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AFTERWORD

DISMANTLING INSTITUTIONAL BARRIERS

Frances Elisabeth Olsen*

The presentations in this symposium make it clear that institutional barriers to women in the workplace exist and that they are important. These barriers make it more difficult for women to enter the workplace and more difficult for women to thrive there.

One of the interesting aspects illustrated by the tax materials is the relative invisibility of many barriers to women in the workplace. The tax system is seen by many as simply part of the “background conditions” — taken as natural and neutral rather than recognized as a chosen government policy — that affect the seemingly individual choices made by women and by families about who shall work at paid employment when and for how long. These decisions are deeply influenced by governmental policies. Tax laws encourage single-wage families and discourage double-wage families. Women who are married to a man earning a regular salary, for example, are discouraged by the tax laws from getting a job unless they can earn a salary that at least approaches the salary of their husband, which of course many women cannot.

The importance of governmental policies is also illustrated by the presentations on poverty. One paper argues that if we are serious about family poverty and the healthy development of our nation’s children “we should stop focusing on the largely sym-

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bolic issue of welfare reform and start talking about the politics of redistribution."¹ The paper emphasizes that the problem of poor women and children is a problem of general poverty and of the redistribution of wealth (from the poor to the wealthy) during the Reagan and Bush years. This is of course correct and important, and if the "we" the paper is talking about who should "stop focusing on the symbolic issue of welfare reform" is well-meaning white men, the advice to refocus on broad issues of wealth distribution may well improve the situation. But "we" who are struggling for women's equality and the "we's" who may see women's equality as less important than the broader issue of poverty, "we" should also turn this observation on its head: those who want to continue the maldistribution of wealth and allow the rich to become richer at the expense of everyone else, "they" are very wise to focus "our" attention on welfare reform and to exploit negative images of women. It may be that one of the most important ways for us to focus attention on the "politics of redistribution" is by fighting against these negative attitudes toward women. Sexism and misogyny are among the leading causes of poverty. The great majority of people in this country would benefit from a more fair distribution of wealth, and the current focus on "abuses" in the welfare system diverts attention from this important goal and harms not just the poor women targeted, but the majority of people.

In fact, I wonder whether opponents of economic justice may not have purposely written some ample opportunities for abuses into the welfare programs when they reluctantly passed the bill. I am reminded of the statement of the humorist W.C. Fields — something along the lines that he had "a bottle of brandy which I keep handy in case I get bit by a snake, which I also keep handy." In other words, if opponents cannot defeat a bill, they may at least try to write it so that it can be abused and will never work very well. For example, for years housing laws could pass Congress only if the laws had built into them unrealistically high rates of return on capital for the builders and refurbishers. The scandal at the Department of Housing and Urban Development of several years back was an example of those who opposed programs designed to help the poor intentionally stealing millions through loopholes that were built into the bill by

1. Joel Handler, *Women, Families, Work, and Poverty: A Cloudy Future*, 6 UCLA WOMEN'S L.J. 375, 378 (1996).

its opponents. These loopholes allowed a chosen few to steal millions and discredit the program.

The barriers to women in the workplace can be confronted at different levels and there are a variety of ways to eliminate some of these barriers. As I suggested before, we may for example need to reduce sexism to reduce poverty.

One of the most important realizations that this symposium may bring home is the social importance of indirect discrimination against women. We must never allow the issue of affirmative action to be seen as just an issue about benefiting a minority of the population. Institutional barriers to women in the workplace exist and it is important for us to study them.

Just as conservatives trying to maintain and increase economic inequality want us to focus on welfare reform so that we overlook the economic redistribution from poor to rich that is taking place, so too conservatives trying to reestablish and maintain white male privilege want us to see affirmative action and the California Civil Rights Initiative (CCRI) as an issue just about racial minorities, and not an issue also about gender or sex equality. The "white coalition"² that racial minorities have identified is and must be split along gender lines. To talk about affirmative action and to ignore or deemphasize sex discrimination is to bias and distort the discussion.

This brings me to another aspect of the importance of talking about barriers to women in the workplace. Discrimination against women is very hard to end directly and, at least in recent years, it takes place covertly more than overtly. Affirmative action was devised to reduce discrimination, and it has been particularly important in counteracting indirect discrimination. In all the years I have watched affirmative action work on the employment level, its main effect has been to reduce (somewhat) the indirect discrimination that takes place.

Members of law faculties make the decisions regarding hiring new faculty members. In my experience, when law faculties I have been on have claimed to engage in affirmative action hiring, we have at best set aside prejudices and hired people we would have hired if there were not institutional barriers and if we did not unconsciously discriminate. In fact, affirmative action has worked out to be a kind of *compromise*: Those who have been

2. Cheryl Harris, address at the UCLA Women's Law Journal *Symposium, Institutional Barriers to Women in the Workplace* (March 9, 1996).

discriminated against will get a few chances and be discriminated against less, if in exchange, those with power can keep on denying they do discriminate and pretend that they are doing something *for* women and minorities. Instead of really confronting the many ways that those with power discriminate, directly and indirectly, women and minorities strike a kind of deal in which they get somewhat more fair opportunities and those with power are able to call it affirmative action and think they are doing women and minorities a favor.³ And as those with power begin to renege on the deal, then it is important for us to return to the discussion of "hidden" discrimination and institutional barriers. This past year, when more than half the entering class of UCLA was women, and when we were hiring new faculty from a pool of candidates about one third to one half women, we wound up inviting ten people to the school for a full interview. Of those ten, all were men; not a single interview offer was to a woman.

Another message from this symposium is that people with the best of intentions can surprisingly engage in discrimination that they themselves disapprove when it is pointed out to them.⁴ Here at UCLA Law School, for example, we talk a lot about strongly supporting work in the public interest, yet without noticing the irony, we in fact pay professors less if they have engaged in public interest work and more if they have been working at higher paying jobs, even jobs contrary to the public interest.

At our sister school, the University of California at Davis, they did a study of gender discrimination in faculty salaries and found major disparities. Women faculty earned less than men faculty in general, and many individual women earned significantly lower salaries than men who seemed by objective measures to be similarly situated. Once such a "prima facie" showing was made, the committee on academic personnel (CAP) began a comprehensive evaluation on a case-by-case basis, taking account

3. I explored this theme in greater detail in a talk I presented to the academic Affirmative Action officers (*Frauenbeauftragter*) of the German federal states of Berlin and Brandenburg in the Spring of 1995 when I was teaching at the University of Berlin (Humboldt) as the first Professor of Feminist Legal Theory in Germany. The printed summary of the text is on file in the UCLA Law Library.

4. This was an important general message of Robert Seibel's paper. See Robert Seibel, *Do Deans Discriminate?: An Examination of Lower Salaries Paid to Women Clinical Teachers*, 6 UCLA WOMEN'S L.J. 541 (1996). Of course, as Professor Seibel recognizes, the numbers he uses in his paper are small and people could debate all the details of his methodology, but his paper certainly raises the importance of looking at issues such as systematic pay inequality — even in universities and among law school faculty. *Id.*

of scholarship and actual achievements. Although some faculty, especially white men, opposed these reevaluations as too time-consuming and unnecessary, the CAP procedure was supported as an important way to correct an injustice. Numerous women faculty have now had their salaries raised on the basis of these merit-based individualized evaluations of gender wage discrimination taking place at the Davis campus.

For some women, these papers about the institutional barriers to women may seem like a road map to a familiar area, illustrating and giving names to conditions and circumstances they have experienced in their own interaction with various workplaces. Some students with limited workplace experience may find this road map disconcerting, and may be depressed about the barriers that they can expect to find in the workplace. I hope that this is counterbalanced by the important recognition that the problems in the workplace are broad, political problems, not just personal problems.

Individual women are often more successful if they seem to ignore institutional barriers and deny that *they* have ever been discriminated against. In fact, women who deny discrimination and criticize feminism can get a lot of attention and approval regardless of the quality of their work. Individually, there is little to be gained by railing against institutional barriers: it is easier just to notice them quietly in order to navigate around them as gracefully as possible. But individual solutions will go only so far. Real solutions are both individual and societal, personal and political.

There are several things to remember about recognizing the institutional barriers to women in the workplace: First, don't let it depress you. Second, there are complex issues about the various ways to overcome these barriers. The papers on toxic workplaces and reproduction illustrate the complexity of many of the issues that confront those struggling to improve the situation of women in the workplace.⁵ It is important eventually to resolve these and a number of other complex theoretical issues. Third, there are many different ways to try to improve things. The symposium includes useful ideas about how to work more effectively

5. See Laura Oren, *Protection, Patriarchy, and Capitalism: the Politics and Theory of Gender-Specific Regulation in the Workplace*, 6 UCLA WOMEN'S L.J. 321 (1996); Nadine Taub, *At the Intersection of Reproductive Freedom and Gender Equality: Problems in Addressing Reproductive Hazards in the Workplace*, 6 UCLA WOMEN'S L.J. 443 (1996).

with poor women,⁶ about changes we can all consider instituting in our own workplaces — wherever they may be,⁷ and about the importance of reimagining gender and gender differences to reflect the diversity and complexity of women's lives.⁸ Finally, workplace barriers must be overcome on both a personal and societal level. There is nothing necessarily wrong with denying or seeming to ignore barriers on the individual level — this may well be the most effective personal approach — just don't let yourself be snookered into discrediting the experiences of other women. Almost any woman can sometimes reap rewards by attacking other women, but no woman needs to resort to such short-sighted expediencies. You can succeed individually and still recognize and struggle through collective action to overcome barriers that can be dealt with politically on a societal level.

The value and importance of collective work on behalf of women cannot be overstated, in my view. One of the most important ways law students can prepare themselves for a productive career is through participation in organizations such as the Women's Law Journal and the Women's Law Union. I think the work these organizations are doing constitutes a major contribution to the UCLA Law School. Especially important in a field such as law that emphasizes competition against one another, work in these organizations prepares students to work cooperatively.

As the last speaker, to bring the symposium part of the day to a close, I would like to invite the audience to join me in thanking all the people who made this day possible, especially Sarah Gill, Geniveve Ruskus, and Peggy Chen, and the other hard-working students of the Women's Law Journal and the Women's Law Union.

6. E.g. Lucie White, *Symposium Institutional Barriers to Women in the Workplace*, UCLA WOMEN'S L.J. (1996).

7. See, for example, Linda Mills, address at UCLA Women's Law Journal *Symposium, Institutional Barriers to Women in the Workplace* (March 9, 1996).

8. See Judith Olans Brown et. al, *The Mythogenesis of Gender: Judicial Images of Women in Paid and Unpaid Labor*, 6 UCLA WOMEN'S L.J. 457 (1996).