THE UNIVERSITY OF CHICAGO PRESS JOURNALS

Women's History Goes to Trial: EEOC v. Sears, Roebuck and Company

Author(s): Jacquelyn Dowd Hall and Sandi E. Cooper

Source: *Signs*, Summer, 1986, Vol. 11, No. 4 (Summer, 1986), pp. 751-779

Published by: The University of Chicago Press

Stable URL: https://www.jstor.org/stable/3174143

REFERENCES
Linked references are available on JSTOR for this article:
https://www.jstor.org/stable/3174143?seq=1&cid=pdf-reference#references_tab_contents
You may need to log in to JSTOR to access the linked references.

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at https://about.jstor.org/terms

The University of Chicago Press is collaborating with JSTOR to digitize, preserve and extend access to *Signs*

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

ARCHIVES

WOMEN'S HISTORY GOES TO TRIAL: *EEOC v. SEARS, ROEBUCK and COMPANY*

PREFACE BY THE BOARD OF ASSOCIATE EDITORS

JACQUELYN DOWD HALL

The Sears case has far-reaching implications for the future of affirmative action, and we welcome readers' comments on the legal issues it raises. But we particularly want to encourage discussion of its implications for feminist scholarship. This turn of events—a courtroom confrontation between feminist scholars offering antithetical interpretations of the new scholarship in women's history—holds an obvious potential for animosity. Instead, we hope it can serve as a catalyst for fruitful debate.

One set of questions raised by the Sears case has to do with the use and abuse of history. Social scientists have commonly put their work at the service of policymakers. In recent years, a new breed of professionals calling themselves "public historians" has argued that historians can and should do the same. Critics have charged that public historians who seek a living as consultants, advisors, and expert witnesses abandon critical thinking in the service of corporate power.

What happens to scholarship when historians bring their skills and expertise to bear in legal controversies? Does the use of historians as expert witnesses necessarily imply that the past predicts the future, ignoring unrealized possibilities and downplaying human agency? Is the style of discourse demanded by litigation inimical to a discipline that privileges irony, contingency, and qualification? Do feminist scholars have special

[*Signs: Journal of Women in Culture and Society* 1986, vol. 11, no. 4]
© 1986 by The University of Chicago. All rights reserved. 0097-9740/86/1104-0006$01.00

This content downloaded from 132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

responsibilities in this regard, either to put their work to practical use or protect it from distortion? Perhaps the Sears debate differs from ordinary scholarly argument only in the immediacy of its economic and political consequences. If so, it can serve as a salutary reminder of the real-life implications of our work.

A second set of concerns is related to the substance of our work. Although the expert witnesses in the Sears case cited numerous scholarly sources, the literature on working women, particularly in the twentieth century, is relatively thin. Has the emphasis of the new scholarship on white middle-class women in the nineteenth century distorted the female past? Have we ignored diversity in our search for commonalities? How different would this debate have been if black women, for instance, were fully represented in the literature? Why was there so little mention of labor segmentation theory, and what bearing might those theories have on antidiscrimination law?

Much of the testimony in the Sears case revolved around the concept of women's culture. Some would argue that the use of this concept by the Sears defense represents a distortion of feminist scholarship; but one of the marks of a good historian is an openness to "bad news." Might these differing interpretations indicate a problematic ambiguity in our work? In our rush to establish women's dignity and relative autonomy, have we downplayed external constraints? Conversely, have our efforts to understand how women participate in their own victimization lent credence to the notion that the absence of militancy or assertiveness implies consent rather than pragmatic accommodation to unequal power? Have we generalized too far from the evidence of distinctive women's values? Or have we stopped short of the research that would show how those values change in different life stages and vary across class, ethnic, and racial lines? Has our research stressed the culture of the private sphere at the expense of understanding the culture of women's work? Finally, have we fallen unwittingly into dichotomies—family values versus individualism, economism versus culturalism, militancy versus victimization—that do violence to the complexities of women's consciousness and behavior?

These are only a few of the questions the following documents raise. They are not meant to define but to spark debate. We invite your questions and response.

Department of History
University of North Carolina at Chapel Hill

This content downloaded from 132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

INTRODUCTION TO THE DOCUMENTS

SANDI E. COOPER

The new scholarship on women has been discovered by the American legal system in a courtroom battle over working women employed at Sears, Roebuck and Company.[1] Empowered by Title VII of the 1964 Civil Rights Act, the United States Equal Employment Opportunity Commission (EEOC) initiated investigations of a number of American corporations in the 1970s, urging the adoption of affirmative action plans. Most companies complied, establishing programs to recruit and train female and nonwhite male employees in nontraditional jobs.[2] Sears announced an affirmative action program in 1968, and by 1973 had set up a more elaborate plan including goals. Six years later, EEOC investigations concluded that the Sears plan had made little difference in the salaries and status of women employees. They remained, according to the EEOC, underrepresented in better-paying commission sales jobs and managerial posts, and moreover,

[1] For a discussion of the use of the expert witnesses, see the classic article by Lawrence Rosen, "The Anthropologist as Expert Witness," *American Anthropologist* 79, no. 3 (September 1977): 555–78. See also S. Charles Bolton, "The Historian as Expert Witness: Creationism in Arkansas," and Carl M. Becker, "Professor for the Plaintiff: Classroom to Courtroom," in *Public Historian* 4, no. 3 (Summer 1982): 59–77.

[2] Those in compliance included General Electric, General Motors, and American Telephone and Telegraph.

[*Signs: Journal of Women in Culture and Society* 1986, vol. 11, no. 4]
© 1986 by The University of Chicago. All rights reserved. 0097-9740/86/1104-0007$01.00

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

women managers were paid lower wages than men. In response to EEOC pressure, Sears went to court to challenge the federal government's authority to propose and enforce hiring guidelines. In May 1979 the government won its case in federal court, where its right to establish affirmative action plans was upheld.[3]

The EEOC then filed a discrimination suit against the giant retailer, charging discrimination in two main categories of employment: commission sales—the selling of items with high ticket prices that netted high commissions and, thus, better pay than ordinary wages; and wage differences between men and women in managerial and administrative jobs.[4] Sears countered that women were reluctant to compete with men to sell traditionally male products (such as plumbing or automotive supplies) to male buyers. Overall, argued Sears, women preferred to work in departments selling items that were familiar or nonthreatening.[5] In response, the EEOC presented an array of statistics to describe women who applied for jobs, women who were hired, and what type of jobs the latter were given—in an effort to demonstrate *patterns* of discrimination against women.[6] Sears, however, maintained that the government's statistics did not prove discrimination and Sears disputed the EEOC's "a priori assumptions of male/female sameness with respect to preferences, interests, and qualifications."[7]

[3] Judge June L. Green ruled against Sears on May 15, 1979, in Washington. See Edward Cowan, "Sears Loses Its Suit over Job Bias Rules," *New York Times* (May 16, 1979). See also Phyllis Segal, "Right War, Wrong Tactics," *National NOW Times* (March 1979), 1, 3.

[4] EEOC v. Sears, Roebuck and Co., no. 79-C-4373, Plaintiff's Pretrial Brief—Commission Sales Issues (Revised, November 19, 1984), pp. 1–2; Plaintiff's Pretrial Brief, Checklist Compensation Issue, pp. 1–3. Here the government noted that disparate salary rates for men and women were continued even after 1976 when the company altered its system for compensating executive personnel.

[5] EEOC v. Sears, Roebuck and Co., Trial Brief of Sears, Roebuck and Co. (September–October 1984), pp. 8–15 passim. Quoting from the case of Malloch v. J. C. Penney, Sears argued: "Plaintiffs have failed to take into account . . . the fact that many women preferred the noncommission areas. Either by training or prior experience or just as a matter of likes and dislikes, many women preferred working with the fashion side of the store rather than in areas such as appliances, stereos, or carpets" (p. 19). In the summation of the case, Sears maintained "Sears' managers continually tried to persuade reluctant women—even those only marginally qualified—to consider commission selling as well as other nontraditional jobs. . . . Many managers reported that they had interviewed every woman in the store and found not one who was willing to sell big ticket merchandise" (Post Trial Brief of Sears, Roebuck and Co., June 26, 1985), p. 9.

[6] Plaintiff's Pretrial Brief—Commission Sales Issues (Revised November 19, 1984), pp. 24–27, 38–71 (for tables).

[7] Trial Brief of Sears, p. 21. Arguments discrediting statistical evidence as a source of discrimination were made in the Trial Brief of Sears, Roebuck and Co., pp. 5, 16–18, 25–26, 50–54, 74–77. For instance: "Sears will offer evidence to prove in many cases, it is not the most appropriate analytical method for use in this compensation case. Instead, cohort analyses of females and males entering Sears at the same time and traced year to year provide a clear picture" (p. 54). See also reference to the issue in Juan William, "Despite Doubts, U.S. Presses to Resolve Sears Bias Case," *Washington Post* (July 9, 1985).

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

In fighting the government's charges, Sears argued that its hiring policies reflected American values about men and women. Since it was a national company, its work force mirrored national social patterns.[8] To bolster its argument, the defense counsel consulted pollsters on American public opinion, as well as economists and social scientists whose work supported the view that women preferred nurturing and supportive ideals over competitive values.

Feminist scholarship in women's history became a participant in this confrontation on July 2, 1984, with the formal, pretrial deposition of Rosalind Rosenberg on behalf of Sears.[9] The trial itself began in September in Chicago (United States District Court, Northern District of Illinois, Eastern Division) with Judge John Nordberg presiding.

Professor Rosenberg, Associate Professor of History, Barnard College, was among many expert witnesses called to support Sears's position. She took the stand on March 11, 1985.[10] Her court testimony was based on an "Offer of Proof" drawn up prior to her appearance. This document summarizes the positions that a witness intends to argue. It serves as written testimony and provides a basis for testimony and cross-examination. The "Offer of Proof concerning the Testimony of Dr. Rosalind Rosenberg" interprets the new scholarship on American women in a way that sustained Sears's defense against discrimination charges.[11]

Lawyers for the government consulted Dr. Alice Kessler-Harris, Professor of History, Hofstra University, in their effort to challenge Sears's historical expert.[12] The second document printed here, "Written Testimony of Alice Kessler-Harris," was prepared in spring 1985 and served as the basis of her oral testimony and cross-examination in June. It summarizes an opposing interpretation of the history of American working women.[13]

[8] Trial Brief of Sears, Roebuck and Co., pp. 22–27 passim. The most succinct statement of this point was made by Rosalind Rosenberg in the "Offer of Proof," no. 24, reprinted below.

[9] The "Deposition of Rosalind Rosenberg" was made in the New York District Office of the EEOC, July 2 and 3, 1984, pt. 1 (55 pp.) and pt. 2 (156 pp.). The opposing deposition, that of Alice Kessler-Harris, was made on April 12 and 15, 1985, in a New York City law office.

[10] Rosalind Rosenberg's major publication is *Beyond Separate Spheres: The Intellectual Roots of Modern Feminism* (New Haven, Conn.: Yale University Press, 1982), a book that examines a group of American woman social scientists who challenged Victorian presumptions about women's behavior based on biology.

[11] Minor changes in punctuation and spelling have been made. Otherwise both documents stand as they were presented to the court.

[12] Alice Kessler-Harris is the author of *Out to Work: A History of Wage-earning Women in the United States* (New York: Oxford University Press, 1982), and *Women Have Always Worked* (New York: Feminist Press, 1981).

[13] Alice Kessler-Harris's "Written Testimony" served as the basis of her oral testimony in court on June 6 and 7, 1985, found in the Trial Transcript, pp. 16493–613. The rules of the court permitted Sears to return Rosalind Rosenberg to the stand to rebut Kessler-Harris's testimony. (See "Trial Testimony of Dr. Rosalind Rosenberg," June 22, 1985, pp. 1814–

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

On February 3, 1986, Judge Nordberg ruled that the EEOC had not proven its charges against Sears, Roebuck and Company. Copies of the trial documents of interest to *Signs* readers—briefs, depositions, offers of proof, and transcripts of examination and cross-examination involving the two women historians—are available at the Schlesinger Library, Radcliffe College, Cambridge, Massachusetts.[14]

College of Staten Island
City University of New York

18306). For this appearance, she submitted a second written document (not included here) entitled "Written Rebuttal Testimony of Dr. Rosalind Rosenberg," 20 pp. plus an appendix of 12 pp. Summation of arguments concluded June 26–28, 1985.

[14] For a more detailed analysis of this case, see Ruth Milkman, "Women's History and the Sears Case," *Feminist Studies* 12, no. 2 (Summer 1986): 375–400.

* * *

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff,

v. No. 79-C-4373

SEARS, ROEBUCK AND CO., JOHN A. NORDBERG
Defendant District Judge

OFFER OF PROOF CONCERNING THE TESTIMONY OF DR. ROSALIND ROSENBERG

Dr. Rosalind Rosenberg, an associate professor of history at Barnard College, Columbia University, whose resume is attached as Exhibit 1, is expected to testify on behalf of Sears, Roebuck and Co. (Sears) as follows:

1. The EEOC assumption that women and men have identical interests and aspirations regarding work is incorrect. Historically, men and women have had different interests, goals, and aspirations regarding work. These differences in interests and attitudes, though in many instances diminishing, have persisted into the present.[1]

[1] Alice Kessler-Harris, "American Women and the American Character: A Feminist Perspective," in John Hague, ed., *American Character and Culture* (Westport: Greenwood Press, 1979), p. 232 – Even after women were "sucked into the competitive maelstrom, . . . they continued to rationalize their activities in terms of familiar humane and nurturing values." These values, which were suited to family succor, tended to foster "inappropriate behavior patterns for participation in a competitive world"; Nancy Cott, *The Bonds of Womanhood: "Woman's Sphere" in New England, 1780–1835* (New Haven: Yale University Press, 1977), 200–201; Carl Degler, *At Odds: Women and the Family in America from the Revolution to the Present* (New York: Oxford University Press, 1980), pp. 26–28; Alice Kessler-Harris, *Out to Work: A History of Wage-Earning Women in the United States* (New York: Oxford University Press, 1982), pp. 50–51, 105, 128, 312; U.S. Department of Labor, Employment and Training Administration, R&D Monograph 24, *Years of Decision*, vol. 4, A Longitudinal Study of the Educational and Labor Market Experience of Young Women, pp. 115, 136–37, found that when young women were asked in 1968 what they wanted to be at the age of thirty-five, only fourteen percent of the white and ten percent of the black non-college-educated women expected to work in occupations that were not "typical" for females. A similar study conducted five years later, in 1973, showed only a slightly increased interest among young women in atypical occupations (nineteen percent of the white and thirteen percent of the black non-college-educated women). College women demonstrated a slightly greater interest in nontraditional jobs than did less educated women, but even among college women traditional aspirations dominated. Only twenty-two percent of black and twenty-five percent of white college-educated women declared an interest in masculine jobs. Further-

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

2. The Equal Employment Opportunity Commission (EEOC) fails to place workers in their social and historical settings and ignores the fact that many workers, especially women, have goals and values other than realizing maximum economic gain. The labor force contains millions of workers whose lives and values were shaped in earlier eras, a fact of particular significance because of the rapid changes that occurred in American society during the 1970s. For example, it was not until the 1976 edition that Dr. Benjamin Spock's influential book on child care gave its approval to mothers working outside the home (earlier editions discussed the working mother in a section on "Special Problems").[2]

3. The distinction between male and female serves as a basic organizing principle for every human culture. Although societies differ in the specific tasks they assign to the two sexes, all societies allocate adult roles on the basis of sex. Historically, these allocations have been reinforced externally through social pressures and governmental action and internally through the internalization of social norms.[3]

4. Throughout American history there has been a consensus, shared by women, that, for women, working outside the home is subordinate to family needs. This consensus has been so strong that traditionally a stigma attached to married women working outside the home unless their work was essential to family support. Historically, the states have reinforced the traditional division of labor in marriage by requiring husbands to support their wives and making nonsupport a ground for divorce.[4]

---

more, the presence or expectation of children was found to decrease the likelihood that college women would expect to be in a male occupation.

[2] Ronald Schatz, *The Electrical Workers: A History of Labor at General Electric and Westinghouse, 1923–60* (Urbana: University of Illinois Press, 1983), p. 42 – Schatz shows that both men and women at GE opposed incentive pay system between the wars because they believed it would be a source of discord among workers; p. 125 – Schatz shows that in the 1940s women union leaders were reluctant to encourage women to compete for men's jobs, "a man has to make money in order to keep his family"; Lillian Rubin, *Worlds of Pain: Life in the Working Class Family* (New York: Basic Books, 1976), pp. 130–131 – Rubin shows that although working class women believe in equal pay for equal work, they persist in their reluctance to compete for better-paying jobs. As one women says, "If a man with a wife and kids needs a job, no woman ought to be able to take it away from him," and another woman adds "I don't like women who want to be men."

[3] Sandra Bem, "Gender Schema Theory: A Cognitive Account of Sex Typing," *Psychological Review* 88 (1981): 354; Michelle Rosaldo and Louise Lamphere, *Woman, Culture, and Society* (Stanford: Stanford University Press, 1974), pp. 1–42; Jane M. Atkinson, Review of Anthropology, *Signs* 8 (Winter 1982): 238–58.

[4] Kessler-Harris, *Out to Work*, p. 49 – in the nineteenth century, "the domestic code . . . held that the home required woman's moral and spiritual presence far more than her wage labor;" p. 51 – "For his wife to be earning income meant that the husband had failed;" p. 105 – in 1869 one observer said that "some people think women are unfitted for the discharge of home duties by staying in stores and factories a few years;" p. 303 – by 1953 there were shortages of stenographers, typists, nurses, teachers, and social workers due to "low depression birth rates and high postwar marriage rates"; p. 312 – by 1970, "still caught in the belief that the home came first, about one-third of the married women who earned wages took

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

5. Even the semisubsistence farming families in seventeenth-century America divided work according to sex. Women cared for the children, prepared the food, nursed the sick, made the clothes, and tended the garden. Men worked the fields, cared for the livestock, and represented the family in the outside world. Many of the jobs that men and women perform in the labor force today are the modern equivalents of traditional male and female tasks. For women these modern equivalents are simply added on to traditional tasks, especially if the woman is a wife and mother.[5]

6. As America began to commercialize toward the end of the eighteenth century and work that had formerly been done at home was transferred to offices and factories, those who took the newly created jobs tended to be those who had formerly done the same kind of work at home. Thus, the early textile workers were the unmarried daughters of New England farmers, and the early clerks were the sons who, being males, historically had been responsible for representing the family in the marketplace.[6]

7.† Before the twentieth century, the double burden of fulfilling woman's historic role and being a member of the labor force was so great that wives and mothers rarely attempted to do both. In 1900, only thirteen percent of all women workers were married. The rest were young women, working for a few years as domestic servants, factory workers, and department store clerks until they too married. Given the demands of housewifery and motherhood on the one hand and the long hours demanded of wage labor on the other, few married women wanted to or could work outside the home.[7]

---

part-time jobs, and many took jobs for which their education and skills overqualified them. They chose to work for the convenience of being close to home or for hours that suited children's schedules." Alice Kessler-Harris, "Rosie the Riveter: Who Was She?" *Labor History* (1983): 252 – even though industries recruited women during World War II as never before, "most women with children chose not to engage in this war." Leo Kanowitz, *Women and the Law* (Albuquerque: University of New Mexico Press, 1969), p. 96.

[5] Laurel Thatcher Ulrich, *Goodwives: Image and Reality in Lives of Women in Northern New England, 1650–1750* (New York: Knopf, 1982), pp. 13–34; Julie Matthaei, *An Economic History of Women in America* (New York: Schocken, 1982), pp. 195–215.

[6] Nancy Cott, *The Bonds of Womanhood*, pp. 19–62; Thomas Dublin, *Women at Work: The Transformation of Work and Community in Lowell, Massachusetts, 1826–1860* (New York: Columbia University Press, 1979), pp. 1–13.

†*Editor's note.*—The following paragraph was changed in court on May 10, 1985, to read as follows: "Before the twentieth century, the double burden of fulfilling woman's role inside the home and contributing to the labor force outside the home was so great that few married women attempted to do both, unless financial pressures, divorce, or widowhood drove them to it. In 1900 most women workers were young and unmarried. Most were working as domestic servants, factory workers, and department store clerks until they too married. Given the demands of housewifery and motherhood on the one hand and the long hours demanded of wage labor outside the home on the other, few married women wanted to or could work outside the home."

[7] Kessler-Harris, *Out to Work*, p. 153.

This content downloaded from 132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

8. The depression of the 1930s sharpened society's disapproval of married women working. According to a 1936 poll, eighty-two percent of the respondents felt that wives should not work if their husbands were working. The Federal Economy Act, passed in 1932, precluded employment in government service of two members of the same family. The impact of that law fell overwhelmingly upon married women. Legislation was introduced in many states to restrict employment of married women. At the local level, many school systems refused to hire married women as teachers and dismissed women teachers who subsequently married; across the country, many businesses refused to hire married women.[8]

9. The expanding post–World War II economy, the popularity of birth control, the modernization of housekeeping, the reduction of the work week, and the growing availability of part-time work all have made it easier for wives and mothers to enter the work force in the twentieth century. Inflation has made it necessary. Between 1940 and 1980, the labor force participation of married women (husbands present) more than tripled, increasing from 14.7 percent to 50.2 percent. By 1980, 62 percent of the mothers of school-age children were in the labor force.[9]

10. Even as they have entered the labor force in increasing numbers, women have retained their historic commitment to the home.

(a) As illustrated by the World War II experience, American individualism has stood in the way of government policies that would make it easier for married women and women with small children to work. During World War II, when the country desperately needed women workers in its war industries, the federal government failed to meet child care needs, even though America's English allies provided extensive child care facilities during the war. As soon as the war was over, child care was abandoned altogether by the American government.

(b) Men perceive paid employment as their primary contribution to family life, a contribution that exempts them from the responsibility of participating in housework or child care to the same extent as women. Husbands' contributions to household labor largely are unaffected by

[8] The 1936 poll was conducted by George Gallup; Ruth Shallcross, "Should Married Women Work?" *Public Affairs Pamphlets* (November 1940): pp. 1–31 – This study of popular reactions to married women's working found that some businesses were much more likely to exclude married women than others (eighty-four percent of insurance companies compared with eleven percent of mercantile concerns); Winifred Wandersee, *Women's Work and Family Values, 1920–1940* (Cambridge: Harvard University Press, 1981), p. 100 – shows that sales work was an area that attracted an unusually high number of married women (in 1940, 42 percent of saleswomen were married, compared with 35.5 percent of female labor force overall); William Chafe, *The American Woman: Her Changing Social, Economic, and Political Roles, 1920–1970* (New York: Oxford University Press, 1972), pp. 108–11.

[9] Chafe, *The American Woman*, pp. 190–91; Carl Degler, *At Odds: Women and the Family in America from the Revolution to the Present* (New York: Oxford, 1980), pp. 418–35; Eileen Appelbaum, *Back to Work: Determinants of Women's Successful Re-entry* (Boston: Auburn House, 1981), pp. 1–35. (Appelbaum appears to think that inflation did not occur until 1973).

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

wives' hours at work. Employed wives divide their work hours almost equally between home and job, while husbands devote eighty percent of their work time to job and twenty percent to home. In studies done in the 1960s, full-time employed wives averaged almost 70 hours per week in paid and unpaid work, while their husbands spent closer to fifty-five hours per week. In the 1960s, women did eighty percent of the housework; in 1975, they were still doing seventy-five percent of it.[10]

11. Because housework and child care continue to affect women's labor force participation even today, many women choose jobs that complement their family obligation over jobs that might increase and enhance their earning potential.[11]

12. Even if women wanted to realize maximum incomes, the time required for housework and child care limits their choices in the marketplace. Many women must choose jobs with flexible hours to meet what they perceive to be their responsibilities at home. Jobs that require full-time work, irregular hours, or weekend work present greater difficulties for wives and mothers than they do for husbands and fathers.[12]

13. Retailing has long been especially attractive to women because the conditions of work there facilitate many women's efforts to balance homemaking with breadwinning. Women seeking part-time work in the 1970s were four times as likely to choose retail sales positions as any other occupation.[13]

[10] (a) Chafe, *The American Woman*, pp. 159–72, 186–87; Leila Rupp, *Mobilizing Women for War: German and American Propaganda, 1939–1945* (Princeton: Princeton University Press, 1978), pp. 179–81.

(b) Laura Lein, "Male Participation in Home Life: Impact of Social Supports and Breadwinner Responsibility on the Allocation of Tasks," *The Family Coordinator* 28 (October 1979): 489; Karen D. Fox and Sharon Y. Nichols, "The Time Crunch: Wife's Employment and Family Work," *Journal of Family Issues* 4 (March 1983): 61–79. See also Elise Boulding, "Familial Constraints on Women's Work Roles," *Signs* 1 (Spring 1976): 95–117.

[11] Kessler-Harris, *Out to Work*, p. 312.

[12] Appelbaum, *Back to Work*, pp. 97–98 – "Currently, about 34% of all employed women in the United States work part of the week, and most of these women work only part of the year as well. . . . Among white women . . . 84% of those who work less than 35 hours a week do so by choice. Moreover, there has been a rapid increase in voluntary part-time employment." There are more women seeking part-time jobs than there are part-time jobs for them. "Adult women have frequently sought part-time employment as a means of meeting home and child care responsibilities while contributing to family income."

[13] Susan Porter Benson, "Women in Retail Sales Work: The Continuing Dilemma of Service," in Karen Brodkin Sacks and Dorothy Remy, eds., *My Troubles Are Going to Have Trouble With Me* (New Brunswick: Rutgers University Press, 1984), p. 118 – "Part-time work opportunities are important to many women, as are the relatively attractive and nonhazardous work surroundings. In some ways, the department store is a familiar and nonthreatening work environment; every woman was a customer before she became a saleswoman. Paid vacations are still more common in retailing than in factory work, and the prospect of a long summer layoff can be attractive to women with school-age children." Appelbaum, *Back to Work*, p. 106.

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

14. Women, anticipating that their labor force participation will be interrupted by child rearing and home responsibilities, are less likely to make the same educational investments as men. Historically, few women have pursued professional degrees, including business degrees, although the number of women entering professional schools rose dramatically in the 1970s. Although the number of women attending college has almost doubled since the 1950s, men and women continue to choose different areas of study, choices that affect earning power and career advancement.[14]

15. The different attitudes, goals, and expectations toward work that have characterized men and women throughout American history have been reflected and reinforced by government laws and policies. Many of these laws and policies, such as state protective laws, were regarded as beneficient and liberal when adopted. Education policies and grants have channeled men and women into traditional jobs. Women to this day are excluded from the draft. Military policies have reinforced traditional male/female differences through training and leadership opportunities. Service-related policies such as the GI Bill, housing subsidies, and preferences for veterans in hiring have provided enormous advantages to men. Other government policies and programs in areas such as tax policy, housing, social security, and transportation also have had the purpose or effect of reinforcing traditional family patterns.[15]

16. Women's role in American society and in the American family unit has fostered the development of "feminine" values that have been internalized by women themselves and reinforced by society, through its customs, its culture, and its laws. This message is also reinforced by language usage.

[14] Rosalind Rosenberg, *Beyond Separate Spheres: Intellectual Roots of Modern Feminism* (New Haven: Yale University Press, 1982), pp. 36–51; See exhibits 9–13.

[15] Judith Baer, *The Chains of Protection: The Judicial Response to Women's Labor Legislation* (Westport, Conn.: Greenwood Press, 1978), pp. 14–42; U.S. Department of Labor Women's Bureau, Pamphlet 15, "State Labor Laws in Transition: From Protection to Equal Status for Women," 1976, pp. 3–20; Sally Hilsman Baker, "Women in Blue-Collar and Service Occupations," in Ann Stromberg and Shirley Harkness, eds., *Women Working: Theories and Facts in Perspective* (Palo Alto, Calif.: Mayfield, 1978), pp. 356–57. "More often than not, high schools accept and reinforce these young women's aspirations, self-images, and beliefs that employment will be only 'temporary'"; Ruth Schulzinger and Lisa Syron, *Inch by Inch: A Report on Equal Opportunity for Young Women in New York City's Vocational High Schools* (Center for Public Advocacy Research, November 1984), p. 45, "New York City continues to maintain a sex-segregated vocational high school system . . . seven of the ten predominantly male schools remain 90% sex-segregated." Task Force on Sex Discrimination, Civil Rights Division, U.S. Department of Justice, *Interim Report to the President*, (October 3, 1978), pp. v, 43, 74, 281; Civil Rights Division, U.S. Department of Justice, *The First Quarterly Report of the Attorney General to the President and the Cabinet Council on Legal Policy as Required by Executive Order 12336* (June 28, 1982), pp. 25–31 (on continuing discrimination in social security); Julia A. Eriksen, "An Analysis of the Journey to Work for Women," *Social Problems* 24 (April 1977): 428–35; Dolores Hayden, *Redesigning the American Dream: The Future of Housing, Work, and Family Life* (New York: Norton, 1984), pp. 7, 152–53.

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

For example, only in the past decade has the United States Census abandoned the term "salesmen" in favor of the term "sales workers."[16]

17. Historically, the emphasis on independence and competition among men and on dependence and cooperation among women has been especially marked in American society. The rapid expansion of capitalism in America led to a heavy emphasis on such qualities as political liberty, economic mobility, and competitive individualism for men. Women, on the other hand, were exhorted to be nurturant and selfless, to serve as a stabilizing force in an otherwise unstable society.[17]

18. Throughout American history women have been trained from earliest childhood to develop the humane and nurturing values expected of the American mother. Thus trained, women have assumed primary responsibility for maintaining family relationships. Early sex role messages have been and continue to be contained in books, toys, advertisements, television, movies, and print media. They are explicitly and implicitly reinforced by parents, teachers, and peers.[18]

19. Women's participation in the labor force is affected by the values they have internalized. For example:

a) Women tend to be more relationship-centered and men tend to be more work-centered. Although both men and women find satisfaction and a sense of self-worth in their jobs, men are more likely than women to derive their self-image from their work. Most employed women continue to derive their self-image from their role as wife and mother. Women tend to be more interested than men in the cooperative, social aspects of the work situation.[19a]

[16] Jeanne Block, "Conceptions of Sex Role: Some Cross-Cultural and Longitudinal Perspectives," *American Psychologist* 23 (June 1973): 512–26; Sandra Bem, "The Measurement of Psychological Androgyny," *Journal of Consulting and Clinical Psychology* 42 (1974): 155–62; Compare Census for 1970 with Census for 1980.

[17] Barbara Welter, "The Cult of True Womanhood: 1820–1860," *American Quarterly* 18 (Spring 1966): 151; Kathryn Kish Sklar, *Catherine Beecher: A Study in American Domesticity* (New Haven: Yale University Press, 1974), passim; Jane Addams, *Twenty Years at Hull House* (1910). The fact that men still tend to define themselves in terms of "agency" and that women still tend to define themselves in terms of "communion" is stressed in the work of Block (see above) and Gilligan (see below).

[18] Jeffrey Rubin, et al., "The Eye of the Beholder: Parents' Views on Sex of Newborns," *American Journal of Orthopsychiatry* 44 (July 1974): 512–19 – found that parents attribute different qualities to girls and boys from birth; Jane Bergman, "Are Little Girls Being Harmed by Sesame Street?" in J. Stacey et al., *And Jill Came Tumbling After: Sexism in American Education* (New York: Dell, 1974), pp. 111–115; Patricia Mamay and Richard Simpson, "Three Female Roles in Television Commercials," *Sex Roles* 7 (1981): 1223–32; Dick and Jane Slide Show.

[19a] Philip Blumstein and Pepper Schwartz, *American Couples: Money, Work, and Sex* (New York: William Morrow, 1983), pp. 325–26 – this is a study of 12,000 couples from different social and economic backgrounds. Pp. 325–26 – On men's and women's attitudes toward work and relationships: "Work is an important part of a man's self-image. For most married couples, it is still the man's work that remains sacrosanct. His superior earning power

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

b) Women are trained from earliest childhood to develop different expectations from men about what aspirations are socially acceptable. Women who challenge those expectations by choosing jobs typically pursued by men often experience doubts about their ability to do well. A 1984 study of 628 graduate women in science, engineering, and medicine at Stanford University concludes that "women feel less self-confident and assertive than their male counterparts, less sure of their ability, less trusting of their own judgment, and more fearful of making mistakes."[19b]

c) Women are seen by themselves and by society as less competitive than men and more concerned with protecting personal relationships.[19c]

---

means it is in the couple's best interest to make choices that will support his presence in the work world. It is interesting that even when the couple shares the provider responsibility, the husband's career will probably continue to be put first. . . . Women in their relationships with men increasingly see employment as part of their self-image, although this does not yet include taking on the provider role. We believe that this role is still foreign to most of them. They wish to work, but not as the primary support of the family. Further, while some women in our study are 'work-centered,' it remains a minority. We think that most employed women continue to value their role as companion and caretaker. Women in the study seem to want respect for both roles and are seeking a way to perform them both successfully. They also want to preserve part of men's traditional commitment to the world of work: They still want their partners to achieve. Women want to look up to, or at least directly across at, their male partner if they are to respect him." P. 167 – "All women, both heterosexual and homosexual, are more likely to put their relationships before their work." Husbands: thirty-nine percent describe themselves as relationship-centered. Wives: fifty-nine percent describe themselves as relationship-centered. Carol Gilligan, *In A Different Voice: Psychological Theory and Women's Development* (Cambridge: Harvard University Press, 1982), pp. 24–63; Nancy Chodorow, *The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender* (Berkeley: University of California Press, 1978), pp. 173–210.

[19b] Elizabeth Kirchner and Sarah Vondracek, "What Do You Want To Be When You Grow Up? Vocational Choice in Children 3–6" (paper presented to the meeting of the Society for Research in Child Development, Philadelphia, March 1973) (ERIC document ED 076 244) – shows that, even as preschoolers, girls choose fewer occupations than boys do and are more likely to project themselves into a parent role; Helen Astin, "Stability and Change in the Plans of Ninth Grade Girls," *Personnel and Guidance Journal* 46 (June 1968): 961–66 – shows decline in desire to pursue careers in sciences and the professions from sixteen percent in the ninth grade to five percent four years later; U.S. Department of Labor, *Years of Decision*, pp. 115, 136–37 (see note 1) – shows that only fourteen to twenty-five percent of all young women expect to have nontraditional careers; A. Regula Herzog, "Paid Work, Child Care, and Housework: A National survey of High School Seniors," *Sex Roles* 9 (1983): 132, "most seniors do not consider it desirable that the mother of preschool children work even half time"; Carolyn J. Breedlove and Victor G. Cicirelli, "Women's Fear of Success in Relation to Personal Characteristics and Type of Occupation," *The Journal of Psychology* 86 (1974): 181–90, shows that women lack confidence about their ability to do well in "masculine" fields; Diana Diamond, "High Test Scores Don't Bring Confidence, Automatic Success," *Stanford Observor*, November 1984. – women lack confidence in themselves despite the fact that their academic background and graduate entrance examination scores are better than those of men.

[19c] Block, "Conceptions of Sex Role," 512–26; Sandra Bem, "The Measurement of Psychological Androgyny," *Journal of Consulting and Clinical Psychology* 42 (1974): 155–62; Gilligan, *In a Different Voice*, pp. 24–63.

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

d) Men's more extensive experience in competitive sports prepares them for the competitiveness, aggressiveness, teamwork, and leadership required for many jobs. The prohibition of sex discrimination in athletic programs encompassed by Title IX of the Education Amendments of 1972 was based on a recognition of the handicap women's absence from sports places upon them. Despite Title IX, men still participate in the more aggressive competitive sports much more than do women.[19d]

20. These differences in female and male self-perception present difficulties for women in traditionally masculine occupations.

(a) Louise Kapp Howe, who interviewed women in a variety of "pink collar" occupations in the early 1970s, discovered difficulties especially with respect to commission sales. One woman union organizer whom she interviewed had brought sales women together in "consciousness raising" sessions to discuss their fears concerning advancement and taking a chance at the high-commission sales jobs. The sales women worried about being too competitive and alienating men if they acted too aggressively. Other women complained that working for a commission made them feel that they had to push people to purchase or use things that they did not need.

(b) While studying a department store that had an affirmative action plan, Howe asked a woman working in the personnel office why men were in the big-ticket commission departments and women were not. The woman responded:

> We're trying to equalize that. . . . But certain departments—heavy stock departments, for example, like major appliances, are mostly requested by men, and certain jobs, like cashiers, tend to be female. Even though I try to spread things out. See, men don't ask for cashier jobs, and I try to put people in places they want to be. And women almost always ask for soft goods, for sportswear or dresses, nine out of ten times, so I don't have too much chance to do what I'd like, do I?[20]

21. While a wife and family have been perceived as aids to a man's quest for success, the roles of wife and mother have required that a woman's life be subordinated to the needs of her family. Because women tend to place family commitments ahead of career aspirations, they are

[19d] Jeana Wittenberg, et al., "Sex Equity in American Education," *Educational Leadership* (January 1981): 311–19, "Although women are now ⅓ of all athletes their athletic programs do not have comparable athletic budgets." Sheryl Sklorman, "Girl Athletes, Citizen Activists, Title IX: The Three Point Play," *The High School Journal* (May 1981): 326–30 – "sport prepares one for assuming an instrumental social role, a role calling for active, assertive, and self-assured social behavior."

[20] Louise Kapp Howe, *Pink Collar Workers*, pp. 87–88, 47.

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

more likely than men to interrupt their careers to care for their children, and less willing than men to move to take advantage of new opportunities.[21]

22. The emphasis placed on "consciousness raising" by the feminist movement during the late 1960s and early 1970s was based on a recognition that men and women have internalized different personality traits and different attitudes toward labor force participation.[22]

23. Despite rapid changes in lifestyles and attitudes occurring over the last decade, traditional values still persist. Insofar as there has been any shift toward egalitarian marriages that would free women from the primary obligation of the home, that shift has taken place more often among college-educated Americans. For the majority of American couples who have never attended college, the traditional values within the family and without continue to be the ideal.[23]

24. As the historical evidence shows, it is not surprising that men and women differ in their expectations concerning work, in their interests as to the types of jobs they prefer or the types of products they prefer to sell, and in the continuity of their participation in the labor force. It is naive to believe that the natural effect of these differences is evidence of discrimination by Sears.

25. The following exhibits are among those expected to be introduced at trial.

[21] Julie Matthaei, *An Economic History of Women in America*, p. 298; Margaret Hennig and Ann Jardim, *The Managerial Woman* (Garden City, NY: Anchor Press, 1977), pp. 42–43; Margaret Poloma, et al., "Reconsidering the Dual-Career Marriage: A Longitudinal Approach," in Joan Aldous, ed., *Two Paychecks: Life in Dual Earner Families* (Beverly Hills: Sage, 1982), pp. 176–79 (researchers found that though a little over half the couples originally gave nearly equal weight to both careers, "in no case was a move made that enhanced the wife's career opportunities").

[22] "Consciousness Raising," in Anne Koedt, ed., *Radical Feminism* (Quadrangle, 1973), pp. 280–81, "The consciousness raising process is one in which personal experiences, when shared, are recognized as a result not of an individual's idiosyncratic history and behavior, but of the system of sex-role stereotyping"; Carol Williams Payne, "Consciousness Raising: A Dead End," *Ibid*, p. 282 – "The group was formed . . . to talk about problems women have in working and wondering whether self-doubts and lack of confidence were related to their being women."

[23] Arland Thornton and Deborah Freedman, "Changes in the Sex Role Attitudes of Women, 1962–1977: Evidence From a Panel Study," *American Sociological Review* 44 (October 1979): 831–42; Mirra Komarovsky, *Blue Collar Marriage* (New York: Vintage, 1962), p. 60; Constantina Safillios-Rothschild, "Women and Work: Policy Implications and Prospects for the Future," in Stromberg and Harkness, *Women Working*, pp. 421–22; Rubin, *Worlds of Pain*, p. 131.

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff,

v. No. 79-C-4373

SEARS, ROEBUCK AND CO., JOHN A. NORDBERG
Defendant District Judge

WRITTEN TESTIMONY OF ALICE KESSLER-HARRIS

1. Sears' experts have argued that women's occupations in the labor force are the product of women's choice, that women do not want better-paying jobs, and cannot handle stress, competition, or risk. History does not support these contentions, and instead places Sears' witnesses' statements squarely within a long tradition of employer excuses for, and manipulations of, women's work force experience.

2. History does not sustain the notion that women have, in the past, chosen not to take nontraditional jobs. The development of social history in the last fifteen years has moved historians in new directions in exploring the history of wage-earning women. Among its major achievements is the recovery of information previously ignored or forgotten about working women: information that has revealed how much of the past was lost, and altered our interpretations of what in fact has happened. Two areas have had special importance: the knowledge that women have functioned in virtually every capacity now assumed to be male, and the rich information that has emerged about women's diverse lives and aspirations. Sensitivity to these issues and new knowledge about the goals and aspirations of working people have opened questions about the ways in which the values and attitudes that are reflected by social institutions may differ from those of ordinary people. The result is to sharpen our understanding of the relationship between individual needs and their expression, and those of a larger society.

a. This new historical information calls into question the idea that women can "choose" not to work in certain areas, and insists that choice can be understood only within the framework of available opportunity. It flatly contradicts the notion that biology, culture, or socialization enable us to make statements about "all" women or about women generally. In particular, it provides the basis for refuting testimony that attributes to most

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

women, and especially to those women who did work for wages, perceptions and attitudes that influenced the lives of relatively few.[1]

b. A more accurate interpretation of the history of women's work in the U.S. would take the following form. The structure of the labor force is the product of a complex interaction between labor force needs and a socialization process that reinforces desirable roles. Women's "interests" as well as their expectations are thus a consequence of life experiences that are reinforced or discouraged by the larger society. In an industrial society, a major part of the cycle of reinforcement is played by employers whose hiring policies significantly influence women's self-perception, their assessment of reasonable aspirations, and their announced goals. What appear to be women's choices, and what are characterized as women's "interests" are, in fact, heavily influenced by the opportunities for work made available to them. In the past, opportunities offered to women have been conditioned by society's perceptions of women and assumptions about them. Thus, women have been hired into limited numbers of jobs, and discriminated against in the work force generally. The resulting profile of "women's work" has been then perceived to be what the women "chose."

3. Although a rough sexual division of labor has existed in the U.S., as elsewhere, the nature of that division varies from place to place, and its outlines have never been rigid.[2]

a. Whatever the sexual division of labor in a particular society at a particular time, economists and anthropologists who have studied the transition to industrialism agree that people renegotiate their relationships in response to changing economic need.[3] It cannot be said that in the U.S. the sexual division of labor has remained the same from the colonial period to the present. By 1820, women were employed in at least seventy-five kinds of manufacturing establishments, and by 1850 in nearly 175 different industries. These ranged from typesetting and bookbinding to brushmak-

[1] Specifically, the testimony of Rosalind Rosenberg omits information, the possession of which alters the interpretation of the data she provides. Her testimony deduces the behavior of working women from literature and studies that purport to reflect their behavior and values but in fact rarely do. These errors in interpretation arise from the fact that her expertise does not lie in the history of wage earning women, but comes rather from the experience and ideology that dominate the lives of upper-income, professional women and those who did not work for wages. The result of these errors is to assume that women were not traditionally engaged in earning income, and to ignore the enormous diversity of motivation and experience that has characterized the experience of wage earning women throughout United States history.

[2] As anthropologist Michelle Zimbalist Rosaldo notes, "there are societies in which women trade or garden, and those in which men do; societies in which women are queens and those in which they must always defer to a man" ("A Theoretical Overview," in Rosaldo and Louise Lamphere [eds.], *Woman, Culture, and Society*, at 18 [1974]).

[3] Esther Boserup, *Woman's Role in Economic Development* at 5 (1970).

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

ing, shoebinding, whipmaking, the manufacture of gunpowder, saddles and clocks.[4]

b. Historically, women's participation in nontraditional jobs has been a function of whether or not there was sufficient male labor available at the right price. Men and women have frequently done the same jobs in different places or regions depending on this male availability. For example, both spinning and weaving processes in the textile mills of the north were typically done by women in the first half of the nineteenth century, because men, with other options, refused these jobs. As the mills moved South, in the late 1800s, the task of weaving was frequently transferred to men because men were available to perform the work, as they had not been in New England.[5] Similarly, women held jobs as printers and publishers in colonial America and in the new republic. As the nation urbanized, and printing moved to cities where more male labor was available, men came increasingly to predominate in the industry. Cigar rolling, a male occupation in New York and Philadelphia, was a female job in Detroit.[6]

c. Men and women have sometimes engaged in the same tasks in the same places at different times. The textile mills again provide an example. As Irish immigration rose dramatically in the 1840s and 1850s, Irish men took over jobs that Yankee women had performed.[7] Women replaced men at telephone switchboards in the 1880s and as bank tellers after 1940. Men replaced women as healers and midwives in the early nineteenth century, and as librarians and social workers in the 1930s.[8]

d. Men and women have not infrequently worked side by side at the same tasks when labor needs so dictated. During the colonial period, and much later in the West and in the South, women and men worked the fields alongside each other, stripped tobacco together and shared responsibility for household finances. Together, they have been tavern keepers and brewmasters in the nineteenth century, street car conductors and mail deliverers in World War I; and taxi drivers in World War II.

[4] Helen Sumner, *History of Women in Industry in the United States*, Vol. IX of the Report on Condition of Women and Child Wage Earners in the United States, Senate Document #645, 61st Congress, 2d Session at 17 (1910); Edith Abbott, *Women in Industry: A Study in Economic History*, 68–69, 80 (1969).

[5] Thomas Dublin, *Women at Work: The Transformation of Work and Community in Lowell, Massachusetts, 1826–1860*, ch. 8, 9 (1979); Abbott, *supra*, n. 4, at ch. 6.

[6] For transitions in these industries, see Abbott, *supra*, n. 4, at ch. 9, 11; Ava Baron, "Women and the Making of the American Working Class: A Study of the Proletarianization of Printers," 14 *Review of Radical Political Economics*, 23–42 (Fall 1982); Patricia Cooper, "The Transformation of the Cigar Industry in the 19th Century" (unpublished manuscript).

[7] Dublin, *supra*, n. 5, ch. 9; Maurine Wiener Greenwald, *Women, War, and Work: The Impact of World War I on Women Workers in the United States*, 190 (1980); Marc McCulloch, *White Collar Labor in Transition*, ch. 2 (1980).

[8] Barbara Ehrenreich and Deirdre English, *For Her Own Good: 150 Years of the Experts' Advice to Women*, ch. 2, 3 (1978); Alice Kessler-Harris, *Out to Work: A History of Wage Earning Women in the U.S.*, ch. 9 (1982).

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

4. The idea of the sexual division of labor is a malleable concept, subject to particular societal needs which frequently change. Employers have used the notion that women's roles are in the home from the period of early industrialization to the present to regulate female work force participation, offering the argument that women possess certain characteristics that are not conducive to success in the labor force. These characteristics have always been used selectively, in ways that suit labor force conditions, indicating that they are not so much characteristics of women, as convenient tools for structuring the labor force.

a. For example, in 1917, the banking community, faced with a shortage of labor, attracted women into clerical and lower-level managerial jobs by arguing that "women are exceptionally fitted for work of this character—their neatness, deft handling of money and papers, tact and a certain intuitive judgment all being qualifications that count in their favor." In the early 1930s, when men became available for work due to the depression, the industry changed its mind and argued that it could not hire women, even as tellers, because they were poor at figures, and because the public would not accept the notion of handing over their money to women. Between 1941 and 1944, faced again with male labor shortages, banks relented and began to hire women as tellers. Industry journals then argued that women would make ideal tellers because they were good at dealing with the public.*[9]

b. Insurance and real estate, both highly competitive, announced themselves in the 1920s to be fields where women could earn high salaries and where age and lack of prior experience were not disadvantages. The insurance industry justified its recruitment of women with the argument that women were performing a service to the American family. Women responded. But by the 1930s, these fields were again seen as unseemly for women, and remained closed to them until the 1960s.[9a] The industries had redefined the jobs as too difficult for women's mathematical capabilities.

c. These varying characterizations of women as unsuited in different ways have frequently been adopted without regard to women's interest or availability, and in the face of the evident need of millions of women to engage in wage work. Since such characterizations have been influential in structuring the labor force into its present shape, it is crucial in looking at working women to examine not what employers say women can or cannot

* In 1940, bank tellers were 80% male; in 1944, they were 65% female, a shift in sexual composition that increased after the war. Tellers are 80% female today.

[9] "Banking and Business Training for Women," *The Bankers Magazine* at 1 (August 1917), reprinted by the Financial Center for Women; McCulloch, *supra*, n. 7 at 81–82. For a similar process as regards secretaries, see Margery Davies, *Women's Place Is at the Typewriter: Office Work and Office Workers, 1870–1930*, ch. 5 (1982).

[9a] Kessler-Harris, *supra*, n. 8, ch. 8.

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

do, but what women *actually* do under conditions where they are either seeking jobs or working at them.

d. In the late-nineteenth-century West, for example, where men and women claimed allegiance to the values of domesticity,[10] women in fact plowed, fought, wrestled steers, and so on, leading one historian to conclude that western women "entered the previously male-dominated business world, and they did so successfully." In so doing, they "tended to ignore, or at least not slavishly strive toward, Eastern dictated models of femininity or the ideal of true womanhood."[11] Black women and immigrant women, under historical circumstances that have consistently demanded wage work, have sought and accepted jobs that contradicted attitudes about family lives that they themselves professed to hold. Many Irish immigrant women, for example, while declaring themselves attached to families, nevertheless remained single, saved money for themselves, and aided nieces and other female relatives in the search for upward mobility.[12]

5. These examples are by no means exceptions. Although many women who have not needed to engage in wage work have conformed to notions of domesticity, rapid and frequent shifts in women's participation in new areas of work when they were there admitted, as well as the eagerness with which women have taken new jobs, suggest that ideas about women's traditional roles are neither deeply rooted in women's psyche nor do they form a barrier that inhibits women's work force participation.

a. During the Civil War, for example, as a result of budget-cutting by the Treasurer of the U.S., Francis Elias Spinner, women for the first time entered office jobs in the Treasury Department. There were virulent objections by those who argued that such jobs would unsex women.[13] This affected neither the women who were recruited nor the Department, which justified its action on economic grounds. Thereafter, the women became permanent members of the staff.

b. In World War I, with a male labor shortage, women in several cities

[10] Domesticity is here defined as an ideology developed in the nineteenth century and continuing in altered form thereafter, which assigns the sphere of the household to women, as their proper and ordinary place. In its early incarnation, as defined by historian Barbara Welter, the ideal domestic woman was to be pious, pure, and submissive as well as devoting her life's energies to the harmonious functioning of the home. Increasingly as the nineteenth century progressed, these ideas became less a description of what women actually did and more a way of structuring their home and work lives.

[11] Sandra Myres, *Westering Women and the Frontier Experience*, at 269 (1982).

[12] Jacquelyn Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present*, pp. 134–35, 158, 259–60 (1985); Hasia Diner, *Erin's Daughters in America: Irish Immigrant Women in the Nineteenth Century*, ch. 2, 4 (1983); Sara Eisenstein, *Give Us Bread but Give Us Roses: Working Women's Consciousness in the United States, 1890 to the First World War*, ch. 5 (1983).

[13] Ross Baker, "Entry of Women into Federal Job World—At a Price," 8 *Smithsonian*, 83–85 (July 1977).

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

were hired as street car conductors despite the protests of those who argued that it was unseemly for women to work outdoors, and that contact with the public might be conducive to immorality. The women conductors, in contrast, argued that working on streetcars was far healthier than their former jobs. As one worker put it, "the wages are good, it's outdoor work, and a million times easier than washing."[14]

c. Between 1910 and 1930, during and after the suffrage struggle, women vocally pressed for opportunity. The real estate and life insurance industries were expanding greatly during this period and responded by including women among their increasing ranks. The proportion of women selling life insurance multiplied sixfold; the proportion selling real estate multiplied tenfold. When the depression diminished opportunity, the proportion of women in both jobs declined.[15]

d. During both world wars, women quickly accepted training to become welders, shipfitters, and crane operators. They worked in every variety of wartime and civilian production. Nor can this be said to be merely a product of wartime fervor, for most of these women left other, more traditional jobs in order to earn better pay. In the words of one woman who took a job cleaning street car tracks, the "almighty dollar" made the work worth the physical effort.[16]

e. Independently of national need, women rapidly filled such nontraditional jobs as that of telephone company lineman in 1973 once AT&T was induced through legal action to allow them entry, and they entered business, law, and professional schools beginning in the late 1960s as soon as those institutions opened their doors, in response to already existent social trends.

6. In the twentieth century, the key to whether women have conformed to notions of domesticity or not resides in the presence of economic opportunity. Where opportunity has existed, women have never failed to take the jobs offered. When opportunities have been closed to them, women have rationalized their inability to participate fully in the world of work with notions of domesticity.

a. The example of female physicians is instructive. In the late nineteenth century, despite the strenuous objections of male physicians and their virtual exclusion from male medical schools and hospitals, women managed to create their own medical schools and to acquire training in medicine. By 1894, twenty-three percent of students in Boston's medical

[14] Greenwald *supra*, n. 7, at 155.

[15] Janet Hooks, *Women's Occupations through Seven Decades*, Women's Bureau Bulletin No. 218, 88–89 (1947).

[16] Greenwald *supra*, n. 7, at p. 32, ch. 1, 4; Karen Anderson, *Wartime Women: Sex Roles, Family Relations and the Status of Women During World War II*, ch. 2 (1981); Chester W. Gregory, *Women in Defense Work During World War II: An Analysis of the Labor Problem and Women's Rights*, ch. 6–9, (1979).

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

colleges were women. But, after that date, female medical colleges allowed themselves to be merged with those run by men; the male-dominated schools set quotas on the numbers of women they would admit, and the female proportion of physicians plummeted. In 1910, the female percentage of physicians in the U.S. was higher than it was in 1960. Not until the strong social pressures of the 1960s began was medicine reopened to women.[17]

b. Numerous other examples of this phenomenon exist. Women made themselves available in large numbers for jobs not only in banking, in the 1920s, but as well as for work in the electronics industry, and on automobile assembly lines when jobs that had formerly been closed to them were opened.[18] That they did not move into other areas suggests that they were not offered opportunities there, not that they would not have taken them.

c. Moreover, there is little evidence that expressions of belief in traditional roles have any bearing on the labor market behavior of women who need to work. Catharine Beecher, Lydia Sigourney and Sara Josepha Hale all offer examples of nineteenth-century women who preached domesticity while earning their livings as ambitious, aspiring, professional women. More recently, the behavior of women towards paid work has contrasted sharply with attitudes recorded by survey researchers, as well as with those that have received public sanction.

d. Despite efforts to keep married women out of the work force in the depression of the 1930s, and despite the statements of many women that they disapproved of paid work for married women, married women increased their work force participation rate in that decade by fifty percent, the fastest rate of increase to that date.[19] This suggests that neither public pressure nor women's willingness to make public statements that conform

[17] Mary Roth Walsh, *Doctors Wanted: No Women Need Apply. Sexual Barriers in the Medical Profession, 1835–1975*, at 183, 185 (1977).

[18] The 1920 Census of Occupations counted 15,000 women working in auto plants. This figure includes laborers and semi-skilled operatives employed as buffers, polishers, and sanders, among other occupations. That this was not simply a holdover from the war is indicated by the fact that the Michigan Department of Labor and Industry recorded 17,250 women in the industry in 1925. Shortly thereafter, a slump in the auto industry raised the numbers even higher, when first General Motors and then Ford replaced well-paid male assembly line workers with lower-paid women. No difficulty was encountered in finding women, for whom even these lower wages represented an economic incentive over their still lower wages in traditionally female occupations. When the depression struck, however, the auto industry was able to obtain men for these lower wages. The women lost their jobs. Robert Dunn, *Labor and Automobiles* (1929).

[19] Susan Ware, *Holding Their Own: American Women in the 1930s*, at 29 (1982); Kessler-Harris, *supra*, n. 8, at 258–65; Ruth Milkman, "Women's Work and the Economic Crisis: Some Lessons from the Great Depression," 8 *Review of Radical Political Economics* 73–97 (Spring 1976).

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

to their expected roles reflect what women do, or how they actually function at work.

e. Nor do such surveys speak to the diversity of women's lives. Margaret Hagood, who interviewed southern farm women in the 1930s, reported that "seven eighths of these women prefer field work to housework and are prouder of their prowess in the field and in the tobacco shed than in the kitchen."[20]

f. During World War II, women who had always earned wages resisted efforts to channel them into less lucrative traditional employment, choosing instead to take advantage of higher-income jobs opened by the absence of men, regardless of the kind of job. The work experience itself seems to have been more important than social approval or disapproval in shaping the desire to remain at work. While eighty-five percent of the women who took jobs in 1941 said that they wanted to work only for the duration, fully seventy-five percent of all new workers wanted to keep their jobs in 1945.[21] Most of these were eased out. In seeking employment and in resisting termination after the war, women gave evidence that the search for higher income and the resultant security it afforded were far more important to them than any conception of traditional roles.

g. In the 1950s, women again paid lip service to the notion that a woman's role was in the home, yet the absolute numbers of women in the work force increased dramatically, as did the proportions of married women and of women with children under age eighteen.[22] This evidence suggests that how women feel about their family lives can and should be separated from their work force expectations and aspirations. A 1960s study confirms this conclusion. It reported that the proportion of women endorsing equal rights in the labor market "was higher than the proportion endorsing equality in the home."[23]

7. Historical evidence as well as some recent studies indicate that, as among men, orientations to paid work among women differ for different people; but for both groups income is, and has been, the primary incentive to paid work.

[20] Margaret Hagood, *Mothers of the South: Portraiture of the White Tenant Farm Woman* p. vi. (1977).

[21] Anderson, *supra*, n. 16, pp. 162–63; Maureen Honey, *Creating Rosie the Riveter: Class, Gender and Propaganda During World War II*, p. 11 (1984); Ruth Milkman, "Redefining 'Women's Work': The Sexual Division of Labor in the Auto Industry During World War II," 8 *Feminist Studies* 338–72 (Summer 1982); Alan Clive, "Women Workers in World War II: Michigan as a Test Case," 20 *Labor History* 44–72 (Winter 1979). All of these sources document the obstinacy with which employers hung onto their sexual stereotypes, despite the war emergency.

[22] Howard Hayghe, "Families and the Rise of Working Wives: An Overview," *Monthly Labor Review* at 13 (May, 1976); Women's Bureau, U.S. Department of Labor, Bulletin No. 297, *1975 Handbook on Women Workers* at 15–16, 27 (1975).

[23] Karen Oppenheim Mason, et al., "Change in Women's Sex Role Attitudes, 1964–1974," 41 *American Sociological Review* 593 (August 1976).

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

a. Contrary to most myths about women's work, every historical study of wage-earning women has indicated that women do not work for "pin money." Early twentieth-century studies record that families could not survive on the income of one wage-earner, and that wives contributed upwards of twenty-five percent of the family income. One historian reports that during World War I women took full advantage of expanding economic options to improve their status.[24] This trend continued until the 1960s.

b. By 1962, married women employed full-time contributed nearly forty percent of family income, and clerical and sales workers contributed a higher proportion than any other occupational category except unskilled workers. This data demonstrates that married female sales workers were more likely to be major contributors to their household income than women working in most other occupations. It suggests that women sales workers have husbands who themselves do not have high-paying jobs. One statistician at the Bureau of Labor Statistics (BLS) concluded that families did not consider this income as "transitory" no matter how intermittently it was received[25] (Transitory income is defined by BLS as that which is available for increasing a family's standard of living or adding to savings).

8. Work choices are influenced for men and for women by many circumstances. Just as many have forgotten that income has always been very important to women, so too one may lose sight of the fact that work choices of men have not been conditioned by income alone. Among Italian immigrants, family values have dictated that both men and women sacrifice higher income if it comes at the cost of family life. Recent studies suggest that men stick to jobs in which they have no interest because their real interest is in their family and leisure lives, and at least one study suggests that job security is more important than income, and that men will sacrifice income if they perceive that there is risk involved.[26]

9. While protective labor legislation was said to reflect widespread opinion, and to benefit some working women, many other women, including printers, taxi drivers, mail carriers, professional women, and telegram

[24] Margaret Byington, *Homestead: The Households of a Mill Town*, [1910] ch. 3 (1974); Greenwald *supra*, n. 7, at 20–21.

[25] Margaret S. Carroll, "The Working Wife and Her Family's Economic Position," 85 *Monthly Labor Review* 373 (April 1962). The wife's importance in income earning had already been noted in 1954, when the *Monthly Labor Review* at 1209 (November) reported that the tendency of women to work reflected a search for income rather than a response to an emergency.

[26] Abraham Bluestone, "Major Studies of Workers' Reasons for Job Choice," *Monthly Labor Review* at 306 (March 1955). Bluestone also points out, at 301, that workers may not divulge to an interviewer their underlying motives for job choice. "Instead, they may be rationalizing in terms of socially accepted criteria." Willingness to take risks, like attitudes toward the job itself, may in fact be a function of the differing places of men and women in the organizational structure, as Rosabeth Moss Kanter suggests. See "The Impact of Hierarchical Structures on the Work Behavior of Women and Men," 23 *Social Problems* 415–30 (April 1976).

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

deliverers objected to it on the grounds that it restricted their freedom to work at some jobs and limited their hours in others. While some employers sought this legislation in order to neutralize competition, others opposed it. They managed to release, among others, waitresses, cannery workers, nurses, and hatcheck girls from the restrictive laws, on the grounds that such laws unduly restricted the employers' capacity to conduct their businesses.[27]

a. New York's female printers, arguing that their schedules were necessary to obtain the child care provided by husbands or other working family members, successfully petitioned the N.Y. legislature for exemption from the prohibition on night work. Other groups were not successful.

b. Female textile mill operatives in Massachusetts complained that the net result of such legislation was a loss of wages, and struck to restore wages lost when their hours were cut. Waitresses and female typesetters objected when night work laws threatened to deprive them of the most lucrative shifts. Streetcar conductors objected to removal from their jobs because they liked the freedom that split shifts gave them to run errands, pick up children at school and the like.

c. The struggle over protective labor legislation indicates that notions of traditional roles did not influence the kinds of jobs women would take if given the opportunity. The women who worked odd hours in canneries or in nursing, for example, and sought the flexibility that night work provided in making provision for child care, make it clear women wanted and needed "nontraditional" employment.

10. There also is little evidence that women have avoided reasonable risks in employment.

a. In World War I, women took dangerous jobs in glass factories in preference to washing clothes because they paid more.[28a]

b. One study of eleven Western States in 1943 indicates that women tended to look for jobs that promised higher income in preference to more secure jobs with lower incomes.[28b]

c. Historically, it was not uncommon in retail sales to pay women on a salary-plus-commission basis. Sometimes the salary could be as little as $2 per week, necessitating success in obtaining commission income just to survive. Women took these jobs as well as those without commission,

[27] Protective labor legislation has often been divided into two types: restrictive and regulatory. The first of these denied women the right to work for more than a given number of hours per day, at certain times, and so on. The second regulated sanitary, lighting and other health-related conditions in the workplace. It was around the first, restrictive legislation, that the battle raged in the first part of the twentieth century. For a fuller description of its impact and illustrations, see Kessler-Harris, *Out to Work* ch. 7; and Judith Baer, *The Chains of Protection: The Judicial Response to Women's Labor Legislation* (1978).

[28a] Greenwald *supra*, n. 7, at p. 30.

[28b] D'Ann Campbell, "Was the West Different? Values and Attitudes of Young Women in 1943," 47 *Pacific Historical Review* 458 (August 1978).

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

knowing that whether or not a commission was involved, they would be fired if they did not "produce"; for historically retail sales was far from an easygoing social haven for unassertive women.[29]

11. The argument that women are only interested in certain kinds of work reflects women's perceptions of opportunities available to them which are themselves products of employers' assumptions and prejudices about women's roles. It constitutes evidence that discrimination in fact exists in the work force.

a. The National Manpower Commission, for example, argued in its 1957 volume, *Womanpower*,[30] that traditional attitudes frequently govern employers' hiring patterns. In particular, the Commission stated that

> The distinctions between "men's" and "women's" jobs appear to be particularly sharp in certain manufacturing fields; and in professional service, and sales work, jobs are often closed to women because it is taken for granted that they should be held by men.

b. Given these patterns, sociologist Valerie Kincade Oppenheimer concludes that employer expectations are confusing to women who are then discouraged from applying for jobs. Oppenheimer goes on to argue that employers tend to believe that women have lower career aspirations.[31]

c. This combination of employer expectation and discouragement was most clearly demonstrated in a 1973 experiment on advertising. When jobs were described in male terms and/or placed under male headings, few women applied for them. But when the same jobs were described in sex-neutral language or in language that suggested both women's suitability and an employer's amenability to hiring women for the job, many more women applied.[32]

12. An argument that women's interests and viewpoints did not shift until the early 1970s can only be based on ignorance of the recent as well as the distant past.

a. Long-term trends show the increasing work force participation of all women dates back to the 1890s. Since then there has been a steady increase in the numbers of married and single women seeking wage work. The

[29] Elizabeth Butler, *Saleswomen in Mercantile Stores: Baltimore 1909*, pp. 11–113 (1912); Annie McLean, "Two Weeks in Department Stores," 4 *American Journal of Sociology* 724 (May 1899); Frances Donovan, *The Saleslady*, pp. 67–68, 198–99 (1929).

[30] *Womanpower: A Statement by the National Manpower Council*, pp. 88–89 (1957).

[31] Valerie Kincade Oppenheimer, "The Sex-Labelling of Jobs," 7 *Industrial Relations* 229, 233 (May 1968).

[32] Sandra L. Bem and Daryl J. Bem, "Does Sex-biased Job Advertising 'Aid and Abet' Sex Discrimination?" 3 *Journal of Applied Social Psychology* pp. 6–18 (1973). When advertisements for the jobs of telephone linemen and framemen were written for men, only five percent of the women in this experimental study applied for the jobs; when they were written for women, forty-five percent of the women applied for the jobs.

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

1930s witnessed the first big leap in the labor force participation of married women, a trend that was continued in the 1940s and which has persisted ever since. The decade from 1940 to 1950 witnessed a reversal of the proportion of married and single wage earners among women. In the 1940 labor force, thirty-one percent of women workers were married, and forty-eight percent were single. By 1950, forty-seven percent of working women were married, and thirty-two percent were single. Sociologist Valerie Kincade Oppenheimer said of these changes that "while the 1940 to 1960 increases for women of all marital statuses combined have been sizable, the increases for married women with husbands present have been truly enormous."[33] By 1950, one third of all women with children under age eighteen were in the labor force; by 1960 nearly forty percent of such women were earning wages.[34]

b. Women have consistently fought against discrimination in attempts to remove or limit their participation in the labor force. The first movement for women's rights in the United States originated in 1848, primarily around economic issues. Since then, there is abundant evidence that women have repeatedly protested such discriminatory behavior as the failure of employers to allow women jobs and the absence of equal pay. In the 1920s such protests were frequently articulated, including the objections of women whose employers failed to promote them. The Bureau of Vocational Information deplored the fact that even women with college degrees tended to be placed, against their wishes, in dead-end jobs. Women resisted attempts to eliminate married women workers in the 1930s, and fought against removal from their jobs in the post-war 1940s. By the 1950s women began to articulate the object of their protest not as just particular employers but rather as society at large. The Women's Bureau of the Department of Labor received dozens of letters in the early 1950s protesting the contradictions inherent in a society that styled itself as one of individual freedom while denying women equal access to jobs.

c. Women's complaints had some effect before 1970. During the 1960s women's presence in those male occupations most difficult to break into had already begun to increase. The population of female blacksmiths, cabinet makers, carpet installers, electricians, and plumbers all increased substantially during the sixties.[35]

d. In 1961, President John F. Kennedy officially acknowledged the existence of discrimination in the federal government, and set up a commission to investigate the condition of women in the country as a whole. The Executive Order that created the President's Commission on the

[33] Oppenheimer, *The Female Labor Force in the United States: Demographic and Economic Factors Governing its Growth and Changing Composition*, p. 10 (1970).

[34] Bureau of Labor Statistics, U.S. Department of Labor, *U.S. Working Women: A Databook*, p. 22 (1977).

[35] Kessler-Harris *supra*, n. 8, pp. 308–309; Janice Hedges and Stephen Bemis, "Sex Stereotyping, Its Decline in Skilled Trades," 97 *Monthly Labor Review* at 16 (May 1974).

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms

Status of Women stated that "prejudices and outmoded customs" could act as "barriers to the full realization of women's basic rights."[36] Simultaneously, President Kennedy urged the Civil Service Commission to eliminate discriminatory practices, a directive that the CSC chairman, John Macy, asserted had immediate impact.

e. Among other analyses offered, the report of the Commission on the Status of Women, issued in 1963, asserted that employers' tendencies to rely on "conventional assumptions" rather than on "actualities" was responsible for much discrimination against women.[37]

f. The Commission urged that Congress act on sex discrimination, which it did with the passage of the Equal Pay Act. The subsequent amendment by President Johnson of Executive Order 11246 to include in its strictures discrimination against women also represents action by the federal government specifically and exclusively devoted to elimination of sex discrimination and the improvement of women's work opportunities.

g. These laws, and the prohibitions on sex discrimination in the Civil Rights Act of 1964, resulted in large measure from the pressure put on the government by women, led by Esther Peterson, head of the Women's Bureau of the Department of Labor, to provide means for the eradication of sex discrimination.

h. The new laws were also in part a result of the potential political pressure of the already substantial numbers of women who by the 1960s had moved into the work force. Consciousness of discrimination among these women is evidenced by the fact that in the EEOC's first year of operation, 1966, to everyone's amazement, forty percent of the complaints submitted to the agency concerned sex discrimination.[38]

i. That the discontent of women regarding their treatment in the labor force preceded the 1970s is further substantiated by the founding of the National Organization for Women in 1966, and a scholarly study that demonstrates that changes in women's attitudes toward work and the family had been in place since at least 1964. Moreover, these changes were not limited to well-educated women, but were prevalent among women with work experience of any kind.[39]

13. History's evidence clearly indicates that substantial numbers of women have been available for jobs at good pay in whatever field those jobs are offered, and no matter what the hours. Failure to find women in so-called nontraditional jobs can thus only be interpreted as a consequence of employers' unexamined attitudes or preferences, which phenomenon is the essence of discrimination.

[36] Patricia Zelman, *Women, Work and National Policy: The Kennedy-Johnson Years*, p. 27 (1980).

[37] President's Commission on the Status of Women, *American Women*, p. 30 (1963).

[38] Bem and Bem *supra*, n. 32, at 6.

[39] Mason, et al. *supra*, n. 23, at 589.

This content downloaded from
132.208.244.137 on Fri, 06 Jan 2023 21:36:30 UTC
All use subject to https://about.jstor.org/terms