

*FAIR WAGES IN THE REPUBLIC:  
AN ESSAY ON EQUAL PAY LEGISLATION FOR THE PRIVATE  
SECTOR*

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**I. INTRODUCTION**

Nothing so inflames society's sense of outrage than the idea that deserving individuals are treated unfairly without reason; for instance, when individuals are paid different amounts solely on account of their race, age, ethnic origin, place of birth, marital status or gender. And while society cannot ensure that people with opposing views always accord each other respect, governments can, and often do, proscribe certain behaviour in the economy. Prejudice, sometimes subtle, does indeed exist, and elimination of discrimination is a laudable aim. For many, however, it is not enough simply to exhort tolerance. The cumulative effect of past discriminatory behaviour is so inhibitory, and the historical injustices so morally indefensible, that not only should society undertake compensatory initiatives, it must actually guarantee equal treatment through legislation.

One of the most prominent theatres in the war against discrimination is the market workplace, and concerns equal pay for work of equal value. The economy is singled out for special attention for several reasons. First, the government's right to make laws governing commerce and trade is well established. Second, the very means by which individuals survive in our modern society requires the sale of labour, and a system which allows certain people to be underpaid is not mere imperfection but gross injustice. Hence, the generic argument for using legal remedies to effect social reform in the workplace has the following structure. A catalogue of facts establishing the presence of unequal treatment is first presented. Next, discrimination is linked to past as well as present inequities that impede the ability of those discriminated against to compete effectively in the market. It is then frequently concluded, for the case of sexual discrimination in the workplace, that equal pay legislation is the correct immediate response.

This essay considers the nature and implications of equal pay legislation as an instrument for eliminating pay differentials between men and women in Canada—concentrating on the private sector, and primarily, but not exclusively, from an economic perspective. Much of the discussion concerning discrimination in the labour market based upon gender is equally applicable to unequal treatment of individuals based on other attributes, such as colour, language, etc., and in other contexts, such as educational opportunities, etc. However, the historical circumstances and institutional details of discrimination based upon gender are sufficiently distinct that they deserve special attention.

The next section interprets the context and evolution of equal pay legislation as a response to the lingering differential in earnings between

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men and women. It also discusses what is generally contemplated by legislation framed in terms of "equal pay for work of equal value." The following section sketches alternative views of sexual discrimination in the workplace. This discussion is necessary not only to understand the causal mechanisms which account for the present state of affairs, but also to provide assessment of remedies. Empirical evidence concerning the extent of male-female earnings differentials is summarized next, and the final section comments on the latent moral and ideological stances that underlie equal pay legislation.

## II. EQUAL PAY LEGISLATION: THE "REASON OF THE LAW"<sup>1</sup>

Those with a sense of history of social reform might marvel at the rapid pace at which the issue of gender discrimination has evolved from problem recognition to policy initiative. Not so long ago, the issue of women in the workplace was not even considered. Today, we have in place the full force of the law requiring that men and women be paid equally for work of equal value. What accounts for the relatively short time span between recognition of women in the workplace and pay equity legislation? Viewed against the attempts to eliminate discrimination due to colour, age, ethnic origin, etc., in areas such as housing, education, political participation, etc., the journey to equal pay legislation must be seen as short indeed.

The antecedents of equal pay legislation designed to eliminate gender discrimination in the market place are many. The most general are the substantial developments in the post-war labour market in Canada which saw the rapid growth in labour force participation and employment of women outside the home. The litany of socio-demographic causes and changing lifestyle patterns of the past four decades need not be recounted here. It is sufficient to note that the labour force participation rate of adult women (25 years and older) increased from about 20% in 1946 to nearly 60% in 1981, and that women as a percentage of the work force rose from 12% to nearly 30% during the same period.<sup>2</sup> Not surprisingly, the increasing visibility of women in the workplace served to highlight the unequal pay between male and female workers as well as publicize its extensiveness.

Concomitant with the increasing entry of women in the workplace came a variety of social programs legislated to further the welfare state and enhance the general well-being of Canadian labour. After some constitutional wrangling, programs such as unemployment insurance and the Canada Pension Plan became entrenched as part of this country's income maintenance system, a system anchored to the earnings-related principle and, therefore, related to the labour market. The salient feature of these and other developments is that both federal and provincial governments in Canada see nothing improper in intervening in the labour market to achieve social objectives.

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1. With apologies to Sir Edward Coke (1552 - 1634).

2. Craig Riddell, Research Coordinator, *Work and Pay: The Canadian Labour Market* Vol. 17 of the Collected Research Studies of the Royal Commission on the Economic Union and Development Prospects for Canada (Toronto: University of Toronto Press, 1985) p. 7.

More recently, there has been a series of initiatives, collectively described for convenience as "equal rights" legislation, which advocate anti-discriminatory behaviour, affirmative action, and equal pay for equal work.<sup>3</sup> Eliminating discrimination in society is unambiguously worthy, and such sentiments are aptly expressed in the *Canadian Human Rights Act*<sup>4</sup> (C-25) of 1978, which prohibits discrimination on the basis of age, sex, race, religion, marital status, colour, etc. But affirmative action and equal pay legislation attempt to go further. Affirmative action programs try to foster equity in employment opportunities and may, in some versions, require proactive initiatives such as setting quotas, targets, or timetables, for hiring specific minorities. It might even sanction "reverse discrimination," that is, deliberate favouring of members of a disadvantaged group.<sup>5</sup> Equal pay legislation concerns rates of remuneration and policy in this sphere has undergone substantial evolution. All Canadian jurisdictions have some kind of equal pay legislation. The most extreme form of equal pay law is the "equal pay for work of equal value" formulation and Manitoba's *The Pay Equity Act* (Bill 53), passed in 1985 and covering principally the civil service and non-private sector, is in this mode.<sup>6</sup>

There are a number of special socio-political trends worth noting in tracing the advent of equal pay legislation. The strengthening voice and power of the feminist movement is an obvious one. Although the goals of the feminists are extremely broad and varied, the economic issue of equal pay for work of equal value is, at once, concrete, easily grasped, and made-to-order for focusing attention on sexual discrimination. Unfair rewards in the labour market makes the issue of pay differences the perfect rallying point; its continuation seems unjustifiable; gains from its elimination would be widespread among all women; and the objective lends itself to clear and precise formulation. As suggested by the theory of rent-seeking coalitions, women have much to gain by exerting power through non-market channels.<sup>7</sup>

3. For a listing, with details, of equal pay legislation in Canada by jurisdiction as of 1981 see Morley Gunderson, "Discrimination, Equal Pay and Equal Opportunities in the Labour Market," in Riddell, *ibid* at 239.

4. *Canadian Human Rights Act*, S.C. 1976-77, c. 33.

5. *The Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11 allows affirmative action programs under section 6, subsection 4 and section 15, subsection 2. The language of section 15(2) is especially relevant. It permits programs, laws and activities having "as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." (emphasis added) Rainer Knopff and F.L. Morton "Judicial Statesmanship and the Canadian Charter of Rights and Freedoms" in W.R. McKercher, ed., *The U.S. Bill of Rights and the Canadian Charter of Rights and Freedoms* (Toronto: Ontario Economic Council, 1983) at 195 argue that section 15(2) is merely permissive, and that "only public discrimination is prohibited by the Charter." The authors also discuss the tendency of anti-discrimination legislation to adopt the test of "discriminatory effect" as measured by statistical imbalance.

6. Manitoba's *The Pay Equity Act*, S.M. 1985-86, c. 21, C.C.S.M. P13, applies specifically to the civil service, crown corporations, universities, hospitals and agencies receiving substantial government funding. It introduces employer-initiated deadlines and procedures for compliance with pay equity in contrast to waiting for employee complaints. It requires comparison between gender dominated occupations within an organization, defined to be any classification with more than 10 incumbents of which 70% or more are of one gender. The *Act* is to operate within the collective bargaining process; that is, to include employee representatives in implementation. A single job evaluation system is required to measure skill, effort, responsibility and working conditions. Pay equity is not to be achieved through wage reductions. A Pay Equity Bureau has also been established to monitor compliance.

7. This literature demonstrates that successful exercise of political power can achieve economic gains for members of coalitions at the expense of society at large. Lobby groups aim to increase the income or economic welfare of its members. They achieve this by persuading government to introduce policies or laws which lead to redistribution in their favour. Further, these groups ignore the social costs or efficiency losses resulting from redistribution because these will be borne by society at large, and are negligible for members of the lobbying group. Examples of rent-seeking actions by special interest groups include restrictive entry provisions, regulatory controls, and cartels,—all actions conferring benefits to members of the special interest group but which reduce economic efficiency. The strongest recent statement of this thesis is by Mancur Olson, *The Rise and Decline of Nations: Economic Growth, Stagflation and Social Rigidities* (New York: Yale University Press, 1982).

The influence of the feminist movement is so important, and tangible, that little more need be said about its impact.

The feminist movement does not propel itself in a cultural vacuum. Of significance, an intellectual shift towards social activism is emerging alongside a growing rejection of anti-collectivist models of economic order.<sup>8</sup> Some observers refer to this as the rise of a "New Class," described by one Canadian sociologist with perhaps just a touch of caricature in this fashion:

This New Class consists of the recent and rapidly expanding body of bureaucrats, technocrats, lawyers, and intellectuals, all of whom are well educated and interested in using the public rather than the private sector as the tool to shape social policy. These people have firm ideas about what constitutes a 'good' or 'just' society and care enough about ideas to devote their careers to the realization of such goals.<sup>9</sup>

This New Class, mindful of the failure of laissez-faire policies to deal with massive unemployment during the Depression, believes in the power and moral responsibility of government action. It maintains that government can, and should, express a will that is distinct from that revealed solely by market forces, and that regulatory edicts are legitimate expressions of collective wishes. Since legislation is the result of an open democratic process, the New Class, once persuaded of the justness of certain claims, finds nothing wrong in applying legal remedies to seek redress. Therefore this New Class, it is alleged, often substitutes its own agenda and judgments in place of the revealed preferences of society at large, thereby implementing policies in advance of either demonstrated need or citizen demand.

Still, granting the incontestable fact of sexual discrimination in the workplace, and, additionally, the serendipitous partnership of feminists with the New Class, it is still necessary to explain the form of policy response; that is, the equal pay for work of equal value formulation. After all, no specific remedy—either public or private—logically follows from establishing the existence of inequities towards women, nor from a sheer willingness to initiate solutions. Nor can there be recourse to any notion of compensatory action, for what is being advocated is horizontal equity—the equal treatment of equals. Before addressing this issue, it is useful to have a detailed understanding of the expression *equal pay for work of equal value*.

Equal pay legislation might be framed in several different ways—for example, requiring that pay be equal for "equal work," "substantially similar work," "composite similar work," or, finally, "work of equal value." The latter is also known as the "comparable worth" approach. Early initiatives in the form of "equal work" severely limited application since minor differences among jobs could be used to preclude comparisons. Further, only jobs within the same company were considered. "Substantially similar

8. Anti-collectivist is a better description of the position customarily portrayed as neo-conservative or laissez-faire market liberalism, since it focuses attention on economic organization rather than political beliefs. The term is from V. George and P. Wilding, *Ideology and Social Welfare* (London: Kegan Paul, 1976).

9. Lance Roberts, "Understanding Affirmative Action" Chapter 5 in W. Block and M. Walker eds., *Discrimination, Affirmative Action, and Equal Opportunity* (Vancouver: Fraser Institute, 1982) at 147. Irving Kristol explains the motivation underlying the New Class in this fashion: "... the professional classes of our modern bureaucratized societies are engaged in a class struggle with the business community for status and power. . . . conducted under the banner of 'equality.' [They] . . . are persuaded they can do a better job of running our society and feel entitled to have the opportunity. This is what they mean by 'equality.'" See his *Two Cheers for Capitalism* (New York, Basic Books, Inc., 1978) Chapter 23 at 165.

work" allowed jobs having minor differences to be compared, usually with respect to several independently assessed inputs, the four common ones being: skill, effort, responsibility and working conditions. But because jobs being compared had to be substantially similar in each of the input categories, this was thought restrictive, and so the "composite approach" recommends itself. The composite approach permits comparison of work requiring different amounts of skill, effort, responsibility, and quality conditions. It is only necessary that jobs be substantially similar in the aggregated value of these inputs to earn equal pay. Obviously, some ranking or "weighting" of the relative importance of each of the four factors is required, even when similar types of jobs are compared.<sup>10</sup> Passing over this difficulty, the "equal value" or "comparable worth" formulation grants equal pay to even substantially dissimilar jobs if the value of these jobs are equal, as determined by some job assessment procedure.<sup>11</sup>

The evolution of legislation mandating equal pay for work of "equal value" can now be seen to stem from three developments. The first, already mentioned, is that socio-political impulses encapsulated in the feminist movement and the New Class achieved sufficient momentum that they could no longer be ignored. In the vernacular of the feminist movement, there was a raising of social consciousness. The next two developments concern the words "equal value" themselves. "Value" has now lost its traditional economic import. It is no longer meant to refer to the market notion of value negotiated through voluntary exchange; instead, value is interpreted in some intrinsic sense, and is to be accordingly rewarded notwithstanding market results.

The last element turns on the very idea of equality itself. When elaborated as "equality of opportunity," this advocates fairness in access to employment opportunities and promotion prospects for women. Orders to cease and desist from sexual discrimination will not by themselves achieve equal earnings for men and women as long as employers are free to respond to market opportunities and are guided by private profits. (This is elaborated below). So then, perhaps as the result of impatience bordering on despair, or perhaps a lack of faith in the effectiveness of on-going attempts to expand opportunities for women in the workplace, the meaning of "equality" shifts gradually from one of "equality of prospective opportunity" towards that of "statistical parity of retrospective results."<sup>12</sup> Hence the

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10. Unless one of two jobs receives higher points in every category of skill, effort, responsibility and working conditions, in which case there is no disagreement about the unequal value of both jobs, it is mathematically possible to make the composite scores of both jobs whatever one wishes by choice of the weighting factors. It is even possible to reverse the rankings. The *deus ex machina* for determining the weights is problematical. Manitoba's *The Pay Equity Act* allows workers to negotiate the job evaluation system. *Supra*, note 5.

11. Gunderson, *supra*, note 3, has pointed out that proportionate pay for work of proportionate value is the logical extension of the equal pay for work of equal value principle, when implemented by job evaluation procedures. This is because it is illogical to allow comparisons only when jobs have equal value. This would preclude adjustment when a female-dominated job was judged to be 90 percent the value of a male-dominated job but received only half the pay. The issue of the weights is crucial here, *supra*, note 9.

12. Equality of prospective opportunity can countenance inequality of final result since individuals may or may not choose to avail themselves of opportunities. It only requires that men and women start from the same spot in a fair race. Statistical parity of retrospective results is akin to identifying winners after the race is run, and requiring that the group of winners contain men and women in proportion to the numbers entering the race, regardless of the actual order of finish among contestants. For further discussion see Thomas Sowell, "Weber and Bakke, and the Presuppositions of 'Affirmative Action'," Chapter 1 in Block and Walker, *supra*, note 8.

clarion cry phrased as legislative imperative: Society should insist that men and women earn equal pay for work of equal value; and make it happen, by order of law. Whether this be social folly or redistributive justice can only be decided after examining the causes of sexual discrimination in the labour market, which is considered next.

### III. SEXUAL DISCRIMINATION IN LABOUR MARKETS: THEORY ENTAILING POLICY

The efficacy of any policy designed to eliminate discrimination between males and females with respect to pay and work depends upon the nature of the cause or process giving rise to the discrimination. Debates surrounding the most appropriate policy course to follow often turn out to be really disagreement over which theory best explains the social process of discrimination. Accordingly, some understanding of the underlying mechanism of sexual discrimination in the labour market is necessary since different explanations of the source of discrimination suggest different impacts and consequences of equal pay legislation. With disregard for detail and subtlety, the major theories accounting for discrimination are sketched below: I consider the competitive market theory, the institutional market theory, the statistical discrimination model, and non-market explanations. In all cases, the focus will be on the identification of behaviour which gives rise to unequal pay between men and women. I also state the implied policy action entailed and direct attention to the assumptions underlying each theory.

#### A. The Competitive Market Model

The competitive market model asserts that profit maximizing employers hire the most productive workers regardless of sex. To do otherwise would earn the employer less than the maximum profits, and simultaneously aid one's competition. Discrimination against women in favour of less-productive men is therefore a costly indulgence. Over the longer term, employers who discriminate will successively experience lower profits, eventual losses, and bankruptcy. Equal pay legislation is thus unnecessary because the relentless and impartial forces of market competition will penalize discriminatory behaviour.<sup>13</sup> Similarly, individual men and women job seekers will search out employers paying the highest wages and offer their services to them in order to earn the highest income possible. The differential in earnings between the sexes must, therefore, simply represent the differing contribution of men and women to the productivity of the enterprise. Policies not antithetical to the competitive market model are those which promote equality of opportunity to participate in the labour market, but government action requiring equal pay for men and women, interpreted without qualification, is positively damaging in that it misallocates resources, reduces economic efficiency and introduces inequities.

The policy with respect to pay equity entailed by the competitive market model of discrimination is simply to do nothing. The conclusions of the

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13. The original seminal contribution is from Gary Becker *The Economics of Discrimination* (Chicago: University of Chicago Press, 1957). Becker also has some interesting things to say about the sexual division of labour in the family. See his *A Treatise on the Family* (Cambridge, Mass.: Harvard University Press, 1981).

competitive model are grounded in the nostalgic world of Adam Smith in which individual workers are freely mobile, perfectly informed, and constantly willing to exchange jobs and occupations. Workers face totally flexible wage rates and adjustable conditions of employment. Men and women face identical restraints and opportunities, and organizations such as trade unions play no role in determining pay.

### B. The Institutional Approach

The competitive market model is often defended as a reasonable approximation of reality since all theory, to be useful, must suppress a certain amount of superfluous detail. Its critics suggest that it is a triumph of formal reasoning from unrealistic premises rather than a description of typical labour market hiring and paying practices.

According to the institutional approach, the market is actually fragmented into several segments.<sup>14</sup> At one extreme, referred to as the primary sector, the labour market employs no price signals at all and workers are trained, paid, and allocated to different jobs by internal corporate procedures. The primary sector comprises well-paying, secure, and meaningful jobs for those accepted into entry-level positions after company screening. Promotion and earnings attainment are then entirely determined from within the firm, without reference to outside wage levels which are deemed irrelevant. The pool of candidates for upper rung jobs is limited to those already familiar with the firm's production methods, and it is not possible to acquire this knowledge without job-specific experience with the company. At the other end of the scale are jobs which require little specific training, offer no lasting employment or promotion prospects, and pay lower wages. This sector (the secondary labour market) accommodates part-time workers and has high rates of staff turnover. Whether the perpetuation of such labour market segmentation is historically determined by custom and tradition,<sup>15</sup> or by choice of technology and power relationships,<sup>16</sup> or whatever, the central proposition concerning pay levels is that they are determined more by administrative procedures and traditional job hierarchies than by competitive forces. Consequently, pay differentials reflect hiring and promotion patterns more than anything else. Since men and women tend to be segregated into different occupations and employment sectors, the earnings gap between men and women represents general occupational segregation, with women being relegated to the secondary labour segment with its low wages, sparse training, and no scope for advancement—the so-called job ghettos.

The implied policy entailed by institutional analysis is that equal pay legislation is a corrective to irrationally administered wage rates. Where the wage structure cannot be reasonably justified by factors unrelated to gender, men and women should earn equal amounts. However, the issue of

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14. Modern statements of this theory are P. Doeringer and M. Piore, *Internal Labour Markets and Manpower Analysis* (Lexington, Mass.: Heath, 1971) and G. Cain "The Challenge of Dual and Radical Theories of Labour Markets to Orthodox Theory" (1975) 65 *American Economic Review* at 16-22.

15. Doeringer and Piore, *ibid.* at 85.

16. Representative of this radical perspective is S. Bowles and H. Gintis, *Schooling in Capitalist America: Educational Reform and the Contradictions of Economic Life* (New York: Basic Books, 1976). An excellent summary of the radical perspective on labour markets is found in D. Gordon, *Theories of Poverty and Underemployment* (Lexington, Mass.: Heath, 1972).

entrance to different occupations cannot be addressed by legislation concerning pay scales alone. For these reasons, some see the question of occupational segregation as more important, and believe that equal pay procedures within the public sector is entirely proper since wage rates and hiring policies are dictated by non-profit, non-competitive considerations anyway. The question then remains whether equal pay legislation is appropriate for the private market sector, when the basic channel of discriminatory behaviour towards women is expressed at the hiring point.

A model which portrays why men are typically hired in preference to equally, or sometimes more, qualified women for similar positions in the private (and public) sector is the statistical discrimination model.<sup>17</sup>

### C. The Statistical Discrimination Model

While the competitive market model attempts to establish that discriminating between men and women is unprofitable and, by implication, irrational, the statistical discrimination model concludes the exact opposite. It suggests that hiring practices based upon some readily determined individual characteristics such as gender (or race, language, ethnicity, etc.) is indeed "rational" in the sense of earning larger profits for those who adopt the practice, often termed "tagging." Like the competitive model, employers in both the public and private sectors wish to hire the most productive job applicants. But with high search costs, employers will tend to substitute an easily observed character trait, such as gender, in place of the vast amount of costly information required to select the most appropriate individual job applicant from among many. The characteristic most suited to this task will be one which identifies group membership at virtually no cost. Simultaneously, there must exist a significantly large average difference in productivity-related attributes between groups; for example, education, training, probability of full-time commitment to employment and the like. Rational employers wishing to minimize hiring costs will therefore discriminate on the basis of statistical information concerning groups rather than individuals. For example, in the context of sexual discrimination, if men are known to have higher life-time labour force attachment rates on average, employers wanting a stable workforce can achieve this aim by hiring entirely men, even though there will be countless women in the full-time paid labour force their entire lifetime. Furthermore, if those hired are given training, career development opportunities, etc., there will be no way for those excluded (in this case, women) to demonstrate the requisite characteristics desired by employers, hence the basis upon which statistical discrimination is rational becomes self-fulfilling. There will be, then, a deterministic link between gender and group earnings, but not between individual characteristics and individual earnings.

Statistical discrimination is, though often unwittingly, a general and pervasive phenomenon. It happens whenever individuals are judged on the

17. See D. Aigner and G. Cain "Statistical Theories of Discrimination in Labour Markets" (1977) 30 *Industrial and Labour Relations Review* at 175-87. A highly readable account is given by Lester Thurow, *Generating Inequality* (New York: Basic Books, 1975). Statistical discrimination is also discussed in the economics literature as "signalling," "imperfect information," and "tagging".



basis of the average characteristics of the group to which they belong rather than their own personal characteristics. The judgments are often "correct, factual, and objective in the sense that the group actually has the characteristics that are ascribed to it, but the judgments are incorrect with respect to many individuals within the group."<sup>18</sup> In the context of sexual discrimination in a world where men and women possess different amounts of productivity-related attributes upon entering the labour market, it becomes economically rational for an unprejudiced employer to practice statistical discrimination. Profits increase when employers hire only men, if men as a group, have a higher average probability of possessing the desired characteristic. Therefore, it is not possible for individual women to escape the impact of statistical discrimination even though they possess the requisite productivity-related attributes. Women will be judged by the women's group characteristics, and it may be difficult or impossible for an individual woman to "signal" her individual productivity.<sup>19</sup> Consequently, a woman's individual advancement will depend upon the group's advancement. This implies that job accession is more important than equal pay legislation and, in the long run, the solution must lie in policies which equalize the group averages of those productivity characteristics sought by employers (i.e., education levels, etc.). For example, if men and women have identical education, training, and so on, the rationale for preferring members of one sex on economic grounds would be removed. In essence, the "signal" which both allows and justifies statistical discrimination would be effectively destroyed. Equal pay legislation will not accomplish this task.

The three models of discriminatory behaviour considered so far address hiring and paying practices in the labour market. The competitive model argues that discrimination is unprofitable and irrational; market forces will ensure its elimination. The institutional model argues that market forces do not determine rates of pay while the statistical discrimination model argues that discrimination is, in fact, profitable. Its practice is individually rational for a single employer though it may be collectively irrational for society as a whole. But, if the market merely reacts to, and rewards differentially, those who enter its domain, the key question must be why men and women enter the labour force on such uneven terms.

#### **D. Sociological Perspectives**

Explanations of sexual discrimination "before the labour market" are variously termed non-market models or sociological explanations. There are many explanations of important sources of differences between men and women which lie outside the labour market, including stereotyping of roles, educational streaming of boys and girls, assigning certain responsibilities, such as the care of children primarily to women, or the asymmetric effect

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18. Thurow, *ibid.* at 172.

19. In the case of colour in the professional sports world, signalling is not an issue since athletes usually have a record of past performance. Therefore, in economic activities such as sports, where information is acquired prior to hiring and productivity is easily measured, individuals will be judged by their personal merits rather than by the attributes of the group. Studies also show that the earnings gap is relatively less for such fields as academia and the professions. Here, there is an additional element of "certification" by an outside authority. Employers can hire a woman with confidence since she has "a doctorate from a good university," etc.

of marital status on the earnings, career ambitions, and job opportunities of men and women.<sup>20</sup> At an initial level of inquiry, the empirical evidence is clear about the importance and significance of factors such as child care responsibilities, husband's earnings, marital status and the like on the labour force behaviour of women.<sup>21</sup> Often ignored by economists who focus attention entirely on market demand and supply of labour, the constraints on women's choices are actually more important, and sociological explanations are extremely helpful. The contributions of the non-market or sociological explanations are several: they highlight the jointly determined nature of labour market decisions and life-style choices; they focus upon the prior determination of certain constraints so results in the labour market are merely the denouement of behaviour and attitudes long established; and finally, they indicate the limited effect of any set of labour market policies, including equal pay legislation, to redress male and female pay differentials since the ambit of determinants is much broader than the mere workplace, and more longstanding than current wage setting practices.

Still, it is perhaps instructive to relate the extensive list of sociological considerations to the labour market setting. After an extensive survey of research on the work behaviour of Canadian women, Nakamura and Nakamura believe that it is important to recognize the tremendous heterogeneity that exist among women in the labour force, and that long-run labour force behaviour is determined mostly by early life-style choices made by women regarding careers and marriages. In their own words:

We see working wives as falling into three basic groups: those who see themselves as working for only a short time to meet the current economic needs of their families; those who see themselves as working on a long-term or career basis to meet the economic needs of their families; and those whose work activities are not primarily motivated by the economic needs of their families. Moreover, we suggest that the wives within each of these broad groupings tend to share certain characteristics concerning the nature of their preparation for work and their interest in increasing their job skills, their interest in trade union activities, their preferences for the manner in which they are remunerated for their work, and the degree to which their work activities are predicated on the belief that their current marriage will endure.<sup>22</sup>

Translating the host of sociological explanations into the economic language of a labour market with heterogeneous female participants serves to focus upon several aspects. It emphasizes the enduring strength of such factors as attitudes, marital institutions, life-style choices, and so on—all yielding to change only in the very long run, and incapable of fast response, if any at all, as a result of equal pay legislation. Next, the sociological explanations point out that the important considerations touch on intentions with respect to home-oriented versus market-oriented activities, investment in education and training for market work, and the importance of marriage and own child rearing. Finally, it alerts us to the fact that empirical findings on women's behaviour in the labour market is an amalgam of several

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20. W. Block "Economic Intervention, Discrimination and Unforeseen Consequences" Chapter 3 in Block and Walker, *supra*, note 8.

21. A. Nakamura and M. Nakamura "A Survey of Research in the Work Behaviour of Canadian Women" in Riddell, *supra*, note 2.

22. *Supra*, note 19 at 194.

responses: a response reflecting social conditioning and cultural constraints;<sup>23</sup> a response reflecting productivity factors and occupational segregation; and, finally, a response reflecting discrimination between men and women with respect to pay. The implied policy entailed by the non-labour market explanations is that the central thrust must lie outside the workplace. So while equal pay legislation may be welcomed, it is not the most important game in town.

Theory ought to inform policy design. Accordingly, to evaluate properly a particular policy requires assessment of the underlying theory explaining the phenomenon to be addressed, in this case, sexual discrimination in labour markets. Nonetheless, it is important to have a rough idea of the magnitude of the male-female earnings differential as well as the relative contribution of various sources of this differential.

#### IV. EMPIRICAL STUDIES: A LOOK AT THE NUMBERS

Data from the Canadian market reveal interesting differences between men and women in terms of their labour force participation, occupational choice, unemployment rate as well as earnings and pay. The bulk of attention in discussions of pay equity has focused, quite understandably, on the average overall differential between male and female earnings in Canada (the so-called earnings gap). The situation may be described quite simply: average female earnings in Canada, as in other developed countries, tend to be between 50 percent and 65 percent of male earnings. Comparing all wage earners, the ratio of female to male earnings varied from 0.46 to 0.55 between 1967 and 1982. But since a higher percentage of women than men work part-time, the data on annual earnings of full-time workers is probably a better measure of pay differentials. While narrowing slightly over the 1967-82 period, the earnings gap ranged from 0.58 to 0.64.<sup>24</sup> In other words, women employed on a full-time basis in Canada earn only about 60 percent of the earnings of men employed on the same basis. In short, there exists an earnings gap of 40 percent between men and women workers in Canada, and this differential is widely acknowledged. For some, an earnings gap of 40 percent is so large that it is taken as prima facie evidence of systematic discrimination against female workers; furthermore, stubborn persistence of the gap and its slow erosion in the face of past policies are signs that pay equity legislation represents the only means to achieve fully equality. For others, the earnings gap is illusory, losing significance when factors such as age, education, cultural aims, and particularly marital status and so on are taken into account. This latter position argues that there is no support for the contention that in the absence of discrimination against females, the earnings gap would disappear.<sup>25</sup>

These contrasting views help to frame the key empirical questions, namely: (1) To what extent does the 40 percent earnings gap represent

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23. This refers to sexual stereotyping which results in a social definition of "women's work" in the labour market, a point emphasized by feminist writers such as F. Blau, "Women's Place in the Labour Market" (May 1972) *American Economic Review* 161-74.

24. Riddell, *supra*, note 2 at 61.

25. Block, *supra*, note 19.

discrimination against women by employers? (2) What portion of the earnings gap represents legitimate differentials such as voluntary choice and preferences which are unrelated to the absence of equal opportunities? (3) What is the influence of individual productivity-related factors such as age, education, training and experience, and hours worked? (4) Are male-female differentials the result of labour market practices such as occupational segregation which undervalue women's jobs, etc.? The major empirical challenge, then, is to sort out the relative contribution of different factors to the earnings gap, and thereby determine the extent to which the observed difference between male and female earnings reflect discriminatory versus non-discriminatory elements. This is important since it is the discriminatory portion of the earnings gap with which policy is most concerned. A corollary matter is to decide whether discriminatory behaviour should refer to the contemporary wage and hiring practices of the labour market, or to the broader conception of different social conditioning of males and females since birth, and other non-economic considerations.

There is no universally accepted empirical procedure to determine the influence of one discriminatory factor from another for the earnings gap. The procedure often adopted reflects, among other things, the underlying hypothesis held, the discipline of the investigator, availability of data and, as well, the form in which the question of pay equity is posed. For example, empirical analyses by those interested in inequality *per se*, but not labour markets in particular, usually employ methods founded on the presupposition of retrospective statistical parity. It believes that group discrimination, say against women, can be inferred reliably from differences in group "representation" or group "average remuneration" so that in the absence of such discrimination, women would achieve labour force participation rates and earning levels indistinguishable from men. Hence, an earnings gap of 40 percent is *ipso facto* proof of the need for affirmative action and pay equity. However, the legitimacy of this procedure, both to detect discrimination and to measure it, requires that the distribution of characteristics by which individuals are rewarded with pay do not differ substantially between men and women, and that all contributing factors are included. This is far from tenable and critics have little difficulty in rebutting these empirical studies by either suggesting neglected or other contributing factors to the earnings gap.<sup>26</sup>

An alternative approach, generally favoured by economists specializing in the study of labour markets, is the regression analysis approach. This procedure involves estimating an equation which determines individual earnings, and then decomposing the overall male-female earnings differential into two parts: one part associated with productivity-related factors such as age, experience, training, full-time employment status, etc. and a remainder which is then attributed to discrimination. This procedure takes into account such observable considerations as unbalanced representation between groups (e.g., more women are nurses than are men) as well as

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26. See, for example, Block, *supra*, note 19 at 111. He argues that marriage has widely asymmetric effects on the earnings gap, and that when never-married females in Canada are compared with their male counterparts in 1971, the female to male earnings ratio is 99.2 percent.

productivity-related features (e.g., men have more job experience on average than women); but there are also drawbacks. Many attributes are not observable (such as career aspirations), or may simply reflect the historical choice of a life pattern made years earlier,<sup>27</sup>—in short, non-labour market factors. Furthermore, as Riddell notes, “we might debate labelling as ‘discriminatory’ a component which, being a statistical residual, is essentially a measure of our ignorance.”<sup>28</sup>

The Canadian literature on the determinants of male-female earnings differential is too extensive to survey here.<sup>29</sup> However, from the perspective of pay equity, we are fortunate in having a timely and careful assessment of the extent to which the earnings gap can be attributed to wage discrimination provided by one of Canada’s leading scholars on the question of male-female earnings differentials. In a study prepared for the recent *Royal Commission on the Economic Union and Development Prospects for Canada* (the Macdonald Commission), Professor Gunderson summarizes twelve Canadian studies published on the subject of the earnings gap.<sup>30</sup> Despite differences owing to different data sources, study periods and statistical procedures, the results permit the following generalizations. The ratio of female to male earnings is about .60. After adjustment for differences in measured productivity-related factors such as education, experience and broad occupation categories, the ratio rises to .80. Finally, by employing evidence of job evaluation studies and other knowledge, the earnings gap attributable to wage discrimination after adjusting for occupational segregation is about 10 percent. In sum, women make 40 percent less than men on average. Half of this gap, or 20 percent, is attributable to productivity-related factors. The remaining 20 percent differential is split approximately evenly between two factors: occupational segregation (men and women clustering in different occupations having different pay rates), and narrowly based wage discrimination (male-female wage differences for narrowly defined occupations in the same establishment).

The central concern of empirical studies of the male-female earnings differential lies not only in its estimated overall magnitude but also in its attempts to understand the sources and social process which lead to discrimination. This latter question is critical for determining the most effective policies for reducing inequality because underlying all of the empirical research is the fear that incorrect assessment of the factors producing the male-female earnings gap may lead to inappropriate, and even injurious, government action. For example, given the findings above, equal pay legislation framed in terms of substantially similar work would achieve at most a reduction of the earnings gap from 40% to 30%, since its policy impact is limited to that portion of the gap attributable to narrowly defined wage discrimination. On the other hand, to legislate total removal of the earnings gap in these situations would introduce further inequities and inefficiencies

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27. Nakamura and Nakamura, *supra*, note 20.

28. Riddell, *supra*, note 2 at 60.

29. See M. Gunderson, *Labour Market Economics* (Toronto: McGraw-Hill Ryerson Limited, 1980).

30. Gunderson, *supra*, note 3.

since legitimate differentials due to productivity-related factors would be ignored.

Despite their lack of precision, the empirical studies are important and useful. Arguments over causes and interpretations of the "bare fact" of the 40% earning gap will doubtlessly remain. Gunderson phrases it aptly:

To some, this assessment . . . of slightly less than half of the overall earnings gap of .40 reflecting discrimination in the labour market will be an insultingly low estimate of a phenomenon that they see as manifestly larger in magnitude. To others . . . it will be a gross overestimate, failing to account properly for unmeasurable characteristics, choices that reflect the comparative advantage of the different groups, and entirely inconsistent with competitive economic forces in the long run.<sup>31</sup>

### V. EQUAL PAY LEGISLATION: DISTRIBUTIVE JUSTICE OR MARKET SUBVERSION?

The thrust towards pay equity is strong and serious. It promises to be one of the more controversial issues in the future, partly because its underlying sentiment has much wide appeal, partly because of the changing shape of work and labour markets, but mostly perhaps because of government willingness to redress what it perceives to be social injustice by policy activism and explicit legislation.

Equal pay legislation is still in its infancy. Its application is limited, its administration uncertain, and its consequences unknown. The touchstone will be its extension to the private sector, where there is stronger opposition, and in the next two decades, when "the young women who, between 1971 and 1981, succeeded in changing female labour patterns, . . . move up the promotional ladders in their place of work."<sup>32</sup> Our discussion suggests that the potential for equal pay legislation to reduce the earnings gap is likely very limited in the short run. This is because the legislation is confined primarily to the public sector, speaks only indirectly to occupation imbalances, and is directed, at best, towards the less than one quarter of the earnings gap attributable to wage discrimination *per se*. Administrative difficulties of implementation will undoubtedly surface, intensifying resistance, and progress, though difficult to reverse, is bound to be slow. This pace is probably attractive to those who counsel caution<sup>33</sup> or believe that the evidence concerning the worth of equal pay legislation needs further discussion.<sup>34</sup> One can only hope that Canadians see equal pay legislation in its proper evolutionary stage—that of prototype policy development. This being the case, it is appropriate to reflect on some of the basic premises underlying the agenda for equal pay legislation.

Except for the most ardent supporters of laissez-faire capitalism, most Canadians are not repulsed by legislation which regulates the economy. We have long accepted the necessity of government intervention. The concern

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31. *Ibid.* at 232.

32. J. Boulet and L. Lavallee, *The Changing Economic Status of Women*. Study prepared for the Economic Council of Canada (Ottawa: Minister of Supply and Services Canada, 1984) at 3.

33. For example, Roberts, *supra*, note 8, and Gunderson, *supra*, note 3.

34. For example, Riddell, *supra*, note 2.

of the private sector, however, is that equal pay for work of equal value is a quantum departure from presently organized economic production. It leads inevitably to administratively-determined concepts of value that have no relationship to market forces. And because the notion of comparable worth omits consideration of relative scarcity in demand and supply of different types of labour, the wage structure loses its ability to signal necessary reallocation of resources.<sup>35</sup> Economic "rents" are ignored and the role of markets is totally supplanted.<sup>36</sup> This line of thinking is based transparently on efficiency arguments and a moral stance that value and social reward should be meaningfully linked to the economic process of production.<sup>37</sup> Value refers solely to market-signalled demands for exchangeable goods and services and, hence, the excessive worry about the adverse incentive effects of equal pay legislation.

On the other hand, it is open to question the very nature of social well being. A society might choose to divide its responsibilities and organize its structure into different configurations of market and non-market spheres. It might also choose separate mechanisms to distribute its rewards and allocate its human resources. There is nothing illogical, or even impractical, about a society which recognizes the intrinsic worth of procreation, or the nurture of future generations, and wishes to distribute from a common pool access to material goods without regard to the pedigree of the effort that entered into its production. However, society may decide to perpetuate, or change very slowly, the boundary between the world of work, and what it regards as social lifestyles. Given the empirical research on the earnings gap, it would appear that changes are necessary in non-labour market practices such as education, stereotyping, etc. in order to eliminate totally the earnings gap. Thus, a society unwilling to contemplate radical alternatives in its social patterns cannot expect to lessen the earnings gap very much in the short run in spite of the New Class or the women's movement. And to extend equal pay legislation to the private sector too quickly or willy-nilly may introduce discrimination of another sort. Seen in this light, the controversy over equal pay legislation is, in reality, a difference over market-determined value versus socially-determined value, economic efficiency versus distributive equity, and collective rights versus individual entitlements.

The last point deserves some elaboration. The philosophical tenets of liberalism accord primacy to individual choice and free will. Equality of opportunity is quite compatible with inequality of result. The game rules

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35. The role of markets may be seen in this example. Consider professional sports, say tennis, golf or skiing, in which men and women compete in separate circuits. Here, there is complete job segregation. There is likely no discrimination amongst competitors (*supra*, note 18) and the results of a job evaluation might even conclude, for example, that male and female tennis players display equal amounts of skill, effort, responsibility, and adjustment to working conditions. Further, the top earner on the women's circuit probably earns more than any of the male tennis players. Even with all this, it is well known that professional male tennis players earn more than their female counterparts on average. The standard explanation is the "market": people attend and watch men's matches in greater numbers, hence larger purses.

36. Economists term "rents" that portion of the market price that reflects the scarcity value of the item rather than its cost of production. Thus an item might fetch a very high price in the market solely due to its scarcity, contrived or otherwise. The high market price incorporating these rents therefore serve the socially useful purpose of indicating to potential suppliers that more of these high-priced items should be produced. Consequently, to ignore these rents and to legislate administered prices would cause the market mechanism to disintegrate.

37. For a thoughtful discussion of rights and freedoms in the marketplace and the insight that the case for private ownership of productive assets must rest primarily on efficiency, see A. Okun, *Equality and Efficiency* (Washington: Brookings Institution, 1973).

merely require that the race be fair from a known starting line; and injured individuals be compensated. What is valued is individual achievement rather than ascribed status. Standing in marked contrast to this is the idea of radical egalitarianism, which seeks redress for historical injustices to groups. The particulars of the argument for legislation to pursue equality are often phrased in terms of the historical disadvantages of women, and the remedy usually formulated in terms of ascribed status based upon some collective characteristics, in this case of equal pay legislation, gender.

There is a delicious irony in all this. The practice of statistical discrimination is only possible when group averages are objectively and widely unequal. The ascription of group characteristics to individuals is therefore rationally based.<sup>38</sup> But efforts to counteract the unequal treatment of individuals arising from widespread statistical discrimination are themselves cast in terms of group attributes. Further, they are justified by reason of past harm to the group, and not harm to particular individuals. Despite all good intentions, some individuals of the now-favoured group will receive unnecessary aid while other individuals of the disfavoured group are prevented from advancing.

The comparable worth view of equal pay legislation is likely to reinforce the depreciation of individualism. For economists, the distinction between marginal value and average value is crucial. When job assessments are done by evaluators who assign points scores to various factors, the assessment is likely to be based on perception of the objective worth of the tasks required to perform the job. This, in turn, is likely to reflect the performance of the average worker rather than the marginal worker. However, economists who attach great importance to market forces of demand and supply will want to stress the "marginal value" that is due to the employment of the last individual.<sup>39</sup>

The importance of the distinction between average value and marginal value, and its relationship to the market deserves brief elaboration. Consider the voluntary sale on the market of a limited-edition print by a world-renowned artist. Should its value be established by the average of the prices offered by the numerous prospective buyers; that is, its "average value?" But surely, the seller will want the highest price that some individual is willing to pay. Accordingly, with the metaphor of the market as auctioneer, the value of the print is determined by what the last bidder is willing to offer; and this is termed the "marginal value" by economists. Furthermore, the marginal value may be considerably higher than the average value; for example, if the artist has recently died and therefore, the prints now become "scarce." The same principle—namely, that market prices are determined by "marginal" rather than "average" value — applies to the labour market

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38. The label "statistical" discrimination accurately depicts rational behaviour of profit-seeking employers in a labour market in which imperfect information is the norm. Unfortunately, it fails to connote the broader circumstances in which social stereotyping and prejudice takes place. The phenomenon, in fact, portrays the "judgment-reaching" process that underlies all inferences about particular individuals drawn from group characteristics. This then leads to ascription of attributes which may or may not have foundations.

39. See Gunderson, *supra*, note 3 at 243.



and individual wages. And, the “market exchange” value of an “average qualified” worker in extremely scarce supply may be very high.<sup>40</sup>

Still others find the moral position suspect.<sup>41</sup> They are uncomfortable with the emphasis on groups, rather than on individuals. The targeted beneficiaries are those sharing a collective characteristic rather than demonstrating personal merit. Furthermore, the legal principle, not to mention social theory, that grants group compensation in the present for past injustices to individuals is highly suspect. In the context of gender discrimination, if the sins of the father are not visited on the son, should the daughter be redressed for the harm to the mother? There is no easy answer.<sup>42</sup>

A final observation concerns the conception of equality and social justice in political economy, a meta-ethical enquiry not attempted in this essay. However, it is worth noting that the equal pay legislation approach inclines more toward the “end-state” principle, vulgarly rendered here as being concerned with the finally-fair distribution, than towards the “historical” principal, which is based upon notions of procedural fairness and just grounds for reasonable rectification.<sup>43</sup>

Defining what exactly is the “just price” has long eluded economists and philosophers both; so now, too, is determining the fair and equitable wage structure. But it is enlightening to recall Plato’s search for the answer to the question: what constitutes a just individual? The process required no less than setting out the entire details, not merely outline, of the whole of *The Republic*.

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40. The value of an “average quality” hockey player might be determined from an assessment of skill, responsibility and working conditions. However, the marginal value of a Wayne Gretzky is the value enjoyed by the team which has him as a member. Also see *supra*, note 34.

41. Roberts, *supra*, note 8 at 159.

42. The *Canadian Charter of Rights and Freedoms* is typically viewed as entrenching individual rights rather than collective rights. James Penton “Collective versus Individual Rights: The Canadian Tradition and the Charter of Rights and Freedoms” in W.R. McKeher ed., *supra*, note 4, argues that Canadians have historically been more concerned with collective rights such as language rights, provincial rights, etc. rather than with individual rights.

43. These contrasting positions are represented by J. Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1972) and R. Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974). For a criticism and discussion of both the Rawls and Nozick approaches from the perspective of welfare economics, see H. Varian, “Distributive Justice, Welfare Economics, and the Theory of Fairness” (1974-75) 4 *Philosophy and Public Affairs* at 223-47.

