in 1975 to 45,000 in 1976². A higher proportion than expected are protracted middle-management applications defended professionally. Once, it was

1. For a fuller discussion, see Byrne and Lovenduski, 'Sex Equality and the Law in Britain', British Journal of Law and Society, No 2, 1978.

2. Ibid.

expected that the legally qualified chairpersons would help complainants, if necessary, to elicit relevant information and that the lay assistants, one from each side of industry, would bring an understanding to the issues possibly not possessed by legal specialists. Because of these original expectations no legal aid is available at tribunals. In significant cases the Equal Opportunities Commission may assist individuals. It was expected that in other circumstances plaintiffs would be helped by trades union officials. To begin with this did not happen in sex discrimination cases¹. The reason is partly that local trades union branches were ignorant of the legal provisions. The other is that following the Industrial Relations Act in 1971 tribunals were tainted with union disapproval of institutions that seemed to abrogate matters thought to be more properly aspects of collective bargaining. Ms Hutchinson of Electrolux, for example, could not get the local branch of the AUEW to assist her in her equal pay application to the Bedford tribunal. In a television interview in 1977, Mr Scanlon spoke of a slight alteration in his ideas about tribunals by stating that in the last resort his union would be prepared to use them to resolve disputes about the rights of individuals². In recent years great efforts have been made to dispel the mysteries of the legislation by pressure groups, like the Equal Pay and Opportunities Campaign, the Rights of Women Group, the National Council for Civil Liberties, the Equal Opportunities Commission and by feminist trade union leaders and the growing

1. Ibid. They note that in 1976-77, 67.5% of applicants under the Equal Pay Act had trade union representation, the equivalent figure for sex discrimination applications being less than 28%. p 155.

2. 'Equal Pay Today - Or Tomorrow', World in Action, 2.3.77.

number of female members. Nevertheless, general improvements have not been striking. Indeed, in some respects the situation is worse. During 1980, 15% of plaintiffs with equal pay and 11% with sex discrimination applications in tribunals were represented by trades unions. Higher up the structure, however, union involvement is significant. Of all cases that have gone to the Court of Appeal over 40% of them were backed by trades unions, alone or jointly with the Equal Opportunities Commission. At lower levels most plaintiffs represented themselves or have solicitors possibly paid for by others. Formal legal or financial assistance may have been provided by pressure groups. For example, the legal department of the National Council for Civil Liberties won a case in 1976 taken on behalf of a woman receiving less pay for more responsible work than a man¹. Assistance granted by the EOC to individuals increased between 1977 and 1980. This is shown below:

TABLE 24

Formal assistance granted by the EOC under Section 75 of the Sex Discrimination Act 1977 and 1980 (excluding informal advice)
 Figures given in brackets are those for 1977.

	No. of Requests	Legal Assistance Granted	Advice Granted	No. Assistance Granted
Industrial Tribunals	105	43	13	49
County Court	12 (59)	7 (29)	0 (7)	5 (16)
Employment Appeal Tribunal	21 (21)	14 (15)	0 (0)	7 (4)
Court of Appeal	3 (3)	1 (1)	1 (0)	1 (2)
House of Lords	3 (1)	2 (1)	0 (0)	1 (0)
European Court of Justice	1 (0)	1 (0)	(0)	(0)
Totals	145 (83)	68 (46)	14 (7)	63 (22)

Source: Equal Opportunities Commission²

1. Annual Report 1976, The National Council for Civil Liberties

2. Second and Fifth Annual Reports 1977 and 1980, EOC 1978 and 1981.

In the early days, the Equal Opportunities Commission tried to assist tribunal personnel as well as plaintiffs. In the then absence of the Employment Appeals Tribunal, regional tribunals were delivering verdicts up and down the country that varied in their implications and were incompatible with the provisions of the laws. Even with the advent of the Appeals Tribunal, regional irregularities continued for some time. An offer made by the EOC to the Central Office of Industrial Tribunals to conduct training sessions and workshops¹ was ignored for years and then declined.

The deliberations of tribunals and courts have both limited and developed the Equal Pay and Sex Discrimination Acts. The points at issue have been procedural and substantive. In the first category, access to and use of information necessary to prove a case has been limited and the onus of proof confused. In the second, the main issues have been: what constitutes like work; the definition of a genuine material difference between employees not based on sex; the status of part-time workers; the meaning of less favourable treatment; indirect discrimination; and coverage of benefits relating to death or retirement. Most cases involve more than one issue. While an applicant may have filed only under one Act, the case may raise issues that can only be considered under the other. Some of the cases discussed below highlight the difficulty in the deliberate distinctions made between the two Acts.

On procedural issues the most important cases are *Brown v El Sombrero Ltd* (1978)²; *Science Research Council v Nasse*

1. First Annual Report 1976, EOC 1977, pp 41-42.

2. This case was heard in the West London County Court but was not reported in the press. It is discussed by Byrne and Lovenduski, *op cit*, p 154.

(1978)¹; Oxford v Department of Health and Social Security (1977)²; and Price v Civil Service Commissioners (1977)³.

Using Section 74 of the Sex Discrimination Act, the Equal Opportunities Commission developed questionnaires for completion by complainant and respondent in order to establish basic facts. It is claimed by the EOC that these documents are admissible evidence in Court. But the County Court Judge presiding in Brown v El Sombrero declared them irrelevant; the court would make its judgements solely on the basis of evidence given by witnesses⁴. As a result of his ruling it seems that Section 74 forms now have little legal usefulness.

In the case of the Science Research Council v Nasse, the issue was access to information, confidential but necessary for demonstrating an allegation. Reversing precedents set in other employment cases, Lord Denning and Lords Justice Lawton and Brown ruled that persons alleging discrimination in hiring or promotion to tribunals or courts were not allowed to see the confidential details of rival candidates. The ruling applies not only to employees but also credit-seekers, university applicants and anyone trying to rent a house. The same verdict was delivered at the same time in respect of a case of alleged race discrimination. The Commission for Racial Equality noted that since the burden of proof rested on the complainant, the Appeal Court decision would make it almost impossible to prove discrimination⁵. Lord Denning said that complainants would be safe-guarded by his instruction

1. Guardian, 27.7.78. Third and Fourth Annual Reports 1978 and 1979, EOC 1979 and 1980.

2. Byrne and Lovenduski, op cit, p 153.

3. Guardian, 16.7.77. First and Second Annual Reports 1976 and 1977, EOC 1977 and 1978.

4. Byrne and Lovenduski, op cit, p 153.

5. Ibid, p 154.

that a tribunal chairman or judge could ask for the files and decide on their relevance. However, the perusal of them would have to take place only minutes before the opening of a hearing. Part of Lord Denning's justification was that the two Commissions already had powers to compel the production of documents in formal investigations, and that employers could not plead freedom not to incriminate themselves. Already, he thought, 'we (are) back in the days of the Inquisition'¹. Because of the wide ranging nature of the ruling Mrs Nasse, with EOC assistance, appealed to the House of Lords. Her appeal was dismissed. But again, moderating principles were laid down about disclosure of information which are being monitored by the EOC².

The burden of proof was discussed in the two other cases referred to above. That it lies with the complainant in cases of direct discrimination was confirmed by the Employment Appeals Tribunal in *Oxford v Department of Health and Social Security*. But the judge suggested that, except in frivolous cases, there was a strong evidential burden on the respondent³. However, a less rigorous requirement has been placed on complainants in indirect discrimination cases as a result of Mr Justice Phillips decision in *Price v the Civil Service Commissioners*. He overruled an industrial tribunals decision to dismiss her application because her statistical evidence was inadequate. Her case was remitted so that another tribunal hearing⁴ could consider better evidence compiled with assistance from the Civil Service.

1. Guardian 27.7.78.

2. Fourth Annual Report 1979, EOC 1980, p 6.

3. Byrne and Lovenduski, op cit, p 153.

4. Guardian, 16.7.77.

On substantive issues, the question of what constitutes like work was clarified quickly in the Employment Appeals Tribunal. Several cases are of interest and reveal inconsistent interpretations among regional tribunals. These include Ali and two others v Reyrolle Parsons Ltd (1976)¹; Walton v Wellington College (1976)²; Trust Houses Forte v Sorbie (1976)³; Waddington v Leicester Council (1976)⁴; Electrolux v Hutchinson and six others (1976)⁴; Capper Pass Ltd v Lawton (1976)⁵; Vickers v Otis Elevator Company (1977)⁶; and Dugdale and others v Kraft Foods Ltd⁷.

In the Ali v Reyrolle Parsons case, an industrial tribunal rejected a claim that the work of women cleaning women's lavatories was different from that of men cleaning men's because the latter was a 'labouring' job and the former a 'domestic' one⁸. But another tribunal agreed that the work of a husband and wife employed in the same college differed because he had to move crates of milk bottles and stoke the boiler while she did not⁹. Another industrial tribunal ruled that Trust Houses Forte did not act unlawfully by giving a male waiter the title of banqueting supervisor to prevent waitresses from being paid the waiter rate¹⁰. Mrs Waddington's case was rather different. She was a community worker and official supervisor of a male play-leader who earned more than she did. Her application was initially rejected because

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1. Rendel, M. 'Legislating for Equal Pay and Opportunity in Britain', Signs Summer 1978, pp 905-906.
 2. Ibid, p 906.
 3. Mack, J. op cit, p 480.
 4. Ibid, p 480.
 5. Ibid, pp 480-481.
 6. Rendel, op cit, p 906. And Mack, op cit, pp 480-481.
 7. Guardian, 10.3.77.
 8. First Annual Report 1976, EOC 1977.
 9. Rendel, op cit, pp 905-906.
 10. Ibid, p 906.

the tribunal felt compelled to observe the provisions about 'like work' strictly - despite the anomaly of the result. In the course of appeals against some of these decisions and others, it was ruled that a broad interpretation be taken. In *Capper Pass v Lawton*, Mr Justice Phillips said that 'establishing broadly similar work did not involve a "minute examination of detail" and that "trivial differences" ought to be disregarded'¹. In the *Electrolux* case the defence was based on a distinction between a contractual obligation on men to perform, if necessary, different duties to the women. Mr Justice Phillips ruled here that to defeat a like work claim it must be demonstrated that the men actually do the different duties to a 'significant extent'². The broad approach was confirmed by Mr Justice Killner Brown when he stated that in *Mrs Vickers'* case, the Liverpool industrial tribunal had 'failed to see the wood for the trees' in its analysis of the work done by her and the man to whom she compared herself³. Also in 1977, Mr Justice Phillips ruled that the time at which duties were performed did not constitute a practical difference between the work of men and women. This was the outcome of *Dugdale v Kraft Foods Ltd* and means that duties performed at night should be paid the same as the tasks on a day shift. It is, however, not yet clear if a requirement to be prepared to work at nights in order to qualify for promotion to a higher grade would contravene the Sex Discrimination Act.

1. Mack, *op cit*, p 481.

2. First Annual Report 1976, EOC 1977, p 28. The company temporarily put the ruling into effect by moving Ms Hutchinson and others to different jobs taking their new rate with them. Other women were transferred to Ms Hutchinson's job at the old rate. This was in direct contradiction to the assurances given to Mr Lee, MP discussed in chapter V.

3. Guardian, 10.3.77.

This relates to job evaluation schemes or restructures of grading which may result in a system where higher pay is awarded to grades which may be more skilled but which may also carry a contractual obligation to work overtime hours or at night if required. Apart from the relatively straightforward problem of whether the practical differences in the work of two grades are significant enough to contravene the Equal Pay Act, there may be an element of indirect discrimination. If the contractual requirement is never imposed or not related to the content of the job, it may indirectly discriminate against women on the grounds that the majority of them, 'to their detriment', cannot comply because of domestic considerations or protective legislation. No legal direction has emerged yet on this issue. The introduction of the idea of indirect discrimination into the Equal Pay Act is among the EOC's proposed amendments.

According to Byrne and Lovenduski, the 'material difference' provision is one of the biggest loopholes in the Equal Pay Act. They estimate that one third of all applications for 1977 were dismissed on these grounds. The legislation allows for differences in pay that relate to 'genuine material differences' between employees not based on sex but stemming from, for example, length of service, productivity and qualifications. The Employment Appeals Tribunal added the controversial factor of 'market forces'. But it has denied 'red circling' the status of a genuine difference. In two cases, *Clay Cross (Quarry Services) Ltd v Fletcher* (1977)¹, and *Pointon v University of Sussex* (1977)², judges accepted employer arguments that it was necessary to pay new male recruits more for work similar to that of existing female employees of

1. Byrne and Lovenduski, op cit, pp 150-151.

2. Mack, op cit, p 480.

greater experience and seniority in order to 'attract' them from previous jobs. It was agreed that this constituted a genuine material difference; although, as Byrne and Lovenduski state, legal commentators believe this 'to undercut the very foundation upon which the Equal Pay Act is based'¹. Both Ms Fletcher and Dr Pointon appealed to the Court of Appeal in 1978². Since one appeal was allowed and the other dismissed, the situation is now confused.

In respect of the other 'material difference' defence, the Employment Appeals Tribunal was less receptive to employers' arguments. The most important 'red circle' case was *Snoxell v Vauxhall Motors* (1977)³. Here Mr Justice Phillips overruled an earlier decision allowing the employer to protect the pay of existing male inspectors whose work, as a result of a restructuring agreement, fitted into a lower paid grade. They continued to be paid at the old rate while female inspectors doing the same work were paid at the rate attached to the new grade. The decision was that the 'red circling' of male inspectors' pay was not a genuine material difference other than sex because it was the result of sex discrimination in the past.

Applications arising under payments for part-time workers are complicated, involving practical differences and material differences in the Equal Pay Act, indirect discrimination in the Sex Discrimination Act and difficulties about which Act to file under. Rendel cites an early case, *Meeks v National Union of Agricultural and Allied*

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1. Industrial Relations Legal Information Bulletin 17.8.77, p 8, quoted by Byrne and Lovenduski, op cit, p 151.
 2. Third Annual Report 1978, EOC 1979.
 3. Rendel, op cit, p 906.

Workers. Ms Meeks was a part-time clerical worker paid at less than the normal clerical hourly rate because she did not work full time. Since there were no male part time clerks she could not apply under the Equal Pay Act where a comparator is necessary. She filed under the indirect discrimination section of the Sex Discrimination Act on the grounds that full time work was a necessary condition for the higher hourly rate but that this sex neutral rate was not related to job performance and disproportionately affected women. The employer was unable to justify different hourly rates and the tribunal chairman, citing *Griggs v Duke Power Company* (US 1971) and other American cases accepted the principle of Ms Meek's argument and her statistical evidence. But, because her complaint was about pay and because the Sex Discrimination Act excludes matters covered by the Equal Pay Act, he dismissed her application. Since then, the law may have changed as a result of rulings in the European Court of Justice. Ms Meeks' case was replicated by an appeal brought by Ms Handley against H Mowo Ltd¹. Her counsel stressed Lord Denning's view that the two Acts should be brought in line with each other and that EEC law may have supremacy over British. Consequently, although the application was brought under the Equal Pay Act, he thought that possible interpretations of Article 119 of the Treaty of Rome and provisions of the Sex Discrimination Act should mean that lower hourly rates for part timers counted as a prime facie case of indirect discrimination. Mr Justice Slynn, successor to Mr Justice Phillips as Chairman of the Appeals Tribunal, did not agree. However, another British case, *Jenkins*

1. Lowe, M. New Statesman, 27.10.78.

v Kingsgate (Clothing Productions) Ltd, got as far as the European Court of Justice. Mrs Jenkins' Counsel, provided by the EOC, described her case, too, as, in principle, the same as Griggs v Duke Power Company. In March 1981, the European Court agreed. It was ruled that victims of direct or indirect discrimination resulting in unequal pay may apply for equal pay under Community law in British tribunals. The ruling does not mean that all part time and full time workers will be eligible for the same rate. It applies only to situations where employers cannot show economic reasons unconnected with sex for unequal pay¹. Three and three quarter million women in Britain work part time; many of them may now be eligible for legal remedy. But this depends upon how seriously British judges incorporate European rulings when cases are remitted to British courts. The judgement is supposed to be binding but the Employment Appeals Tribunal decided only 'with considerable reluctance' to send Mrs Jenkins' case back to the industrial tribunal for a further hearing².

It is worth mentioning another case that went to the European court. It has nothing to do with part time work but it does cover another aspect of Ms Meeks' problem. In 1980 the first British equal pay claim to go to Europe was Macarthy's Ltd v Mrs Smith. Lord Denning and Lords Justice Lawton and Cumming-Bruce had been unable to agree whether tribunals had been wrong to allow Mrs Smith to compare herself with her predecessor - a man no longer an employee of the company. But they all agreed that a strict interpretation of the British Act might

1. EOC Press Notice M38, 2.4.81.

2. Guardian, 4.7.81.

conflict with Community law; and so they referred to case to the European Court. The outcome was that not only could Mrs Smith compare her wages with a man no longer working with the company, but that women could compare their wages with 'hypothetical' men¹. Consequently, when the case was remitted to the Court of Appeal, Mrs Smith's employers' argument was rejected². How a case involving a 'hypothetical' male will be dealt with remains to be seen.

Less favourable treatment was the point at issue in some celebrated cases. Various charges against the El Vino wine bar have failed because judges have ruled that separate treatment is not the same as less favourable treatment³. An employment case hingeing on an interpretation of less favourable treatment was brought by a man. Mr Peake claimed he (and other men) were discriminated against by not being able to leave the factory until five minutes after the women. His employers, Automotive Products Ltd, won the first round on the grounds that women and disabled men left earlier for safety reasons to avoid the risk of being bowled over in the 4.30pm rush. Mr Justice Phillips overruled the decision. He pointed out that the concession amounted to 2½ fewer working days a year with the same wages and that safety could be ensured by other methods⁴. However, the Court of Appeal sided with the employers. Lord Denning thought

... it very wrong if the statute ... were to obliterate the differences between men and women or to obliterate all the chivalry and

1. Hunter, E. New Statesman, 14.3.80.

2. Fifth Annual Report 1980, EOC 1981.

3. Separate but equal was the doctrine that lasted for sixty years in the United States until *Brown v Board of Education* (1954).

4. Guardian, 18.2.77.

courtesy which we expected mankind to give to womankind, or that the courts must hold that the elemental differences of sex must be disregarded in the interpretation of an Act of Parliament.¹

Later in the year the House of Lords declined to hear an appeal by Mr Peake, supported by the EOC, on the ground of de minimus. But the principles at stake were not trivial. That was why the Commission supported Mr Peake. The draftsman of the Act, Mr Francis Bennion, wrote to The Times pointing out that Mr Justice Phillips' reasoning had been 'impeccable' but that Lord Denning had established 'the dangerous principle that the Act does not necessarily mean what it says'. He was referring to the unambiguous statement in the Act that provisions applying to women should be read as applying equally to men. Disregard of this meant that protection for both men and women deliberately created in Parliament was 'gravely impaired'². What Lord Denning also did by implication was to introduce into the sex discrimination law the idea of a 'material difference'. But it is not the same concept as in the equal pay law; that is, 'not based on sex'. Instead it is precisely the opposite; that sex itself might count as a material difference even if, in practice, unrelated to other factors like safety. Subsequent cases in the Court of Appeal also involving less favourable treatment on grounds of chivalry may or may not have limited the general applicability of Lord Denning's original judgement.³ So far as indirect discrimination is concerned *Price v Civil Service Commissioners* was a landmark. Its main importance was not only its implications for evidence discussed earlier.

1. Law Report. The Times, 5.6.77.

2. The Times, 15.7.77.

3. Third Annual Report 1978, EOC 1979. Fourth Annual Report 1979, EOC 1980, p 7.

It was the first successful case using statistical evidence to demonstrate indirect discrimination. Not only was it the first such application under the Sex Discrimination Act, it was the first time that the concept was considered in a precedent setting judicial forum in Britain. According to one report Ms Price's victory was 'unexpected'¹. Rejected as a recruit by the Civil Service Commission because she exceeded the age limit of 28 years for new executive officers, she argued that the specified age range - 17 to 28 - coincided with the period during which most women had children and were thus unable to apply. She also argued that anyone over the age of 28 could do the job just as well. The original tribunal agreed with the Civil Service Commission that women could apply if they really wanted to. Later Mr Justice Phillips said that the point was not whether 'a person could do a thing because it was theoretically possible for them to do so'. The important question was 'whether they can do it in practice'². Of his two assistants, a personnel consultant, Mrs N Taylor agreed with him but, curiously, Mr E Alderton of the National Association of Local Government Officers, did not. This meant that the Civil Service was given leave to appeal. No appeal was lodged and Mrs Price's case was reheard in an industrial tribunal where the Civil Service was given until 1980 to change its regulations³. As the discussion of payments for part time work indicate, the notion of indirect discrimination may become part of equal pay law. That it be specified in the Act by an amendment has been recommended by the EOC⁴. As unemployment becomes almost a bigger

1. Wainwright, M. Guardian, 16.7.77.

2. Ibid.

3. Second Annual Report 1977, EOC 1978.

4. Fifth Annual Report 1980, EOC 1981, p 39.

problem than recruitment, the Commission is now interested in whether the principle of 'last in, first out' may constitute a form of indirect discrimination. This has not yet been tested in British law¹; versions of it are unlawful in the United States. Indirect discrimination in redundancy arrangements is part of the subject of enquiry in the formal investigation of the British Steel Company (Shotton).

Both the Sex Discrimination Act and the Equal Pay Act allow employers to discriminate in terms related to death or retirement. A number of cases involving ages of retirement, post retirement privileges and benefits accruing from voluntary pension schemes have been heard in the Employment Appeals Tribunal and the Court of Appeal, and one in the House of Lords. During 1980 three decisions were held up pending references to the European Court of Justice. One is a claim by Mr Burton against the British Railways Board and the other two are claims by women against Lloyds Bank and British Rail Engineering Ltd². They are still to be heard but the principles on which they are based are included in the Commission's proposals to the government for amendments.

1. Ibid, p 13.

2. Ibid, pp 4-5.

(VII) Attempts by Extra-Governmental Groups to Influence Policy Implementation

Courts, tribunals and, especially, the Commission were criticised severely almost from the start. The critics were to be found on all sides. The Times thought the result of Price v Civil Service Commissioners to be flagrantly unfair discrimination in favour of women.¹ But women's groups thought it and Capper Pass v Lawton to be the only 'milestones' among a plethora of incorrect applications of the law². According to the Spectator, the Equal Opportunities Commission should never have been created and the Telegraph chastised its deputy chairman, Lady Howe, for 'ruining her husband's career' by associating herself with 'a bunch of trendy radicals'³. Employers spent the first year expecting to be made to comply, but soon, as discussed earlier in this chapter, felt free not to. The Commission's deliberate decision to concentrate on persuasion rather than coercion and its policy of distancing itself from pressure groups committed to women's rights were regarded by the latter as misplaced. Dissatisfaction among women's rights groups reached a crescendo at the end of 1977, continued through 1978 and still rumbles on, although more quietly.

Excluded from the workings of the Commission, feminist groups and women's rights sections of other bodies began to develop their own policy demands in isolation from the Commission. The most important covered the EOC itself, child care facilities, positive action and amendments to the laws to close loopholes. As the EOC began to

1. The Times, 9.5.78.

2. Coote, A. 'How Equal Are We?' Cosmopolitan 1977.

3. Spectator, 20.11.76; and the Daily Telegraph 1977.

shift its priorities, its recommendations began to be compatible with those of outside groups. But its most recent ideas on positive action and amendments were predated by two to four years by pressure groups. Moreover, the new more singular direction of enforcement agencies may have emerged too late; the problems of 'busy managers' and everyone else are even greater as the conditions of unemployment become almost as important as those of employment.

As early as October 1976, the EOC was under attack at a seminar organised by Women in the Media. It was accused of being oversensitive about feminism; of not using expertise available among women's groups; of having no feminist Commissioners or any with specialisms in changing social attitudes; and of conducting its affairs unaccountably¹. Following briefing by legal experts on behalf of the Equal Pay and Opportunities Campaign in December 1977, a group of Labour women MPs lead by Mrs Helene Hayman, lobbied the Home Secretary, Mr Merlyn Rees, early in 1978. The main criticism was the Commission's inadequate use of the 'cornerstone' of its powers; the formal investigation. Another was its decision not to issue a Code of Practice for Employers². A third point was the absence of Commissioners with a feminist viewpoint. These views were shared in public by Ms A Coote, a well known activist and writer on women's rights, Ms J Colthorpe, General Secretary of the National Women's Farm and Garden Association, Ms J Coussins and Ms P Hewitt, Women's Rights Officer and General Secretary of the National Council for Civil Liberties³. In March the Equal Pay and Opportunities

1. A New World for Women, op cit, pp 32-34.

2. Taylor, R. Observer, 1.1.78.

3. Guardian, 13.1.78.

Campaign published its reactions to the EOC guidelines for employers and began to prepare its version of a Code of Practice. This was published towards the end of 1978 together with a strong attack on the Commission's record¹. In December, the Campaign drew up a list of New Year Resolutions for the Commissioners to be more assertive, accountable and effective. In 1979, the Campaign ran a survey in order to be able to comment on EOC recommendations in respect of protective legislation. As a result of consultation with trades unions, the Campaign took the Commission to task for failing to build safeguards into their proposals for the removal of restrictions on the hours of women's work². Later in that year the Fawcett Society added its voice to the general criticisms. In 1976, at the Women in the Media Seminar, a Fawcett Society member had disassociated her group from the harsh attacks of others³, although stating that the Society, too, was anxious. But during 1979, as a result of an invitation from the Home Office to consider the future of the EOC, its Public Affairs sub-committee arrived at a number of 'wide ranging recommendations'. Proposals for greater vigour in enforcement were sent to the Home Secretary, Mr William Whitelaw⁴. Specific recommendations were that more energy be expended on formal investigations and less on individual case work; that the Commission make itself more public; and that equal opportunity officers be established throughout the country. The chairman of the Society was invited by Lady Lockwood to exchange views informally. But, while the Society sympathised with her view that researchers, using old material,

1. Minutes of Meeting, EPOC, 18.10.78.

2. Press Release EPOC 6.5.79.

3. A New World for Women, op cit, p 36.

4. Newsletters, Fawcett Society, October 1979 and January 1980; and Annual Report 1979-80, Fawcett Society, p 8.

'perpetuated an inaccurate bad press', its leaders remained of the opinion that the Commissioners should be more vigorous¹. The Fawcett Society was pleased with the appointment of Mrs Jane Finlay as Lady Howe's successor because of her long experience of problems in women's lives². On her resignation from the National Council for Civil Liberties in January 1980, Ms Coussins told an interviewer that, while she thought 'the Equal Opportunities Commission could be a tremendous force for good', it was 'constantly disappointing'³. However, during 1980, the Commission prepared in draft form its long awaited Code of Practice for Employers. On its publication in 1981, it was welcomed by the Equal and Opportunities Campaign almost without reservation. The campaign's six comments recommended: the inclusion of a statement about the legal status of the Code; a greater specificity about size of firms; a more positive description of what was required of small firms; greater explicitness on pension benefits; and more encouragement of the provision of creche facilities and better maternity leave⁴.

On the latter issues, pressure groups began to make the running in 1975. The Equal Opportunities Commission published its documents on maternity rights and nurseries in March and December 1979. But neither unofficial nor official bodies have been clear about the question raised in chapter II; that is, whether children create real supply side difficulties or whether they are a social investment. Thus there has been very little agreement about whether employers should be encouraged or

1. Newsletter, op cit, January 1980.

2. Ibid.

3. Forgan, L. Guardian, 10.1.80.

4. EPOC Press Briefing 1981.

compelled to make arrangements for them or whether their care is, at least in part, the responsibility of the state¹. Early in 1975, the National Labour Women's Advisory Committee called on the government to implement election pledges to improve child care facilities by making more resources available and compelling local governments to meet specified short term and long term targets for creche and nursery places². After the passage of the Equal Pay and Sex Discrimination Acts, the TUC also called for provision by local authorities of such facilities. In addition affiliated unions were encouraged to provide them for members during meetings and conferences. Trade union leaders also called for better maternity provisions and more opportunities for women re-entering the labour market to be trained and re-trained³. The Equal Pay and Opportunities Campaign published a guide to negotiators in 1978 which was bought immediately by two hundred employers, trade union officials and individuals⁴. In it, employers were told that agreements on creche facilities, flexible working hours and paternity leave that exceeded statutory requirements were in their own best interests. The guide praised the agreements between relevant unions and Camden Borough Council, Norfolk Capital Hotels and the magazine Time Out as exemplars for other organisations. Later in that year, as interest grew among the TUC, the Central Policy Review Staff and the Equal Opportunities Commission, the Campaign began to persuade MPs to lobby for governmental action on nurseries and direction to employers on the other issues⁵. In 1979,

1. Coussins described feminist thinking on child care as 'muddled and remiss'. Guardian, 10.1.80.

2. Child Care Facilities, National Labour Women's Advisory Committee 1975.

3. Gibson, A. TUC. 'Women in the trade unions: Present and future policy on equal opportunities'. Paper presented to PSA Women's Group Conference 27.9.80, pp 5-6, and appendix A.

4. Work and Parenthood, March 1978; and Minutes of Meeting EPOC 12.4.78.

5. Minutes of Meeting EPOC 18.10.78.

the TUC held a Regional Council Conference on the care of under-fives. The charter that formed the discussion document closely resembled the Equal Pay and Opportunities Campaign guide¹. Similar demands were on the agenda at a Day of Action on the 27th November 1980 organised by the Fawcett Society and Women in the Media, attended by sixty seven other groups. A copy of the agenda was sent to the Prime Minister. In reply, Mrs Thatcher said that her government was in favour of equal opportunities for men and women because:

More than ever we need to mobilise the skill and ability of all our citizens if we are to revitalise the currency and increase prosperity in this country.²

But at the same time, as part of its general policies, her government was reducing protection for pregnant women in the Employment Protection Act and modifying the system of maternity grants. The National Council for Civil Liberties lobbied for but failed to prevent the introduction of more complicated procedures for returning to work after child birth. But the Council, working with employers unions, women's societies and the Child Poverty Action Group, succeeded in persuading the government to abandon its proposals on maternity grants³.

Proposals for positive action and amendments to the laws arise from the views that, whatever the stance of the Equal Opportunities Commission, the Acts as they stand, good though they are in comparison to others in Europe, are limited. Isolated calls for measures to be taken similar to affirmative action in the United States were made

1. Ibid, 11.7.79.

2. Newsletter, Fawcett Society, January 1981.

3. Annual Report NCCL 1980, pp 13-14.

during the 1970s but the campaign did not get under way until 1980.

In 1978, the Equal Pay and Opportunities Campaign asked the Home Secretary Mr Rees, to require the EOC as well as the Commission for Racial Equality to monitor the equal opportunities policies of firms in contract with the government¹. But the government preferred to await the outcome of the CRE experiment². A personal project of Ms Coussins at the National Council for Civil Liberties to persuade selected unions and employers to try out an affirmative action plan also foundered except in one case³. Some Industrial Training Boards were, however, agreeable to using the section of the Sex Discrimination Act allowing positive discrimination in training. The Clothing and Allied Products Training Board and Brunel University began a scheme that offered incentives to women to take a production engineering course⁴. The white collar sector of the engineering union, TASS, and the Engineering Industry Training Board initiated a scheme to increase the numbers of female trainee technicians and the Equal Pay and Opportunities Campaign lobbied the Manpower Services Commission to sponsor more girls on it⁵. TASS began to consider how to make better use of the opportunities provided by the Training Board⁶. The principal training officer of the Board described the new scholarships and courses as a 'tremendous success'. But he and Ms Hunt of TASS pointed out that eliminating the stereotypes that engineering is a 'dirty'

1. Minutes of Meeting EPOC 15.11.78.

2. Home Office Letter to EPOC. Minutes of Meeting EPOC 13.12.78.

3. Forgan, op cit.

4. Guardian, 12.5.78.

5. Minutes of Meeting EPOC 11.7.79.

6. Ibid, 8.10.80.

or 'masculine' occupation is expensive¹. Similar programmes for the promotion of women to managerial positions are being carried out, with some assistance from the Manpower Services Commission, by the Food, Drink and Tobacco Industry Training Board². By April 1981, the Industry Training Boards were described as 'the leading innovators' in the use of positive action³. But at the same time fears were growing that the government was about to close them down. A Parliamentary lobby began to prevent this.

In 1980 assistance for such efforts and calls for a wider conception of positive action were made by the TUC and the National Council for Civil Liberties. In that year the TUC Women's Conference persuaded Congress to committing trades unions to negotiating with employers for positive measures to promote equality, particularly in training. The hope is that employers will not only be more open to positive discrimination in training but that procedures similar to those in the United States will be developed to analyse the work force and the potential of the catchment area and to take steps to rectify anomalies between them⁴.

During 1980, the National Council for Civil Liberties launched a pioneering research project of this type in Thames Television, the only organisation to have responded to Ms Coussirs' overtures in the late 1970s. The Council succeeded in getting financial assistance from both the Equal Opportunities Commission and the Commission for Racial Equality⁵. The project resulted in a number of

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1. Bowman, M. Guardian, 22.1.80.
 2. Minutes of Meeting EPOC 11.2.81.
 3. Ibid, 8.4.81.
 4. Gibson, op cit, pp 11-18.
 5. Hodges, L. The Times, 2.10.80.

discussions and seminars with other groups, unions and management in local government, the health service and engineering to identify where other similar projects might take place¹. The project culminated in a three day conference in March and April 1981 funded by The Ford Foundation and the German Marshall Fund. It was attended by managers, training board representatives, union officials, feminists and American experts on affirmative action. The conference was said to be 'encouraging' because it clarified misunderstandings and highlighted some positive responses from a few firms; notably ICI, Rank Xerox and Sainsbury's². The research project is continuing taking account of the issues raised during the conference.

This chapter ends with an account of views of interest groups and the Equal Opportunities Commission on necessary amendments to the laws. Recommendations cover a number of the problems revealed by the workings of institutions described throughout the chapter. Most of the amendments suggested by the Equal Opportunities Commission early in 1981 had been considered by the National Council for Civil Liberties by 1977. In October of that year Ms Coussins produced a list of thirty five amendments³. The main areas of concern were: pensions, particularly those that were part of the benefits of employment; references to the Central Arbitration Committee; comparisons between women and men segregated into occupations which had not been evaluated or where there were no existing male employees; the absence of indirect discrimination in the Equal Pay Act; discrimination against single women;

1. Annual Report NCCL 1980, p 14.

2. McLoughin, J. Guardian, 31.3.81.

3. Coussins, J. 'Amending the Equal Pay Act and the Sex Discrimination Act', NCCL 1977.

and the burden of proof in the Sex Discrimination Act. At the end of December 1977, the Women's Liberation Movement began to organise a campaign to amend the Sex Discrimination Act. Its Nottingham group announced that particular attention would be paid to social security, pensions and taxation¹. Although the Equal Opportunities Commission conceded then that the scope of both Acts needed to be wider, they did not arrive at their own proposals until January 1981². A campaign run by Woman magazine later in the year showed widespread support for them³. The twenty five suggested amendments fall into four groups: those bringing the Equal Pay Act and the Sex Discrimination Act into line with one another; those that extend the scope of the laws; those that make British law compatible with European; and administrative and enforcement changes. In the first category it is suggested that indirect discrimination against individuals or in collective agreements be part of the Equal Pay Act, while practices like bonuses for mobility or overtime clauses in contracts resulting in unequal pay be unlawful under the Sex Discrimination Act. It is also recommended that, as is so in the Equal Pay Act, there should be no exemption for small firms in the Sex Discrimination Act. In the second it is recommended that the Equal Pay Act be extended to cover work of equal value where work is highly segregated. This would bring Britain in line with the International Labour Organisation and the revised Article 119 of the Treaty of Rome. The EOC suggests that the Sex Discrimination Act be extended to cover provisions relating to death or retirement; that discrimination on grounds of family status be substituted

1. Morris, M. Guardian, 30.12.77.

2. Press Notice M28, EOC 14.1.81; and Press Briefing M29 EOC 16.1.81.

3. Press Notice M41, EOC 2.7.81.

for marital status; that employers be able to positively discriminate in recruiting trainees instead of be able to do so only in the training of existing employees; and that provisions relating to membership of associations and advertising be widened. In the third category, in addition to equal pay for work of equal value, the Commission recommends the incorporation of European rulings on part time work and the elimination of practices allowed under other statutes regarded as discriminatory under Community law. In the last category numerous amendments are proposed, the most significant of which cover referrals to the Central Arbitration Committee by other bodies including the EOC, extensions of time limits allowed for commencing proceedings, and clear directions about the burden of proof. A case under the separate law for Northern Ireland resulted in a ruling there that clearly expressed what had been obscurely hinted at by judges in English tribunals. This is that once a complainant shows that she or he has been less favourably treated than a member of the opposite sex, the evidential burden shifts to the alleged discriminator. This is what the Commission, and others, would like to see embodied in the Sex Discrimination Act.

It remains to be seen whether the closer harmony of Commission and group policies will have any impact. They are supported by more than one hundred MPs and by some peers. During a debate on a motion calling for their implementation in June 1981, Members of Parliament were told that the relevant government departments were considering the recommendations and that the House would be told of the government's response in due course¹. The impact of similar institutions and groups in the United States is contrasted in the next chapter.

1. EOC News August/September 1981.

CHAPTER VII

Implementation in the United States

(1) INTRODUCTION

As indicated earlier, this chapter will refer to changes in the pay and employment of women. It will, however, concentrate on the behaviour of enforcement institutions and the activities of interest groups.

(II) Pay and Occupational Distribution after the Equal Pay Act and Civil Rights Act

The contrast between the pay of women compared to men in Britain and the United States is striking. The ratio is much worse for American women and, in all major occupational groups but one, the gap has widened since 1963. This is shown in the following table.

TABLE 25

Women's median wage or salary income as % of men's by selected major occupational group, 1962 - 1973.

Selected occupational group	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973
Professional, technical	66.1	64.8	64.3	67.7	65.1	66.2	65.9	64.9	66.7	68.6	64.6	63.6
Managers, administrators (except farm)	57.8	55.2	55.5	52.2	54.0	54.4	54.5	53.1	56.4	56.2	52.1	52.8
Clerical	68.6	67.7	66.2	68.1	66.5	67.1	65.1	65.1	64.4	62.4	62.3	60.9
Sales workers	43.6	39.0	40.4	42.4	41.0	42.4	40.5	40.5	42.8	43.0	38.3	37.8
Operatives	59.4	57.4	57.8	57.1	55.9	57.8	59.2	59.1	59.2	60.8	57.2	56.4
Service workers (except private household)	51.8	57.5	53.7	57.0	55.4	56.5	55.0	58.9	56.8	59.5	58.8	57.8

Source: US Department of Labor¹

The trend is not a consistent one. In most groups peaks appear around about 1965, 1967-8 and 1970-1. The pattern among

1. 1975 Handbook on Women Workers, op cit, p 130.

service workers appears to lag. The decline from 1971 has not yet brought pay below the ratio for 1962. Despite the widening differences between men and women, the incomes of white and minority group women narrowed from 25% in 1967 to less than 7% in 1974. In anticipation of the next section, it should be pointed out here that the Department of Labor is thought to have discharged its equal pay obligations properly. Consequently analysts have tried to explain these trends by other means. The explanations vary. The Wall Street Journal and the Department of Labor attribute part of the income differential to the success of equal opportunity policies and in part to the discontinuous work profile of women¹. Because women are increasingly entering new occupations or re-entering the labour market, each year sees more and more women earning entry-level salaries, thus pushing average pay figures down. Other research indicates that poor education and employment opportunities are still depressing women's earnings². It has been argued that about 75% of differentials can be explained in this way. Part of the remaining 25% includes some unequal pay for the same work. But the main conclusion of the research is a plea not for equal pay but for 'equal work'.

The pattern of employment after 1964 indicates that some modifications of occupational segregation are taking place so that both explanations may have some basis.

In Hakim's analysis occupational concentration was greater in America than in Britain at the beginning of the twentieth century but by 1960 the degrees of segregation in the two countries were

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1. Malabre, A. Wall Street Journal 28.8.78. 1975 Handbook on Women Workers op cit, p 125.
 2. Sell, R. and Jackson, M. in Sociology and Social Research, Oct 1962, No 1, reported in New Society, 6.4.78.

almost identical¹. By 1970 the rate of decline of segregation was greater in the United States; but mainly because of the permeation of men into 'female' occupations. However, women have increased their share of some occupations where men predominate. At the same time some 'female' occupations have become more so. These trends are shown in the table below.

TABLE 26

Women as % of totals employed in major occupational groups, 1960-1979

Occupational Group	1960	1970	1979
(All Occupations	33	38	41.3)
Professional and technical	38	39	43.3
Managers & administrators (except farm)	14	16	24.6
Clerical	68	75	80.3
Sales	36	41	45.1
Craft	3	3	5.7
Operators	27	30	32.0
Service (except private household)	52	59	59.1
Private household	97	96	97.6

Sources: Department of Labor and Hakim²

Intra-occupational segregation appears to be diminishing a little. The changes in some occupations in the professional group are provided in the following table.

TABLE 27

Women as % of men in selected professions where women are increasing, 1960-1977

Profession	1960	1970
Accountants	16.4	27.5
Architects	2.1	3.4
Editors, reporters	36.6	44.9
Engineers	0.8	2.7
Physicists	9.2	15.6
Lawyers and Judges	3.5	9.5

Source: US Department of Commerce and Labor³

1. Hakim, op cit, p 34.

2. Perspectives on Working Women, op cit, p 9. Hakim, op cit, p 35.

3. Reported in US News and World Report 4.9.78, p 59.

While the absolute size of the female share of engineering is still tiny, the rate of increase, as in Britain, is large. In medicine British women have always been better represented than American. In the United States the proportion of female doctors rose from 7% to 9% during the 1960s. In both medicine and law, the position of American women is expected to improve following sharp rises since 1969 in female enrollments in courses leading to degrees in these subjects.

The Department of Labor believes that the most dramatic changes have taken place among skilled trades. Again, the absolute size of the female share is very small. It is the rate of increase that is impressive. At 80% in 1970, this rate is twice that for women in all occupations and eight times that for skilled men¹. Particular trades picked out for praise were as follows:

TABLE 28

Women's share of traditionally male occupations 1960 and 1970

Trade	1960		1970	
	Nos.	% of occupation	Nos.	% of occupation
Carpenters	3,300	0.4	11,000	1.3
Electricians	2,500	0.7	8,700	1.8
Plumbers	1,000	1.9	4,000	4.1
Car Mechanics	2,300	0.4	11,000	1.4
Painters	6,400	1.9	13,000	4.1
Toolmakers	1,100	0.6	4,200	2.1
Machinists	6,700	1.3	11,800	3.1
Compositors & typesetters	15,000	-	24,000	-

Source: US Department of Labor²

The pattern of education and training cited by research referred to above as a stumbling block to equality in employment may not remain so for long in professional subjects. The sharp rise in

1. 1975 Handbook on Women Workers, op cit, p 92.

2. Ibid, pp 92-93.

some enrollments means that in 1978 24% of medical students and 28% of law students were women. Ten times more women in 1978 were studying engineering than in 1970¹. But the position for working class women in probably less promising. The Wisconsin apprenticeship scheme referred to in chapter V reveals that in 1973 many training opportunities for traditionally male jobs still included only handfuls of women². And the staff of Federally funded training programmes were found to be 'profoundly ignorant of apprenticeships and skilled trades'³.

Such changes that have occurred among manual occupations are attributed by the Department of Labor to the affirmative action plans of its own Office of Contract Compliance⁴. General changes are credited to other laws and institutions and the influence of the women's movement. These beliefs are shared by some independent researchers, employers and women. But a growth in the social acceptability of working women and an increase in numbers of women who need to work to support single parent families have encouraged women into the labour market⁵. Many professional women are reported to believe that without Federal intervention recent advances in how they are employed would have taken decades⁶. The attitudes of employers are complex. On the one hand, failure to comply with legal requirements can be expensive. The first, and one of the largest settlements was

1. US News and World Report, op cit, p 59.

2. Women in Apprenticeship - Why Not? op cit, p 28.

3. Ibid, p 16.

4. 1975 Handbook on Women Workers, op cit, p 92.

5. New York Times, 12.9.76.

6. US News and World Report, op cit, p 60.

Wall Street Journal, 28.8.78.

New York Times, 12.9.76.

in American Telephone and Telegraph Corporation. More recently, General Electric had to spend \$32 million to settle charges filed by the Equal Employment Opportunities Commission. But, on the other hand, while bound to protest in public about the high cost of equal opportunities policies, some corporations admit discreetly that the legislation has forced them to modernise out-of-date labour utilisation policies and grievance procedures¹. As a result of improved labour use and industrial relations, they sometimes find it difficult to be precise about the real costs of reform. But smaller firms, surveyed in Wisconsin continued in 1973 to be reluctant to train women in 'dirty' or 'masculine' jobs unless persuaded otherwise².

Trades unions have varied in their support of legislation to promote equality. The main source of union dissent has been the question of protective legislation. This was also a consideration in AFL-CIO opposition to the Equal Rights Amendment. Gradually a wide range of groups came to see protective legislation primarily as a device for denying equality. In 1974 women in fifty eight trades unions formed the Coalition of Labor Union Women to encourage women to join trades unions and to persuade cautious unions into unequivocal opposition to discrimination. By the 1970s special laws about the hours of women's work had been declared void and regulations about exposure to the hazards of work applied to both men and women. After that, the AFL-CIO publically approved the Equal Rights Amendment and joined the boycott of unratified States.

Since 1978, the state of the economy and a new style of politics has emerged which may modify the activities

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1. Interviews with equal opportunity directors and staff in two of the largest corporations in the United States. April and May 1978.
 2. Women in Apprenticeship - Why Not? op cit, pp 7-9, 25, 26.

of equal opportunity agencies and halt advances by women workers. The duties and activities of the principle departments and agencies up to that point are, however, described in the next section. As in chapter VI, this is followed by a discussion of the part played by interest groups in policy implementation.

(III) Departments and Agencies Responsible for Implementation

It is important to note that there are many more agencies in the United States than in Britain. At the Federal level equal opportunity responsibilities are placed on the Civil Service Commission, the Equal Employment Opportunities Commission, the Department of Justice and three sections of the Department of Labor. In addition, each government department has an equal opportunities office to review its own staffing policies and those of programmes administered by them. Central agencies like the Equal Employment Opportunities Commission also have a structure of regional and field offices. Moreover, most States also have their own offices of fair employment, equal opportunities and contract compliance. In the judicial system, suits may be filed in State, District and Appellate courts, Federal circuit courts or considered in the Supreme Court. The enormity of the task of reviewing all of these institutions compared with the scope possible in this thesis means that this section will deal principally with Federal institutions involved in the conditions of employment in companies in contract to the government and in those wholly in the private sector. In particular, attention will be paid to the Wage and Hour Division of the Department of Labor, the Equal Employment Opportunities Commission, the Office

of Federal Contract Compliance Programs in the Department of Labor, the Department of Justice, Federal courts and the Supreme Court.

The Women's Bureau of the Department of Labor and the Civil Rights Commission will be referred to in their capacities to undertake research into women's work and law enforcement.

(III)(b) Wage and Hour Division

Until 1978 the Wage and Hour Division of the Department of Labor was responsible for investigating possible violations of the Equal Pay Act by private employers or State and local governments; negotiating settlements; and, when necessary, securing compliance through the courts. Employees did not have to file suits through the Division and, conversely, the Division might pursue equal pay violations without complaints but which emerged in the course of investigations in other fields. Complainants were protected from victimisation by the Division's right to maintain anonymity. The main office is, of course, in Washington. The Division was responsible for equal pay to the Secretary of Labor through the Employment Standards Administration which has ten regional offices. Law suits were prosecuted by the Department's own solicitor. In 1979, responsibility for the Equal Pay Act was removed to the Equal Employment Opportunities Commission.

In general, the Division has had a reputation of effectiveness. But in 1977, the Civil Rights Commission reported that its activity had declined¹. Washington officials felt that this was because regional staff had become lax in following up equal pay violations revealed in other investigations. It was also reported that investigating staff had become less rigorous in passing on to other institutions information about

1. The Federal Civil Rights Enforcement Effort - 1977. Civil Rights Commission, ch 3.

violations of other laws.

The national office was also taken to task because of its guidelines on equal pay which, it was claimed, were so inadequate that employers could not use them and comply with the law.¹ Its advice to employers was inconsistent with that of the Equal Employment Opportunities Commission in respect of pensions and fringe benefits and uninformative about how the 1972 and 1974 amendments affected employment. The Wage and Hour Division guidelines also permitted different rates for some part time workers, although not for those working more than twenty five hours a week. These defects were serious because the courts generally give great weight to agency guidelines; and conflicting advice on fringe benefits has had important consequences for the treatment of maternity as a temporary disability for the purposes of health insurance schemes.

The Civil Rights Commission received representations from women about the male dominance of Division staff, which, it was felt, meant that the agency was not fully receptive to female complaints. The first part of this observation is borne out by statistics. Its consequence is perhaps confirmed by implication by some writers who stress the role of the courts rather than the Department in advances made in the definition of equal work and in the amount of back-pay awarded². At the same time many women's groups were relatively content with the agency's record believing that, if the courts have played an important role it is because the agency, using a broad interpretation of equal work, has been more willing than others to litigate³. They also

1. Ibid, p 153.

2. E g Freeman, op cit, p 177; and Wallace, P. 'The Impact of Equal Opportunity Laws', in Kreps (ed) op cit, p 138.

3. Spokeswomen, December 1977, Sophia Smith Collection, Smith College; and Freeman, op cit, p 177.

note that settlements were reached more quickly. As a result the Division's backlog of cases was minimal compared to that of the EEOC. A measure of the relative confidence in the Wage and Hour Division was the opposition of women's groups to President Carter's proposal to transfer authority for equal pay to the EEOC. This was agreed to only after certain commitments were made. Misgivings were still being expressed about the transfer several months after this agreement had been reached¹.

(III) (b) The Equal Employment Opportunities Commission

Under Title VII of the Civil Rights Act, the EEOC was given power only to seek voluntary compliance with the Act. Litigation powers rested with the Department of Justice. Although unable to litigate the Commission could file amicus curiae briefs. After 1972, it was granted power of litigation. Enforcing the Act has two aspects: the resolving of individual charges and the eliminating of 'patterns and practices' of discrimination. Cases of the latter type may only be initiated by the Commission. In scope such an undertaking would resemble the British formal investigation. But the EEOC has no 'cease and desist' power like the EOC's authority to issue a non-discrimination notice. If an American investigation revealed widespread non-compliance with the law, the EEOC would need to go to court as in individual or 'class action' cases.

The chairman and four other Commissioners are appointed by the President with the advice and consent of Senate for five

1. Interview at National Organisation for Women, New York, April 1978, Civil Rights Division of AFL-CIO, Washington, May 1978, Women's Equity Action League, Washington 1978.

year terms. The chairman (or chair, as the present incumbent prefers) oversees administration, provides direction and, with the other Commissioners, determines policy. The senior staff positions are Executive Director and General Counsel. Since 1977 departments report to the Commission through the Director. The General Counsel, also a Presidential appointee, provides legal advice and makes recommendations to the Commissioners about litigating. Until 1977, the field structure comprised seven regional offices responsible to the EEOC, five regional litigation centres responsible to the General Counsel and thirty two district offices. In 1977 the first two were abolished and operations combined into field agencies based on the old district offices¹.

Its first budget was \$3¼ million based on a prediction of 2,000 cases. The 1978-79 budget was about \$94 million. The case load of individual charges for the preceding year was 87,000. During 1976 about 52% of charges were of racial discrimination, and 31% of sex discrimination. Others were of national origin and religion. The highest share of the budget is spent on the salaries and related expenses of more than 3,000 members of staff². The rest goes on data collection and analysis and investigating charges. Publicity and research about working women not directly related to specific issues or to compliance by particular employers tends to emanate more from the Women's Bureau and other bodies than from the EEOC. The output of the Bureau is prolific both in the form of published documents and in educative seminars and meetings all over the United States.

1. The Federal Civil Rights Enforcement Effort, op cit, ch 4.

2. Interview with T Harris, Office of Policy and Program Implementation EEOC, Washington, May 1978.

Disappointment with the performance of the EEOC is widespread. It has a huge backlog of cases (130,000 in 1977) and settlements are slow, and by 1978 it had not mounted an effective litigation campaign to eliminate segregation or 'systemic discrimination'. According to various 'watchdog' agencies, a number of internal management and organisational problems have hindered effective enforcement¹. These defects have been exaggerated by a high turnover of staff and Commissioners². The most important of these problems were an uncertain division of policy responsibility between the Commissioners and senior staff, the autonomy of the legal section, poor coordination between investigating and conciliating staff, and the absence of internal monitoring of performance. These deficiencies lead to unnecessarily heavy caseloads, delays in dealing with complaints, duplication of effort, and the acceptance of standards of evidence later rejected by the Commission's own legal staff and by the Department of Justice. The agency is also charged with a poor record in monitoring settlements.

Upon taking up the chair in the summer of 1977, Eleanor Holmes Norton immediately instigated a complete overhaul of the institution, bringing in structures and procedures she had used successfully in the New York City Commission on Human Rights. These reforms rationalised the field structure, clarified functions and integrated previously separate ones. Intake procedures were reformed and are now operated by more highly skilled staff to speed up the rate at which individual relief can be obtained. Special plans were introduced to deal with

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1. Federal Civil Rights Enforcement Effort, op cit. Report to Congress by Comptroller General September 1976. Oversight Hearings by House Subcommittee on Equal Employment Opportunities December 1976, July 1977. Interviews at General Accounting Office and Office of Management and Budget, Washington, May 1978.
 2. Until the women's movement put pressure on the White House, the posts, being unpopular among the tax paying community, did not attract individuals of high calibre. Interview EEOC, op cit, May 1978.

the backlog. The responsibility for deciding whether individual cases should be turned into class action suits is confined now to Commissioners and field directors. A vigorous programme to eliminate systemic discrimination through the initiation of cases by the EEOC was promised¹.

Before being able to litigate itself, the EEOC's role in the courts was limited but influential. Between 1972 and 1977 it litigated successfully in individual cases also involving other employees. In 1977, thirty five such class action cases, each involving more than one thousand employees were resolved. But, in the view of the Civil Rights Commission, this is a poor record for the three hundred attorneys it employs. And by 1978, the Commission had not initiated law suits in any case of systemic discrimination.

EEOC amicus curiae briefs, and guidelines are judged to have exercised 'significant' influence on the law². Six hundred such briefs were filed to good effect by 1977. Among these were the briefs and expert evidence submitted by the EEOC from its own investigations and from research commissioned outside, in the enquiry into the American Telephone and Telegraph Corporation.

The settlement, often quoted as the largest ever under Civil Rights legislation covering both racial and sex discrimination, began before the EEOC was empowered to file charges in court. The Commission's involvement happened because of the ingenuity of one of its legal staff. More than 2,000 complaints about the Corporation, the largest private employer in the United States, had been received in the EEOC. When A T & T applied to the Federal Commerce Commission (FCC) for a

1. Statement of Ms Norton to House Subcommittee on Equal Employment Opportunities, July 1977.

2. Federal Civil Rights Enforcement Effort, op cit, p 201.

price increase, the legal officer suggested petitioning against it on the ground that the Corporation was violating the Civil Rights Act. After two years of hearings and discussions among A T & T, the Departments of Labor and Justice, The EEOC, FCC, civil rights groups, social scientists and public interest law groups, the Supreme Court handed down consent decrees. These ordered the Corporation to comply with the Equal Pay and Civil Rights Acts and contract compliance regulations by awarding \$38 million in back pay and by restructuring its personnel and industrial relations procedures.¹ An important consequence for women was that the investigation of A T & T ended the remains of a view that predominated at first in the EEOC that women did not need the agency to pursue their rights².

Its first guidelines, issued in November 1965, were strict in some respects and permissive in others. In it the Commission stated that stereotypical assumptions about women and preferences of employees and customers or clients could not count as defences against charges of violation of Title VII. Its views were upheld in various public and judicial hearings. The status of the guidelines became similar to that of British Codes of Practice when, in 1971, the Supreme Court clearly specified that administrative guidelines were 'entitled to great deference' (Griggs v Duke Power Company)³.

This first version of the guidelines also adopted one of what according to Blumrosen were three possible interpretations of the

1. Wallace, P. Equal Employment Opportunity and the A T & T Case (MIT Press 1976).

2. Interviews with two attorneys employed at the time of the case by the EEOC, New York, April 1978. Interview with former secretary of Citizen's Advisory Council on the Status of Women, Washington, May 1978.

3. 401 US 424 (1971).

meaning of discrimination¹. The possibilities were that discrimination required proof of evil intent; that it required demonstration of unequal treatment of two similarly situated people; or that discrimination was established by proof of adverse impact on a class of people. The EEOC chose the last. This view was deferred to and established in law in the Griggs case, although refinement appeared later.

The first guidelines did not, as many hoped they would, deal with the separate advertising of jobs for men and women, protective legislation, fringe benefits and pregnancy, or seniority rules².

On protective legislation and seniority the Commission awaited judicial guidance and then incorporated court rulings into versions of the guidelines in 1968, 1972 and 1976. Job advertisements were the occasion of disputes concerning the EEOC, pressure groups and the courts.

Developments in the EEOC position on fringe benefits and benefits relating to maternity have resulted in conflict with other institutions. Like the British Equal Pay Act, the American allows for different payments relating to factors other than sex. In 1969, the EEOC found certain differentials in fringe benefits to be unlawful under the Civil Rights Act notwithstanding their legality under the Equal Pay Act. In its 1972 guidelines, the EEOC decided that higher costs revealed in actuarial analysis in, for example, medical, accident or retirement insurance schemes, profit sharing and bonus plans could not constitute a defence against allegations of discrimination. The EEOC and the Department of Labor then operated different guidelines in these respects. In the same guidelines

1. Blumrosen, A. 'Toward Effective Administration of New Regulatory Statutes PT1', Administrative Law Review, 1977, p 99.

2. See Wallace in Kreps (ed) op cit, pp 128-137; and Freeman, op cit, pp 76-79 and 184-188; and Blumrosen, op cit, pp 99-100.

the EEOC recommended that disabilities caused by pregnancy should be treated under normal sick leave and insurance plans. EEOC policies were upheld over the less strict Department of Labor advice until 1976 when they were overruled in the Supreme Court¹.

Comments on the performance of the agency by outsiders have been similar to those of the 'watchdog' agencies; that is, a mixture of approval and disapproval. But, in addition these critics have been concerned about the bias of the agency. Despite the observation made on page 283, employers, predictably, tend to feel that the agency favours minority groups and women². But, in meetings of all parties to a complaint, employers come with financial and legal resources. The Civil Rights Commission therefore argues that, in such circumstances, it is proper for the EEOC to assist complainants to secure all relevant information³. But evidence to Congressional Hearings revealed that in 1976, the EEOC itself was practising discrimination and committing illegal acts to conceal its inefficiency⁴. Examples were given of discrimination against Jewish employees by senior black staff. It was alleged that Commission meetings degenerated into bickering between the black and Hispanic Commissioners. Files were said to have been destroyed to conceal the extent of the backlog in field offices. Naturally, these reports were publicised in the business press⁵.

Complaints by women of bias are that the

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1. 429 US 125 (1976) v Gilbert General Electric Company.
 2. Report by Comptroller and Auditor General, op cit, pp 15-17.
 3. Federal Civil Rights Enforcement Effort, op cit, pp 219-220.
 4. Joint Economic Committee of Congress, June 1976. Reported in Fortune Magazine, December 1976.
 5. E g Fortune Magazine, ibid.

agency, until the A T & T case, gave high priority to racial discrimination and none to sex. The first chairman, F D Roosevelt, Jr, made it clear from the start that he thought the addition of sex to Title VII was made only to bring the Act into disrepute and was not really part of his brief¹. Feminists and civil rights groups felt that Nixon appointees were not seriously concerned to see that the agency enforced the law². However, they have no such doubts about Chairwoman Norton but do have some misgivings about her procedural reforms. One is that the new procedures aimed at quick conciliated settlements for individuals could mean that a complainant might be persuaded to accept less than her full rights under the law. It has been noted that in the three offices experimenting with the new techniques the rate of 'no cause' closures is suspiciously high³. Women are agreed that the main problem of discrimination is occupational segregation and are, therefore, pleased with the promised attack on 'systemic' discrimination to reduce it. But they are unhappy with the confinement of decision making in this area to Commissioners. However, under changes in the law, third parties are allowed to act on behalf of individuals whose cases become class actions. There is, therefore, still a role for women's groups in important cases. And it has been promised that they will be consulted when Commissioners target companies for investigation of systemic discrimination.

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1. Robinson, op cit, pp 422-424. This article is an interesting and useful analysis of the relationship between policy initiation and implementation.
 2. Freeman, op cit, pp 205-206.
 3. Spokeswoman, op cit, December 1977.

(III) (c) The Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor

The Office administers a policy that is absent in Britain; that is, the requirement placed on government contractors to conform with equal opportunity policies and the monitoring of their progress. Class action and 'pattern practice' charges filed against private employers by the EEOC or Department of Justice may result, too in affirmative action plans of the type now being asked for in Britain. But it is the Office of Federal Contract Compliance Programs with the authority of Executive Orders 11246 and 11375 that has developed the typical plan employers are expected to follow. The sheer size of this aspect of policy and its influence on British pressure groups necessitate some discussion of it.

Executive Orders 11246 and 11375 were promulgated by President Johnson in 1965 and 1967. The first did not cover sex discrimination; the second amended the first to do so and to cover age discrimination and war veterans. The Orders are estimated to cover at least thirty million workers, three hundred and twenty five thousand contractors and to involve approximately \$50 billion of public funds¹. In 1976, 3,039 complaints were received by the agency². Contracts were divided into supply and construction. Until 1977, the second category, forming about one quarter of the programme, was not required to include positive steps to promote the employment of women.

Administrative arrangements for the policy have changed several times. Before 1977, the OFCCP oversaw the general

1. Interview, Deputy Director OFCCP, Washington, May 1978.

2. Federal Civil Rights Enforcement Effort, op cit, p 76.

stance of nineteen line agencies situated in contracting departments.

A system of field offices existed but these reported only indirectly to the OFCCP through the Employment Standards Administration first.

The line agencies were responsible for direct enforcement and day-to-day operations. In 1977 these were reduced to eleven and responsibility for policy became more centralised in the OFCCP. This trend was completed by President Carter in 1978, after which ten regional and sixty two field offices came under the supervision of the OFCCP. President Carter's intention was that, when the overhauled EEOC had proved itself, contract compliance responsibility would be transferred to it.

The reason for reform is the poor record of compliance. Sanctions were rarely applied. Part of the problem was internal to the OFCCP but the main difficulty was diagnosed as the lack of its control over the line agencies which are often also parties to the contract¹. Different line agencies set different standards for action and in evaluating compliance attempts. Some line agencies were picked out as particularly bad. The Department of Health, Education and Welfare, with a large volume of charges sparked off by one brought by the Women's Equity Action League in 1970, has been severely criticised for not expediting its duties². It is alleged that the General Services Administration accepted plans, 65% of which did not comply with OFCCP guidelines³. The Treasury, picked out by the Civil Rights Commission, blames its defects on lack of guidance from the OFCCP⁴. Employers and employees are confused when several agencies with different standards are involved

1. Federal Civil Rights Enforcement Effort, op cit, ch II; and interview at General Accounting Office.

2. Freeman, op cit, pp 194-202.

3. Spokeswoman, op cit, February 1978.

4. Federal Civil Rights Enforcement Effort, op cit, p 105.

with different aspects of the same contractors services - as is often so when the companies are conglomerates. According to the Civil Rights Commission, the OFCCP was often poorly informed about the status of actions pending against contractors and about the monitoring of conciliated settlements¹.

President Carter's centralisation, designed to bring about consistent compliance standards, was welcomed generally by business as well as women and minorities. The exception was the American Banking Association who, with the Treasury, lobbied the President and his advisors against it, warning of a possible collapse of business confidence in Mr Carter².

But, despite reform, some of the problems identified by the Civil Rights Commission are bound to remain. Although the decision to impose sanctions is now the responsibility of the OFCCP and the Solicitor of Labor, actual debarment or the cutting-off of funds is still to be in the hands of the contracting agency; and there seems to be some confusion about how a recalcitrant agency would be dealt with. The Department of Labor would expect to turn over such a case to the Department of Justice. But the latter would be reluctant to intervene in an inter-agency dispute except in a matter of grave national emergency³. The Department of Justice and other agencies believe that the application of sanctions will depend on the strength of Presidential commitment to the enforcement of civil rights legislation⁴. Such commitment is unlikely under President Reagan's administration.

1. Ibid, ch II.

2. Interview, Office of Management and Budget, Washington, May 1978.

3. Interviews, OFCCP and Department of Justice, Washington, May 1978.

4. Interviews, Department of Justice and GAO, Washington, May 1978.

Developments in policy, which would have taken place whatever the organisational arrangements, were tardy. It was not until 1971 to 1972 that the Office of Federal Contract Compliance developed guidelines about affirmative action plans for non-construction contracts and regulations for women in the construction industry did not emerge until 1977. Nor was the Office able to develop guidelines on sex discrimination that were compatible with those of the EEOC. For non-construction contractors, guidelines for affirmative action plans (described in chapter V) appeared in Revised Order No 4 at the end of December 1971¹. The 'Philadelphia plan' was developed about the same time to promote equality for racial minorities but not women in the construction industry.

When the Alaska pipeline plan was submitted in 1974, it contained goals and timetables for increased employment of women which were rejected by the OFCCP 'because they did not yet have a policy on this'². Two law suits were filed by women's groups against the Department of Labor in 1976 and 1977. As a result, the Department announced an intention to require affirmative action programmes in construction contracts and, in the meantime, funded two schemes for apprenticeships for women in non-traditional trades. But, according to the Civil Rights Commission, the data for which companies are presently asked are insufficient for the working out of suitable goals and timetables. The Commissioners criticise the specific goals that have been proposed for being low, based on existing participation rates and not broken down

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1. Reprinted in A Guide to Federal Laws and Regulations Prohibiting Sex Discrimination, Clearing House Publication No 48, Civil Rights Commission, July 1976, appendix II.
 2. Federal Civil Rights Enforcement Effort, op cit, pp 126-138.

geographically or by trade. Women's participation rates vary on both these last counts¹. In California in 1974, more than 11% of the members of electricians unions and nearly 13% of painters unions were women.

The OFCCP goal for women in these crafts is a national one of 5%. In some States with local contract compliance regulations, local goals are higher than those of OFCCP.

When one local contract compliance officer tried in advance of Federal policy to promote the employment of women in construction, she was discouraged by other Federal agencies. In New York City in 1977 the deputy director of the City Contract Compliance Office found that contractors defended themselves by stating that the US Employment Services Agency did not refer women to them. The regional office of the Employment Services Agency took the view that, since the OFCCP had not by then developed complete guidelines on the employment of women in the industry, the agency had no need to take special steps².

The OFCCP has attracted some approval. Like the Wage and Hour Division it has been applauded for its broad interpretation of equal pay³. But other aspects of its work are its guidelines on sex discrimination and selection procedures. These will be discussed in a later section dealing with coordination of effort. This also involves the Department of Justice, whose activities are discussed below.

1. Ibid, pp 137-138.

2. Interview with Deputy Director of City Office of Contract Compliance and files of that office. New York, April 1978.

3. AFL-CIO News, 12.9.78.

(III) (d) The Department of Justice : Employment Section of the Civil Rights Division

This section of the Department of Justice has not experienced the same organisational and managerial problems of the EEOC and the OFCCP. In 1978 it had forty six members of staff, about twelve of whom were clerks and the others legal specialists or attorneys. Turnover rates are low, training good and review of performance close. But its smallness, possibly a cause of these characteristics is also used sometimes to explain its cautious approach to policy enforcement¹. Before 1972 it was the major unit of Federal government empowered to bring law suits of alleged discrimination. The Department could intervene in private cases, initiate 'pattern and practice' cases and accept referrals from the EEOC. In 1972, its responsibility in private employment cases was transferred to the EEOC, to take effect in 1974. The reasons for the transfer were that the Department had filed too few 'pattern and practice' cases and that those which were filed had limited impacts². On the other hand, the Department was praised for its skill when it did act³. The 1972 amendments to the Civil Rights Act, however, also added to the Department's responsibilities because coverage was extended to state and local government employees. After the final transfer in 1974 to the EEOC of authority to litigate in the private sector and in individual cases in local government, the courts revealed some confusion about respective jurisdictions in public sector cases. But President Carter's reorganisation plan confirmed authority in 'pattern and practice' cases against State and local governments.

1. Federal Civil Rights Enforcement Effort, op cit, pp 261-265.

2. Freeman, op cit, p 79; and The Federal Civil Rights Enforcement Effort, op cit, pp 243-292.

3. Ibid, p 265.

Relations between the Department of Justice

and the Department of Labor have been uneventful. With the EEOC some cooperation had excellent results, as in the A T & T case, but there was friction over the treatment of cases referred by the EEOC and over the transfer of litigation authority. Within the Department itself difficulties have occurred between the civil section, dealing with federal employees, and the civil rights division, the two sections having different interpretations of the proper treatment of class action cases¹.

Civil rights leaders and feminists concede that the Department has played a useful role in the development of case law but point out that the EEOC has also contributed to the establishment of principles of indirect discrimination, affirmative action and the like. In terms of relief for victims of past discrimination, women feel that the Justice Department has given unfairly high priority to cases of racial discrimination. In 1969, a departmental official justified the ordering of priorities to the Civil Rights Commission on the grounds that they were in the 'business of social turmoil' and that women were not 'out in the streets' demanding their rights². Despite the view that the biggest impact could be secured in cases involving both race and sex, only two such cases were litigated before 1972. In the transitional period between 1972 and 1974, there were two sex discrimination cases against airlines and one against a national loan company. Since 1974, women have fared better in public sector cases; of thirty four cases, six were sex discrimination ones and nineteen involved sex as well as race³.

1. Ibid, p 291.

2. Freeman, op cit, p 79.

3. Federal Civil Rights Enforcement Effort, op cit, p 272.

(III) (e) Coordination

As the preceding sections have indicated, the multiplicity of agencies and their lack of coordination hindered the first ten years of enforcement. Employers and employees were confused by the plethora of agencies and their inconsistent demands for information and interpretations of specific issues.¹

The Civil Rights Commission has criticised OFCCP guidelines on sex discrimination for being weaker than those of the EEOC on three points². Firstly, it has pointed out that the OFCCP guidelines did not tell employers that arbitrary leave policies for all pregnant women are prohibited. Nor did they remind employers that the EEOC's narrow ruling on what counts as a bone fide occupational qualification allowing exemption was upheld by the courts. And thirdly, like those of the Wage and Hour Division, they did not ban different pension and fringe benefit plans. The OFCCP responded by arguing that the EEOC sex discrimination guidelines had been struck down by the courts in the Gilbert case³. But, as the Civil Rights Commission points out, the guidelines as a whole were not struck down in this case. The ruling was that it was not a violation of the Civil Rights Act for employers to exclude maternity from consideration as a temporary disability for the purpose of health insurance. Nothing was said about the rest of the guidelines.

Different agency positions on insurance schemes for pensions and fringe benefits have also affected retirement

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1. These problems are discussed in a recent article by Bryner, G. 'Congress, Courts and Agencies: Equal Employment and the Limits of Policy Implementation', Political Science Quarterly, Fall 1981.
 2. Federal Civil Rights Enforcement Effort, pp 76-78.
 3. Ibid, p 80.

pensions. It will be recalled that, as in the case of maternity benefits, the EEOC took the view that different costs are not an acceptable defence. Thus it believes pension benefits, despite actuarial differences, should be the same for women and men. The Department of Labor, on the other hand suggested that either equal contributions or equal benefits can be taken as compliance¹.

The status of seniority systems has been brought into confusion, especially when labour shedding takes place according to the principle of 'first in last out'. The EEOC held back pending court rulings on the issue. District and circuit courts interpreted the law as allowing principles, neutral on the face of it, to stand even if, in effect, they perpetuated past discrimination. The OFCCP acted more positively than the EEOC by using their guidelines to remind employers that cases heard in appellate courts had been brought under Title VII and did not, therefore, apply to Executive Orders 11246 and 11375. Labour shedding by government contractors could not be allowed to limit the effectiveness of affirmative action plans. In 1976 and 1977, the Supreme Court clarified the matter a little by making distinctions between individuals and classes². It now seems that under either regulation certain individuals may be awarded retrospective seniority and therefore would be protected from a 'last in first out' rule.

So that the government agencies would be seen to be speaking with one voice, making the same demands on employers and providing the same kinds of remedies for employees, the 1972 amendments established the Equal Employment Opportunities Coordinating

1. Ibid, pp 316-322.

2. See p 320

Council (EEOCC), consisting of the Secretary of Labor, the Attorney-General, and the Chairmen of the Commissions of Equal Employment Opportunities, Civil Service, and Civil Rights. Except for the Civil Service Commission and the Departments of Labor and Justice, most bodies interested in civil rights agree that the Council was completely ineffective in carrying out its brief to maximise effort, efficiency and cooperation¹.

Meeting only once a month and without a full time staff, the Council concentrated on affirmative action and selection guidelines, pensions and rationalised data collection. Only on the last did they succeed in reaching agreement. Agreed guidelines on affirmative action were issued but these glossed over differences, covered only State and local governments and were less effective than those of the OFCCP in getting at the effects of past discrimination². The agencies agreed that an affirmative action should expand the pool of applicants but disagreed about the propriety of certain selection procedures, when race or sex could be taken into account, and whether the voluntary (as opposed to imposed) adoption of goals and timetables by an employer was legal.

The Council tried and failed to reach agreement on job-related selection criteria³. A staff draft was rejected by the EEOC whose own regulations were stronger. The main weaknesses in the draft related to the validation of such tests. But in November 1976, the Departments of Labor and Justice and the Civil Service Commission adopted them and published them as Federal Executive Agency Guidelines. Consequently, two sets existed causing continuing confusion. For example,

1. Interviews, Civil Rights Commission, GAO, Office of Management and Budget, National Organisation for Women, Women's Equity Action League, Washington DC Commission on Status of Women, Washington, May 1978; and American Civil Liberties Union, New York, April 1978.

2. Federal Civil Rights Enforcement Effort, op cit, pp 305-315.

3. Ibid, pp 323-328.

the Treasury instructed revenue sharing agencies to follow the EEOC recommendations but the Law Enforcement Assistance Administration requires agencies receiving funds to adopt the other set. Yet police departments, for example, are subject to the rules of both. The issue was only resolved in 1978 after President Carter's reorganisation¹.

President Carter came into office with a pledge to improve the enforcement of civil rights legislation and, in February 1978, announced proposals to re-organise the institutions to this end. The Coordinating Council was abolished and its leadership function transferred to the EEOC. Other changes, mentioned already, are summarised here. Authority to enforce the Equal Pay Act and to enforce the law in the Federal Civil Service were transferred to the EEOC in 1979. The relationship between the EEOC and the Department of Justice was clarified over the question of 'patterns and practices' of discrimination in State and local governments. Contract compliance was centralised into the Department of Labor. These changes, which include modifications asked for by interest groups, are supported by the civil rights and women's lobby. But they and more official bodies feel that, although it is sensible from a functional point of view to place the EEOC at the apex of the enforcement effort, much will depend on Chair Norton's ability to live up to her promise to transform her agency².

1. St Louis Post Despatch, 23.8.78.

2. Interview at and files of Office of Management and Budget, Washington, May 1978.

(IV) The Courts

Some judicial rulings have been mentioned already. Here important cases are treated more systematically.

Until the second half of the 1970s, the courts tended both to interpret the statutes broadly in advance of the other institutions and to give clear confirmation of the views of these bodies when they were in the lead. Because the Civil Rights Act bans race and sex discrimination, significant cases may involve racial minorities or women or both. Precedents set in one area are usually applicable in the other. *Griggs v Duke Power Company*, for example, a case of great significance for all the prohibitions in the Civil Rights Act, was one of race discrimination. An exception to this general statement is that the provision allowing for bone fide occupational qualifications applies in different treatment of men and women but not between races. The 1963 Equal Pay Act, too, covers sex but not racial discrimination.

To begin with it is important to refer to two aspects of law in the United States that have no real counterpart in Britain. Firstly, review of laws about or regulations of classes of persons is set in the guiding framework of the United States Constitution. The 14th Amendment requires that States guarantee the 'equal protection of the laws' to all persons. The 5th Amendment protects individuals from actions by Federal officials without 'due process of law'. Since the nineteenth century, the relationships between private and public bodies and State and Federal jurisdictions have become infinitely complex. And 'equal protection' has become an inherent part of 'due process'.

Chapter I referred to the dismay of nineteenth century feminists at their exclusion from part of the 14th Amendment.

Since then, to a large extent they have come to be included; but not with the same status as other classes. In certain kinds of issues brought under the 5th and 14th Amendments, the courts have developed a strict standard of review. These are cases involving 'suspect' classifications which differentiate on grounds of race, religion or national origin; but not sex. Where such classifications are used it must be shown, not merely that there is a rational relationship between the differentiation and the intended outcome of it, but that there is a compelling governmental interest at stake and that no other non-discriminatory rule could accomplish the same purpose. In recent decades the only classification to be upheld was the internment of Japanese-Americans during the Second World War. If sex had been deemed a 'suspect' classification, there would be no need for an Equal Rights Amendment. The Supreme Court came close to doing so in 1973 in *Frontiero v Richardson* (411 US 677)¹. The case involved different rules about benefits for dependents of male and female members of the armed services. Except for Mr Justice Rehnquist all agreed that the substantive issue was discriminatory in its effect on Ms Frontiero. The other eight split evenly on the question of whether it was necessary to declare sex a 'suspect' classification. Since then, the Supreme Court has provided the guidance of an intermediate standard of review for sex discrimination cases². While not going the whole way towards a 'suspect' standard, judges have not been lenient towards defences based on a rational relationship between classification and intent. Defences of classifications disadvantageous to a woman that are based on stereotypical generalisations have been found to be insufficient.

1. Cary and Peratis, *op cit*, pp 29-31.

2. *Ibid*, pp 31-41.

However, 'suspect' classifications have the potential to limit as well as promote equality for racial minorities and women. This is because of the question of whether it is ever legitimate to take race into account. This was the central constitutional issue in the allegations of Defunis and Bakke that they had been denied on account of their race, entry to law and medical schools. In the Defunis case the Supreme Court did not address the issue of whether there was a compelling governmental interest in undoing the effects of past discrimination¹.

In Bakke's case the civil rights lobby was split. Most felt that the cause of civil rights would receive a severe symbolic blow if Bakke were to win. But legal experts believed that, because the affirmative action plan of the University of California Medical School was little more than a quota system based on racial labels, a defeat of Bakke would legitimate the use of race as a classification device². In the end, the Supreme Court ordered the Medical School to admit Bakke. The judges criticised the School's affirmative action plan but the principle of affirmative action to eliminate the effects of past discrimination was upheld, provided plans were more than quota systems. The question of the specific kinds of characteristics of such plans that may or may not be constitutional remains unanswered³.

Legal procedures in the United States allow individuals to stand as representatives of classes⁴. In Britain, one person, such as Ms Hutchinson at Electrolux, may represent five or six others in strictly similar situations⁵. But in the United States there is no limit

1. Ibid, pp 43-44.

2. Interview Dr B Sandler, Women's Equity Action League, Washington

3. E g, Wermiel, S, Boston Globe, 5.10.78; and Chase, M. on possibilities that other cases pending might clarify Bakke, Wall Street Journal, 21.9.78.

4. Player, op cit, pp 217-221.

5. Pannick, D. 'Sex Discrimination and the Class Action' EOC News, Aug/Sept 1981.

to the size of class action, some of which have covered a thousand individuals. American class actions are therefore comparable to 'pattern and practice' cases or the British formal investigation. It is a procedure widely used under Title VII. The jurisdiction of the court is, in theory, confined to the facts of the original charge but it is likely that cases will be construed as covering all issues within the scope of the EEOC. Dismissal of the original named individual need not invalidate the claims of the rest of the class. Mr Justice Phillips might have found it a useful device in the Electrolux case because the criteria of acceptance used in American courts include the idea that it would be impracticable to settle the matter through individual suits. Other factors that need to be present are the existence of common questions of law; the typicality of the named individual; and assurances that the individual will represent the others fairly. The courts have resisted attempts to limit the use of class actions and, on the contrary, they have so widened their use that a black woman may be taken to represent both other members of the racial minority and women¹.

The courts have used specific cases to discuss the relationship between the Equal Pay Act and the Civil Rights Act.

As in Britain, the problem of the relationship between the two Acts arose first in a case of indirect discrimination leading to unequal earnings. In neither country was the outcome favourable for complainants. But the situation in America is confused. At first, in *Shultz v Wheaton Glass* (3rd Circuit 1970) it was declared that women could not be paid less because of violations of Title VII², through denial to a group of access to higher paid duties.

1. *Arey v Provident Hospital* (DDC 1972), *ibid*, p 220.

2. *Player*, *op cit*, p 46.

But other courts disagreed. In *Hodgson v Golden Isles Convalescent Homes, Inc* (5th Circuit 1972) it was ruled that violations of Title VII could not be remedied indirectly through the Equal Pay Act¹. In decisions discussed later, that involve payments for shiftwork and training, it could be argued that judges have used Title VII concepts in equal pay law. And in the *Gilbert* case about pregnancy benefits the Supreme Court clearly brought the two Acts together by deciding that, if no violation could be found under the Equal Pay Act, none could be found under Title VII.

The question of whether a complainant can compare herself with a predecessor is not clear in the Act. But while British judges had to ask the European Court to decide in a similar issue, American judges themselves interpreted the Equal Pay Act as allowing this².

The onus of proof in equal pay cases was discussed in *Corning Glass Works v Brennan* (417 US 188 1974)³. The judge stated that a plaintiff is responsible for proving that an employer pays unequal wages for equal work. The plaintiff need not establish improper motive. After that an employer has to show that the pay differential is based on a 'factor other than sex'. But the task of the plaintiff is made easier by the fact that equal work is construed broadly and there is a heavy burden placed on the respondent to justify the reasons.

The definition of equal work originally proposed to Congress was in terms of comparability. Congress limited the definition to 'equal work requiring equal levels of skill, effort and responsibility'. This formulation approaches the idea of identity and was formulated to avoid irreconcilable disagreements about what was comparable.

1. Ibid, p 46.

2. *Hodgson v Behrens Drug Co* (5th Circuit 1973); *Player*, op cit, p 40.

3. Ibid, p 39.

The courts have developed a concept somewhere between identity and comparability. Like officials in the Department of Labor, judges only require jobs to be 'substantially equal' for equal pay to be granted. This precedent was set in Federal law in *Shultz v Wheaton Glass*. To establish comparability, judges examine tasks that carry extra pay. As in Britain, it is not sufficient to argue that men may have to but do not actually do them. To justify higher pay, extra duties must be regular, recurring and time consuming. In *Shultz v American Can Co* (8th Circuit 1970) and in *Hodgson v Fairmont Supply Co* (4th Circuit 1971) substantial but infrequent and frequent but inconsequential extra duties were ruled out of order¹. Moreover, if there are significant secondary or tertiary duties that carry extra pay, the additional pay must be commensurate with the obligation². As indicated earlier, some courts added consideration of whether or not women were prohibited from undertaking additional duties carrying extra pay³. Whether this counts as a violation of the Equal Pay Act still depends on how courts interpret other judgements about the relationship of the two Acts.

The issues discussed above centre on women doing substantially the same jobs as men. In *Shultz v Wheaton Glass Co*, it was stated that the Equal Pay Act did not authorise equal pay for different jobs that had the same monetary benefits for employers⁴. This seems to limit the Act's effectiveness where there is occupational segregation. But in considering what constitutes equal effort, skill and responsibility the courts have considered that jobs which are different

1. Ibid, pp 44-45.

2. *Shultz v Wheaton Glass Co* (3rd Circuit 1970); Player, op cit, p 45.

3. Ibid, p 46.

4. Ibid, p 41.

in content merit equal pay. In *Hodgson v Daisy Manufacturing* (8th Circuit 1971), judges ruled that heavy lifting was equivalent in effort to putting hands in lighter but high speed machines with the risk of loss of limb¹.

In *Hodgson v Brookhaven General Hospital* (5th Circuit 1970) it was ruled that male janitors and female maids needed almost identical degrees of skill and hence merited equal pay². Responsibility refers to the degree of accountability in the performance of a job. And if the consequences of decision making by two employees are similar, even if their contents differ, unequal pay is not allowed³.

In defence, respondents, as in Britain, are allowed to invoke 'good faith' seniority systems, merit, productivity and 'factors other than sex'. The last 'catch-all' exception has been construed narrowly by the courts. It has been used by respondents to justify shift differentials and 'red circling'. Unlike their British counterparts, American judges allow different rates for work performed at different times of day. But they insist that the shift differential is paid uniformly and without discrimination. If under rules that appear neutral women are in practice denied the opportunity to work on a shift that carries higher pay, this cannot count as a factor other than sex⁴. Similar principles apply to cases where training carries higher pay⁵. 'Red circling' is allowed if an employee is, for example, temporarily re-assigned to a job carrying lower pay, provided this practice applies to everyone. But, if protection of pay rates perpetuates past violations of the Equal Pay Act, it cannot count as a defence⁶.

1. Cary and Peratis, op cit, p 79.

2. Player, op cit, pp 47-48.

3. Several cases which developed this idea are discussed by Player, ibid, pp 48-50.

4. *Corning Glass Works v Brennan* (US 1974), cited by Player, ibid, p 55.

5. *Shultz v First Victoria National Bank* (5th Circuit 1969) and *Hodgson v Security National Bank* (8th Circuit 1972), Player, ibid, pp 56-57.

6. Ibid, pp 55-56.

But in contrast to the British, American judges have firmly rejected the idea of market considerations as a genuine material difference other than sex between employees. This issue was also raised in *Hodgson v Brookhaven General Hospital*. Here, and in other courts, judges agreed that female availability and prevailing wages, while reflecting a willingness of women to work at a lower rate, cannot be used as a defence. 'To permit this economic "reality" to justify discriminate pay would be to completely undercut the remedial purposes of the Act'¹.

So far as the Civil Rights Act is concerned, the *Griggs* case is significant for procedural and substantive additions to the law. Supreme Court deference to EEOC guidelines have already been mentioned². The status attached to agency guidelines was re-affirmed in *Albemarle Paper Co v Moody* in 1975³. The burden of proof also figured in the *Griggs* case and again in *McDonnell Douglas Corp v Green* (411 US 792 1973). Following *Griggs* it seems that an employee has to demonstrate that a rule or classification has the effect of denying opportunities to a 'protected' class. Although the judges concentrated on impact, it was not clear whether they meant that motive had to be proved. Once the impact is demonstrated, however, it become incumbent upon an employer to justify the rule or practice on grounds of business necessity. As a result of *McDonnell Douglas* it seems that an employee has to demonstrate that an action is taken with discriminatory motive. To negate an allegation of improper motive employers need only show legitimate reasons which do not have to relate to job performance⁴. According to Player resolution of these cases means that procedures arising from *Griggs* are to be used

1. Ibid, p 54.

2. See p

3. 422 US 405, *Player*, ibid, p 96.

4. In this case participation by a black machinist while laid off in industrial action in the employers premises. Ibid, p 134.

where there are broadly applicable rules from whose impact on classes, motive can be inferred. McDonnell, on the other hand, is the norm for individual cases where motive is the primary issue¹. The burden of proof relating to performance and business necessity placed on an employer is strong.

Griggs also elucidated acceptable statistical and other sources for the allegations brought in this case. Census statistics and EEOC research reports about tests were consulted by the judges². In cases of sex discrimination, too, judges have used census data and official reports. In addition they have referred to the works of legal scholars, historians, political and social scientists³.

The far reaching substantial impact of Griggs was that it affirmed the EEOC view about the importance of neutral laws with a disparate impact on a particular class. The facts of the case were that preconditions for employment were a high school diploma and successful scores on two admission tests. Black applicants were rejected because they did not possess these prerequisites. Both lower and circuit courts held that, since the employer was concerned to raise the standard of his work force, and since the Act referred to discrimination because of race, and not other factors, the tests were legal. The Supreme Court stated that the Act proscribes

not only overt discrimination but also practices that are fair in form but discriminatory in operation ... Congress

1. Ibid, pp 147-149.

2. Ibid, p 145. E g, Kanowitz, L. Women and the Law (1969); Myrdal, G. An American Dilemma (1962); Amundsen, K. The Silenced Majority (1971).

3. Taylor v Louisiana, Frontiero v Richardson; Cary and Peratis, op cit, pp 24, 29, 30.

directed the thrust of the Act to the consequences of employment practices, not simply motivation ... What Congress has forbidden is giving these devices (tests) and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance.¹

So far as women are concerned, the principle has been applied in connection with height and weight requirements and subjective criteria for promotion. In *Meadows v Ford Motor Company* it was revealed that company policy required employees to weigh a minimum of 150 pounds². Eighty per cent of all females between the ages of eighteen and twenty four in the United States cannot meet this requirement. But it was also revealed that exceptions had been made for men below 150 pounds. No tests or studies had ever been carried out on the comparative strengths of individuals above or below the weight limit, nor had the company doctor ever been asked to test the strength of women. In *Leisner v New York Telephone Company*, promotion to management positions depended on admission to and completion of a training programme which rarely admitted women. Non-validated tests and criteria were used to determine admission and eventual promotion. The court, following *Griggs*, decided that the personnel supervisor's judgement that, for example, military experience was ^a better ^{qualification} than teaching, was not objectively related to the qualities needed in management³.

Rules and tests are now the subject of EEOC guidelines. But before their publication in 1978 the courts were already strict about them, not only where they were neutral but also where they applied to one sex only. In general, employers are compelled to show that

1. *Player*, op cit, pp 144-146.

2. *Cary and Peratis*, op cit, pp 60-61.

3. *Ibid*, pp 61-63.

the reasons for them override their discriminatory impacts, that no alternative, less discriminatory procedure is possible, or that they are justifiable in terms of societal interest in, for example, safety. *Green v Waterford Board of Education* (2nd Circuit 1973) involved a school teacher made to take unpaid maternity leave during the fifth month of pregnancy. She was fit and healthy. Other employees were not forced to go in anticipation of a future disability. The circuit court held that the Board's defence that classroom distractions would result was trivial. Continuity of instruction was of greater social importance. Ms Green was allowed to continue teaching until a specified date nearer to the expected birth of her child. The Supreme Court confirmed the following year that the safety of pregnant teachers had to be secured by evaluating the health of individual employees and not by blanket disqualifications probably void under the 5th and 14th Amendments ¹.

Strict EEOC guidelines about what constitutes a bone fide occupational qualification have been confirmed by the courts by their stringency on what employers may count as a defensible reason for treating women differently to men. In summary, it is not allowed to base differentiation on stereotypes or romantic ideas about womanhood; nor is it possible to argue that customer preference creates a genuine occupational qualification.

In various cases judges decreed that a woman cannot be denied a job because of beliefs that it is embarrassing for women in general to enter bars, uncomfortable and unpleasant for them

1. *Cleveland Board of Education v LaFleur* 414 US 632 (1974)

discussed by

Player, op cit, pp 119 and 174.

to work in mines, or that they are incapable of working long hours or enduring physical labour. Codification of beliefs of this type ('romantic notions'¹) in State laws is not allowed now either. The Supreme Court ruling in *Rosenfeld v Southern Pacific Co* (9th Circuit 1971) embodies both aspects. Ms Rosenfeld was denied promotion to the post of 'agent-telegrapher' because the job demanded heavy physical exertion. The Court 'ruled that company personnel policy was based on "characteristics generally attributed to the group" of exactly the same type that the Commission' had deemed to constitute unlawful generalisations². Physical prowess, as in *Meadows v Ford*, has to be judged in individual cases. Part of Southern Pacific Company's defence referred to protective legislation. In the same ruling, State protective laws based on generalisations about the physical and mental characteristics of women were declared unconstitutional under Article VI of the Constitution which gives 'supremacy' to Federal laws in clashes³. The EEOC, having found the task of reconciling State and Federal laws impossible and having advised complainants to test judicial opinion, began to revise its guidelines after hearings in lower courts and completed the process in 1972 after *Rosenfeld*⁴. As a result, unless protective legislation can be applied to both sexes, it is unlawful.

Where stereotyping did not involve clashes of law, the EEOC and the courts moved in the same direction at the same time. Their coincidence of views is evident in cases involving airlines. Airlines often differentiate between men and women in the ages of compulsory retirement for flight attendants and in whether or not they can be

1. Ibid, pp 117-119.

2. Cary and Peratis, op cit, pp 55-56.

3. Player, op cit, pp 118-119.

4. Wallace, in Kreps (ed), op cit, pp 128-129.

married. Sometimes men are denied employment as stewards. To justify such practices, airlines have used the defence that customer preference provides a genuine occupational qualification and makes the differentiation a business necessity. In *Diaz v Pan American Inc* (5th Circuit 1971), a case involving a man, and in others where women were complainants, the courts decided that the main business of an airline is to transport passengers safely and that whether the attendants are males or young and single females is 'tangential to the essence of the business'¹.

In *Phillips v Martin Marietta Corp* (400 US 542 1971) the respondents tried to ensure that marriage and pre-school age children counted as a bone fide occupational disqualification for women. Just as circuit court judges ruled in *Sprogis v United Airlines* (7th Circuit 1971) that a marriage bar applying to one sex only was unlawful, Supreme Court judges decided that the set of rules that disqualified Ms Phillips were unlawful because they did not apply to married men with young children². The Court ruled that employers would have to establish that all or most such women could not perform their duties as well as similarly situated men. If they could not individuals must be treated separately. The bone fide occupational qualification (BFOQ), it was argued by Mr Justice Marshall, must be limited to job situations that require specific physical characteristics necessarily possessed by only one sex³. *Green v Waterford Board of Education*, discussed earlier in connection with the balancing of social interests, embodies parallels with the views expressed in Ms Phillip's case about the standards required to demonstrate

1. Player, op cit, p 125; Wallace in Kreps (ed) op cit, pp 129-130; Cary and Peratis, op cit, pp 56-58.

2. Player, op cit, p 112.

3. Ibid, p 121.

a genuine occupational qualification or disqualification.

The courts overruled the EEOC at first on whether the separate listing of jobs in newspapers is unlawful. Title VII does not prohibit the separation into different columns of female and male job advertisements, but theoretically it is illegal for employers to use them. When separate listings continued after 1964, a number of charges were brought against the EEOC and newspaper companies. The EEOC eventually ordered newspapers to desegregate job advertisements, but the Washington DC court suspended the guidelines, pending appeals by the newspapers. As a result of a ruling in the Supreme Court, all sex labelling of advertisements is forbidden in States where there are laws which prohibit it¹. In *Brush v San Francisco Newspaper Printing Company* (9th Circuit 1972) the judge declined to interpret newspapers as employment agencies under the Civil Rights Act. Had he done so a similar Federal law would have applied in all States². But, according to Player, a case in Mississippi means that, if the newspaper itself provides separate classifications instead of merely receiving sex-labelled advertisements from employers, the action should be construed as an unlawful one by an employment agency³. In Freeman's view, however, the legal position is still confused⁴.

Notwithstanding a cautionary note in the Civil Rights Act on preferential treatment, the courts have accepted the principle of affirmative action for remedial purposes in private employment

1. *Pittsburgh Press Co v Pittsburgh Commission on Human Relations* (93 US 515 1973). See Freeman, op cit, p 78.

2. Ibid

3. *Morrow v Mississippi Publishing Corp* (SD MISS 1972); see Player, op cit, p 99.

4. Freeman, op cit, p 79.

under Title VII as well as under Executive Orders and Constitutional law. This is because, while the Civil Rights Act does not require preferential treatment, it does not proscribe it either. In addition, redress for injured classes is deemed not to be preferential but remedial. Thus, while the Act gives the courts power to order positive steps in, for example, publicising a commitment to policies of equality, judges have also upheld decisions in lower courts to impose goals and timetables for altering the composition of the work force¹. As indicated earlier, the Supreme Court confirmed the principle provided schemes are constitutional². But the granting of retrospective seniority, important as redundancy is increasingly a problem in America as well as in Britain, has been disallowed as a general principle but deemed lawful in specific circumstances. In *Franks v Bowman* (74 US 728 1976), Supreme Court judges argued that in most cases of racial discrimination retrospective seniority in affirmative action plans would be necessary to accomplish the twin purposes of the Civil Rights Act; that is, individual remedy and the broadly defined end of discrimination. But mass granting of retrospective security would negate the constitutional and established employment rights of existing white male employees. Thus, only those individuals covered by an affirmative action plan who can demonstrate that they personally were victims of discrimination may secure a remedy of retrospective seniority³. In the following year, 1977, a similar distinction between individuals and classes was made again in the Supreme Court in a Title VII class action suit that involved women as well as racial minorities⁴.

1. Player, op cit, pp 192-194, 202-203.

2. See p303

3. Oelsner, L. New York Times, 25.3.76.

4. Siner, R. International Herald Tribune, 1.6.77.

(V) Pressure Groups

Although less obvious than in Britain in the period preceeding legislative reform, American women, as Robinson points out, had to organise in order to ensure that the law on sex discrimination was implemented at all¹. Since 1966, women's groups and others concerned with women's rights have become closely and publically involved in subsequent policy developments. There are thousands of women's rights groups throughout the United States. In addition professional associations and trades unions contain women's caucuses, religious organisations have women's rights sections and the American Civil Liberties Union counts female equality as one of its concerns. Since a complete review of all groups is impossible, this section will refer only to those involved in some of the most notable developments in policy and law.

The National Organisation for Women (NOW) was born in 1966 because of the low priority accorded women by the EEOC². The first Executive Director shared his chairman's view on where their duties lay. According to him, the banning of sex discrimination was 'a fluke ... born out of wedlock'³. But of the large numbers of complaints received in the first year, 25% were from women. In some geographical areas, the figures was as high as 50%. And they were mostly from working class women.

The Citizens' Advisory Council on the Status of

1. Robinson, op cit, p 424.
 2. Information about the National Organisation for Women comes from Friedan, B It Changed My Life, op cit; Freeman, J. op cit, Ch II; Novarra, V. 'Right on Sister', unpublished paper arising from Winston Churchill Travelling Fellowship 1976; Robinson, D. op cit; and interviews with B Friedan, New York, April 1978, New York and Washington Chapters of NOW, April and May 1978, and G Steinnem, Washington, May 1978.
 3. Robinson, op cit, p 423; and Freeman, op cit, p 54.
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Women (successor to the Presidential Commission) met with blank refusal on two of their three demands in 1965. These three demands were made in connection with the BFOQ, sex segregated job advertisements, and public commitment to enforce the sex provisions of Title VII. Only the first demand for a narrow BFOQ was agreed to. However, not all members of the EEOC staff shared the views of their seniors. Nor did one Commissioner agree with his colleagues. But there was little they could do internally to alter the situation. Privately they suggested to women outside the government that a NACCP-type organisation for women would help. When Federal officials running the third National Conference of State Commissions on the Status of Women refused to allow a motion to be put on the question of race and sex priorities, notes were circulated at lunch on napkins suggesting the creation of such an organisation. Betty Friedan became first President and a former EEOC Commissioner, Richard Graham the Vice President.

NOW's first action in 1966 was to persuade President Johnson to amend his 1965 Order on contract compliance to include the elimination of discrimination against women. With help from the Citizens' Advisory Council which encouraged 'respectable' professional women's organisations to support the proposal, NOW secured a series of meetings with the President. A new Order was issued in 1967. Enforcement, however, was slow. When guidelines of sex discrimination and affirmative action plans were eventually published in 1970 and 1971, women's groups then tried to ensure companies would comply with them. NOW filed complaints against 1,300 corporations receiving Federal funds. The Women's Equity Action League (WEAL) took the campaign to the

universities¹.

WEAL was founded in 1968 as a way into the feminist movement for more conservative-minded women - although it later became more radical. In 1969, one of its members, Dr Bernice Sandler, had reason to believe that she had been discriminated against by her university and began to look for a legal remedy. The Civil Rights Act provisions on education excluded employment, while the employment sections excluded employment in educational institutions (until 1972). But the Executive Orders on bodies in receipt of Federal funds did not exclude employment in education. In addition, they permitted general data on employment patterns as prima facie evidence of discrimination for a class action suit. By 1970, Dr Sandler and others had filed class action suits against universities and colleges with contracts totalling over \$3 billion. Specific charges were filed against her own university. Other charges followed against medical and law schools. NOW filed against Harvard and the whole State system of New York. The line agency in the case of universities was the Department of Health, Education and Welfare, which according to one writer, believed the charges initiated by Dr Sandler would die a natural death². Instead, the campaign mounted with letters to Congressional representatives, lobbying and picketing. HEW then instructed all field staff to include sex discrimination in all investigations of contractors as a matter of course. The campaign succeeded in improving HEW's investigative record but complaints about its inability to secure implementation continued. A suit was filed against it by WEAL in

1. Information about the Women's Equity Action League and its activities comes from Freeman, op cit, ch 6; Novarra, op cit. Interviews with Dr B Sandler and officials in Department of Health, Education and Welfare, Washington, May 1978.

2. Freeman, op cit, pp 191-200.

1974 for failing to enforce the law.

University suits do not deal only with academic staff, but also with manual, clerical and administrative employees. Other groups have aimed at the conditions of working class women. Those which, according to the Department of Labor, have the most political influence include Women Employed and Women Working in Construction¹. Women Employed is a nation-wide organisation but mainly based in Chicago which is concerned about clerical workers in banks and insurance companies. The Treasury is the main line agency with which they are interested. It will be recalled that the Treasury's record in contract compliance was picked out as poor. Women Employed succeeded in getting the OFCCP to intervene and to reject affirmative plans which did not comply with OFCCP policy but which were accepted by the Treasury. They also monitor the record of the General Service Administration. Women Working in Construction was one of the groups referred to above which filed against the OFCCP to make the agency ban sex discrimination in construction contracts. Groups like these see their best way forward in targetting specific companies in breach of the law, and, on the basis of solid research and documentation, prodding officials into response².

The National Organisation persisted in a long campaign against a very large company, Seers Roebuck, because of its treatment of all employees, including sales staff. Allegations involved breaches of Executive Orders and Title VII. NOW lobbied the OFCCP and the EEOC and its Legal Defense Fund helped in the bringing of charges. The campaign also involved direct action; shops were picketed and with the

1. Interview OFCCP official, Department of Labor, Washington, May 1978.

2. Spokeswoman, op cit, February 1978.

cooperation of the women's division of the Methodist Church a shareholder resolution was brought at a company meeting. A ruling favourable to employees was challenged in the courts on the grounds of conflict between the demands of government departments and that an EEOC attorney was too closely involved with the National Organisation for Women. The appeal was rejected in 1979. Ms Norton of the EEOC stated that there had never been any doubt among the legal community about the outcome¹.

The coincidence of views between NOW and the EEOC took some time to develop, except over a narrow interpretation of the BFOQ. An early conflict was over the law on job advertisements referred to above. The first EEOC guidelines prohibited the specification of race but permitted separate listings for men and women. In response to representations, the guidelines were modestly revised, requiring newspapers to carry a statement to the effect that separate listings were not intended to discourage applications from persons of the other sex. This led to a barrage of criticism and action to which the Chairman of the EEOC responded by once again arguing that the inclusion of women in Title VII was an accident or intended to bring the whole Act into ridicule. The newly formed NOW threatened to take the EEOC to court and mounted a campaign of lobbying and picketing of the major newspapers and publishers. As a result, the EEOC decided to hold hearings in 1967 but it was not until 1968 that the guidelines were revised. In the meantime, NOW filed a complaint against the New York Times and a suit against the EEOC to make it comply with Title VII. The fate of guidelines issued in 1968 has

1. International Herald Tribune, 17.5.79.

already been discussed. As a result of events in the courts, there was no judicial ruling on the guidelines \ but State laws eliminating segregated advertising were upheld.

. Although the Supreme Court ruling only applies where there are State regulations, most newspapers now comply with the EEOC guidelines.

Women's groups also participated in preventing airlines from expanding the BFOQ. Airlines had petitioned the EEOC, arguing that the majority of passengers - male - expected to be served by attractive young women. NOW asked the EEOC to instruct them that this did not exempt them from Title VII. A public hearing was held by the EEOC in 1967, and in the following year the EEOC declared that gender was not a genuine occupational qualification for the job of flight attendant and customer preference did not justify different treatment of men and women. The courts, it will be recalled, upheld the instruction and, in 1971, a man was able to seek redress from Pan American which had refused to hire him¹.

Women's groups in the United States have adopted an attitude to protective legislation that differs from those in Britain. The attitude is shared among a wide range of groups, although there have been disagreements about the issue. Legislative histories about the effects of Federal civil rights laws on State protective legislation are unclear. Congresswoman Griffiths expected State laws establishing minimum wages and maximum hours for one sex only to be superseded. Others thought not². The EEOC, it will be recalled, was indecisive at first, appealing to the lack of congressional guidance and

1. Wallace in Kreps (ed) op cit, p 130.

2. Robinson, op cit. Interview Smith College, Massachusetts, April 1978.

leaving the matter to judicial interpretation¹.

Most women's groups rapidly agreed that employers were using protective laws as a BFOQ to avoid treating women equally. Other groups were less convinced. The AFL-CIO and the American Civil Liberties Union (ACLU), for example, stated support for equal employment opportunities where possible but thought that protective legislation should stand. (They opposed the Equal Rights Amendment at first for the same reasons.) In 1967, the Legislative Director of the AFL-CIO wrote to the ACLU that there was no evidence that women preferred extended overtime opportunities². The next year, the AFL-CIO became worried that the American Civil Liberties Union was moving too far away from its original position. NOW temporarily lost the support of the Union of Auto Workers, which had provided office services and facilities, because of NOW's stand against protective laws. In the meantime, however, lower courts had been ruling that, where protective laws could be extended to men, conflicts should be so resolved; and where they could not, Federal legislation superseded State laws. By 1969, virtually all groups had adopted this line (although the ACLU held out until 1970) and the EEOC began to revise its views accordingly. Appellate courts confirmed the position and the EEOC completed its shift. The development of consensus also removed obstacles to agreement on the Equal Rights Amendment.

More recently, groups like NOW, ACLU, the Coalition of Labor Union Women, and feminists in academic and professional institutions are also trying to ensure that EEOC and other official agencies

1. Freeman, op cit, pp 186-187.

2. Files of ACLU consulted in New York, April 1978.

carry out their promise to deal with systemic discrimination¹. The ACLU tried to but did not succeed in getting the courts to declare a job evaluation scheme, alleged to be manipulated so as to cause segregation and unequal pay, unlawful. State government publications which, for example, suggest that male hospital orderlies rate higher than female nurses have been criticised and publicised. And negotiations with the EEOC mean that women's groups will be consulted over investigations by the Commission into systemic discrimination.

NOW tried to alter the priorities of the Department of Justice without much success. It will be recalled that an early official response was that 'women were not out in the streets'. It was not until 1972 that the Department brought its first sex discrimination case and this was settled out of court². Instead, women joined the Civil Rights Campaign to remove the authority to litigate to the EEOC and to give it 'cease and desist' powers. Congress had added the latter to President Kennedy's proposals. It was struck out during 1964. Attempts made in the late 1960s to give the agency this power were unsuccessful. Similar attempts in 1972 resulted in the compromise of transferring litigative authority. It was expected in some quarters that President Carter would announce legislative proposals along with his reorganisation plan which would include the granting of cease and desist powers. In the event he did not. The new Chair Norton's view that such power would be more of a burden than a help at the present stage has been accepted by women's groups³.

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1. Information about this comes from Conference proceedings: Equal Pay and Equal Opportunities for Women in Europe, Canada and the United States, Wellesley College, 1-4 May 1978.
 2. US v Libby-Owens, see Freeman, op cit, p 79.
 3. Interviews, Office of Policy and Program Implementation EEOC and Office of Management and Budget (Reorganisation Project), Washington, May 1978.

Disappointed by Presidents Johnson and Ford over appointments in the Department of Labor and the EEOC on other occasions, women had some success in securing committed leadership. In 1970, NOW lobbied against the Nixon nominee to the Supreme Court, Judge Carsewell. The black civil rights lobby believed it would be impossible for them to block his appointment because of their success not long before in preventing Judge Haynesworth's ratification. Betty Friedan of NOW, supported by other women's groups, testified that Judge Car sewell had failed to enforce the law in a lower court in a case involving an employer's right to discriminate against the employment of women with pre-school age children. (This was Phillips v Martin Marietta, reversed in the Supreme Court.) The Judge's appointment was not ratified and Ms Friedan was told that the women's testimony had been crucial in tipping the vote of Senators from States where black pressure was weak¹.

Similar attempts at the executive level have had mixed results. Suggestions from the women's lobby for middle level appointments have been rebuffed. But it is largely because of their unanimous support that Eleanor Holmes Norton at present leads the EEOC. The black lobby was divided over her and other candidates. Since women were unanimous and united with part of the black civil rights movement, the balance was tipped in her favour².

Women have to organise legal defence funds separately from but related to pressure groups. Between 1966 and 1974 NOW's attorneys participated in over fifty cases, apart from their activities directed at affirmative action plans. In one of the cases that laid to rest the lawfulness of use of generalisations about womanhood (Weeks v

1. It Changed My Life, op cit, pp 117-184.

2. Files of Office of Management and Budget (Civil Rights Reorganisation Project) consulted Washington, May 1978.

Southern Bell Telephone Co 1969), the complainant was a member of NOW and she was represented by a NOW attorney¹. During the 1970s other groups have followed NOW's example. Feminist lawyers and public interest law groups also take on cases. The ACLU has sponsored over three hundred cases and in one suit a woman was helped by the NAACP although she was white². University legal rights groups have been funded by the EEOC and one of these, at Columbia University, sponsored a big case against Readers Digest. NOW succeeded in securing EEOC agreement to their seeking consent decrees before signature, and women's groups now monitor settlements, a practice that public interest law groups find too time-consuming³. In addition to legal help groups now provide, to an increasing extent, moral support networks and information about jobs and training⁴.

Women also 'went out on the streets' on the 50th anniversary of the suffrage amendment to demonstrate for effective enforcement and to launch a new campaign for an Equal Rights Amendment. The campaign gathered information as a symbolic issue at first, but later it took on a practical significance as it was feared that the Gilbert case might be a symptom of 'back sliding' by the courts. It also swelled the ranks of NOW, the main organiser. As support grew, so did the opposition become more organised and time began to run out for the last three necessary State ratifications of the ERA. Women's groups joined together under an umbrella organisation, ERAmerica, to lobby in the likely States, to organise a conference boycott of the unratified States and to lobby in Washington for an extension of the seven year deadline.

1. Novarra, op cit, p. 86.

2. Freeman, op cit, p 181.

3. Spokeswoman, op cit, February 1978, and Novarra, op cit, p 57.

4. Col, J. 'Women's Support Networks'. Unpublished paper, IPSA Round Table, University of Essex, 6-8 August 1979.

Another example of participation by women's groups in policy implementation is their involvement in President Carter's reorganisation project. They joined forces with the black caucus, presenting proposals to him in December 1976. The recommendations of the staff of the Office of Management and Budget to the President were broadly in line with these proposals. It was February 1978 by the time the President announced his package, by which time he was beginning to be accused of 'cold feet' on civil rights¹. Women's groups supported the package in toto but some of the details reflect compromises arising from earlier consultations.

Part of the deal included a statement of Presidential commitment to legislation that would invalidate court rulings that, if no violation of the Equal Pay Act could be found, none could be found under Title VII and that pregnancy should be excluded from disability benefit schemes². The latter in particular, was being keenly lobbied for by the Coalition of Labor Union Women³.

So far as details are concerned women see the ultimate home of contract compliance in the EEOC but agreed to centralisation in the meantime in the OFCCP. However, it was thought that an announcement of eventual transfer would discourage OFCCP from attempting to improve performance in contract compliance. It was agreed that the proposals should merely state that the position would be re-evaluated in 1979⁴.

The transfer of authority to enforce the law

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1. Interview, Office of Management and Budget (Civil Rights Reorganisation Project), Washington, May 1978.
 2. Ibid.
 3. Teamster, March 1977, p 27.
 4. Ibid.

in Federal civil service immediately was strongly supported by all civil rights groups and women. But this proposal met with difficulty in the Senate. It was thought that, if retained, the whole package might be lost. On this issue the Executive orchestrated a letter campaign by lobbyists to Senators. In the end a compromise was reached which delayed the transfer for a year¹.

The transfer of authority to enforce the Equal Pay Act was originally to have taken place in 1978. The move was opposed by the AFL-CIO and by women because of their relative contentment with the Wage and Hour Division. Twenty women's groups, including Women Employed and the Legal Defense Fund of NOW, met Chair Norton and received commitments from her that led them to accept a compromise. It was agreed that the transfer be delayed for a year. In return they were assured that equal pay would be administered separately from the EEOC's existing structure and back log; that an agreed plan for dealing with cases in process at the transfer date would be worked out; that EEOC staff would be trained in cooperation with the Department of Labor; that the EEOC would receive the same levels of resources as the Wage and Hour Division; and that the EEOC would develop systems for handling self-initiated investigations of systemic discrimination in pay in order to establish a wider concept of equal pay for equal work². It was noted earlier that pressure groups are trying to ensure that the Commission fulfills this promise. Its overall performance under its new procedures is also being monitored carefully³.

Robinson argues that the organised groups of

1. Ibid.

2. Ibid, and interviews with NOW Washington Chapter, WEAL, EEOC, Washington, May 1978.

3. Press Release Women Office Workers, New York 15.1.79.

the women's movement has been so successful in making the agencies take them seriously that the EEOC has made Title VII into a 'Magna Carta for working women'¹. According to an official in the Department of Labor, if civil rights laws work for anyone, they work for women 'because women are making them do so'².

1. Robinson, op cit, p 427.

2. Interview official OFCCP, Washington, May 1978.

CONCLUSION

CHAPTER VIIIA Comparison of British and American Politics; What a Study of
Equal Opportunity Policies Reveals about the Two Political Systems(I) Introduction

It was argued in Chapter I that the study of a public policy can elicit a relatively rounded picture of politics in the society where it operates. It was suggested, too, that there are at least two reasons for comparing policies in more than one country. On the other hand, the aim of such an undertaking might be the formulation of better policy by learning from the experiences of other societies. On the other hand, a comparison of policies might be used as an advance on older approaches to comparative politics because of considerations similar to, but more complex than, those that lead to a belief in the superiority of policy studies in one country over analyses of single components in that system. Ashford, for example, argues that the important attraction of comparative policy studies is the possibility of discoveries about the power structure of the modern state through the analysis of differences in policies that are broadly similar across states.¹ He suggests that policies contain better explanations of how modern democracies work than do either behavioural studies of individuals or those which classify components of society at too general a level.² He argues, for example, that the institutional equivalent in other countries of the Prefect's role in France is better discovered by an examination of the latter's role in influencing policy than by assuming, in the first instance, that systems of local government are the basic units of comparison.³

1. Ashford, D. (ed) Comparing Public Policies, Sage 1978, pp 12-14, 82.

2. Ibid p 82.

3. Ibid p 83.

The diffusion of innovation model of political change appears to straddle the two objectives of comparative policy studies. This is because developments of it, following Walker's seminal article, focus on the effects of 'borrowing' on the extent to which particular states of affairs are altered in intended directions.¹ Thus far, it is compatible with the purpose, referred to first, of comparative policy analysis. But the model soon departs from that aim because its proponents hint that transplanting is almost bound to fail to lead to intended outcomes. The argument is that differences between two countries in effectiveness of policy implementation will not necessarily result from unconsidered 'borrowing' that embodies incorrect observations or faulty re-applications within the subject-area of the policy itself but are just as likely to stem from wider dissimilarities in political arrangements and traditions into which the 'solution' is transplanted. The model does not usually go beyond this point. Adding specificity to it, it can be argued that explanations for differences in policy impacts must be found in the relationships of particular policies and institutions to other features of political environments; these might be, for example, the general roles of interest groups and parties, expectations of various kinds of institutions, the relationships of different types of institutions to one another and to governments, and general values about politics that provide a framework for the particular policies and the workings of relevant bodies. If pursued along these lines, the diffusion of innovation model comes close to straightforward attempts to improve the discipline of comparative politics.

This final chapter provides some discussion of whether or not the initial hypothesis of the diffusion of innovation model is supported

1. Walker op cit and Moynihan op cit.

by a study of equal opportunity policies. It is argued that the hypothesis is undemonstrable in this case. It will be recalled that in Chapter I it was suggested that 'borrowing' may, in any case, be too universal a feature of politics and acclimatisation of transplants too commonplace for the simplest level of the diffusion of innovation model to be of much significance. Nevertheless, how adaptations in different environments take place, leaving aside the judging of superiority or inferiority, is itself an interesting line of enquiry. Thus, because of the closeness between where the diffusion of innovation model can be made to lead and the broad aim of comparative policy analysis, this chapter concentrates on how the workings of wider political phenomena affect equal opportunity policies in Britain and America. The chapter deals principally with regulatory agencies and non-departmental bodies, judicial traditions, interest groups and systems of policy and government. These aspects are brought together in a final section on 'networks' in policy implementation.

(II) The Evidence for and against the Diffusion of Innovation Hypothesis

The first point to make is that one of the empirical claims of 'diffusionists' may be weakly founded. The idea that the United States is a 'leader' in civil rights may apply only in the cases of white men and racial minorities. It is true that America legislated first for women's rights in employment and, as indicated in Chapters III and IV, British policy-makers self-consciously 'borrowed' in this respect. But as Chapter V shows, American law on sex discrimination developed on the 'coat-tails' of civil rights reforms for racial minorities. During all the hearings on the Civil Rights Act, no discussions were held about how precisely the law would work for women. Chapter VII referred to appeals by early Commissioners to this lack of Congressional guidance. However,

since the principles for all 'protected' classes are now almost the same, it may be fair to accept a generalisation about America's leadership in civil rights for all persons.

The indicators of whether the policies work more effectively in the 'leader' or 'borrower' state are inconsistent. At the most basic material level, the diffusion of innovation model is undoubtedly refuted. This is the aggregate level of women's pay as a proportion of men's. Such an assertion may seem misplaced given that it has been suggested in Chapters I, III, IV and V that equal pay laws in both countries followed the conventional rather than the diffusionist course of change. Because they did, the lengthy discussion of context, argued by diffusionists to be a condition of effectiveness, was present. Therefore, similarly good results should be present in both countries. But there are striking divergences in women's relative earnings between the two countries. If a corollary of the diffusion of innovation model cannot be demonstrated, the model itself is indirectly undermined. On the other hand, if the argument holds that the content of equal pay and equal opportunity policies are sufficiently complementary for them to be regarded as part and parcel of a single set of objectives, then equal pay may be considered part of the 'borrowed' British anti-discrimination legislation. If so the diffusion of innovation model is directly refuted. Chapters VI and VII show that without doubt women in the 'borrower' state - Britain - are better off in relation to men than American women. While before the new laws earnings of women relative to men in each country were not dissimilar, women's relative pay rose much more quickly in Britain than in America after legislation. This contrast exists despite broad interpretations in both countries of equal work. Nor can the difference be accounted for by the fact that in Britain, but not in America, the Equal Pay Act covers jobs

rated as equivalent under a job evaluation scheme. Degrees of segregation are similar in both countries. Evaluation schemes, which would mitigate different pay for different jobs have not been used often in Britain; when they have, some have been unbiassed and others not. One factor that might reduce the significance of differences between the two countries in women's relative earnings is that there has been a down-turn in Britain. Furthermore, it was noted in Chapter VI that the reasons for this are believed to stem from inadequate consideration of limitations in the Equal Pay Act and in the relationship of its content to that of the Sex Discrimination Act. Another relevant factor is the claim that American success in equal opportunity policies depresses aggregate earnings figures. The extent to which the claim is valid lends support to the model predicting greater effectiveness in the leading state.

While the consequences of equal pay legislation cannot be used easily to test hypotheses arising from the diffusion of innovation model because of ambiguities about its pattern of origin, the same cannot be said about anti-discrimination laws. Nevertheless, the evidence of the employment of women in both countries following reform is inconclusive.

Despite American claims that women are benefiting from the Civil Rights Act and Executive Orders and allegations in Britain that the Sex Discrimination Act is not being enforced rigorously enough, the overall pictures of the non-contractual aspects of women's employment in the two countries are not dissimilar. Faster rates of increase in female training and employment in some occupations in the United States are balanced by the existence of a higher proportion of women in them in Britain; law and medicine were referred to as examples in Chapters VI and VII. The chapters also show that engineering is opening up a little in both countries as a female occupation. Where America most notably leads is perhaps in some diversification in the professions and among skilled manual occupations.

But advances are small in absolute terms and may well be halted by a 'back lash' resulting from recessions being experienced in both countries.

According to one large 'American' multinational employer, balances in work forces can still be changed even when times are hard.¹ But, when job vacancies of all types decline and the numbers of unemployed rise, pressures to restrict who counts as an eligible recruit increase.

The behaviour of enforcement agencies in Britain and America appears on the surface to support the diffusion of innovation model. Since 1968, the EEOC has asserted the rights of women strongly and was regarded by President Carter as central to their economic emancipation. On the other hand, as Chapter V shows, the British Commission has been indicted for its caution. However, Chapter VII shows that the American Commission acquired its reputation for pursuing women's interests seriously by dint of pressure from women's groups and its own 'learning' experience in the A T & T enquiry. Nor did it acquire powers resembling those of the EOC until 1972. During the last few years the British Commission, too, has appeared to have become a little less cautious, a little less like an advisory body, and more willing to use its powers of enforcement.

Judicial developments in the two countries have diverged. Robinson notes that during the early 1970s the courts 'to a remarkable extent' were supporting the 'advanced positions on sex discrimination' adopted by the EEOC under 'intense pressure'.² Some of these judgements were referred to in Chapter VII. Despite appointments to the Supreme Court by President Nixon, the court in the early 1970s was still substantially a 'New Deal' one. But as the court's transformation became more complete, rulings about discrimination became more ambivalent. It

1. Interview Conference at Wellesley, op cit

2. Robinson, op cit, p 424

will be recalled that in contrast the approach of British judges was more mixed, tending towards caution, with the exception of the first Chairman of the Employment Appeals Tribunal. However, as the sometimes more generous European regulations about women's rights became operative in Britain, British judges have had to seek opinion in the European Court of Justice.

A more intangible area in which laws and institutions in the innovative state appear to have been more effective than in the 'borrower' is the changing of values and what counts as acceptable in political discourse. But, again the argument has to be qualified by the advent in America of political leaders whose ideology is similar to that of Mrs Thatcher and her colleagues. The reasons for ideological changes will become apparent in the next section. Suffice it to say here that the women's movement in the United States became an important Presidential constituency. Businessmen, whatever they might have continued to say in the privacy of the boardroom, had in public to support women's rights. Opinion polls taken before the general changes in politics revealed that as many men as women (sometimes more) supported efforts to eliminate sex discrimination.¹ In general until the fundamentalist right succeeded in associating abortion reform and the Equal Rights Amendment with all the other alleged attacks on the 'American Way of Life', to declare oneself against women's rights was, even for a politician, was 'to place oneself on the unacceptable fringe of politics along with the John Birch Society and the Ku Klux Klan'.² An example of a glaringly different atmosphere in Britain is recorded by

1. Novarra, op cit, p 60

2. Comment made by Republican host in Washington, May 1978.

Ms V Novarra whose research has been cited several times in this thesis. When she was presented by the first American woman Ambassador to London with a silver medal commemorating her Winston Churchill Travelling Scholarship, 'the entire audience laughed' when they heard that the subject of her research had been equal opportunities for women.¹ Despite the expectations referred to in Chapter IV that the law would and should change attitudes, and despite the existence of the Equal Opportunities Commission, the only leading British politician who now treats the subject of women's equality as more than a passing thought is Mr Tony Benn.²

In a crudely materialist analysis, changes in dominant ideology follow only from prior changes at the economic level. Super-structural modifications without the other are therefore illusory. It will be indicated in the final section that changes in the realm of political discourse and ideology may, in fact, feed back to the material base; that the relationship between the two levels is a dialectical one. If so, in the long run, it may be that the diffusion of innovation model will be supported by these policies in these countries. But, in the present, the contradictory nature of measurements of impact suggest that the model is not borne out. If it is not, then a search for explanations in wider societal arrangements seems on the face of it to lose its point. This, however, is not so, for the reason discussed in

1. Novarra op cit p 107

2. He attends conferences on the subject of improving the conditions of women's work. At one, in which the author participated, he remained all day. During recent years his speeches often include sections dealing with this aim. In the campaign for deputy leadership of the Labour Party he is, apparently, the only candidate to have discussed a policy programme on women's rights (Lawson, J, Bath Labour Party). Mrs Thatcher sees a 'continuing role' for the EOC (Fawcett Society Newsletter June 1981). But she is better known in public for his disassociation from feminist issues.

Chapter 1 and in the introduction to this chapter. This is that discussion of the different workings out of broadly similar policies across states can be a contribution to comparative politics. This is because discussion of such differences entails a move beyond the immediate problems of the particular policies to consideration of them in the light of more general political characteristics and values in the two societies. In the case of equal opportunity policies, questions that must be discussed include, for example, the influence of differences in judicial rules and in beliefs about the roles of the courts in rights and politics; the relative importance of parties and pressure groups and their relationships to executive bodies; and the places of regulatory agencies in their respective political systems. The next section begins with a comparison of wider factors affecting the Equal Employment Opportunities Commission and the Equal Opportunities Commission.

(III) Regulatory Agencies and Non-Departmental Bodies: the EEOC and EOC

Institutions responsible for policy implementation which are not Departments or Ministries are new in neither the United States nor Britain.¹ The Interstate Commerce Commission is one of the oldest in America. In Britain, until reforms in the first half of the 19th Century and the triumph in the second of the twin ideas of ministerial responsibility and neutrality in a meritocratic civil service, independent boards were common. A professionalised civil service also developed in the United States from the end of the 19th Century, although less

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1. In recent years the literature on such bodies has burgeoned. An excellent bibliography is appended to a report by the Outer Circle Policy Unit, What's Wrong with Quangos? July 1979. Particularly helpful analyses of them are:
 Hood, C. Keeping the Centre Small: Explanation of Agency Type Political Studies, March 1978 and
 Johnson, N. Quangos and the Structure of Government Editorial in Public Administration, Spring 1978, pp 1-12
 One source on America is
 Kohlmeier, L. The Regulators, Harper & Row, 1969.

fully than in Britain. In both countries independent boards that continued into or were created in the 20th Century became objects of criticism. In the United States unease was commonly expressed during the New Deal. In Britain objections have been most vocal during the last decade.

Nevertheless, despite some reforms resulting from the criticisms, non-departmental or regulatory agencies are an established feature of the machinery of government in both countries, operating alongside conventional administrative departments. Just as differences exist in the histories of each country's civil service, so are British independent boards sometimes less similar to American than they seem. The weaker establishment of the American civil service in the upper echelons coexists with a large number of powerful regulatory agencies that administer and enforce a wide range of policies. The number of British non-departmental bodies has been placed as high as 3,000 by Mr Philip Holland MP.¹ But, on the whole, each covers a smaller policy area and does not enjoy the same range of executive powers as those in the United States.

In spite of these general differences and despite common negative opinions about their places, such bodies are also viewed positively in both countries for similar reasons. For example, it is believed that implementation can be carried out more effectively by small uncomplicated institutions where 'clearance points' for decisions are minimised.² They are thought to provide a way of making the best use of voluntarism and expertise.³ And, for 'affected groups' they provide a clearly visible unit of responsibility.⁴

Jowell argues that the Equal Opportunities Commission and the Commission

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1. Holland, P. Quango Quango Quango, Adam Smith Institute, 1979.
 2. Pressman & Wildavsky, Cited by Richardson J & Jordan, Governing Under Pressure, Martin Robertson, 1979, p.134.
See also Fulton Committee Report (1968) and discussion of it in Outer Circle Policy Unit op cit.
 3. Ibid, p 7.
 4. Ibid, p 26, 27, 61.

for Racial Equality are, in formal terms, exceptional in British government.¹ The scope of their responsibilities and the extent of their powers places them closer to their American counterpart than to the usual British non-departmental body. However, as Chapter VI shows, the EOC began by implementing the law more in the fashion of a traditional advisory body than as a powerful law enforcement agency. Commissioners explained this approach, apparently unintended by policy-makers, by reference to the untried nature of the law and to 'teething troubles'.² But, since all new institutions, including the American Commission, experience initial staffing and administrative difficulties, it is necessary to move beyond this level of explanation and to seek it in the effects of different emphases in the administrative and decision-making traditions of the two countries. These are considered here under the headings of bureaucratic styles, incorporation and systems of party and government.

(III) (a) Bureaucratic Styles

The underlying reality of beliefs that Britain is characterised by ministerial responsibility and civil service neutrality and America by politicised bureaucracy renewed with each Presidential election, is, of course, more complicated than the simple concepts suggest. The

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1. Jowell J, The Enforcement of Laws Against Sex Discrimination in England: Problems of Institutional Design, in Ratner R (ed) Equal Employment Policy for Women, Temple University Press 1980 p 173
 2. 1st Annual Report 1976, EOC, pp 1-5
Coote A, Guardian 17.12.76
Erriman A The Times 30.12.77
Taylor R Observer 1.1.78

simple dichotomy characterising the British system does not and cannot explain who makes policy and who does not. Up to a point, the American Federal Civil Service Commission operates with notions of meritocracy and neutrality with which any Briton would be entirely familiar; although it coexists, sometimes uneasily, with the practice of presidential appointment.¹ The stereotypes, however, do have some reality in the equal opportunity policies of each country.

The EOC may be one of the few British institutions which has tried seriously to operationalise the constitutional definition of the respective tasks of administrators and politicians. The analogy between the proper roles of EOC staff and commissioners on the one hand and civil servants and ministers on the other was made explicitly once to the Commission staff at a time when there was a good deal of tension between the two groups about policy priorities.² The insistence that all policy decisions be left to Commissioners has created administrative difficulties because of the infrequency of full Commission and sub-committee meetings mentioned in Chapter VI. Decision-making is slow.

The content, too, of decisions has been a source of tension between staff and Commissioners. Members of staff believed in a policy direction more akin to 'the hard and fast' knocks recommended by Byrne and Lovenduski.³ At the height of tensions, staff were explicitly instructed to behave like administrators and to 'leave their feminist hats at home'. However, the Commission's current investigations can be traced to this period and, with changes of personnel on both sides, it seems that there is a more realistic appreciation that the evolution of policy involves both administrators and politicians.

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1. Heclo, H. A Government of Strangers, The Brookings Institution, 1977.
 2. Interview, July 1977.
 3. Byrne and Lovenduski, The Equal Opportunities Commission, Women's Studies International Quarterly, Vol 1, No 2, 1978.

The idea that bureaucrats can and should wear two hats is not one that is well established in the United States. The old idea of a politicised bureaucrat is one that has worked to the advantage of women in that country, although its uncomfortable partnership with ideas about meritocracy and neutrality has been evident. As Chapter VII shows, the EEOC, too, was wracked once by disputes about the proper distribution between staff and Commissioners of policy-making functions. But it continued to be regarded as normal that staff on the EEOC and related institutions will maintain personal contacts with political groups and cooperate discreetly to stimulate decisions that are favourable to women.¹ Some examples of the consequences of this style are the actions of some members of the Kennedy Commission on the Status of Women in the initiation of the National Organisation of Women; the discreet encouragement of women by early staff members of the EEOC to lodge complaints in order to persuade Commissioners of the seriousness of their responsibilities towards women; encouragement by senior officials of the Women's Bureau of the Department of Labor of Southern female textile workers to join unions; and, in general, the keeping of pressure groups informed about proposals for changes in regulations that will affect women.

On the other hand, the interests of economic groups, if not feminists, are represented on the British Commission; and, despite

1. Interviews with senior officials in US Departments of Labor and Health Education and Welfare, Washington, 1978. Interview with ex-member of Presidential Committee on the Status of Women, Washington, 1978. Interview with ex-member of staff of EEOC, New York, 1978. Interviews with members of National Organisation for Women, New York and Washington, 1978.

insistence that feminist staff adhere to an ideology of neutrality, 'economic hats' are not left at home by Commissioners. This is discussed in the next section.

(III)(b) Incorporation of Interest Groups into the Formal Structure of Implementation

Tendencies towards corporatism in policy-making have been noted in almost all advanced industrial societies. Considerable dispute exists about precisely what the concept means and what empirical observations might be expected in a system that is corporatist. A widely quoted description of a corporatist society is that of Panitch:

... corporatism ... connotes a political structure within advanced capitalism which integrates organised socio-economic producer groups through a system of representation and cooperative mutual interaction at the leadership level and of mobilisation and social control at the mass level.¹

Because of the chimerical nature of the concept and the disputes surrounding it, Byrne and Lovenduski describe the representation of the Confederation of British Industry and the Trades Union Congress on the Equal Opportunities Commission as tripartism.² Although they can be sympathised with over the conceptual problem, their choice of concept may not describe adequately what is going on. Tripartism is also used to describe the frequent practice of British governments of discussing with the CBI and the TUC legislative proposals in advance of their becoming law. But, as the whole literature about policy analysis stresses,

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1. Panitch L, The Development of Corporatism in Liberal Democracies, Comparative Political Studies, April 1977, p 66
 2. Byrne and Lovenduski, The Equal Opportunities Commission, Women's Studies International Quarterly, No 2 1978, p 132 FN

implementing laws also counts as policy-making; and, as Richardson and Jordan point out, groups whose activities are to be regulated may succeed in eroding policy after the passage of legislation.¹ Success in controlling the impact of policy is even more likely to be the case if they are actually represented on the body that it to do the regulating than if it is merely the case that consultations continue.

It will be argued in this section that incorporation of interest groups into the American EEOC has not lead to the representation of major producer groups. On the face of it, this is surprising. The United States is often seen as the most advanced capitalist society with a marked transition from interest group liberalism to corporatism. The paradox becomes more understandable if the notion of 'agency capture' is broken down. Early American regulatory agencies were notorious for being 'captured' by the very interests they were to regulate. The Interstate Commerce Commission, created to regulate passenger and freight transport across the States, became taken over by railway magnates.² Organised labour, by nature of its history, is less often involved than in Britain in the process of agency capture. The growth of concern, however, about race relations and poverty during the 1960s was accompanied by worries about policy delivery. Demands for appointments to counter the 'capture' of an agency by the regulated community became widespread.³ By the middle of the 1970s, the EEOC was in the hands of leaders committed to expanding rather than eroding equal opportunity policies.

1. Richardson and Jordan, op cit, p 143-146.

2. This and other examples are discussed in Kohlmeier op cit, Chapter 6.

3. Blumrosen op cit p 92.

Responses to demands for changing the capturers of the agency to those who wanted the policy to work probably did not arise simply out of a humane concern for increasing equality. Whitehorn believes that political leaders were afraid of a powerful alliance of radical blacks and women.¹ The Department of Justice, it will be recalled, held back on sex discrimination as long as officials thought women were not a source of social disruption. By the 1970s, they were 'out in the streets demanding their rights' and attention was being paid to their preferences in political appointments.

The system of appointments to the British Commission follows the usual pattern. Although there have been proposals to reform the system - from the civil service itself - selection to non-departmental bodies generally institutionalises the existing organisation of interests. Whitehall nominations to the EOC therefore represent party, region and the two sides of industry. One expectation of this method is that it will introduce individuals into decision-making who are experts in a field and who may, therefore, be able to deliver policies more effectively than a government. Women's interest groups were opposed three times over suggestions for appointees known to be knowledgeable about female employment and at the same time to hold feminist views.² However, recent appointments have included women with more obvious personal commitment than their predecessors to the intentions expressed in the law.³

Despite these concessions, the contrast with what happens in the United States is sharp. The British list of public appointments has its larger counterpart in the 'plum book'. But appointees are not taken from a list of 'the great and the good'. It is necessary for American presidents to distribute

1. Whitehorn, K. Observer 22.1.78

2. Gill, Tess, Coote, Anna & Hewitt, Patricia, Guardian 16.9.77

3. eg. Sandra Brown, Women in the Media, and Ann Robinson, University of Wales.

commissionerships equally to the two parties, and to seek the advice and consent of Senate for some appointees. Beyond that, the main concern is to secure qualified but not necessarily partisan, personnel who will also satisfy the protected lobby; in this case the civil rights and women's constituency. According to Heclo, great efforts were made during the Kennedy and Johnson administrations to seek out suitable appointees outside the normal political channels.¹ He also argues that the old systems of partisan spoils and ethnic patronage are now dressed up in a minority group guise.²

It is difficult to be precise about what different policy consequences follow from these systems of interest group integration because official proceedings, particularly in Britain, are confidential. Chapter VII referred to Congressional Hearings that, at one stage, revealed widespread corruption and mis-management stemming from minority group rivalries on the Commission. But, during the second half of the 1970s appointees who are both efficient and committed to equality for all protected groups seem to be resolving these problems without creating a breach with any of them. One example of the extent to which the structure of decision-making integrates political leaders, agency leaders and protected rather than regulated or producer groups, is President Carter's Civil Rights Reorganisation Program, discussed in Chapter VII.

In that chapter it is noted that the new chairperson of the EEOC was the unanimous recommendation of a large number of black civil rights and all women's groups. Her plans for the reform of the EEOC and President Carter's for all of the civil rights institutions were the

1. Heclo, A Government of Strangers, op cit, pp 92-93.

2. Ibid, p 93. He also suggests that where straightforward rewards for favours or party loyalty remain as the main rationale for appointments in the values of congressional or local politicians, p 93.

product of close consultation with representatives of protected groups. Plans went ahead incorporating their views and with only minor alterations to proposals opposed by other groups like the American Bankers Association and the Federal Civil Service Commission.

Other consequences will emerge in the last section on policy networks. The brief summary of what happened during the reorganisation project is culled from the files of the President's Office of Management and Budget. Problems of access in Britain mean that there is very little material with which to examine hypotheses about the influence of corporate interest groups.

From an intuitive point of view, both labour, as presently organised, and capital have interests that, at least in the short term, conflict with the aims of legislation. This was discussed in Chapter III which considered the economic rationale for male support of the 188 TUC resolution on equal pay. This was the protection of male jobs by the prevention of undercutting. It was noted that the argument falls when discrimination in recruitment is unlawful. The chapter also referred to possible social-psychological reasons for male resistance to anti-discrimination laws. Chapter III also discussed the possibility that the short-term interests on employers coincide with those of male interests because of the need to maintain stability in a workforce dominated in its organisation by men. Despite long term arguments about the quality of life and the most rational distribution of person-power, the two groups may have short term interests in colluding with each other to frustrate the intentions of the acts, whatever they may say in public about them.

The shreds of evidence available suggest that representatives of capital and labour may indeed act to erode the Equal Pay Act and Sex Discrimination Act. If they do, it is serious because as Byrne and Lovenduski point out, equality could be impeded by such a Commission when it is supposed to be the focal point of change.¹ Although staff have been sacked for breaches of confidentiality it is routine for employers and trade union representatives to refer Commission discussion documents to their 'parent' organisations.² At the end of its first year, Coote reported that the Commission had initiated a survey of employers but not trades unions because trades unionists 'were reluctant to let the EOC into territory traditionally occupied by the TUC'.³ Other voluntary Commissioners and the two full time Commissioners apparently were either unsure of their functions or too 'lady-like' in style to counteract the dominance of employer and trade union representatives. This did not necessarily stem from lack of knowledge or opinion about women's employment. One of the voluntary Commissioners, Margaret Allen, cited in Chapter III, was economics correspondent for The Times; the Chairwoman, Betty Lockwood, had been involved in persuading Labour Party leaders of the need for action. In the month after Ms Coote's report, another journal noted that it was 'an open secret that difficulties' were being caused by the conflicting interests of representatives of both sides of industry

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1. Byrne and Lovenduski, Sex Equality and the Law in Britain, op cit p 164.
 2. Interviews with members of Engineering Employers' Federation and member of TUC, February 1978 and September 1980.
 3. Guardian 17.12.76.

between the work of the EOC and their parent organisations.¹ In the same article it was reported that TUC representatives tried to direct action on complaints received from women that their unions were being unhelpful. But it was also pointed out that the TUC was understandably worried that the existence of the Commission 'would undermine the importance of joining a union'. In the middle of 1977, questions were still being asked about whether producer groups had delegates or representatives on the Commission.² One employer was clear about his function. Writing to the CBI about the issuing of guidelines instead of more significant codes of practice for employment, Philip Jones said:

You will note that it is to be published in the form of guidance rather than a code of practice. I am glad to be able to tell you that this is to a great extent due to CBI influence on the EOC³

In 1980 Commissioner Ms Marie Patterson told a reporter that she experienced no conflict of interest and never would because trade union policy was always best for women.⁴ But the reporter noted that traditional trade union policy on part-time workers conflicted with women's interests. When jobs are scarce, the pruning of part-time work first disproportionately affects women. It is only as recession has bitten all workers deeply that trades unions have begun to discuss retaining part-time work, limiting the hours for everyone and job-sharing schemes.

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1. Justice for Women, New Society 13.1.77
 2. Mackie L, Guardian 11.7.77
 3. quoted by Mackie L, Guardian 23.3.77
 4. Toynbee P, Guardian 10.3.80

A former TUC Commissioner was Ms Ethel Chipchase, an early proponent of equal pay before the time when male trade union colleagues paid more than 'lip service'¹ to the idea. She was withdrawn by the TUC from the EOC for not acting as a delegate. When the Commission published its recommendations for reform of protective legislation, she, having participated in the lengthy consideration of the issue, did not sign a dissenting report that conveyed TUC ideas. The TUC allowed her neither another term of office on the EOC nor to continue as TUC Women's Officer.²

On the other hand, employers and personnel managers were not expecting to be protected on the Commission. A variety of sources indicated that they were waiting for 'hard and fast' knocks in the first year and only later began to feel free to ignore the law. And, even while Mr Jones was a Commissioner, it was planned that codes of practice would be published eventually. Moreover, it may be that British Commissioners, like their American counterparts, are being 'educated' by the process of implementing the law into a belief that there is a serious problem for them to solve. It seems implausible that Ms Chipchase's action would have taken place five years earlier.

But the extent to which the American and British enforcement bodies came to follow similar paths to the same policy goals may be limited by the fact that they operate within very different systems of party and government. These contexts are contrasted in the next section.

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1. Profile of Mrs Chipchase in Sunday Times 5.3.78
 2. Toynbee P, Guardian, 10.3.80 and interview with member of TUC, September 1980
 3. Findings of Equal Pay and Opportunity Campaign reported by Whitehorn K, Observer 22.1.78 and Editorial, Industrial Relations Review and Report, June 1977.

(III)(c) Systems of Party and Government

An institutional factor that might influence the British EOC is suggested by Byrne and Lovenduski to be the consequence of a system of advisory politics. Following Finer, they argue that, in a system of alternating parties in government, any institution has to keep an eye open for the next one to avoid being eliminated.¹ Not unnaturally, perhaps, the view of at least one Commissioner is that preferences of a future government had no effect on present deliberations.² But on the other hand, all governments of recent years have tried to solve continuing problems by institutional reorganisation. And it is the case that the Commission was worried generally about their future under Mrs Thatcher. Curiously, it has not suffered as much as other non-departmental bodies from cuts in public expenditure. In particular, the funds of the EOC have been reduced by less than those of the Commission for Racial Equality. A possible inference might be that there is a connection between the less severe cuts and the fact that the Commission has pursued its goals in a fashion more akin to original Conservative proposals than to the American-inspired ideas of Mr Jenkins. Circumstantial support of such an inference is present in the fact that current allocations maintain research and publicity activities rather than other aspects of the Commission's work. In any case, there are other means for a government, should it so wish, to restrict opportunities for women; for example, public expenditure cuts in related areas of child care facilities and education and training.

The corollary of the point made by Byrne and Lovenduski is

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1. Byrne and Lovenduski, The Equal Opportunities Commission op cit p 132
 2. Lady McCarthy Seminar, Nuffield College, 1979

that, where the system of party and government is different, agencies like the EOC will be able to be less cautious. President Reagan enjoys the unusual privilege of a Republican majority in the Senate and a strong conservative, but not necessarily Republican, following in the House of Representatives. Since accession to office, he has given hints that civil rights institutions are at risk. But, even with strong support on Capitol Hill, he has been unable to implement fully his proposals to reduce the scope of public welfare policies. With strong pressures on Congressmen and Senators, it might be possible that he cannot carry out his intentions with respect to civil rights.

When, as is usual, majorities in the Presidency and Congress are more different than at present, it seems even more unlikely that civil rights institutions could be disbanded. Beyond that, the implication is unclear. In principle, the result could be 'immobiliste'. On the other hand, an activist and astute agency could play off a favourable Congress against a reluctant President and vice versa. Greater complexity in American institutions extends to those through which agencies are normally publicly accountable. A variety of other bodies are responsible for examining the EEOC to ensure, not only that it spends money correctly, but that it is managed effectively and that it deals with complaints properly. Indictments by the Civil Rights Commission, Congressional Committees and the General Accountancy Office of the EEOC, referred to in Chapter VII, were a spur to President Carter's intention to do something about enforcement of civil rights policies. Once in office, his enthusiasm for immediate reform slowed down. But he was continually pressed by these public bodies, as well as by interest

groups, to expedite his reorganisation plan.¹

In contrast, the scrutiny of British non-departmental bodies is very imperfect. Like the EOC, they may have to lay Annual Reports in Parliament and may be financially accountable through the Comptroller and Auditor General. But that office is not interested in the same wide management audit as the American General Accounting Office, although a recent Select Committee report has recommended reforms that would increase the similarity of their functions, at least in respect of departments.² Questions in the House of Commons about the EOC and other non-departmental bodies are often deflected by Ministers because of lack of knowledge or because it is thought they ought to be addressed directly to the body concerned. It has also been suggested recently that the reformed Select Committees take on responsibility for inspecting non-departmental bodies as well as departments.³ This would mean that, as in the case of the American Congressional Committees, staff and commissioners could be called upon to describe successes and explain failures. But problems of confidentiality have been evident already in investigations by Select Committees of departments and the same problem would affect scrutiny of the EOC. It is no coincidence that most proposals for reform of procedures of accountability see different regulations about official secrets as complementary.⁴ In this issue area, too, the American Freedom of Information Act is invoked as an exemplar.

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1. Files of Office of Management and Budget, consulted in May 1978
 2. The Role of the Comptroller and Auditor General, 1st special report of Committee of Public Accounts HC 115 1980-81
 3. Outer Circle Policy Unit op cit p 59
 4. Garrett J, Managing the Civil Service Heinemann 1980 pp 186-8, 192

One of the issues raised on connection with non-departmental bodies also occurs in the tribunals system. This is the problem of tripartism which does not arise in the United States. This and other differences between the judicial aspects of equal opportunity laws in each country are dealt with in the next section.

(IV) Judiciaries: Roles in Rights and Policy-Making

On the face of it, the responsibilities placed on the judicial systems in Britain and America for clarifying equal opportunity laws are similar. But the course of judicial developments must be expected to run differently because of dissimilarities in the roles of the judiciaries in their respective societies. The contrasts are fourfold. Firstly, there are differences in procedure. Secondly, in Britain, but not in America, responsibility is divided between courts and tribunals. Thirdly, citizens have different beliefs about the use of litigation to secure rights. And fourthly, partly in corollary of the third aspect, the judicial incumbents in each country have different constitutional positions and understandings of their functions.

(IV)(a) Procedures

So far as equal opportunity policies are concerned, the most important procedural differences are the rules of evidence, what is permissible in the interpretation of legislation, authority to award remedies and the distribution of legal costs. Some of these have already been referred to explicitly or implicitly in Chapters VI and VII. Here they are compared more systematically.

The value of Amicus Curiae briefs in American courts has been described by Rendel;¹ she points out that these may be used to put forward 'wide ranging general evidence relevant to the purposes and principles of the legislation, but not tied specifically to the case before the Court'. A precedent for the form and content of such a brief was won by Louis Brandeis and Josephine Goldmark in the Supreme Court when they filed a document containing sociological, psychological and medical data about women in support of protective laws in the State of Oregon in 1908.² Under current practice, similar briefs may be submitted by individuals or organisations who are not parties to an action. Trade Unions, women's groups and the EEOC have used this device frequently in cases where it would be difficult for a complainant herself to collect and submit certain kinds of evidence. Ironically, briefs of this kind now challenge the content of the brief by Brandeis and Goldmark by invalidating generalisations about the frailty and vulnerability of women and demonstrating patterns of discrimination.³

Amicus curiae briefs reduce the likelihood that an outcome will be determined simply by the relative skills of counsels for each side.⁴ This is not so in Britain where no such evidence is permitted.

The status of intentions of policy-makers is another area that has had different consequences for policy development in the two countries. American judges are allowed to consult legislative histories

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1. Rendel Law as an Instrument of Oppression or Reform op cit p 151-2
 2. Cary and Peratis op cit p 22
 3. Used in cases described in Chapter VII which resulted in insistence that individual women should be located separately in connection with pregnancy, heavy and dirty work. Also used in disputes revolving around jury selection. See Peratis and Cary op cit pp 23-25.
 4. Rendel Law as an Instruemnt of Oppression or Reform op cit p 151

in arriving at decisions. Hansard and ministerial statements are not wholly admissible in British courts. Instead judges have to rely on the actual words of a statute. In the Griggs case in the United States judges explicitly incorporated the sentiments expressed in Congress into their reading of the statute arguing that legislators clearly intended to direct the 'thrust of the act to the consequences of employment practices, not simply motivation'.¹

In Britain judges are dependent on the skill of the drafters of laws in covering every eventuality - an almost impossible task.² Lord Denning and colleagues for example argued that they had to rule in favour of Mr George Ward in the Grunwick case because the Employment Protection Act gave no extra powers to ACAS to act when denied access to existing employees.³ During the passage of the Equal Pay Bill, Mr Fred Lee was informed that the government's legal advice was that although under British law only persons could win cases, it was expected that this Act would be taken to mean that any occupant of a particular job in question would be protected. This does not appear in the statute and there are examples of individuals, successful in equal pay claims, who have been replaced by others at the old rate.⁴

The question of remedy is one where the British government in part built on an idea present in the Rent Act and in part imported an American concept. This is the provision of remedy for damaged feelings. But in respect of this and other remedies, American judges

1. Player op cit p 145

2. Scarman op cit p 2; and Rendel Law as an Instrument of Oppression or Reform op cit p 160

3. Rogaly J Grunwick Penguin 1977 pp 148-149

4. See references to Ms Hutchinson in Chapter VI.

have discretion to create a larger impact than the British, making non-compliance with the law more costly. In the United States wilful discriminators may be liable for heavy fines.¹ And complainants may be awarded back pay with interest. In one individual case this amounted to \$30,076, the award being dated back to the date of under-employment.² Class actions, already discussed in terms of who may file on behalf of whom, can result in awards of back pay amounting to \$1 million.³

Rules about costs in the courts in the two countries are also different. In the United States in most cases parties pay their own legal costs whether they win or lose.⁴ Sometimes attorneys may take a percentage of damages if the case is won and nothing if it is lost. In Britain no legal aid is available for tribunal cases. However, the costs of preparing a case are comparatively low. But, in the courts the whole costs of the winning party are awarded against the loser. In Rendel's view 'the system of costs in what is in any case a very expensive legal system does indeed limit the possibility of using law as an instrument of reform.'⁵

The comparatively low financial risk of tribunals implies a superiority over American courts as a source of remedy despite the cost advantages of the latter over British courts. But as the following paragraphs indicate there is a problem in the structure of tribunals that exists in the courts of neither country.

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1. Player op cit Chapters IV and VI
 2. Weeks vs Southern Bell (1971) see Rendel Law as an Instrument of Oppression or Reform op cit p 164
 3. ibid
 4. Boggs R, Address to Equal Pay and Opportunities Campaign, 13.2.80
 5. Rendel Law as an Instrument of Oppression or Reform op cit pp 165-166

(IV)(b) The Division of British Equal Opportunity Jurisdiction Between Courts and Tribunals

The intended benefits of grafting equal pay and employment cases brought under the Sex Discrimination Act on to industrial tribunals have already been discussed; so have the limiting effects of some trade union opinion of them. In principle, branches of knowledge of the type conveyed in amicus curiae briefs might already be familiar to experts in working conditions appointed to serve on tribunals. But tribunals exhibit two particular problems. One, discussed by Rendel, relates to procedures.¹ She points out that 'informality' does not mean that there are no procedures. Furthermore, because tribunals are intended to be informal, procedures are not formally set out. Therefore, those who are accustomed to the system will apply unconsciously informal rules which are not known or understood by those who appear before them. This places the latter at a disadvantage in presenting their cases. The other problem is described by Byrne and Lovenduski. This is the ubiquitous British practice of tripartism. Each of the sixty regional tribunals and the Employment Appeals Tribunal is chaired by a legally qualified person who is assisted by two lay members. One is nominated by the CBI, the other by the TUC. Few lay persons are women and attempts to expand their numbers have been resisted by the TUC for fear that the increase would be at the expense of trades unionists³ - although one third of trades unionists are female. Issues arising under the Sex Discrimination Act are often seen by employers as managerial prerogatives

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1. Rendel The Law as an Instrument of Oppression or Reform, op cit p 150
 2. Byrne and Lovenduski, Sex Equality and the Law in Britain, pp 156, 164
 3. Chipchase Memorandum for TUC Conference 1977, op cit paras 67-69

and by trades unionists as aspects of collective bargaining. When they agree about charges, there is a tendency for regional tribunal chairmen to defer to their joint 'common-sense' opinion. The deference, however, is less frequent in the Employment Appeals tribunal where the presiding officer is a judge of Court of Appeal standing. Because of the inhibiting structure of tribunals, Byrne and Lovenduski have more, but not much more, confidence in the formal courts.¹ The procedural risks discussed above and the values of citizens and judges discussed below may add limits to their already cautious optimism.

(IV)(c) Citizens' Beliefs about the Use of Litigation to Secure Rights

In addition to the higher risk of larger financial liabilities facing British litigants, citizens in the United States and Britain may well have different attitudes about the propriety of using the law. To begin with, ideas about what conflicts are or are not properly resolved by courts or by collective bargaining or by other methods may well be shared by large sections of the population. In addition, Rendel also draws attention to a diffuse attitude of deference to government bodies.² This may discourage citizens situated in the lower strata of society from believing that they have real rights of access to the courts or that they will be treated equally once there. On the other hand, although there are, of course, classes in the United States, she argues that an ideology of egalitarianism may encourage an expectation that, in litigations to resolve conflict, the parties will be on an equal footing. Thus, even if women in Britain find that their interests are not being pursued by

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1. Byrne and Lovenduski Sex Equality and the Law in Britain op cit pp 163-164
 2. Rendel Law as an Instrument of Oppression or Reform op cit pp 166-167

traditional protectors, they, because of general social attitudes, may be less willing than their American sisters to use the institutions now at their disposal.

Pervasive attitudes among the populace about the roles of the two judiciaries must be connected to their respective constitutional positions and to how judges have interpreted their functions in respect of public policy in general and rights in particular.

(IV)(d) Judicial Systems; Policy-Making and Rights

The initial caution among British judges in dealing with equal opportunity cases is attributed by Byrne and Lovenduski to their natural conservatism.¹ They cite Griffith's view that the British judges tend to reflect social prejudice in matters where they have discretion. Thus, they are probably uncomfortable when responsible for enforcing ideas embodied in the Sex Discrimination Act that could encourage radical change. Their relative optimism stems from the observation that a slow adjustment in the judiciary to new policies is normal. Griffiths attributes judicial conservatism to the class origin of judges.² But judges occupy the same class position in America as they do in Britain; and all accounts of approaches by American judges to sex discrimination legislation indicate an early acceptance and understanding of their role in the process of changing employment practices. Therefore, there must be wider reasons for activism in one country and initial caution in the other. These can

1. Byrne and Lovenduski Sex Equality and the Law in Britain op cit pp 156, 163-164

2. Griffiths J The Politics of the Judiciary Fontana 1977 pp 24-31

be found in both the constitutional position and the politics of the American Supreme Court and the comparatively limited position of the British Judiciary combined with an absence of public law.

Although Americans are accustomed to speaking of the separation of powers, Neustadt argues that the system is more accurately described as one of separate institutions sharing powers of policy-making.¹ Among other things, this is because the Supreme Court, in its function of judicial review, may actually change or modify policy. The most famous example is the shift from the 19th Century doctrine expressed in *Plessy v Ferguson* that separate treatment of blacks and whites was not unequal to the ruling in *Brown v Board of Education* in 1954 that separate treatment is inherently unequal.² The New Deal court consistently upheld the social and political rights of ethnic minorities. Of course, implementation of them depended on government allocations and policing. But, paradoxically, given an association of a *Laissez-faire* ideology with America and welfare-statism with Britain, the New Deal court, without organised pressure, came closer than British courts to accepting the idea that economic rights for the poor have a similar status to traditional and political liberties.³ Consequently, the idea of equal employment rights for classes of persons could easily be assimilated by the remnants of the late New Deal court.

The paradox is not as extraordinary as it seems. The doctrine does not entail equal economic outcomes for all individuals. It means that the law may intervene to perfect the market or, in other words, to establish equal rights to become unequal. Nevertheless, the

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1. Neustadt R Presidential Power: The Politics of Leadership John Wiley & Sons, 1960 pp 32-34
 2. Vile M Politics in the USA Hutchinson 1976, Chapter 9
 3. This is dealt with in more detail by Shapiro M The Supreme Court: from Warren to Burger in King A (ed) The New American Political System American Enterprise Institute 1978, p 180

point is that economic rights, if at a minimal level, are an acceptable area of judicial intervention.

In Britain, the pursuit of economic rights for underprivileged classes has been the prerogative of politicians. The courts have, of course, played a part in economic affairs. Traditionally the main interest has been in protecting property and rights of individuals, although Lord Scarman has indicated his dissent from the norm by stating that he finds 'nothing illogical or surprising in Parliament legislating to override a property right if it be thought to be socially necessary'.¹

The constitutional position of the British judiciary is, of course, unlike that in America. The courts, according to Lord Scarman,

do not, as a general rule, interfere with government. Only exceptionally would our courts scrutinise the propriety of executive action: and they would never question the validity of a statute. This tradition has developed since 1689 when the supremacy of Parliament and the independence of the judges were assured by the Bill of Rights.²

It is not, however, the case that British courts play absolutely no role in the policy-making process. Even strictures about interpreting only the words of statutes leave room for discretion over ambiguities. Moreover, as Lord Scarman points out, the standing of judges and the climate of the time affect interpretations of statutes. In a case involving social rights conferred on classes of persons (racial minorities), Lord Diplock stated that the Race Relations Act was a statute 'which, however admirable its resolves, restricts the liberty which the citizen

1. Guardian 10.3.78

2. Scarman op cit p 1

has previously enjoyed at common law to differentiate between one person and another in entering or declining to enter into transactions with them'.¹

In so far as equal employment conditions for women are concerned, uneasiness about the rights of classes is less obvious in equal pay. This may be because the equity principle involved is well established in jurisprudence. But judges, with notable exceptions in the Employment Appeals Tribunal, may share the view that non-contractual elements of employment are part of managerial prerogatives and that a law about them is an unnecessary intrusion into personal relationships. Lord Denning's ruling in *Peake v Automotive Products* is similar to some extent to Lord Diplock's in that, despite the rules governing the relationship between the courts and government and insistence on analyses only of the words of statutes, he felt able to state what he thought the Act did or did not intend to achieve. His conclusion, quoted in Chapter VI, differed from the intentions of legislators.

The ambiguity between constitutional theory and some practical applications of anti-discrimination laws would be changed, according to Lord Scarman, by the presence of a stronger concept of public law. He recommends the clear formulation of general guiding principles, like those that exist in written constitutions, accompanied by specific statutes based on them.² The statutes would provide criteria to facilitate the exercise of the general principles. As a result, he argues, judges would be able to avoid both the courses of action open to them now. One is to retreat

1. *Dockers' Labour Club v Race Relations Board* 1974, Griffiths op cit, pp 87-93.

2. Scarman, op cit. This view supports the speculations of an economist, referred to in the Introduction to Chapter V.

behind observations that the matter is one for ministers to decide.¹

In Chapter I it was noted that this was the course taken over the question of female suffrage. It was adopted during consideration of the rights of Agee and Hosenball to remain in Britain when there was a conflict between the right of freedom of expression and national security. The other course presently available is for judges to 'exercise discretion, unguided and untrammelled by anything other than the judge's own sense of what is appropriate'.²

The unwritten constitution of Britain is augmented by the accession to the Treaty of Rome. Thus it may be that the concept of public law, common in Europe, is being brought into Britain by the 'back door' as it were. Some evidence of reference to the relevance of European 'guiding principles' in the application of equal pay and opportunity laws has emerged as a result of remission of British cases to the European Court of Justice.

This section has referred to greater participation of interest groups in American legal developments compared to the situation in Britain where they may only assist in the formal representation of a party to a dispute and may confine themselves only to the facts of the particular case. In the final section their respective places in policy networks will be examined. But, avoiding repetition and pre-emption, it is necessary first to consider general characteristics of group politics in America and Britain that do not fit easily into either of these sections.

1. Scarman op cit p 5

2. ibid

(V) The Relative Importance of Groups and Parties in British and American Politics

The arguments of the pluralist democracy school in the United States are too well known to be rehearsed in detail here.¹ Briefly, the central point is that democracy is protected by a myriad of shifting coalitions of groups, enabling citizens to participate in decisions on issues that are important to them. Parties, too, are loose coalitions, less controlled by leaders than those in Britain. In Britain, there has been a tendency to think of pressure groups as anti-democratic. Their importance is often downgraded relative to a cohesive (until 1980) party system.²

At the level of broad generalisation, arrangements of political actors in both countries look similar in so far as pressure groups and parties appear in both. But closer examination reveals differences. For example, despite demonstrable criticisms of theories of pluralist democracy,³ it is the case that the configuration of influential pressure groups in America is not the same as in Britain. Relatively speaking, the group system in the United States may indeed be more democratic than in Britain.

However, so far as producer groups are concerned, organised business and labour are less equitably represented in the American decision-making sphere. The traditional pattern of agency capture, discussed earlier, benefited business rather than labour. Organised labour is not linked constitutionally to the Democratic Party and in 1972 the relationship was tenuous enough for the AFL-CIO to withhold

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1. See Dahl R Pluralist Democracy in the United States Rand McNally 1967
 2. See Richardson and ~~Talbot~~ *op cit* p 159
 3. Summarised in Lukes S Power: A Radical View Macmillan 1974

endorsement of the party's presidential candidate, Mr George McGovern. In Britain, business and labour are both relatively closely involved in government. In part this is connected to party links, but Richardson and ~~Todman~~ attribute present arrangements to the relationships established during the Second World War to keep up production of essential goods.¹

So far as 'cause' groups are concerned, success, albeit limited, may be easier to achieve in the United States than in Britain. Gelb and Palley accept, to some extent, Schattschneider's view that success depends on accepting social 'bias'.² But they also found that where groups are cohesive and broad-based they can secure reform that is, in the long run, redistributive, provided they can present the proposed change as merely distributive.³ Cohesion and representativeness are also sources of legitimacy for groups in Britain. But it may be easier in the United States than in Britain to acquire the approved characteristics for at least two reasons. One is the different systems of funding in each country and the other is the different relationship between groups and parties. In addition, a specific contrast in respect of women is a different relationship to black civil rights movements.

Sources of funds for pressure groups are in general more numerous and more generous in the United States than in Britain. This benefits both sides on any dispute, a factor evident in anti-ERA and anti-gun control campaigns. Individual groups in favour of women's rights like the National Organisation for Women and the Women's Equity Action League have been estimated to have smaller memberships than several British organisations.⁴ But the gap between subscriptions and

1. Richardson and ~~Todman~~ op cit p 148

2. Schattschneider E The Semi-Sovereign People Holt Rinehart & Winston 1956, and Gelb J and Palley M op cit p 363

3. ibid p 371

4. Novarra op cit p 61

their large expenditures is filled, for particular programmes, by grants from large foundations and from the government.¹ For example the Ford Foundation gave \$106,000 to the National Council of Negro Women for a leadership training programme, \$140,000 to the Ohio Women's Law Fund for a litigation and education programme and \$91,000 to NOW's legal Defense and Education Fund. The Kellogg and Sears Roebuck Foundations gave \$300,000 apiece to groups promoting the training of women and the maximisation of their employment. The government, through the National Commission on the Observance of International Women's Year, gave WEAL \$32,000 to publicise federal laws on equal opportunities.

Groups in Britain experience a problem that arises in general from the creation of new non-departmental bodies irrespective of governmental funds. This is the possibility that old sources of funds dry up as new ones appear when the intention may have been to increase resources.² The Voluntary Service Unit, for example, of the Home Office, became reluctant to grant funds to women's groups with the creation of the Equal Opportunities Commission.³ But, in its first year, the Commission could allocate only £40,000 to all groups with an interest and competence to pursue activities similar to American counterparts. In 1979 the allocation was £20,000. Private foundations of the type referred to above have not been customary donors to women's groups in Britain. This, however, may be changing; Chapter VI referred to underwriting by the Ford Foundation and the German Marshall Fund of the seminar on positive discrimination run by the National Council for Civil Liberties.

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1. The following figures are also provided by Novarra op cit pp 61-62
 2. Hood C The World of Quasi-Government SSRC Machinery of Government Project, paper presented at University, June 1979, pp 16-17
 3. Ashdown-Sharp P The Sunday Times 27.2.77

In the United States, categorisation by 'right' or 'left' is not applicable to women's groups. The National Organisation for Women is usually spoken of as a middle-class reformist body. But if its Charter were implemented, society would be altered radically.¹ Nevertheless, there are groups which, in practice, tend towards modifying existing society and others less interested in piece-meal reform concerned to alter it radically. On specific issues, however, groups with different philosophies work jointly through both political parties.² In Britain women's groups are more fragmented. Cooperation among women's groups in America is compatible with the prevailing American ideology that links group politics with democracy. In Britain, dominance on the left of the idea that the end of class inequality is the main tenet of democracy is the main reason for fragmentation among women on key issues. Divisions along party lines on class-type issues that affect women's lives, like state provision of child-care and cuts in public expenditure in the social services, engender sufficient mutual suspicion among the various elements of the women's movement to frustrate cooperation of the kind found in the United States. Chapter III indicated that cracks were papered over in 1973, however, and subsequent issues, like abortion and the Nationality Bill, inspired unity among those against legal restrictions. Press treatment does little to foster the growth of unity. Disputes are usually reported, but when almost seventy disparate groups did come together on 27 November 1980, under the auspices of Women in the Media and the Fawcett Society, to discuss and deliver to politicians a

1. This point is made by Freeman, op cit, pp 50-51, 74-75.

2. Examples are provided in the four case studies by Gelb and Palley, op cit.

policy programme for women's employment, education and domestic life, the event went almost unnoticed by the press.¹ This contrasts with the 'newsworthiness' of women's cooperation, as well as disagreement, in the United States.

Division between even the 'left' of the women's movement and the left-wing in politics generally is still evident in Britain, partly because of a continuing suspicion that feminism is a diversion from the class struggle.² Conventional party politics are alike in both countries in that women are poorly represented in their respective legislatures. At the Federal level in America there are even fewer women than in the British parliament. But the looser party system in America may make it potentially easier for women to break the pattern from time to time. One example of the contrasts between the relative cohesiveness of respective major parties and control by them of the political agenda, is the fate of women who have tried to defeat the system. In the United States, democratically-minded Elizabeth Holtzman defeated the official Democratic incumbent and candidate for New York, Emmanuel Celler, solely on the issue of the Equal Rights Amendment.³ Una Kroll failed in her attempt to win an election standing as a women's rights candidate in Britain. Most of the few women in Congress belong to the National Women's Political Caucus and collectively work for most issues of interest to women's groups.⁴ The aim of the recently formed

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1. The event was well covered the next day in the Morning Star. The Guardian, but for a mistake, would have reported it. Mary Stott, a leading member of Fawcett, wrote about it later, Guardian 18.8.81; it passed by unnoticed by all other newspapers.
 2. Rowbotham, Segal & Wainwright, op cit.
 3. Freeman, op cit, p 234.
 4. Gelb and Palley, op cit, pp 389-390.

all party 300 Group in Britain is to assist women to become elected representatives in the major Parliamentary parties. But the group has attracted opprobrium for its treatment of radical feminist issues.¹ Disagreement between it and other feminists has not gone unnoticed in the press.

Fragmentation and suspicion are, of course, not absent in the United States; they are submerged for particular purposes. Attitudes similar to those characterising the relationship between the British left and feminism can be found in the relationship between the black civil rights and women's movements in the United States. On the other hand, as suggested earlier in this chapter, and in Chapters I, V and VII, the connection between the two movements has also been a source of strength. In the early 1960s, black women saw feminism as a diversion from the more important struggle to undo racial oppression. Ten years later, black women (and white female civil rights activists) were prominent in the women's movement.² Two reasons were referred to in Chapters I and V. Like British radical feminists, they discovered that radical men shared general social attitudes about the subordinate role of women. And like Nineteenth Century American feminists, they found analogies too glaring to resist. In addition, the problem of 'double discrimination' was causing a

1. Shapiro, R. New Statesman 30.1.81.

2. The change was evident in the grassroots, too. A Louis Harris Virginia Slims poll showed that more black women than white favoured efforts to improve the position of women and sympathised with women's liberation groups. See Freeman, op cit, p 38.

serious anomaly between levels of education and occupational destinations for black women.¹ An alliance between the two movements is a powerful one for political leaders to risk dissatisfying. Such a combination is almost completely absent in Britain. Black American women, however great their oppression, share at least some American cultural characteristics. The 'Americanisation' of blacks became obvious when it was fashionable in the early 1970s for them to visit Africa to seek out their roots.² First generation immigrant women in Britain, particularly Asians, tend to retain their customs of seclusion from public life.

The relationships in both countries may come to resemble one another. White feminists in Britain have begun to be interested in the lives of black women. More members of ethnic minorities are British by birth and have footholds in two cultures. Economic recession in the United States even by the middle of the 1970s was beginning to reactivate suspicions of feminism because of fears that the women's movement was succeeding at the expense of ethnic minorities and a belief that acknowledging analogies belittled the origins of racial oppression.³

Nevertheless, the extent of cooperation in the United States that still exists and its comparative absence in Britain have implications

1. Freeman, op cit, p 39.

2. The author recalls bewilderment and disappointment about not feeling 'at home' among many black American visitors to Nigeria in 1970.

3. Poussaint, A. New York Times 6.5.74.

for the seriousness with which political leaders treat demands for implementation of anti-discrimination laws.

How all the actors and institutions discussed so far relate to one another in the business of policy implementation and development is the subject of the next and concluding section.

(VI) The Creation of Policy Networks to Secure Tangible Benefits

A possible outcome of legislative reform is that, once a law is passed, no real change follows. An early exponent of this view is Edelman.¹ His argument is that laws purporting to protect 'victim' groups or extend rights to them may be but symbolic reforms. By the mere passage of laws or the creation of new institutions, governments may be seen to be concerned about 'victims' without necessarily enforcing any material changes. The 'victims' may be satisfied with symbolic success, in which case, governments increase their legitimacy at very little cost. But, if tangible benefits are to follow from legal symbols, organisation and collective action are necessary. Organised groups among those protected by the law must take an informed interest in its administration and bargain for benefits.

Edelman's treatment of the administration is mainly concerned with the relationship between enforcement agencies and groups whose activities are supposed to be controlled. This is because his main interest is in why real changes seldom follow legal reforms. Freeman is more concerned with the conditions necessary for protected groups to secure the tangible benefits promised in the legal symbols.² She

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1. Edelman, The Symbolic Uses of Politics University of Illinois Press, 1964, especially pp 22-29, 37-38
 2. Freeman op cit, pp 12-43, 48-49, 54-55, 230-237

grounds her analysis of the politics of women's rights in the literature on social movements. In her account, the following characteristics have to be present for 'victims' to secure both symbolic reforms and tangible benefits. First, there must be a sense of deprivation felt by politically skilled members of the 'victim' group. And there must be a pre-existing communications network of others amenable to being organised. For American women this was provided by political groups in the universities and the State and Federal Commissions on the Status of Women. A catalytic event, like the passage of the Civil Rights Act, followed by poor enforcement for women, is needed to spur them all into political action to remedy the deprivation. Finally, Freeman also argues that collaboration between interest groups and institutions are necessary to give substance to the law. But she concentrates more than Edelman on positive possibilities. Her analysis shows that the administration may have to do more than react to the demands of already established groups; that is, sympathetic 'insiders' have to help in the creation of coherence out of an amorphous mass of individuals and small groups of 'victims'.

Blumrosen, an academic lawyer and a former senior employee of the EEOC, argues that it is essential for administrators to involve participants from the beneficiary class in order to counteract pressures from the group that is to be regulated and tendencies towards a debilitating 'bland neutrality'.¹ An account by Gelb and Palley of the fates of four policy interests of women's groups makes it clear that a well-rounded network that includes a spread of relevant institutions and groups contributes to success in securing preferred decisions and in monitoring their consequences.²

Examples of network orchestration by 'insiders' in the United

1. Blumrosen, op cit, pp 102, 209-214.

2. Gelb and Palley, op cit, pp 383, 389.

States have been referred to on various occasions in this thesis. The origin of the National Organisation for Women is described in Chapter VII. The stimulation of enquiries from women by EEOC staff is also mentioned. Part of the stratagem of the New York contract Compliance officer was to create two pressure groups to act in ways that would not have been permissible for her.¹ One group is an information centre and source of mutual moral support for aspiring skilled female employees. The other is composed of eminent New Yorkers who lend their prestige to high-level lobbying of employers and public bodies. New groups that meet with some success raise expectations and generate the formation of others. 'The Mushroom Effect' and 'Women Today' respectively listed hundreds and thousands of groups in the early 1970s.²

Ensuring continued implementation of laws and monitoring effects of regulations are assisted by the discreet passing-on of information by individuals in all directly relevant bodies. The Women's Bureau of the Department of Labor was given as an example in Chapter VII. Another is the encouragement and information given by a member of the Department of Health Education and Welfare to Dr Sandler in her attempts to make that department enforce the law.³ Groups like Wider Opportunities for Women and the Coalition of Labor Union Women cooperate with government departments in opening up training schemes to equip women with skills.⁴

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1. Interview, Office of Contract Compliance New York April 1978
 2. Freeman op cit p 147. Support groups are not being analysed by Col J op cit
 3. ibid pp 195-200
 4. The existence of such activities emerged in discussion of papers presented at a conference at Wellesley College May 1978 op cit

The network also spreads through other institutions, closely connected with but not directly responsible for, law enforcement. Heclo notes that, more than in any other nation, the United States bureaucracy is accessible to organised interest groups and that permeation has increased with the growth of governmental intervention.¹ The effects of attempts in Congress to limit 1972 legislation on equality in education were restricted by the 'leaking' of new regulations drafted and sent to President Ford.² Official bodies and interest groups were equitably integrated into President Carter's reorganisation proposals. A measure of the impact of their opinion is that his staff stimulated a campaign by 'outsiders' directed at ensuring Congress accepted the proposals, in the name of the President, but bearing the stamp of women's groups.³ Blumrosen argues that Congress, too, has facilitated the integration of members of the 'protected' groups into the administrative process by introducing rules about the award of costs in court proceedings during the last ten years which have the effect of 'encouraging private litigation to achieve public purposes'.⁴ In addition the form of accountability and the process of 'advice and consent' for Presidential appointments to the Supreme Court and Executive Agencies discussed earlier in this chapter, provide a variety of access points through which groups may initiate or be invited to take part in bargaining for benefits in terms of personnel or policy development.

The difficulty faced by officials responsible for contract compliance in New York supports the view of British Commissioners that,

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1. Heclo, A Government of Strangers, op cit, p 17.
 2. A detailed account can be found in Gelb and Palley, op cit, pp 380-385.
 3. Files of Office of Management and Budget, consulted May 1978.
 4. Blumrosen, op cit, p 98.

if discrimination is to be eliminated, it has to be attacked by all public agencies.¹ To this end, the EOC has tried to develop fruitful relationships with other governmental bodies. But, at least until 1979, its policy-network, unlike that of the EEOC, seems to have concentrated on the upper level rather than on the grassroots as well.

The results of consultations with other government departments and non-departmental bodies do not satisfy Commissioners completely. It will be recalled that the Committee of Industrial Tribunals rejected the EOC's offer of help in training its members in the provisions of the Acts. Disappointment with the Manpower Services Commission was referred to in Chapter VI. In 1978 the EOC was forced to ask the Prime Minister to instruct the MSC to do more about female school leavers.² And, although the EOC is reportedly pleased with relations between the Commission and the CAC and ACAS, another source referred to in Chapter VI gives less reason for optimism in respect of commitment by the conciliation service to enforcing the Sex Discrimination Act. In 1977, the Commission reported that two nationalised industries, despite EOC comment, continued to provide training only at night, hence denying women the possibility of apprenticeships.³

Relations between the EOC and central departments and ministers are notable for both failures and modest gains. The Department of Education and Science has been particularly difficult so far as the EOC is concerned. Reluctance in that department to be covered by any legislation was noted in Chapters III and IV.

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1. 1st Annual Report 1976, EOC, 1977 p 8
 2. Linscott G Guardian 26.4.78
 3. Lady Lockwood. Speech to the Society of Occupational Medicine Protective Legislation: Who Benefits - Men or Women ? delivered 28.10.77, published as document with same title EOC p 6

Towards the end of 1977 a supposedly confidential report by the Home Office stated that there was no need for an education section in the EOC. Its duties could be split between the goods facilities and services section and the Department of Education and Science. The department itself had done little to publicise the relevant provisions of the Act in circulars. The proposed transfer was vigorously opposed by the Commission in discussions with Mrs Shirley Williams.¹ Dr Byrne of the EOC's education section was dismissed for discussing the matter with the press, although a tribunal later held her sacking to have been unfair.² When Mrs Price won her case about age bars in the civil service and Civil Service Commissioners were instructed to draw up new conditions of employment, the EOC found them unwilling to consult over the drawing up of new rules.³ Thirteen departments were criticised by the Commission for not setting an example by seeking qualified women to serve on public bodies.⁴ On administrative matters, too, relating to staffing, equipping and running the day-to-day affairs of the Commission, government departments are alleged to have been unhelpful.⁵

Taxation and social security are not directly covered by the Act. But, as noted in Chapter IV, the Commission is expected to advise governments on these matters. In line with the view that change requires concerted action, Commissioners have continually pressed Chancellors of the Exchequer and Secretaries of State for Health and Social Security to

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1. Times Educational Supplement 4.11.77.
 2. Guardian 31.12.77 and 11.1.77.
 3. Interview 1979.
 4. Linscott, G. Guardian 26.4.78.
 5. Interview 1978.

end discriminatory regulations.¹ Modest improvements have been made. But, in 1979, social security benefits still discriminated against women, particularly married women caring for invalid dependents.² Initial changes in taxation were regarded as cosmetic by the EOC and a Green Paper published in December 1980 discourages (on grounds of cost) the EOC aim for an early separation of the taxing of wives and husbands. The EOC's proposed amendments to the Sex Discrimination Act, released in January 1981, call for the ending of discrimination in tax and social security legislation within ten years.

It is not surprising that civil servants and junior ministers might not take the views of the EOC seriously given that leading politicians do not seem to set the pace. Suspicions are referred to earlier in this thesis that the Sex Discrimination Act, whatever Mr Jenkins' personal commitment, was a 'test-run' for the 1976 Race Relations Act.³ Later Labour Ministers were evasive in response to questions, suggestions and criticisms.⁴ Mrs Thatcher's assurances to

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1. 2nd, 3rd and 4th Annual Reports 1977, 1978, 1979 EOC, pp 35-36, 28-31 and 25-27 respectively.
 2. 4th Annual Report 1979, EOC 1980, p 26; and Benn, M. 'Women Denied Equal Treatment under the New Social Security Legislation', Rights, Sept-Oct 1980, National Council for Civil Liberties. A harrowing account of experiences of women applying for the Housewives Non-contributory Invalidity Pension or for the Invalid Care Allowance is contained in an EOC Report, Behind Closed Doors, EOC, Dec 1981.
 3. Misgivings were felt by both those against a strong race relations act (Daily Telegraph 13.11.75) and those who hoped that sex discrimination legislation would be taken seriously but feared that it would not if the Sex Discrimination Act was merely a model for the Race Relations Act. Comments that this was 'the real purpose of the Act' have been made in private to the author. That it was consciously used as a model for the Race Relations Act has been confirmed (without the implications of the private comments) by M. Rendel 'Legislating for Equal Pay and Opportunity for Women in Britain', Signs, op cit, p 960.
 4. Byrne and Lovenduski, Sex Equality and the Law in Britain, op cit, pp 161-162. An example is the reply from the Secretary of State for Employment to Mr Ashly, MP, on 20.2.79 that the operations of the EOC were for it to decide. OR 962/63 Col 99.

Women in the Media and the Fawcett Society were mentioned in Chapter VI. But she is better known for her general opposition to State intervention into economic and social affairs and her lack of enthusiasm for the women's movement. Unlike American politicians, however, British political leaders have little incentive to espouse the cause of women's rights because of the less cohesive grassroots element of the British policy-network on equal opportunities.

It is only recently that the Equal Opportunities Commission has begun to take an interest in actively stimulating cooperation with women's groups. To begin with, the Commission invited pressure from women.¹ But subsequent EOC overtures to women's groups were confined to grants to promote research and publicity. And, in the beginning, Commissioners were divided about whether funds should be allocated to radical women's rights groups.² In its capacity as a law enforcement agency (rather than an advising or educative body), the EOC has conducted relations with pressure groups in an 'arms length' manner. In November 1979, however, a one-day conference with women's groups was held. Its title was 'Barriers to Full Equality'. The most immediate concerns were the pressing issues of the day; possible erosions of the employment conditions of pregnant women workers and the status of women's nationality rights. The Commission acknowledged that if government proposals to narrow existing rights were to be resisted, a concerted campaign was necessary.³ Since then, while stressing its need not to appear like a pressure group, the Commission has tried to instigate a united campaign

1. EOC Press Notice 7.7.76

2. Ashdown-Sharp op cit 27.2.77

3. 4th Annual Report 1979 EOC 1980 p 29

by pressure groups for its proposed amendments to the Equal Pay Act and Sex Discrimination Act.¹

(VII) CONCLUSION

Although institutions and policies in both countries in the natural course of events change, and although some of those *changes* that have taken place increase similarities between the politics of women's rights in the two countries, the different general political characteristics outlined above are likely to limit the extent of convergence. In particular, because of those differences in the political systems of Britain and the United States, it may be less easy for either the Commission or women themselves to organise a cohesive women's lobby. In summary, the looser party system in the United States, the greater equality between executive and legislature, the hitherto importance of the civil rights constituency in Presidential elections, the more complex system of accountability and Senate ratification of Presidential appointments, all provide opportunities for permeation by groups that formulate demands carefully, avoiding the appearance of too much change too quickly. In Britain, access points are limited by a more controlled party system that ensures the primacy of class issues on the political agenda, at least at a theoretical level, and by the dominance of the legislature by the executive. Recent reforms and proposals for others of systems of accountability are probably unlikely to have much impact so long as the other two factors are present and so long as the executive, regardless of its 'colour', places women's equality low on its lists of priorities.]

A possible 'joker in the pack' is Britain's membership of the EEC. The covert introduction of some aspects of public law is being accompanied by attempts to create a policy network that resembles that of the United States. According to Hoskyn and others, Community

1. EPOC Newsletter, May 1981.

Commissioners and officials have 'a much more overt and publicly visible political role' than British civil servants in promoting new proposals.¹

They can be heard at consultative meetings openly seeking pressure-group support against recalcitrant national ministries and revealing details of controversial negotiations in a way which would be quite unthinkable in Whitehall.²

Hoskyn et al, however, also note that British pressure groups have been slow, especially in the field of social policy, to take up opportunities affected by the openness of the EEC.³ Withdrawal from the EEC by a future Labour government would remove these opportunities.

The EEC apart, institutional arrangements in Britain ensure that the initiative in forming and maintaining a network must come, more than in the United States, from the relatively weak and uninformed grassroots. Difficult though it will be for the women's movement to become a cohesive political constituency, it is important that it does so. The policies of both countries on equal opportunities is based on the assumption of an expanding economy creating more opportunities. Even where there is no significant economic growth, distribution of person-power can be modified where there is a turnover of labour. But in decline, the policy may become a zero-sum game where those with the least

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1. Hoskyn et al in the Rights of Women Group.
The EEC and Women - a base study of British and European Legislation on Equal Pay. Unpublished paper presented at Conference of PSA Women and Politics Group, Bedford College 27.9.80 pp 3-4
 2. *ibid* p 3
 3. *ibid* p 4

political bargaining power are likely to be the losers. In both countries opposition to equality for working women has appeared as jobs became scarcer. In the United States even some liberal Jewish groups, once in favour of banning sex discrimination, have begun to see women as a threat to the rights of religious and ethnic minorities.¹ In Britain, politicians have started to revive the hardly buried notion that married women work for pin-money and to urge the government to take steps to discourage them from the labour market.² Resistance to such notions requires fairly well established policy networks operating at all major points of access.

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1. Freeman op cit pp 201-202
 2. eg Lord Spens, reported in the Guardian 28.7.79 . And he has sympathisers in both Houses. Such sentiments miss the point that, despite the Sex Discrimination Act, women and men still largely work in different labour markets. Even if the ethical premise were accepted, the desired outcome would appear to a large extent, in present circumstances, only if the effects of recession were appropriately distributed and if men were prepared to accept low-paid part-time work.

APPENDIX IRouth's Explanation of Class Categorisation

'The list that follows is not exhaustive but shows the general scope of each class, those occupations whose allocation might otherwise be in doubt and those whose occupational class and social class do not line up in the way described above.

Occupational class 1A (Higher professions)

Accountants (professional)	Lawyers, judges, stipendiary magistrates
Architects and town planners	Medical and dental practitioners
Authors, editors, journalists	Officers in the armed forces
Clergy, priests, nuns	Scientists
Engineers (professional)	

Occupational class 1B (Lower professions)

Actors (III)	Musicians (III)
Aircrew (III)	Navigating officers and pilots
Artists	Nurses, including assistant (III), student (III) and nursery (III) nurses
Draughtsmen	Officials of associations
Engineering officers and electricians on board ship	Pharmacists
Librarians	Sportsmen (professional) (III)
Medical auxiliaries, including chiropodists (III), opticians and physiotherapists	Teachers, including university teachers

Occupational class 2A (Employers and proprietors)

All employers except those in the professions (Occupational classes 1A and 1B)
 Proprietors, as defined above
 Farmers
 Restaurant, boarding-house, hotel and public house proprietors
 Retail and wholesale traders
 Road transport proprietors

Occupational class 2B (Administrators and managers)

Managers and administrators in mining, manufacturing, trade, transport, finance, and public administration, including the following:

Auctioneers, estate agents, appraisers, valuers	Government officials n.e.s. (not clerks) (III)
Bankers, inspectors (I)	Inspectors and superintendents in gas, water and electricity distribution (III)
Bus and tram managers (I)	Insurance managers, underwriters (I)
Civil service administrative and other higher officers (I)	Police inspectors, superintendents, chief constables
Civil service and local government executive and higher clerical officers	Railway officials
Clerks of works	Secretaries and registrars of companies, institutions and charities

Company directors (business not specified) (I)	Shipbrokers, agents, managers (I) Stockbrokers (I)
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Occupational class 3 (Clerical workers)

Clerks n.e.s.	Insurance agents and canvassers
Costing, estimating and accounting clerks, including book-keepers (II)	Office machine operators Typists and shorthand typists

Occupational class 4 (Foremen, supervisors, inspectors)

All foremen, supervisors and inspectors, including the following:

Farm bailiffs	Inspectors, viewers, testers
Haulage and cartage contractors, master carmen (employees)	Overmen, coalmining

Occupational class 5 (Skilled manual workers)

All craftsmen and skilled process workers in social class III,
as well as the following:

Fire brigade officers and men	Railway transport: engine drivers, guards, signalmen, pointsmen and level crossing men
Hairdressers	
Photographers	Sea transport: petty officers, seamen and deckhands; pursers, stewards and domestic staff
Police, other ranks	
Radio operators	Warehousemen Stationary engine drivers

Occupational class 6 (Semi-skilled manual workers)

Semi-skilled process workers in class IV, as well as the following:

Agricultural workers	Packers
Armed forces, other ranks (III)	Postmen and sorters (III)
Conductors, bus and tram	Railway engine firemen, running-shed workers, ticket collectors
Domestic servants, including chefs (III) and kitchen hands (V)	Salesmen, shop assistants (III) Storekeepers (III)
Drivers of self-propelled passenger and goods vehicles (III)	Telephone and telegraph operators (III) Waiters (III)
Laundry workers	
Machine minders	

Occupational class 7 (Unskilled manual workers)

Boiler firemen and stokers (IV)	Labourers and other unskilled n.e.s.
Builders' labourers and navvies	Porters
Charwomen, office cleaners	Watchmen
Door-keepers (IV)	

(Figures in brackets denote the Registrar General's social class where this does not align with the occupational class as suggested in the rules stated above.)'

APPENDIX II

(a) Britain

List of organisations revealed in research to have participated to a greater or lesser extent in post World War II campaigns for equality at work. Some are trades unions, sections of political parties, or politically funded bodies. Others are pressure groups, some of which are 'umbrella' organisations to which others, sometimes listed, sometimes not, affiliated for specific purposes. The list contains 108 organisations. At least another 100 women's organisations exist, some of which espouse feminist issues; others are anti-egalitarian; most are engaged in cultural, religious or sporting activities.

Actresses Franchise League
 All Party Equal Rights Group
 Amalgamated Union of Engineering Workers
 APEX
 Associated Countrywomen of the World
 Association of Broadcasting and Allied Staff
 Association of Headmistresses
 Association of Assistant Mistresses in Secondary Schools
 Association of Moral and Social Hygiene
 Association of Scientific Staffs and Engineering Technicians
 Association of Scientific Technical and Managerial Staff
 Association of Teachers of Domestic Subjects

British Commonwealth League of Women
 British Federation of University Women

Campaign for Financial and Legal Independence
 Co-operative Women's Guild
 Concert Artistes Association
 Confederation of Shipbuilding and Engineering Unions
 Conservative Women's National Advisory Committee
 Council for the Single Parent and Her Dependants
 Council of Women Civil Servants
 Cruse Organisation for Widows
 Electrical Association for Women
 Equal Pay Campaign
 Equal Pay Coordinating Committee
 Equal Pay and Opportunities Campaign

Fawcett Society : Formerly London Association for Suffrage
 London and National Society for Women's Service
 Federation of Soroptimist Clubs

General and Municipal Workers Union
 Guild of Insurance Office Staff

Housewives Register
 Institute of Qualified Personal Secretaries
 International Alliance of Women for Suffrage and Equal Citizenship
 International Alliance of Women
 Inter-Organisational Committee sponsored by Fawcett Society

Josephine Butler Society

Legal Action Group
 London and National Society for Women's Service

Married Women's Association
 Medical Women's Federation
 Mineworkers Federation
 Mothers' Union

National Advisory Centre for Careers for Women
 National Association of Local Government Employees
 National Association for One Parent Families
 National Association of Probation Officers
 National Association of the Self Employed
 National Association of Women Citizens
 National Association of Women's Clubs
 National Council for Civil Liberties
 National Council for Social Service
 National Council of Women of Great Britain
 National Federation of Business and Professional Women's Clubs
 National Federation of Women's Institutes
 National Joint Committee of Working Women's Organisations
 National Labour Women's Advisory Committee
 National Organisation for Women (London chapter of US organisation)
 National Union of Journalists
 National Union of Public Employees
 National Union of Students
 National Union of Teachers
 National Union of Townswomen's Guilds
 National Union of Women Workers

Open Door Council
 Over Forty Association of Women Workers

Post Office Engineers

Rights of Women
 Royal College of Midwives
 Royal College of Nursing
 Runnymede Trust

St Joan's Alliance : Formerly The Catholic Women's Suffrage Society
 Scottish Trade Union Congress
 Six Point Group
 South Wales Miners
 Standing Conference of Women's Organisations
 Status of Women Committee
 Suffragette Fellowship

Tailors and Garment Workers Union
 TASS
 Trades Union Congress and its Women's Advisory Committee
 Transport and General Workers Union

Union of Shop Distributive and Allied Workers
 Union of Women Teachers

Wages for Wives
 Women in Building
 Women's Engineering Society
 Women's Farm and Garden Association
 Women's Forum : Formerly Women's Group on Public Welfare
 Women's Freedom League (Breakaway from Women's Social and Political Union)
 Women's Gas Federation and Young Homemakers
 Women's Guild of Empire
 Women's Human Rights Movement
 Women's Information and Study Centre
 Women's International League for Peace and Freedom
 Women's Liberal Federation
 Women's Liberation Workshop
 Women's Lobby
 Women in the Media
 Women's National Commission
 Women in Parliament
 Women Public Health Officers Association
 Women's Publicity Planning Association
 Women's Report Editorial Collective
 Women's Research and Resources Centre
 Women Solicitors Group
 Working Women's Centre
 World Association of Girl Guides and Scouts

 Young Women's Christian Association

(b) List of American organisations revealed in research and by Freeman (op cit) that participated to a greater or lesser extent in promoting equality for working women; or that supported President Carter's Reorganisation Project. The list is very selective. It does not include all unions, etc with women's rights programmes, nor does it include all of the thousands of groups alleged to exist. These include locally based organisations of conventional or radical types. Examples of the latter are

Chicago Women's Liberation
 New York Radical Women
 Seattle Radical Women

Amalgamated Clothing Workers
 American Civil Liberties Union
 American Council of the Blind
 American Federation of Government Employees
 American Federation of Labor - Congress of Industrial Organisations
 American Federation of State County and Municipal Employees
 American GI Forum of the United States
 Anti-Defamation League of B'Nai B'Rith
 Asian-American Legal Defence and Education Fund
 Asociacion Nacional Pro Personas Mayores

Centre for Law and Social Policy
 Centre for Women's Policy Studies

Church Women United
 Cleveland Women Working
 Coalittion of Labor Union Women
 Commissions on Status of Women (Federal and State)
 Communication Workers Union
 Congress of Cities
 Congressional Black Caucus

Dayton Women Working
 Disability Rights Center

Federally Employed Women
 Federation of Organisations for Professional Women

Grey Panthers

Human Rights for Women

International Association of Official Human Rights Agencies
 International Ladies Garment Workers Union

Lawyers Committee for Civil Rights Under Law
 League for Academic Women
 League of American Working Women
 League of Women Voters
 Legal Research Services for the Elderly

Martin Luther King Center for Social Change
 Mexican American Legal Defense Fund

National Alliance of Postal and Federal Employees
 National Association for the Advancement of Colored People
 and NAACP Legal Defense and Education Fund
 National Association of Retired Persons
 National Bar Association
 National Black Caucus of Local Black Elected Officials
 National Black Feminist Organisation
 National Business League
 National Catholic Conference for International Justice
 National Coalition of American Nuns
 National Coalition for Women and Girls in Education
 National Conference of Puerto Rican Women
 National Council on the Aging
 National Caucus on the Black Aged
 National Council of Negro Women
 National Council of Senior Citizens
 National Education Association
 National Federation of Federal Employees
 National Federation of Independent Business
 National Indian Council on Aging
 National Organisation for Women and NOW Legal and Education Defense
 Fund
 National Retired Teachers Association
 National Small Business Association
 National Student Association
 National Urban League
 National Urban Coalition
 National Women's Party

National Women's Political Caucus

Operation Push

Opportunities Industrialization Center

Professional Women's Caucus

Project on the Status and Education of Women

Puerto Rican Legal Defense and Education Fund

St Joan's Alliance (US branch of British organisation)

Southern Christian Leadership Conference

A Philip Randolph Institute

Retail Clerks International Union

Teamsters Union

United Automobile Workers

Wider Opportunities for Women

Women's Action Alliance

Women's Board of Methodist Church

Women's Caucus of American Political Science Association

Women's Caucus of American Psychological Association

Women's Caucus of American Sociological Association

Women Employed

Women's Equity Action League

Women Inc

Women's Legal Defense Fund

Women's Lobby Inc

Women Office Workers

World Committee of Islam in the West

Young Women's Christian Association

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Trades Union Congress

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