Toward equal rights for men and women, by Ethel M. Smith

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FOREWORD

In the following study, Miss Smith has undertaken a difficult task and has accomplished as extraordinarily successful result. She has shown, in an impressive way, the great complexity of undertaking to restate the law with reference to the position of women so that that position may be in accord with modern needs and modern social development.

Under the earlier law the woman was generally less than fully responsible. The young woman was subject to the limitations of infancy, the married woman under coverture was legally incompetent, the married woman under the civil law might arrange for the independent conduct of her own affairs, but the presumption in favor of the community generally gave to the husband complete management during their joint lives. The unmarried woman might be legally competent, but she was occupationally restricted and inferior from the point of view of inheritance. So that marriage or the convent were the only socially reputable channels of self-expression.

In those earlier times, governments were absorbed in problems of national existence, of public finance, in overcoming conditions of precarious economic life, threatened by other governments and by lack of natural resources. Issues were therefore neglected and questions ignored to which under conditions of economic and political stability replies must be found. The great question is how to get the woman out from under these restrictions—from infancy to adult life, from coverture to the light of self-determination, from occupational restrictions to occupational freedom. With independence should come equality, but the independence comes first, and often the problem of independence will give rise to grave doubts, not as to whether equality is desirable, but wherein equality consists. “Hard cases make bad law” we are told. Certainly the hard position of the wife at common law found most inadequate remedy in the equitable separate estate and in the statutory separate estate under the so-called married women's property rights statutes in the United States. The husband was a
person of too great power, too little responsible; the wife of too little power and no legal capacity. The remedy found for this did not follow the rational plan of increasing his responsibility, while giving her responsibility likewise, but of giving her a limited right to use her own property for her own purposes.

At the present moment, the place of the family in the life of the time, the respective duties and rights of husband and wife, are subjects which would be subjected to the most searching analysis, the most intelligent and careful scrutiny. Equality is one principle to be applied in working out the change from what has been and what is to what should be. But no quantitative or mechanical or mathematical conception can comprehend the entire undertaking. There are qualitative considerations—matters of emphasis, of stress, of social importance that should also affect these decisions of issues that affect the very source from which the race draws its being.

Miss Smith has called attention to the variety of influences from which the law has sprung, and the great number of points at which it must be changed. The law of public organization, the marital law, the poor law, the law of master ad servant are all of importance. In public organization there are questions of holding office, of jury service, etc. In the family law, there are reciprocal rights and duties, especially with reference to the care and nurture of the children; in the poor law, the matter of protecting the taxpayer and also of sound methods of treatment. The possibilities of applying the principle of equality in these different fields vary enormously.

With a very great respect then for those who urge that the principle of equality is universal in its applicability and comprehensive in its influence, Miss Smith has shown that there are many phases of the movement toward legislative reform in the legal relations between men and women in which the principle cannot be applied with arbitrary uniformity.

She has done more than this. She has portrayed something of the chaos and confusion that would result from the adoption of the “equal rights” amendment and from the more extended reliance on the so-called “blanket” enactments in the various states. She has shown, too with great patience and thoroughness, the result to be anticipated from complaisant application of the principle to labor legislation and to international relationships. To the person in immediate contact with those who suffer from inadequate legislative reform, the proposals she is combatting seem both doctrinaire in their general bearing and tragically remote from the realities of life.

To the difficult and absorbing task of readjusting the rights and duties of men and women to the demands of the newer order, this study makes a real and very important contribution.
Sophonisba P. Breckinridge *Chairman, Committee on the Legal Status of Women* University of Chicago
May, 1929

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POINTS OF VIEW AND RESPONSIBILITIES
The woman movement of our time took form in eighteenth-century France and England. This was the France of the Revolution, which was fighting for the “natural rights” of the individual. It was the England of a less bloody transition, but a no less convinced individualism, where feudalism was yielding to ideals of modern democracy; the England whose rebellious colonists in America were launching a new form of government with a Declaration of Independence which proclaimed: “All men are created free and equal.” It was an age of individualistic thinking everywhere.

But it was an age when a third great revolution, of a different but still more comprehensive kind, was also under way. Machines, and steam and electric power, had begun to change the world of individual artisans and craftsmen into working masses of people whose lives were controlled not by themselves but by machines and the owners of machines. Mass production, rapid transport, world-wide markets, supplying new millions of a fast increasing population, were changing the social and political forces of life, and compelling nations to think, not first in terms of the individual as the basic unit of society, but of groups and kinds and classes. Science had created something which no individual human being could control, and under which no individual could escape the consequences of his neighbor's fate.

Not individualism, not laissez-faire for this new age—that old philosophy would not do. Tragic experience proved that the social policy which left “every fellow for himself” left, in literal truth, the hindmost to the devil. For that result had to pay, and pay, and pay; in a vicious circle, because society can only pay by falling back on the individuals, some of whom will paid in blood and suffering long before the others can be taxed in money for the continuing price of misery to which nobody, ultimately, is immune.

It came to be clear that there must be conditions permitting freedom of action before there can be liberty, rights, or opportunities for the individual. The environment, the community and society, must be safe before life can exist or prosper. Community welfare promotes individual welfare, and therefore freedom.

But the direct antecedent of freedom is justice, and it must be social justice. Equality is contained in justice, but it is not all of justice, nor is it a fixed and final quantity anywhere. It is rarely the same for a few individuals as for a multitude. It may not be the same for a community as for an entire nation. It is not the same in the wilderness as in the civilized state. Equality in the civilized world is the minimum of justice, and it must not be limited to a few.

The modern world reaches for liberty through law and social restraint, and not through nihilism or anarchy. It seeks to curb individual liberty at the point where the liberty of one individual collides
with the corresponding liberty of another. Only thus can we curb the enemies of society and protect good citizens. Only thus can we have a community fit to live in. Only thus can we have the equality, or liberty, or opportunity, with hope of happiness.

And the enemies of society, be it remembered, are not all criminals; they are not necessarily human beings. Often they are forces which arise in consequence of human act of good intent. Good government uses law to curb anti-social policies as well as criminal acts. It does this to make way for liberty—and equality—and opportunity.

Social justice through social control. This ideal, with its enlarged ideal of equality replacing the old individualism, was the lesson of the industrial revolution. Because that revolution began in England, modern social legislation had its beginnings there. In America, the industrial revolution came at first more slowly, having here a whole new continent to subdue. Its social consequences in the new republic came more slowly still, for the vast free-land frontier relieved the pressure from which the crowded populations of industrial Europe had no such corresponding means of escape. But the consequences came, and with them a new social-mindedness, a new concept of social responsibility.

This new concept was to express itself in social legislation which came largely at the demand of women. In America the old individuals feminism—that which began by seeking women's rights through imitating men, and measuring itself by men and the standards set up by men—passed out of this “sterilizing phase” as Havelock Ellis calls it, and became an organized social force.

This happened in the course of the campaign for the vote, and gave impetus to the suffrage movement. Suffragists wanted the vote as a means of service beyond that goal. And the service beyond was not to be limited to a mere equality, to be always measured and balanced, making sure that neither men nor women had one thing more or less that the other. It left open possibilities for development and diversity, for women in women's way, as for men in theirs.

So, at least, the record of a century indicates. As fast as they gained a point, suffragists used the new leverage at that point; used it largely to bring women up to the status of men, and at the same time to secure what they could to meet women's separate, independent needs.

Now, women have the vote in most of the English-speaking countries of the world, and throughout the most of Europe except in the Latin countries. They have advanced to a position of great power. But they have much further to go, and they have pushed on so zealously, so intensely, that they not too often paused to read the compass, or take the need soundings for their course. At best it was hard to define a course, in the whirl of great new currents.
Shall we not take those sounding now? And perhaps re-define the course?

By that I do not mean to suggest a change of goal. There is no boundary, I take it, to which we could limit constructive feminism if we would. No issue that women face can be detached from the interests of men, the interests of children, the interests of home and fireside, the interests of community, state, and nation, and the interests thereby of the world.

But there are different approaches to all issues. There are different premises at different points of view. And there are different ways to work, different instruments to use. What are our premises, our point of view? Having determined our approach, by what means shall we proceed?

The first great instrument of justice is the law, but there are others, and there is a technique for the use of each. There is strategy in selection, for timeliness, opportunity, and need. There are, moreover, the forces other than law which must be reckoned with, which are not amenable to law, and which are strong enough sometimes to negate the law; strong enough always to affect the law's results. These are the economic and industrial forces which even science cannot yet control. Opposed to them, the law is often powerless.

The conscientious, socially-minded feminist cannot lay down an arbitrary course. She cannot be satisfied with one instrument alone. To be constructive, feminism must be clear-sighted, open-minded, just; it must be flexible, resourceful, versatile. How far is the law a remedy for the injustice we would cure? What is the point at which other remedies apply? Which remedy is best, or should more than one be used at once? With justice in view, the different forces involved must be recognized, and their interplay examined, their possibilities appraised.

As voters, we are in a basic sense lawmakers. The laws we seek to make will apply to the everyday lives of millions of people, in all the relationships of life. We are especially concerned with the rights of women, that they should be equal to the rights of men. That means women in their private as well as their public capacities. Women as the owners of property, and women who have no property. Women rich and poor, educated and uneducated, trained and untrained, wage-earning and non-wage-earning. Women as wives, mothers, and housekeepers, dependent and independent. As a lawmaking problem, technical from the standpoint of the lawyer as well as of women, it traverses the fields of political and civil rights, property rights, economics, labor, domestic relations, and social welfare, each a technical field in itself, and each impinging on another. It goes to the very roots of our civilization.
No question, then, but that the first responsibility of the voting feminist is to think things through; to analyze each problem, to segregate and balance issues, and see them in their right proportions. And the end to seek is not equality, but justice and human happiness, to which equality is a means.

The task undertaken here is not to find the answer, it is to suggest the scope of the problems before us; to compare different methods of approach; to bring together material for thought and judgment as a basis for intelligent action, and leave it in the hands of thinking women to use.

BEFORE WOMAN SUFFRAGE

Nationally, the woman movement found its first organized expression in the demand for woman suffrage. ¹ But by this time nearly half the nineteenth century had passed, and the agitation had borne other fruits. As early as 1809 the Legislature of Connecticut had begun the removal of the disabilities of women imposed by the common law. ² By the enactment married women in Connecticut were given the right to make a will.

² Ibid., p. 12.

Other states followed Connecticut ³ on this adventurous course, but at a careful distance. Ohio came next, in 1835, and by the time the first Women's Rights Convention was held, in 1848, Kentucky, Texas Alabama, Maine, Illinois, and Vermont had one by one added something to the liberties of women. All of these but Kentucky confined their legislative acts to the subject of married women's property, granting different degrees or kinds of control. Kentucky in 1838, by allowing widows with property, and with children, to vote on school questions, gave women their first suffrage rights in America.

³ Catt, Carrie Chapman (editor), Woman's Century Calendar, 1800-1900, “Political Science Study Series,” Vol. V. No. 3 (New York National American Woman Suffrage Association, September, 1900), pp. 7-64.

By the end of the nineteenth century, when four states had provided for equal suffrage, all the states had given married women the right to make a will, there were seven states in which married women
had full control of their separate property, seven states had given parents co-guardianship over their children, and “nearly all the United States” had raised the age of consent.  

4 Ibid., pp. 63-64.

After 1900, as the suffrage area widened, and women could give political force to their protest against the inequalities of the law, the number and kind of their disabilities diminished steadily. By 1920 it was possible to list a number of states in which there existed no differentiation at all in the law as applying to women and men in certain respects where formerly there was discrimination which was most unjust. It was a very uneven advance, a step of one kind in one state, a different kind in another. 12 Nevertheless it could be said, with respect to those particular rights, that the status of women under the law in those particular state was identical with the status of men. Other than suffrage, made equal and nation-wide in August of the year (1920), those rights, in one state or another, 5 were as follows:

Eligibility to public office

Eligibility to jury service

Married persons’ property rights in real estate

Parents’ rights of inheritance from deceased child

Married persons’ rights of contract to real estate

Parents’ rights to earnings of children

Parents’ rights to guardianship of children

Divorce


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USING THE VOTE The Achievements of Seven Years
These gains, accompanying the state suffrage victories and the federal campaign, and often directly their fruits, marked an obvious line of duty for the enfranchised women of 1920. So, when the ratification of the Nineteenth Amendment had been completed, and the National American Woman Suffrage Association found its great life work accomplished, it passed on this unfinished task to the inheritor of its ideals of citizenship and government, the National League of Women Voters. The new organization, founded in 1920, pledged itself, among other duties, to the removal of the remaining discriminations against women in the codes and constitutions of the several states. 6 Energies hitherto concentrated on suffrage work were now released, and, still under the stimulus of their victory, the newly enfranchised women set about their further self-liberation by use of their new political tool.


The National League of Women Voters having been organized in 1920, the state Leagues had barely had time to set up machinery for work in the legislative sessions of 1921. Nevertheless many achievements were registered for that year. Soon joint legislative committees were formed in many states, and a national committee was formed at Washington—composed of organizations of different types, which were, nevertheless, interested in legislation of related purposes. The record to date of laws or amendments to laws, sought by women voters since 1920 for the benefit of women and to equalize their status and conditions of life and employment with the status and conditions of men, shows a total of many scores of enactments, state and federal. 7 The variety and trend of such legislation may be indicated by listing subjects and states as follows:

7 National League of Women Voters. Unpublished replies to questionnaires, containing reports of state Leagues for the legislative years.

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LEGISLATION SINCE 1920 AFFECTING THE STATUS OF WOMEN 8

Public Rights

*Citizenship*

Federal Statue (Cable Act)

*Eligibility to Public Office*
Arizona
Arkansas
Delaware
Iowa
Kentucky
Maine
Maryland
Massachusetts
Missouri
New Hampshire
New Jersey
Vermont
Wisconsin

Jury Service
Arkansas
Delaware
District of Columbia
Maine
Minnesota
Nevada
New Jersey  
North Dakota  
Oregon  
Pennsylvania  
Rhode Island  
Utah  
Wisconsin  

*Party Management*  
Delaware  
Iowa  
Massachusetts  
Missouri  
New Jersey  
Ohio  
Tennessee  
Washington  
West Virginia  

*Equalizing Pay of Women and Men in Public Employment*  
Federal Statute (Sterling-Lehlbach Act for Reclassification of Civil Service)  
Maryland  

Toward equal rights for men and women, by Ethel M. Smith http://www.loc.gov/resource/rbnawsa.n2783
New York

For this compilation, which does not claim to be exhaustive, the writer is indebted to Miss Gladys Harrison, executive secretary of the National League of Women Voters.

Private Rights

*Property Rights of Married Women (Including Inheritance)*

Arkansas

California

Connecticut

Florida

Illinois

Missouri

New Hampshire

New Jersey

New York

Ohio

South Carolina

South Dakota

Texas

Virginia

Washington

West Virginia
Wisconsin

Contract Rights

California

Colorado New

Florida

Illinois

Louisiana

New Jersey

South Carolina

Texas

Acting Capacity

California

District of Columbia

Florida

Kentucky

Louisiana

Mississippi

Nebraska

North Dakota

Ohio
West Virginia

_Domicile_

California

Massachusetts

New York

Ohio

Virginia

_Age of Majority_

California

Iowa

Missouri

Nebraska

Ohio

Washington

_Marriage Age_

Arizona

California

Kentucky

Minnesota

Missouri
Toward equal rights for men and women, by Ethel M. Smith http://www.loc.gov/resource/rbnawsa.n2783

Nebraska
New York
North Carolina
Ohio
Vermont
16
Age of Consent
Florida
Iowa
Kentucky
Missouri
New Hampshire
New Jersey
North Carolina
Ohio
South Carolina
Virginia
West Virginia
Wisconsin
Penalties for Sex Offenses
California
Florida
Maine
New Jersey
New Mexico
Ohio
South Dakota
Wyoming

*Women's Reformatories or Prisons*

Federal Statute

California
Illinois
Maryland
Vermont
Washington

*Parental Guardianship*

Arkansas
California
Colorado
Delaware
Florida
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<td>West Virginia</td>
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</table>
Wisconsin

*Responsibility for Illegitimate Child*

California
Missouri
New York
Ohio
South Carolina
Wisconsin

17

*Support*

Kentucky
Mississippi
Nebraska
Virginia
West Virginia

*Mothers' Aid*

California
Colorado
Connecticut
Delaware

District of Columbia
Florida
Idaho
Illinois
Indiana
Iowa
Kentucky
Minnesota
Mississippi
Nebraska
New Jersey
North Carolina
Ohio
Oregon
Pennsylvania
Rhode Island
South Dakota
Virginia
West Virginia
Wisconsin

Regulation of Hours and Wages
RE-EXAMINING THE PROBLEM- I. THE REALISTIC APPROACH- The Status of Women Today
The effect of these changes in the law accomplished in the last eight and a half years, added to the changes of previous years, has been to remove many of the most important legal discriminations against women. The right of jury service, however, is still withheld from women in twenty-seven states (with two more in doubt). The property laws in six states allow the husband to take his wife's wages, and in the eight community property states the husband has complete control of all the property of both parties during his lifetime. No state allows to the wife the right of choice of domicile (except as voting residence); nor is joint headship of the family anywhere allowed by law.


Other than these, however, the injustices that remain are either (a) confined to a small number of states, or only one; or (b) cause hardship to relatively few people; or (c) however important, are still the subject of emphatic difference of opinion among women themselves with respect to what constitutes equality in those situations.

(a) There are but two states in which the common-law disabilities of married women as to contract rights have not been removed. Only one state still permits a father, under the common law, to will his child away from the custody of the mother, and there is but one other that permits the father to appoint by will the guardian of a child over fourteen.

(b) With respect to most of the remaining common-law disabilities of married women, the extent of the actual hardship entailed cannot be ascertained. The average citizen, man or woman, never has to appeal to the law. Comparatively few husbands or wives need or resort to legal protection from each other, either as to property rights or physical freedom. To a considerable extent, no doubt, vestiges of an old régime persist on the statute books precisely because they are so seldom invoked that they are largely forgotten between times. Had they pinched more severely, or more often, they would have been more widely protested.

(c) In many instances no alternative provision has been agreed upon, and no focusing point for public opinion has appeared. Here, most likely, is the principal reason for the persistence of some of the most prevalent in equalities still to be found in the law. They present issues still unsettled, they raise questions still unanswered. Until some definite conclusion has been reached as to what constitutes equality under conditions in this or that phase of family life, in this or that relationship of men and women, in public or private affairs, legislation on the subject in question is not likely to be advanced.
If that be true, our obvious next step is one of analysis and appraisal.

**Differentiation versus Discrimination**

There are innumerable laws that differentiate between men and women, and some are found in every state. For present purposes, the most important may be listed in three groups under topical headings as follows:

1. *Laws that Differentiate between Men and Women*

   Citizenship
   
   Suffrage
   
   Eligibility to public office
   
   Eligibility to jury service
   
   Admission to public employment (teaching, civil service)
   
   Marriage
   
   Divorce
   
   Property rights of married women
   
   Support of family
   
   Domicile
   
   Guardianship of children
   
   Inheritance from children
   
   Earnings of children
   
   Sex offenses
Obviously, however, not all these laws that differentiate can be held to be discriminatory against women. Some of them have been and are among the chief legislative objectives of women's organizations because they are believed to operate toward equal rights and equal opportunity for men and women, and must be distinguished from laws which merely differentiate. From the above list of headings, therefore, four must be set over into another category; namely—

II. Laws that Differentiate without Adverse Discrimination

Maternal and infant hygiene

Mothers' aid

Regulation of employment conditions for women (with some exceptions)

Sex offenses (some only)

Still another category is needed, however, to describe another set of laws. These are in a sense and unclassifiable group because they deal with situations so intricate, and so highly personal and conditional, that women themselves are not prepared to say conclusively what provision equality demands. They are included under—

III. Laws that Differentiate on Subjects Where Equality Is Not Yet Adequately Defined

Married women's property rights (some only)

Married women's contract rights (some only)
Age of majority

Marriage age

Divorce (some causes)

Support

Sex offenses (some only)

Health (some only)

For a plan of legislative action, then, the way has been clear enough as to the political inequalities. Presumably nobody has questioned, at least nobody who worked for equal suffrage, that women should have identical public rights such as citizenship, eligibility to jury service (a reservation here), eligibility to public office and to public employment. It has been apparently accepted that husband and wife should have the same or reciprocal rights of property and contract; but some of us would have these provided on the basis of separate property for married persons, while others believe that equality can best be attained under a community property system. For reasons partly judicial and partly economic and political, it has been possible to have laws regulating hours of women's labor, or fixing minimum wage standards for women, only by making a difference in the contract rights of men and women. Therefore the question of legal equality here seemed unimportant as compared with the need for the equalizing economic effect of the laws. Nor was the point raised with reference to maternal and infant hygiene laws, or mothers' pension laws.

The net result of this examination, then, is to re-emphasize the dangers of generalization and call for a clear definition of terms. The laws of the forty-eight states differ, they have been amended in different ways in the different states, and the remaining needs are so uneven as to have, in concrete terms, no common denominator at all.

In fact, for some of the type situations found under existing codes, no standard of equal rights has been set up, no definition framed. Two things are therefore reaffirmed by this examination:

1. The continuing necessity for subject-by-subject and state-by-state analysis of the law, and the importance of a carefully worked out specific program for the needed legislative changes on each subject of the law. But in order to accomplish this we must meet—
2. The necessity for a definite working concept of the meaning of “equal rights,” for specific application to each subject to the law where differentiation between men and women seems appropriate.

What Are Equal Rights?

Analysis of existing laws we leave, necessarily, to the lawyers. It is the lay woman's job, however, especially her job as a voter, to say what she wants the law to be. What then is our concept of equal rights? Or rather, what are our concepts for each of the subjects of the law where we ask for change to bring about equal rights for men and women? That is the question before us.

Public Rights- Citizenship

One of the first pieces of legislation sponsored by the National League of Women Voters was the bill which became a law on September 22, 1922, providing for citizenship of women irrespective of their marital status. This act provided (with certain exceptions) that thereafter an alien woman who married a United States citizen should not thereby acquire citizenship in the United States, nor should a native-born woman who married an alien forfeit her citizenship by reason of such marriage. The principle thus established was an important advance toward equal citizenship rights for women and men. To the regret of its advocates, it failed to embody, as finally enacted, certain order equalizing provision which had been asked for.


The conditions of citizenship for a native-born woman who marries an alien man ineligible for citizenship, and a native-born man who marries an alien woman ineligible for citizenship are not the same. A man who is a citizen may marry a Chinese woman without losing his citizenship, but a woman citizen who marries a Chinese man loses hers. So also, under the provisions of the act, native-born women married to naturalized citizens and living abroad for more than a specified period lose their citizenship, but native-born men married to alien women are under no such penalty for foreign residence.

The law contains, however, an intentional difference in the naturalization procedure for alien wives of citizens and for alien men; this to facilitate the naturalization of the alien wife, who usually knows
less English than her husband, and by reason of old-country traditions, is more easily discouraged by the steps necessary to citizenship.

Here is a differentiation. Is it a discrimination against the husband? If so, is it justified? There are two, or indeed three, opinions about it. One opinion is that the provision does discriminate—in favor of the wife, even if not against the husband—and is not justified. Another is that the differentiation does not in fact amount to discrimination, but tends to equalize the probabilities of naturalization of both husband and wife, which is the desired end. The third is that because of the restricted environment of these alien women, the law is a hardship in that it requires any independent act on their part to make them citizens, instead of allowing them, as hitherto, to derive their citizenship automatically from the citizenship of their husbands.

What constitutes justice here? And does equality coincide with justice?

**Eligibility to Public Office**

Membership in all state legislatures and the federal Congress is now open to women on the same terms as men. One state, however, Oklahoma, has a constitutional provision which prevents women from holding any of the major state offices, and in Wisconsin women are still ineligible to serve as governor.

No dissent will be heard, we believe, to the opinion that all public offices should be open to the candidate, man or woman, who can qualify for the duties, and that any law excluding women as women should be repealed.

**Jury Service**

Although women are eligible to jury service in twenty-one states, the District of Columbia, and Alaska, in only ten is jury service for women compulsory, while in one of these the statute provides that women “in the discretion of the court” may be excused on request, and in still another “mothers of one or more minor children” are exempt. In the other eleven states, the District of Columbia, and Alaska, jury service for women is permissive.

Opponents of compulsory service contend that woman's typical occupation as wife and mother entitle her to be excused at her own discretion. They want eligibility only. Some advocates of compulsory service urge special exemptions for women, particularly for mothers of young children.
Apparently the majority of those working for jury service measures today would have the law make no distinction in the terms of service for men and women, believing that the discretion which rests with the judge is a sufficient practical safeguard against the infliction of hardship. Still others, however, would have no difference whatever in the requirements of law or the court's discretion as applied to women and men.

Conclusions must be reached somehow. Are there typical differences in the occupational and domestic obligations of men and women which warrant certain exemptions for women but not for men? Is there inequality, undue personal hardship, or social disadvantage to the community in making jury service compulsory for men and women alike? Or if service is compulsory for both, should there be differences in the causes of exemption? What is equality here?

**Party Management**

Equal opportunity in party management is a matter of law in some states only, but in a number of states the laws have been changed since the ratification of the suffrage amendment, for the purpose of giving women equal voice with men in party councils. This legislation brings forward, however, a much mooted question. Is equal representation attained by providing an equal number of representative *positions* for men and women, a form of equality attained by doubling the number of state and national committee members and convention delegates, one-half to be women with the same voting power as men? Or is it attainable by making rules or by-laws to give men and women the same *eligibility* to election or appointment to the existing positions on committees and convention delegations?

It has been contended that to double the number of positions is to create an artificial equality. But reply is made that experience seems to have demonstrated thus far, with the existing man-controlled party machinery, that this plan is necessary to secure the election of a fair number of women to the representative positions, with the same voting power as men.

The other point of view maintains that equal opportunity is offered if women are made eligible to election or appointment on the same terms as men, and that it is then up to women to earn their way, as men have done, to party places, through party service and seniority.

Which plan constitutes equal opportunity—in a man-controlled party organization?
Private Rights- Married Women's Property

Replacing the old English common-law theory of marriage— that of unity of person and property in the husband—two other theories have been written into statutory law in more recent times. The eastern and northern states have in great measure substituted for the old common-law principle a basis of independent and separate property rights for husband and wife. In the one-time French and Spanish territory of the southern and western states, the community property principle, derived and adapted from the Roman law, is the basis of the present-day statutes.

Neither plan has yet succeeded in establishing complete equality within the marriage relation, and each has ardent advocates as the best means to the end. The argument rests at bottom upon acceptance of a given theory of marriage itself—whether the parties shall retain their status as individuals in the eyes of the law, or whether they shall merge their interests in what would be virtually a legally regulated partnership. Solution of the question of property rights therefore waits on the common acceptance of some concrete definition of equal rights under marriage law and family obligation.

The worst of the existing disabilities of married women, in respect to all their domestic relations, are chiefly remnants of the old English common law or of the French and Spanish law, not yet removed by statute. At common law, a woman upon marriage “lost all right to the control of her property. She could not sue or be sued in her own name. She had no standing before the law as a separate entity. The control of her real estate passed her husband, and he could manage it and have the use of all income, rent, and profits therefrom without her interference. All personal property when reduced to possession passed absolutely into his control, including the right of disposition. Only the fee to her real estate could not disposed of, and that went to her heirs. She could not make a will, for the law itself disposed of such portion of her estate as was reserved to her at the time of her death. If a living child was born, her husband gained control of her real estate until his death, however long he might outlive her.”

The workings of the Code Napoleon were no more liberal to the wife than this, for although the principle was different, the husband became the wife's “curator” and sole administrator of the community property. 13

13 Schouler, op. cit., p. 9.

It is under the vestiges of these old codes that even nowadays, in one state here and another there, a court may occasionally rule that a house or farm bought with a wife's own earnings is still her husband's property; that she may not possess in law even the clothes she wears; that her husband may collect for services she renders to the family boarder, or may collect damages for her bodily injury and incapacity for service; that even a drunken, idle man may legally consume all the earnings of his wife and minor children, and a no less dissipated, arbitrary, faithless husband and will his child away from the best of mothers. But fortunately monstrous judgments like these are rare in fact, and possible under the laws of few of the states today. Married women's property acts and co-guardianship laws have modernized nearly all the codes to that extent at least.

Debatable questions still remain, however, delaying the removal of some obvious inequalities for lack of a final answer. Four states have gone so far as to give a married woman a right in her husband's real estate while he has no reciprocal right in her. But in seven states the common-law rights of dower and curtesy still persist—which is to say, the wife has a right to a life interest in one-third of her husband's real estate whether or not he dies intestate. He cannot defeat her dower interest by a will. The husband has a right to a life interest in all of her real property, provided there is a child born capable of inheriting. In the eight community property states, the wife's share of community property, including her earnings as well as his, is under control of the husband during his lifetime. 14

14 Dunshee and Perry, op. cit., p. 7

Clearly in each of these instances the conditions are unequal and apparently they are unjust. But what provisions will make them equal and just?

In the first instance, where the law gives the wife a right in her husband's real estate which he does not have in hers, the husband's greater earning capacity was presumed, and the wife given protection for the event of his improvidence or bankruptcy. In the average family, does this work out as an injustice to the husband. Would it be more just to give neither husband nor wife an interest in the other's real estate, or to give them reciprocal rights?

In the second instance, it is perhaps easy to conclude that dower and curtesy should be abolished and married persons be given equal rights in each others' property, including inheritance rights.
But this only leads again to the question of what form of equality shall obtain—the separate, independent, reciprocal plan, or the joint rights of a partnership?

The third instance, of the community property states, presents the same question in another form. It should be possible—though no state has yet succeeded—to amend the community property law to give husband and wife joint control. But this leaves another point undetermined. Property owned before marriage is separate property. Property acquired after marriage is the common property of both—a half interest and control over half allotted to each. But wages are then community property, and if husband and wife are both wage-earners, they probably contribute unequally to the common fund. The wife's services to the home may or may not be sufficient to outweigh the husband's earnings, or her services plus her earnings may or may not equal his. What should the wage-earning wife, in fairness, control? Who is to say? In most families the question would never come into court. But what should the just judge say? What should the wife herself claim as her equal and just right?

All these questions must be met, it would seem, by some definition of the obligations of marriage in terms of the economic dependence or independence of married women. And then must come well-supported, well-directed efforts for the appropriate changes of law.

Marriage Age


In some states the age requirement for marriage without consent of parent or guardian is the same (twenty-one years) for women and men. In most of the states it is twenty-one years for men and eighteen for women. With consent of parent or guardian the age differences between boys and girls are still in evidence in the statutes, running as low as fourteen for boys and twelve for girls.

These laws represent, apparently, the widely accepted theory that girls mature at an earlier age than boys. The fact, however, that in some states neither men nor women may marry until they are twenty-one, unless they have the consent of parent or guardian, is a challenge to this theory which leads to further questions. What is the basis for the conclusion represented in those laws; that is, have scientific reasons been found for assuming the age of maturity to be the same in both sexes? Does maturity mean physical capacity, or sense of responsibility, say, to the community for proper upbringing of a family? Did the theory which fixed the marriage age for girls at eighteen have in view a longer child-bearing period than would be permitted with the marriage age at twenty-one? And
does the postponement of the legal marriage to twenty-one in those states assume the desirability of fewer children?

Other questions arise in connection with this difference in age for marriage. The age of majority for girls in many states is eighteen years, so far as the power to contract, or own, or manage property is concerned, though the legal voting age is twenty-one. Should, or should not, the age of majority be the age of eligibility, responsibility, and consent as to both public and private rights; i.e., suffrage, office-holding, jury service, control of property, marriage, criminal liability, sex relations? And if so, should or should not the age for girls be the same as the age for boys? What is equality here?

Divorce

Twenty-nine states still differentiate in causes for divorce for husband and wife, sometimes in the wife's favor, but more often the reverse. In every state that grants divorce (South Carolina does not), adultery is a cause alike for husband and wife if the offense is committed after their marriage. There are still fourteen states, however, that allow a divorce to the husband if the wife was pregnant at the time of marriage without his knowledge or agency, and only one of these fourteen gives the wife corresponding cause of action against the husband for illicit parentage. That one is West Virginia.

Maryland allows the husband a divorce when the wife, before marriage, has been guilty of illicit carnal intercourse with another man. But Maryland does not allow the wife a divorce on similar grounds against the husband. Tennessee allows a divorce to a husband whose wife refuses to move with him to live in Tennessee—but a wife has no legal right to separate domicile in any state, and therefore no ground for divorce under circumstances which allow it to the Tennessee husband. Pennsylvania has a unique provision, allowing divorce "in case of the lunacy of the wife upon application of a relative or next friend of the wife." Nothing is said as to lunacy of the husband.

A single standard of morals applied to causes of divorce would presumably equalize the law in some of these instances, and plain principles of equity in others. But shall non-support be a cause of divorce for husband as well as for wife? And in case of childless marriage? Shall alimony be provided for the support of either party? And if the marriage is childless?

Non-Support
The law holds a husband responsible for the support of his wife. In any state in the Union, or the District of Columbia, action will lie against any husband who fails in this obligation to a blameless wife, unless he is physically incapacitated. But in few states will the corresponding action lie against a wife for non-support of her husband, unless he is disabled.


Non-support of children by an able-bodied husband and father is a misdemeanor or a felony in every state and the District of Columbia, and a cause of divorce in many states. But this law applies to wives in only some of the states.


For equal treatment of men and women, how should these laws be changed?

Where no children are involved, this question calls for a rather searching test of modern attitudes. It is easy for the older generation to say: “Of course a man who is able-bodied should support his wife under any all circumstances except misbehavior on her part.” And there are new-school women—and men—who would say at once: “Why? If she is able to support herself?” This newer school would deny the wife court action against a neglectful husband, and make the law require, in effect, that each be self-supporting unless otherwise agreed between themselves.

Where does justice lie in such a case as this? The woman who gives up a gainful occupation when she marries assumes the risk of losing her earning power. Should she need to resume this occupation some years later, she may find it hard to get work because she is older, she may be “rusty” at her calling, or out of step with progress in her profession. The woman who was not self-supporting before her marriage will find it harder still, for she must begin at the bottom, untrained and inexperienced in the business or industrial world. As time goes on, there will be fewer and fewer women who are without some kind of preparation for earning a livelihood. But any woman who steps out of pathway of earning into a non-earning capacity for a number of years is interrupted in her possibilities of an independent career of self-support. Her time, instead, has been invested in the making of a home for her husband and herself.
Shall she be indemnified for this if the husband quits the bargain? Or shall she be told that she must reflect that she took a sporting chance, as it were, and having lost, must accept in a sporting spirit the luck that fell?

If there are children, the case is different. No question then but the husband must pay at least a shared. But how much of his earnings, if he is a poor man, should the court take away from him? On a theory of equal requirements, how measure his contribution against the wife's if she has to take care of the children? What shall be required of the wife, in services, or earnings, or both?

30

Courts of domestic relations have to settle such problems. Can they do it on the basis of equality of husband and wife? Do they not, in fact, and must they not, consider the children first, and provide for them to the extent of the parental resources available, even though the requirements bear unequally upon the husband and the wife? Can equality here mean anything more than such measure of justice, in three directions, as the circumstances will permit—to the children according to their needs, to the parents according to their probably unequal earning capacities, but different resources—different because of the different rôles of the sexes in family life? And can that equality be stated in terms of law?

Guardianship of Children

In all but two of the states where guardianship laws apply differently to mother and fathers, preference is given to the father in respect to control and custody of the child. Arizona and Nebraska, the exceptions, give preference to the mother under certain conditions. Pennsylvania gives equal authority to father and mother, "if the mother contributes by labor or otherwise to the support of the child."

In thirty-seven states the guardianship laws recognize joint authority and control in father and mother.

There seems to be little room for difference of opinion as to what constitutes equal rights in the guardianship of children, and this fact is reflected, no doubt, in the large proportion of states that have written such provisions into their codes. Even where these laws do not yet provide guardianship on exactly equal terms, for mother and father, their presence on the statute books and their history indicate progress toward the acknowledged goal. We hear little debate as to what constitutes justice and equality here.
Sex Offenses

There are twelve states that include both men and women within the meaning of their anti-prostitution laws. ¹⁸ The other thirty-six states recognize no male prostitutes, and in their laws women only are penalized for this offense, although the act cannot be committed by a woman alone.


This is plain injustice and inexcusable discrimination. But there are other differences in the laws which are not to be so characterized, for, in view of the different physical capacities of the sexes, how can the same terms and penalties be made to apply equally to men and women?

The law of Colorado, ¹⁹ for example, and other states have laws that are similar on this point, provides three penalties for rape. First degree rape is defined as intercourse between a male over eighteen years of age with a female under eighteen, and is punishable at most by life imprisonment. (Some states provide a death penalty if the girl is very young.) If the female is over eighteen, under the Colorado law, and the act takes place at her solicitation with a male under eighteen, the offense is rape in the third degree, and punishable at most by a fine or a five-year sentence. ²⁰


²⁰ Second degree not cited here because not in point for illustration.

These differences in degree of offense and penalty are based on the physical, structural incapacity of the woman to use physical compulsion even though she be much older than the boy involved; whereas even the adolescent boy of eighteen or nineteen can commit the offense by the use or physical force. The language of the law applies unequally to the sexes, and the penalties are more unequal still. But if this is inequality and injustice, what would justice be? How could laws like this be equalized in effect without reckoning with the physical differences between the sexes?

Illegitimate parents were penalized unequally under the common law, the mother but not the father being held responsible for support of the child. ²¹ Many states have corrected this by statute, but great difficulty is encountered in proving paternity and enforcing the father's responsibility. Paternity proved, the illegitimate father is often more of a problem than the idle husband who does not
support his family, but the definition of equal rights of the parents raises corresponding questions as to obligation to support. (See page 29 herein.)


The federal White Slave Act is another example of a difference in treatment of sex offenses of men and women, in this instance affording a protection to women and girls not provided for men and boys. It provides: “...that any person who shall knowingly transport or cause to be transported ... any woman or girl for the purpose of prostitution or debauchery, or for any other immortal purpose ... shall be deemed guilty of a felony, and upon conviction ... shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both....” 22


Should this be made to apply alike to men and women?

32

Public Health and Social Welfare

In the last thirty to forty years there has been enacted by the state legislatures a large body of law which is distinctly the product of modern science in its effect on social consciousness. Some such laws make direct provision for protection of the health of women in their capacity as mothers. Others are a part of an increasingly large body of law which is enacted for the protection of labor, because of the relatively weak bargaining power of labor in the labor contract. 23 Where the labor laws affect women only, they are based on the economic fact of women's peculiarly weak bargaining position, as compared with that of men, plus the physiological consideration of potential motherhood in its relation to the public health. Such laws have to do with the living conditions and the working conditions of women, and are an application of the police power of the state in the interests of the public health and social welfare of the community or the state; an application held by the courts to be in accord with the constitutional principle of equal protection of the laws. 24


24 Commons and Andrews, ibid., p. 31: “Even though the individual liberty of both employer and employee to make so-called voluntary contracts is restricted by the law, yet each continues to have 'equal protection of the laws' because each individual is treated equally with all other individuals of his own class. The bargaining power of the employee is increased while that of the employers
is reduced, yet all employers in a given class are treated alike and all employees in their class are similarly treated alike.”

“The reason is, as declared by the court, that the employers and their laborers do not stand upon an equality; that ‘the proprietors lay down the rules and the operatives are practically constrained to obey them;’ that ‘the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health and strength,’ and that, even though ‘both parties are of full age and competent to contract,’ yet the legislature may interfere ‘where the parties do not stand upon the equality, or where the public health demands that one party to the contract shall be protected against himself.’

Because basic law, both in England and America, was written in a period of individualistic thinking and laissez faire doctrine, and because court decisions are so largely determined by precedent, it was not until 1898 that a new precedent was established under which effective legislation of this kind could be enforced. Then the United States Supreme Court sustained a Utah statute limiting hours of work of men in mines and smelters to eight per day. The court found in this case that the use of the police power was justified by the danger to the health of the miners, and “the protection of labor becomes a public purpose.”


27 Commons and Andrews, *op. cit.*, p. 27.

Here was a direct interference with the personal liberty of working men to make what terms they chose in regard to their labor contract. The state interfered in the interest of public health.

The precedent furnished by this decision of the United States Supreme Court opened the way for further legislation based on this principle—the curtailment of individual personal rights, not alone for the purpose of protecting property and safeguarding the lives of citizens against crime, but for the purpose of protecting lives and health against crime, but ditions induced by the competitive, possibly ignorant, and at all events anti-social, conduct of other citizens. It is in consequence of that decision that there are on the statute books today hour laws for many groups of workers, tenement-house and home-work laws, prohibited processes, and various other provisions for the public welfare, which curtail the personal liberties of specified groups of individual citizens, and especially the individual worker and employer.
Some of the citizens and some of the workers whose liberties are thus curtailed—many of them indeed—are women. Sometimes the problem is one where the dangers are different for women as a class and men as a class. Nearly always, too, legislators can visualize the harm to women where possibly they cannot see it for men. For the combine reasons, therefore, of women's special hazards and consequently special needs, plus the legislative feasibility of securing laws for women when they might be unattainable for men, or if attained might be held unconstitutional for men—for these reasons students of public health and social problems, and workers who are themselves affected, have asked for laws prescribing the conditions, or minimum terms, under which their employment shall or shall not be legal, without waiting for or insisting upon similar legislation for all other classes of workers.

Almost at first glance it is evident that some of this legislation is valuable and worth preserving, while some of the rest of it is already obsolete or obsolescent, and cumbers the statute books, in certain instances to the serious disadvantage of women. Some of it is now of debatable value. But what its relation to the problem of securing equal rights for men and women?

Clearly that is a complex question. The laws in question deal not only with women as citizens, but as class of citizens affected by certain special circumstances or conditions of life to which the law has been found applicable. In the first subdivision, including maternity and child protection, the law applies to women in relation primarily to their sex function as mothers. Again, in the laws prohibiting employment in occupation called dangerous to women, regulating their conditions of work, and providing seats for them, the application is only to women because of a sex difference which occasions a special hazard due to the physical constitution of women.

When it comes to the hours laws and minimum-wage laws for women another factor comes to the fore, the sex characteristics of women taking secondary place, or even disappearing in the straight economic problem involved. Economically, with respect to their hours and their wages, women are not a sex at all but an underbidding element in a competitive labor market.

In other words, for women as wage-earners, the sex-equality issues intersects the economic class-equality issue, and principles of equality applicable to the solution of the one problem conflict with principles of equality applicable to the solution of the other. Historically, the very essence of the demand of the woman's movement has been less restriction for woman as a means to equality and freedom. The essence of the demand of the labor movement is more restriction (at the lower economic levels only) as a means to equality and freedom. But the question of equality and freedom in one case is between women and men. In the other it is between wage-worker and employer, then
between women and women, and them between women and men. Obviously, when the two issues conflict, women have a decision to make, a conclusion to form.

28 Another difference is that between the individualistic and the collective, or social point of view.

Can either the sex-equality question or the labor-equality question be settled by itself? Are they not so interwoven that no arbitrary rule will apply? Do not the emphasis vary, in fact, in such a ways as to suggest that ultimate equality, ultimate freedom, will be accomplished best by approaching some of these problems directly as sex problems and other directly as labor problems? If so, must not be principles applicable to the one and the other respectively prevail?

Maternity and Child Protection

Applying to women in their capacity as mothers are the law in six states prohibiting employment of women for a specified period before and after childbirth; the federal statute for maternity and infancy care, which is matched by provisions for the same purpose in forty-five states; and the 35 mothers’ pension or mothers’ aid laws of forty-four states and three territorial jurisdictions.

When it comes to the legal prohibition of the employment of women for a specified period before and after childbirth, a physiological problem is complicated by the economic status of the women involved. Only six states and the Philippine Islands have a law on this subject, and it is applied to women in manufacturing and mercantile industries only. The physiological reason for such laws is apparent. They do, however, forcibly restrain women from their employment for periods of weeks, thus curtailing both their liberty and their earning power. Here, undoubtedly, is inequality of the sexes, for no law restrains men in corresponding fashion. But does the law that applies to women create that inequality? Does it not rather help to relieve in inequality already there?

In a different category, because purely a health measure irrespective of the economic status of the women affected, is the federal maternity and infancy law (the Sheppard-Towner Act of 1922). Federal and state co-operation are provided for under this act in order to prevent mortality, and to promote healthy motherhood and childhood. It is a hygienic measure, administered through the child welfare and health authorities of the state and federal governments. Its intent is protection to women, however, not applicable to men. It differentiates the sexes on grounds of the different rôles they play in the life of the human race, the difference between motherhood and fatherhood. Shall we call that discrimination against either sex?
Mothers' aid or mothers' pension laws provide an allowance to mothers of needy children, usually under the age of employment. In all jurisdictions but two, the “pension” is payable to the mother or to a woman who, if not the mother, stands in that relationship to the child. The pension is paid to her in order to keep the child at home and under her care, rather than in institution. In Colorado the payment is made to “parents” or other persons designated by the court. The Mississippi law seems to be similar in its intent, but at one point specifies the mother.

It has been contended that “mothers’ pensions,” which are really public aid to dependent children, should be payable to either parent in all states as in Colorado. This would change the principle of the legislation and make of it virtually a family allowance to supplement low wages—a state subsidy to presumably able-bodied men. Here is a very vexed and vexing question, involving a double standard of wages for married and single men, and probably leaving unsettled the problem of the widower 36 with children on his hands. For the widower's need is probably not the money the state would be adding to what he can earn.

These laws remain, therefore, in all two jurisdictions, mothers’ aid laws or widowed mothers’ pensions. And whatever the conclusions on grounds of equality between parents, most legislatures, it may be ventured, would not extend the provisions to fathers on the same terms. Should they, in fact, be asked to do so? Is not the question one to be determined not primarily on the basis of equal rights of parents to draw the pension, but of public welfare as affected through the welfare of dependent children?

From that point of view, how important is the legal differentiation, even though it be called an inequality between the parents?

**Prohibited Occupations**

Twenty-five states and the District of Columbia prohibit the employment of women in certain occupations presumed to be hazardous to women especially. Four states have general provisions, to such effect as that women shall not “engage in any hazardous employment” or “under conditions of labor detrimental to health or welfare, in any industry or occupation.”

**Blanket Prohibitions**

The blanket provisions cited, one of which (in Michigan) forbids women “to engage in any hazardous employment or where health would be injured or morals depraved, to work at any task disproportionate to her strength, and in any place detrimental to her morals, health, and
potential capacity for motherhood”—such provisions apparently could be construed to almost any purpose according to the community's prejudice, or the judge's fancy. They might be invoked to the great disadvantage of women; for almost all occupations are hazardous and may be injurious to somebody's physique, and morals too, under certain conditions. It would be difficult to maintain an argument in support, nowadays, of a blanket provision like that.

Occupations Specifically Prohibited

It will be widely agreed that the principle of exclusion from any given occupation by law is wrong. But widespread protest against most of these prohibitions is noticeably lacking among women, probably for one or more of three reasons:

(a) Usually the occupations prohibited are not of a kind that women seek.

(b) In most instances such laws exist in but a few states, or only one.

(c) In a few instances opinion among women is divided as to justification for the prohibition.

Employment of Women in Mines

The most widespread of the prohibitions against the employment of women in any specified occupation is that against women in mines, which exists in eighteen states. Most of these laws are relatively old, the Illinois prohibition going back as far as 1872. But their origin is thirty years older than that.

The first legislation on this subject was enacted in 1842 in Great Britain 29 to eliminate the abuse of the “human mule.” It was for this degrading work that women were being used in coal mines in Great Britain and Ireland, harnessed and crawling on all fours in the narrow shafts to haul out the coal the men had mined. The American legislation apparently Forestalled the possibility of such a condition as had come about in British experience. But in any event, there is a conspicuous absence of complaint from any women frustrated in the desire to work as miners.


Local Prohibitions

Ohio and Pennsylvania furnish examples of local prohibitions, which occur in no other states. Ohio prohibits the employment of women as crossing watchmen, express drivers, molders, taxi-drivers,
30 Jitney drivers, freight or baggage elevator operators, baggage or freight handlers, workers in blast furnaces, shoe-shining parlors, bowling-alleys, pool-rooms, and in delivery service; none of which occupations is prohibited to women in other states. The prohibitions peculiar to Pennsylvania are acetylene welding or burning, handling nitrators in the manufacture of nitroglycerin, “taking down blue beds after the process of lead corroding, setting up blue peds in the corroding stacks of the Old Dutch Process unless such buckles or lead plates are used which have not previously been corroded,” operating cranes, working as waitresses in theatres or circuses, and as messengers for railroad corporations with the duty of calling train crews. Both states prohibit women as gas or electric meter readers.

30 With reference to taxicab driving by women, this law has been (Mar. 3, 1928) declared unconstitutional by the Court of Common Pleas of Franklin County, Ohio, as the result of a suit to compel the city of Columbus to issue licenses to women to be employed as drivers by the Cy Hill Taxicab Company, of that city.

38 Probably these states were protecting women against a moral hazard in forbidding them to enter back stairways and cellars in order to read gas-meters; just as was the intent of another prohibition—against employment of women in barrooms and saloons—now out of date. Within very recent memory also, bootblacks did no business for women customers, in neat and open “parlors,” but conducted a street trade which catered to men only. Now, gas-meters are more accessible, and nobody would be greatly shocked to see a woman polish shoes. But it is not of record that Ohio or Pennsylvania women in any appreciable numbers have wanted to follow these two occupations.

In two other instances, obviously—Pennsylvania's prohibition against women as waitresses in theatres and circuses, and as messengers for calling train crews—protection against moral hazard must have been the object of the law, since women work everywhere else as waitresses, and messenger service of other character is not prohibited to women in Pennsylvania.

Both these states have further prohibitions, however, which are more serious. The working conditions which were the reason assigned for the exclusion of women from core rooms have been largely improved, and there are thousands of women employed in core making in the United States.

31 So also with the grinding trades, prohibited to women in Ohio and New York. Working women, through Women's Trade Union Leagues, have protested the efforts to exclude women by law from metal-polishing and buffing, on grounds of lack of evidence as to its greater harmfulness to women than to men.
The chemical industries, however, present a different problem, though with respect to one substance only—lead—has a scientific conclusion been reached. The lead trades—i.e., where lead is handled in such a way as to cause lead poisoning—are pronounced by industrial hygienists to be peculiarly dangerous to women, and to produce effects not produced in men, notably upon the reproductive organs, rendering women sterile. This medical view is so generally accepted as to have been incorporated in a convention submitted by the International Labour Office to the member governments of the League of Nations for adoption as an international standard.

A sound conclusion as to prohibited occupations would seem to be that with the exception of those peculiarly hazardous or fatal to women, so demonstrated by scientific investigation, the law should not interfere. Too often, where it does prohibit, it not only differentiates between men and women, but creates a handicap instead of a genuine safeguard for women.

Health Regulations

Some half-dozen states have regulations as to the maximum weights to be lifted by women, and a few specify certain operations as hazardous because of materials used, their temperature, or the kind of machinery involves. Several states forbid women to clean machinery while it is in motion. Nearly all the states require factories and stores to provide seats for all female employees.

The regulations as to weights have a physiological basis, and it may well be accepted that women should not be required to lift and handle heavy weights. But whether the law should attempt to say how heavy as another matter. The processes of industry have changed so rapidly that men do not now, as a rule, do much heavy lifting and handling. Steam or electrically operated devices have replaced muscular requirements in most of the heavy industries. So this type of regulation, whatever may have been the need for it in the past, would seem likely to go out of date. Meanwhile it would seem that, instead of a rigid provision in law itself, industrial commissions might be empowered to determine the application of such provisions according to the nature and methods of the industry.

As to the cleaning of moving machinery, which here and there has been prohibited to women because of the danger of bodily injury, the risk was greater for women than for men because of women's skirts, their long hair, and uncovered heads. But women wore overalls and caps in munition
factories in war time. As a matter of fact, the law referred to exists in only six states, in one of which (New Jersey) it was enacted in 1885, in three of which it is more than twenty years old, and in only one (Michigan) is it of post-war date. Here, too, is involved the question of keeping pace, by law, with industrial development, with the possibility, it would seem, of safeguarding all the workers by removing the hazard itself.

With respect to both these types of regulation, in fact, an important new type of legislation has come into favor, with self-inducing safety and health regulations so far as accident and occupational diseases are concerned. Since 1900 forty-four states and four territorial jurisdictions have enacted workmen's compensation laws, one of the pronounced effects of which has been a more rigid enforcement of safety rules on the part of the management of industrial plants than was ever possible under state 40 regulations, for the reason that insurance carriers fix the employer's premium rate according to his accident record. It is doubtless because of the spread of workmen's compensation laws that regulations as to weight-lifting and the cleaning of moving machinery by women are still confined to a few of the states. If this is true, these special regulatory laws for women become relatively unimportant in a practical sense, even if, abstractly, they violate the equality principle.

Regulations requiring seats for women and girls employed in manufacturing and mercantile establishments are on the books of forty-seven states and the District of Columbia. One state, California, requires seats for elevator operators, men and women, and Florida requires seats for all employees in stores. In three states the laws provide for seats for motormen on street cars. Generally speaking, however, the seat provisions apply to women only. It is commonly believed, and apparently established by experience, that women's health and physical condition are more seriously affected by standing all day than are men's. In any case the regulation seems good; but it does differentiate between women and men, this time it would seem, to the advantage of women, with the discrimination turned against men.

It may be asked, however, Are men asking for seats for themselves, and in vain? If not, shall women undertake to have the laws changed to provide seats for men? Or shall they let men take the initiative in their own behalf? How important an issue for women is this?

**Regulation of Hours and Wages**
Probably first in importance is the large group of laws regulating terms of employment of women with respect to their hours in forty-four states, and with respect to their wages in seven states. These are more directly economic in their results than are the laws grouped under the two previous headings, though none the less measures for the public health.

These laws do not affect women in general, but only women in specified occupations or industries, or some classes of industrial establishments. But the number of women who come directly within their provisions is computed by the federal Women's Bureau at about three million, and nearly all are women in industrial occupations.

It is true that in a few instances, possibly through lack of foresight in the drafting of the law, or as the unexpected result of court interpretation later, women in occupational groups who did not desire to be included in the law were covered in. This has happened in respect to such callings as that of pharmacist, where, in New York for example, the duties bring the woman pharmacist under a law applying to mercantile establishments. And it happened to women printers in New York, when the words “manufacturing establishment” in the text of the law were interpreted by the court to apply to newspaper offices and printing plants. In these cases, however, latitude of enforcement or subsequent exemption from the provisions of the law have corrected an unintended hardship, which may thus be prevented in the future.

The women employees for whom these laws are intended are those who work in factories, stores, restaurants, laundries, and other industrial establishments. *And the reason back of the laws does not exist to the same degree, if at all, for business and professional women.*

That is a fact which is not sufficiently understood, and a confusion of the issue sometimes results. The different economic problems of these different economic groups may therefore be stressed here.

**Where Economic Problems Differ**

(a) The business or professional woman occupies an individualized position. She is highly trained, the cost of that training, in time and money, has limited the numbers of men and women in her field, and superiority of the individual can be recognized. A woman can progress as far as she can make herself acceptable to her clients or employers. She meets obstacles in this—sex prejudice on the part of the public, or employers, or both, as well as on the part of the male members of her calling. But she is competing in a field which is relatively uncrowded—not so crowded but that individual meets individual, and can successfully bargain as such. The newcomer women enter a
few at a time, and never in such numbers as to set up a competition *with each other* that compares with their direct competition with men. This competition with men is the more difficult for women because employers and the public give preference to men for the professional and higher paid positions. Opportunity is thus limited, more or less on all sides, by prejudice against women as women, wherever they come into direct competition with men.

**34 Teachers are the important exception which proves the rule.**

(b) But quite another state of things exists for the woman industrial worker. There are millions like her—all unskilled or little skilled, and easily replaceable one with another. There is small chance for individual recognition, because of the number and uniformity of mechanical tasks at the bottom and limitation in the number of positions at the top. Employers want women workers—often prefer them to men—largely because they are “cheaper.” “Houston has available for textile mills over 7,000 native white female workers, ranging in age from 18 to 44 years. . . . Operators in the 12 Texas textile mills receive an average of $14.41 for a 55-hour week.” Thus reads a bulletin of the local chamber of commerce which is said to have been mailed to every New England textile manufacturer, in an attempt to bring new mills to Houston—a bulletin which is quoted in the *Congressional Record* of April 30, 1929. And this is no isolated example.

Women are “cheaper” because the competition among women in the absence of regulative law is comparatively unlimited, their potential numbers being unlimited; and these women must have work in order to live. Their necessities, and their inexperience in the labor market, combine to force them to accept low terms—thereby undercutting *each other*. This undercutting *of each other* —the unlimited competition among millions of newcomers in the labor supply—constitutes a *mass* assault upon the standards of their predecessors, men; standards won by generations of struggle (by both men and women) up from slavery and serfdom.

The woman industrial worker, therefore, has to struggle within a mass, the whole mass pressing upon her very vulnerable economic position, while the business or professional woman has but individual competition to meet. The industrial worker’s *primary* competition is with other *women*, rather than with men. *Secondarily*, and en masse, she has to compete with men, and then, because the market value of her labor has already been forced down by her numbers, she becomes men’s collective underbidder.

The business or professional woman is in competition not so much with women as with men, because relatively few women are in the field, and the standards are in any case far less vulnerable to individual newcomers than they would be to a mass.
Free competition, then—“laissez faire”—may hold no terrors for the woman lawyer, doctor, journalist, or business woman, or for trained executives and salaried staff with highly technical qualifications. But it is deadly to the woman in industry. Neither she nor her family can withstand it, nor the community nor the state itself, as history has tragically proved.

To overlook the difference in the economic status, which is to say the difference in bargaining power between these two groups of women, 43 to fail to deal fairly by the industrial worker, and possibly by her different placed sister as well. A collective problem in the one instance; an individual problem, comparatively speaking, in the other.

To recognize this difference is to realize the necessity for different treatment of these two groups of women. What may mean equal opportunity for one group means unequal opportunity for the other. And it is entirely feasible to separate the groups from each other in the application of labor law. Therefore it becomes a mutual obligation, on the part of business and professional women on the hand, and industrial workers on the other, to respect each other's needs and allow each group to be the arbiter of its own legislation. For either to impose its own kind of equality upon the other is an unwarranted dictation, as well as a serious practical wrong.

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Legislative Principles Involved

To the wage-worker, the hours of work and the rates of pay are terms of employment which stand apart from all other terms. Nor is this solely because of their basic importance to the wage-earner's standard of living. They register bargaining power, and bargaining power determines, for the wage-worker, all the conditions of life.

By this measurement, therefore, the hour laws in nearly all the states, and the minimum-wage law, in seven states, are labor laws of first importance. They are also regulations for public health and social welfare. But their direct relationship to women's bargaining power, and the vital relation of that bargaining power to the fundamental issue of the labor struggle, gives them their high economic importance. They apply for the most part to women, and not to men, though there are hour laws that apply to men only. This is differentiation between women and men. Is it discrimination against either sex?
Only in a narrow and arbitrary sex-equalitarian sense can such a contention hold. This is a labor problem first, and a woman problem second. It concerns women not primarily as a sex, but as newcomers and forced underbidders in a competitive labor market where not only women themselves, but their own husbands, brothers, fathers, and sons are the sufferers by their competition.

Women have thus a very special labor problem; special not chiefly because they are women, but because they occupy, as a class, the lowest 44 level in every economic stratum. They occupy this position for the double reason of their own economic history as a class, plus the history of industry itself. They came in legions, two hundred years ago in England, directly out of unpaid into a competitive market already over-supplied. Here the unrestricted competition, plus self-undervaluation, as well as exploitation by employers, held the women's standards down. As machinery continued to take the place of skill, more and more women entered the factories. Each was approximately as satisfactory as her neighbor, and competition was unrestrained. All standards fell, and England paid the price in the health and strength of her working population, until Parliament eventually gave relief. Under legal regulation the conditions, the bargaining power, the hours, and the wages of women in the trades affected by the law improved, and trade union organization was notably advanced.


The United States has largely repeated England's experience, in kind though not in degree. The industrial revolution came in this country after the War of the Revolution, and slowly at that in the newly developing, largely agricultural country. Its effects were not reflected in the law until after many years had passed. Then our labor law, like our common law, followed the British precedent.

Meantime, however, repeating the industrial history of England, women had entered our mills and factories by the thousands, as forced underbidders of men. But they were underbidders of men because first underbidding each other, an unlimited group of newcomers competing for a limited number of jobs. Competition among themselves kept their own standards down. And the mass pressure then constituted a menace to the standards already erected by the workers who were earlier in the field.

The early generations of women in the mills, factories, and workshops of New England and the Middle Atlantic states had revolted against the conditions that oppressed them. They formed unions
and fought side by side with the workmen, obtaining reduction of hours and gradually increasing pay. But then came political turmoil in Europe, and the great immigration began. 37


What women had originally done to the men in industry, the newcoming immigrants now did to women and men. Undercutting the hard-won 45 American standards, an influx of foreign-born workers rapidly replaced the native. “Cheap” labor was plentiful, and immigrant women were “cheapest” of all. So the cruel process continued—the newcomers always undercutting, women always undercutting each other, and then undercutting men. Inevitably, so long as competition in the labor market was free. It came to be realized that competition must not be free.

This was labor’s conclusion—its basic economic reason for labor laws. Regulation would bring standardization of the labor contract at a decent minimum at least. Better hours, and consequently better wages—a higher standard of living, better health, more independence and self-help, better citizenship, better communities, a better country—this was the sequence in labor’s thinking.

Non-labor students of social conditions, of public health and sanitation, arrived at the same conclusion. Legislators put it into laws regulating competition by stipulating minimum terms of employment. But, in the last fifty years, for reasons not yet overcome, these laws applied mainly to women, in specified kinds of employment.

Constitutionality

One of the reasons is in the rulings of the courts.

Regulation, of course, means restriction of contract rights, a limitation upon personal liberty, and there labor laws collide with the courts. Regulation, it is true, is the fundamental principle of organized government in every department of life, from the traffic and fire regulations we submit to as a matter of course, to the prohibition of rebates on railroad transportation or the federal Anti-Trust Law. But it is more reluctantly accepted when it comes to the prevention of unfair competition in wages or hours of the working day, so persistent in the law and the courts is the old laissez faire idea. The courts have ruled variously since 1898 on the constitutionality of labor laws for which it might have seemed that the decision on the eight-hour statute for miners (cited below) would have been conclusive. On the contrary, the United States Supreme Court has come to the following diverse conclusions:

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Toward equal rights for men and women, by Ethel M. Smith http://www.loc.gov/resource/rbnawsa.n2783
It is held constitutional for state legislatures to limit the hours of men who work in mines, and for both Congress and the state legislatures to limit the hours of men work on railroads in the operation of trains. But it has been held unconstitutional for a state to limit the hours of men in bakeries to ten per day, although constitutional to limit to that same extent the hours of men and women in manufacturing establishments in 46 general. 38 The hours of street car men are limited in some states, and the hours of caisson workers. The hours of women in certain occupations or industries are limited in all but four of the states, either as to length of day or night shift, or both; and there are other laws applying to women only, such as those, in every state but one, providing seats in stores and factories for all female employees, and the minimum-wage laws are still operative in seven states. The Court has sustained the principles of hour laws for women, 39 and of night-work laws for women, 40 but it has declared unconstitutional the minimum-wage laws of the District of Columbia, Arizona, Arkansas, and Kansas. 44 The Court has upheld the California eight-hour law for women, 45 as well as the Oregon ten-hour law, but it has not yet passed upon an eight-hour law for men in general employments.

42 Sardell v. Murphy, 269 U.S. 530; 46 Sup. Ct. 22, 1925.
44 Topeka Laundry Co. v. Court of Industrial Relations, 119 Kan. Rep. 12, 1925.

The Court reasoned that the state is justified in limiting the freedom of contract of men in mines and in caisson work because of the exceptional hazards to those particular workers themselves. Regulation of the hours of railroad and street car men, however, is justified, not primarily because of the hazards to health or safety of the men, but to the safety of the traveling public, which is jeopardized by undue fatigue of the men responsible for the movement of trains and cars. The laws applying to women are justified by the Court both on the ground of the health hazards to women themselves, whose physique is presumed to be weaker than men's, and on the ground of their potential motherhood, involving the health of future generations.

Thus the Court holds that railroad men, and women in the particular occupations or industries specified in the laws, are rightly protected by law against industrial hazards in order to safeguard, not solely or primarily themselves, but other people not in those occupations or industries. To limit
the hours of bakers to ten per day was, however, considered unconstitutional because infringing the
right of “freedom of contract” in an industry not considered sufficiently hazardous to the workers,
or to anybody else, to justify singling it out for special treatment. And again, while a ten-hour law for
factory workers, men and women, was upheld 47 because of the health hazards due to fatigue, and
an eight-hour law for women was upheld on the same ground, something more than an eight-hour
day for men was not considered sufficiently hazardous to warrant the state's interference.

Dr. Commons and Dr. Andrews sum up the situation thus: “While it is not definitely settled that
hour legislation for women is a rightful exercise of the police power of the state, the question is
somewhat more uncertain in regard to hour laws for men. The constitutional status of the latter type
of laws seems to depend on the purpose of the restriction and the class of workers covered. The
courts usually uphold hour legislation which applies to public work, and to private business if the
public safety is directly concerned, as with railroad trainmen, but opinions are conflicting on hour
legislation for private employment where the safety, health, or welfare of the employees alone is
involved.” 46

And again they say: “The constitutionality of eight-hour legislation for men in general employments
had not, up to January, 1926, been passed upon by the United States Supreme Court. The early
unenforceable eight- and ten-hour laws were generally upheld by the courts, but when Nebraska
in 1891 attempted to make such a law enforceable by requiring double pay for all work in excess of
eight hours, farm and domestic labor being excluded, the law was declared unconstitutional by the
supreme court of the state in 1894, both on the ground of class legislation and as an interference
with the right of free contract. (Low v. Reese Printing Co., 41 Neb. 127, 59 N. W. 362, 1894.)” 47

47 Ibid., p. 285

With doubt existing as to the constitutionality of eight-hour laws for men in private employments
in general—doubt which has existed with tangible basis for nearly forty years; with women's needs
persisting and legislative opportunity for women still open, by what logic would the benefits of
legal regulation be withheld from women until or unless available to men also? The technical, legal
equality thus maintained would be thoroughly retrogressive in character; much as if equal suffrage
had been brought about by taking the vote away from men because women did not have it.

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Economic Equality versus Legal Equality

Regulation of Working Day and Working Week
The working woman herself has to view the situation from three standpoints: viz., her necessities, the health hazards of her work, and the economic bearing of the terms of her employment upon herself and all her fellow-workers.

The first two considerations are so directly personal and commanding that unless she is a trade union woman, she does not always give the attention to the third, which in fact controls the other two. The law that limits her working day, however, operates directly upon the terms of her employment, and thence upon the health hazards of her job, by relieving her fatigue and increasing her period of rest and recreation. *Nor does it result in lower wages*. Therefore the net result is to relieve her necessities. This is one of the most firmly established truths in labor history. It is so old, indeed, that it was put into rhyme more than seventy-five years ago by the wife of the machinist who founded the eight-hour movement: “Whether you work by the piece Or work by the day Decreasing the hours Increases the pay.”


That the women in industry whose hours are limited by law are not handicapped in earning power as compared with other women is abundantly proved by labor history and by current studies.

49 *The Effects of Labor Legislation on the Employment Opportunities of Women*, Women's Bureau, United States Department of Labor, Bulletin No. 65 (1928), p. 46:

“Not only have there been practically no instances of actual decreases in women's employment as a result of hour legislation, but the general status of their opportunity seems not to have been limited by this type of law. Women were employed as extensively in California as in Indiana, in Massachusetts as in New York. In fact, because in certain States women can not work overtime, the result in some cases has been not a restriction of their employment but increased opportunity for them. This is due to the fact that, in States where women's hour are so limited that they can not work overtime, it is not unusual for establishments to employ additional women when there is extra work or else to carry a larger force of women the year around in order to be prepared for the rush seasons. In States where there is little or no legal regulations of women's hours the establishment may, instead of employing extra women for these rush periods, keep the women already on the rolls for very much longer hours. One of the most important effects of hour legislation on women's opportunities is, therefore, to increase the number of jobs available for them.

“Further illustration of the fact that hour laws have not limited women's opportunities in industry was given by the actual experiences of working women who had been employed at the time
when some hour legislation went into effect. Not one woman had found that such legislation had handicapped her or limited her opportunity in industry. As a result of the laws, hours had been decreased for the majority of women, but this was the only result experienced generally enough to be significant.”

Is she, however, handicapped otherwise by the fact that her freedom of contract is limited by law, while the men in her industry or her state are not affected by the law? Her is plainly a differential treatment under the law. Is it unequal in its effects?

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To answer this question it must be remembered, first, that shorter and shorter hours are labor's constant aim; then that men and women in the same industry are likely to be working on jobs that are interdependent, and therefore to have the same hour schedules. If the scheduled hours have been more than a new law stipulates as the mountain for women, and women's hours are now reduced to conform to that new law, the men automatically get the benefit of that reduction. This was the general effect of the forty-eight-hour law for women in Massachusetts as applied to the textile industry.

Taking any state or industrial area as a whole, however, it will usually be found that the industries or occupations in which men predominate have a shorter hour schedule than have the women-employing industries. This is due to the superior bargaining power of men, primarily the collective bargaining power of unions, which cannot make the same stipulation for women unless women are in the same plant or are members of the unions.

The law regulating daily or weekly hours of women in factories, workshops, and stores does not create an inequality by shortening the hours of women. It does, however, by shortening their hours, lessen the existing inequality between women's hours and those of men in general.

It serves, in other words, to equalize both the hour schedules and the bargaining power of men and women, for with restricted hours comes restricted competition and thereby increased bargaining power, the most vital thing in the world to the man or woman who works for wages. It is for that the trade unionist exchanges his freedom of contract, it is that consideration which makes legal freedom of contract a myth in his eyes, and hers.

Such being the relative values to the wage-worker, shall other women presume to insist that mere legal equality is better?

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Night-work laws in the United States exist in a third of the states, and have a very limited applications in those states. They apply to certain specified occupations, and to women only in those occupations. They are health measures, applied to women primarily because, in the first place, though obtainable for women only and considered most necessary for them, they were valuable for their reaction upon all the workers in the industry affected. Night work is so generally considered objectionable that there in a world-wide movement against it among the workers in all but certain necessarily continuous industries, such as public utilities, and night workers, wherever sufficiently organized, demand a differential in wages or hours for the night shift. The organized bakers, especially, both in this country and abroad, have sought legislation against night work.

And just lately, a director of a big southern cotton mill is reported as publicly denouncing the practice of running mills at night and urging the membership of the southern cotton manufacturers’ association to abandon it on humanitarian grounds, as well as for the economic purpose of meeting the problem of overproduction. Only for women, however, have night-work laws been sustained by the courts.

Other than the public utilities, the textiles are the only large industry where, even without legislation, night work for women prevails; night work, that is, after ten o’clock. For this reason, the first American night-work law has a special interest, having been enacted in response to the demand of the textile workers’ unions in Massachusetts in 1890.

The Massachusetts law was asked for and enacted as an “overtime law”; i.e., to prevent overtime under the ten-hour law then on the statute books. In other words, to enforce the ten-hour law, which fixed no closing time, the textile workers asked that women be prohibited from working between 6 P.M. and 6 A.M. The legislature at first made the prohibited period 10 P.M. to 6 A.M., but some years later amended the law with a six-to-six prohibition, for the textiles only, however. Without this provision, the ten-hour law failed of one of its purposes, namely, to shorten hours for men as well as women.
Recently, with the forty-eight-hour law in effect in Massachusetts, it has been contended that the night-work law works to the displacement of women by men. Authentic studies as to the facts on this point do not, however, sustain that contention. 52

52 Information from the Women’s Bureau, United States Department of Labor.

In New York, where the night-work law of 1919 applied to public utilities, the effect upon women's opportunity for employment has been a subject of controversy because a traction company discharged the women conductors and ticket sellers who were in its employ at the time the law was passed. This occurred, however, just after the war, at a time when this company had already inaugurated a policy of dismissing the women employed in these capacities, and no adjustment of schedules was attempted. In Michigan and Massachusetts, where the employment of women at night on street railways is prohibited by law, and in Chicago, where it is prohibited by union agreement, women have not been displaced, but merely transferred to the day shifts.

The controversies that have arisen over night-work legislation would seem to suggest the importance of careful drafting rather than abolition of such regulations. The great abuses and hardships under conditions disclosed in mill cities such as Paterson and Passaic, 53 with thousands of women carrying the double burden of household and child care by day and factory work by night, are the problems at which night-work laws are primarily aimed. There the health and welfare of the whole community are at stake, and better working conditions must be achieved before the sex-equality issue can even be discerned. For other industries, or other situations, exceptions to the law can be provided.

53 Women in New Jersey Industries, Women's Bureau, United States Department of Labor, Bulletin No. 37 (1924).

Minimum-Wage Laws

The question of minimum-wage laws for women is somewhat in abeyance at present, because of the succession of United States Supreme Court decisions that have invalidated the laws of the District of Columbia, Arkansas, and Arizona. The respective state courts thereupon invalidated the minimum-wage laws of Kansas and Porto Rico. Technically the laws of the seven other states have not been invalidated, because not specifically before the Court, but their enforceability is presumably subject to successful challenge, except in Massachusetts, which has a non-mandatory law not affected by the adverse Court decisions. Minnesota is enforcing only 52 the provisions for minors, and Wisconsin has passed a new law forbidding an “oppressive” wage. 54
The Court decision rests upon the “due process” clause of the Fourteenth Amendment to the Constitution and the legal theory of liberty of contract, which is alleged to be curtailed by minimum-wage laws as by many other labor laws.

So far as the principle of equal rights is concerned, two kinds of equality are in question to opposite purposes. These laws are intended and do operate toward equalization of women's bargaining power, and of their actual wage rates, with the bargaining power and the wage rates of men; and these tangible, practical results are what the wage-workers value. Legally, it is true that the freedom of contract of women is curtailed by these laws and the contract power of men is not touched. The question is between a actual lift toward economic equality, with actual increase in contract power, and a theoretical “right” under the law which admittedly has no factual existence in the wage-earner's life.

It is contended sometimes that minimum-wage laws for women displace women in favor of men. The fact that men are already receiving, in every occupation they fill, higher wage rates than woman receive, or than any minimum fixed under the law for women, makes this contention an empty, unsustained hypothesis.

Threats of certain employers to dismiss women and substitute men have uniformly fallen to the ground, because the men could not be found who would work for the women's lower wage. As a further matter of fact, the numbers of women employed have been steadily increasing in the very states and the very industries where minimum-wage orders are in force.

An important principle of liberty, equality, and just government is at stake where women's labor laws are concerned, more than in any other group of laws where differentiation occurs. Here the women affected have a life experience, an economic status which differentiates them from other women. They are peculiarly entitled, as well as peculiarly fitted, to say what equality means to them, and there exists in their case especially a 53 choice between legal equality and economic—a choice because economic facts make these two kinds of equality alternatives, for the present at all events. Who then shall decide whether there shall be labor laws for women? The opposition comes from

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certain employees, chiefly men, who want unregulated competition among women in industry, in order to employ women “cheap”; and from women who are not directly affected by the law, because they are not industrial workers, but who hold the theoretical, outworn concept of equality that comes from the eighteenth century and the doctrine of laissez faire.

Shall we have, for industrial workers, equality of the kind that comes by specification of employers and reactionary theorists, against the will of the workers, or equality of the kind that is obtained “by consent of the governed”—equality as defined and sought by organized working women themselves?

**Recapitulation**

Our inquiry brings forward the fact that long before the suffrage movement took form in the United States, the law's injustices to women were recognized by legislators, and the slow but steady progress toward equalization began. From 1809, when Connecticut led the way by correcting one item of the discriminatory common law, the movement slowly gathered impetus through the following hundred and twenty years until many of the old injustices have been erased from the statute books, and a whole new concept of women's status, in law and in life, has now been substituted.

Nevertheless, because the old ideas of “woman's place” were so deeply embedded in the common law, and because one injustice was oftentimes overlaid by another; because some inequalities became virtually inoperative in practice as the ways of the world outgrew them; because some are yet stubbornly upheld by an unyielding public opinion; or because some are actually neglected—for these or other reasons countless inequalities are still to be found in the law, or the administration of the law.

Meanwhile, however, another movement was more rapidly in progress which complicated the question of equality. That was the industrial revolution, which swiftly changed the whole face of the civilized world, not only for the wage-earning people, but for all the others as well. New social problems were created for the community to deal with by law. New methods of dealing with these problems began to be reflected in the law, as science contributed new knowledge, and a new understanding of health. 54 A new philosophy of social responsibility and co-operation superseded the old theories of individual rights and free competition.

The newer philosophy called for a newer principle in law—not the old arbitrary equalitarianism, but a classification of citizens for purposes of providing equal protection of the law. This is not to deny
a general equality of rights, but to bring about adjustment permitting the exercise of those rights. Women are a class from this point of view, as are all wage-earners, and all property owners, or farmers, city-dwellers, immigrants, or children—whose needs as classes are respectively so different that they must be differentiated for treatment. In specialized conditions of life, only specialized legislation can meet new and special legislative needs.

But here the two philosophies collide—the individualist ideal and the collective, or social-justice ideal. Social legislation frequently differentiates between men and women in the interests of social justice. But there are feminists who consider a differentiation in the law between men and women a discrimination against one or the other. Others regard some differentiations as discriminatory, but they see in other differentiations an equalizing process.

Obviously, if inequalities are to be corrected, they must by recognized as such, and they must be replaced by something that can be defined as equality. How shall we decide what laws to change, and what new laws to pass in order to provide an equal footing for men and women?

We have inquired from the basis of three premises:

A. Equality may exist between things of a kind or of different kinds. Difference may exist without inequality.

B. Legal equality, social equality, and economic equality may or may not coincide.

C. Equal rights between large groups may be more important to society than equal rights of individuals within those groups. It may also be the most direct means to individual equality.

To test, from these points of view, the typical differences in the law as applying to men and women, we have asked the following questions in each case: Is it of advantage to women, and through them to society in general? If it disadvantageous to women, how shall it be changed to put them on an equal footing with men in terms of the law? Would legal equality in this instance coincide with social and economic equality? Would it be consistent with social justice?

The test, in short, is to apply a concrete definition of equality to each particular situation that calls for change. What constitute equality here?

Legislation is drawn, however, with reference to other forces that bear on the situation, and in the United States it is drawn with reference to somebody's concept of “equal protection of the law,” as required by the Constitution. To attempt to change it to secure equal rights for men and
women requires, as we see it, first, that we reckon with the factors in the given situation which are
determined by social and economic forces in addition to the law.

Proceeding in this fashion, we find that instead of final answer as to kinds of rights desired by
women in order to establish equality with men, we are left under nearly every topic with a question;
thus:

Public Rights

*Citizenship*

Should alien immigrant wives be allowed a shorter and simpler naturalization process than alien
husbands? The existing law does so provide in order to meet the social problem of facilitating
naturalization of women immigrants, who are slower to accept citizenship responsibilities than are
their husbands.

*Jury Service*

Should jury service be compulsory for women as for men, and if so should the exemptions be
identical with the exemptions for men? Or should mothers of young children be exempted, though
the fathers are not?

*Party Management*

Does equality demand equal numbers of men and women in official party positions? Or shall women
be merely eligible to take their chances in the party machine with men—service and seniority being
the rule for recognition?

Private Rights

*Married Women's Property*

Shall the property rights to husband and wife be equal on a separate or reciprocal basis, or on a
common property basis? If on a separate basis, shall the wife have no legal claim on the husband's
earnings, or shall a share of his earnings be counted equivalent to her household service? In this
event, what shall be required of each spouse as an equitable minimum (a) where the income is so
small that the wife must do all the household 56 work, and (b) where the income is sufficient to
employ housekeeper and servants?
On a common property basis, shall husband and wife be joint owners of their combined earnings irrespective of the earning power of each, and irrespective of the extent of the wife's household services? Or shall they be proportional owners, and put some valuation on the services of the wife?

If husband or wife has had an illegitimate child, what should be the inheritance rights of that child or its other parent in relation to the married parent and the children of his or her marriage?

**Marriage Age**

Is it better to allow young people to marry when they are eighteen, or shall they wait until they are twenty-one? Do girls mature earlier than boys, and are the sexes then treated equally when the legal age for girls is eighteen and for boys, twenty-one? Or does equality require the same age provision?

**Divorce**

Shall divorce be granted for the same causes to either party, including non-support?

**Sex Offences**

Shall women and men be equally penalized for rape, notwithstanding the incapacity of the woman to commit the crime by physical force?

**Public Health and Social Welfare**

Is the public health more vitally threatened by ill health or fatigue of the mother than of the father?

If, as experience shows, legislation will enact and court will sustain laws protecting women from specified occupational hazards from which the law does not protect men, shall the needed protection be withheld from women unless or until it can be granted by law to men?

Are the laws prohibiting employment of women for a period before and after childbirth a discrimination in favor of women and, if so, are they justified?

Is there any inequality as between husband and wife in provisions for maternity and infancy care?

Should widowed fathers as well as widowed mothers receive the public aid provided for the protection of needy children?

**Regulation of Hours and Wages**
With men-employing industries largely on an eight-hour schedule and women-employing industries largely on a nine to ten-hour schedule, do men need an eight-hour law as much as women do? If men's standards are union-made standards, but unions are absent or weak in most of the women-employing industries, and if minimum standards are attainable either through unions or the law or both, shall we insist on the standards themselves or upon a prescribed method of getting them? Shall we measure equality by results, or by the method of getting the results? Do we create inequality or lessen it by limiting women's hours of labor by law to the accepted maximum standard for men?

If women are now working in vast numbers for three-fourths or a half of men's wages, and a minimum-wage law for women raises their wages, and increases their bargaining power, by limiting their right to underbid their own low rates, does this increase inequality or lessen it? Does it make for equality or against it?

Under only two topics in our classification are we left with one clear, uncomplicated conclusion as to what equality is—namely, with respect to eligibility to public office, and guardianship of children. To us it seems clear that on these two subjects there is no debatable ground in the propositions that men and women should have identical rights under the law, that this would mean equality in fact, and that equality here would coincide with justice.

This is not to say, of course, that other questions on other topics we have listed are not satisfactorily clear to other minds, or that there is no debate as to these two exceptions of ours. But it is interesting to note that these are the two subjects upon which the law thus far gives the same status to men and women in the greatest number of states, women being eligible to the major public offices of all but two states, and there being now joint (if not wholly equal) guardianship laws in all but eleven states.

What we would say, and emphasize again and again, is this:

Each subject of the law where differentiation occurs between men and women needs study to discern the purposes underlying existing provisions, the appropriateness of such provisions to present-day conditions, the bearing of social forces as well as the law upon those present-day conditions, the functions the law can and should serve for the remedy of injustice and inequality. These things understood, the rights of men and women affected by the given provision of law can presumably be measured, practical equality defined, and an equitable provision formulated.
In brief, for the attainment of equal rights for men and women, a pragmatic approach, and pragmatic treatment of the problem is the policy necessary.

II. THE THEORETICAL APPROACH- Equal Rights by Federal Constitutional Amendment

It is a step-by-step, pragmatic policy for removal of legal discriminations against women that has been pursued thus far in the woman movement, and it has resulted as we have seen. The most acute injustices have been removed in all or nearly all the states, but some inequalities, of widely varying actual importance, persist everywhere. The National League of Women Voters in particular, as successor to the National American Woman Suffrage Association, has advocated, and has in its own work followed this step-by-step procedure. Is there any better way?

Another way has been proposed; in fact two other ways, the one a variant and a wider application of the other. The first has been advocated since 1921, when the National Woman's Party, another group of former suffrage workers, drafted and offered to the Congress a proposal for a new amendment to the federal Constitution, as a means of “carrying forward today the fight for the complete freedom of women undertaken in 1848.” The draft of their proposal, as now pending before the Congress, reads: “Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction. “Congress shall have power to enforce this article by appropriate legislation.”

This legislation is advocated by its proponents as “the most effective and the surest, quickest and least expensive method of securing the equality of men and women before the law.” It would, they assert, “establish the principle of equal rights once and for all,” because a national amendment would “override all existing legislation which denies women equal rights with men, and would render invalid every future attempt on the part of any legislators or administrators to interfere with these rights.” A national amendment, they say, “is more inclusive than state legislation, is more permanent and would make unnecessary the costly and laborious state-wide referendum campaigns involved in amending state constitutional provisions dealing with the position of women.”


57 Ibid., p. 5.
As an affirmative proposal to an end which, generically, is widely desired by modern-minded men and women, this method of removing inequalities calls for studious examination. It has been so examined by various organizations of women, by many lawyers and legislators, and by numbers of other citizens and groups of citizens. After seven years, however, although the amendment has been introduced at each session of the Congress, has been the subject of hearings before the Judiciary Committees of both houses, and has received widespread publicity throughout the country, it has little organized support and many organizations oppose it.

Why is the amendment not more widely acceptable? The answer to that question varies, naturally, with point of view. The opinion of many of its critics, however, is the exact reverse of the claims made for it by its proponents. It can be shown, we believe, that any such blanket proposal for the removal of the wide variety of inequalities between men and women under existing law would be probably the least effective, the most uncertain, the slowest, and the most expensive method that could be devised for the purpose of securing the ends desired by the proponents themselves, while it would almost certainly be destructive to the purpose of other advocates of equal rights.

**Equal Rights by Treaty**

The variant of the amendment proposal, coming from the same source, takes the form of a treaty, a draft of which was presented at an informal session of the Sixth International Conference of American States at Havana, Cuba, in January and February of 1928. The language of the main article of the treaty proposal (for full text see page 117 herein) is almost identical with that of the proposed amendment to the Constitution of the United States: “The contracting states agree that upon the ratification of this treaty, men and women shall have equal rights throughout the territory subject to their respective jurisdictions.”

This proposal was advocated at Havana on the following basis: “We have chosen the treaty method because it is the most dignified. It is the easiest. It is the most permanent. It will not only abolish existing national and international inequalities. It will prevent new ones from being written. And lastly, it obviates a cruel waste of energy. For we ought never to be compelled to appeal for our rights to the most backward opinion in any State. Our appeal to the most select, the most cultivated, the most imaginative men in the world, should be welcomed, approved and answered in this most dignified method.”

58 Stevens, Doris, in address to the Sixth International Conference of American States, Havana, Cuba, February, 1928. Quoted by Alice Paul in her thesis, *Towards Equality: A Study of the*
Legal Position of Women in the United States, 1928. See also Equal Rights March 10, 1928, p. 38.

The treaty, once adhered to by any two nations, would become law within those jurisdictions, without waiting for action by any other nation. Subject to constitutional limitations, all laws in conflict with the terms of the treaty would be automatically abrogated in those jurisdictions. (See page 81 herein for further discussion.) The Pan American Union, had the Havana Conference voted to submit the treaty proposal, would have had the duty of advocating it throughout all the member nations.

The Conference took no action upon the treaty proposal itself. It did, however, create an Inter-American Commission of Women “to prepare the juridical information necessary for a proper consideration at the Seventh Conference of the civil and political equality of women,” the United States to be represented by the proponent of the treaty. The similarity, and likewise the differences, between the constitutional amendment and the treaty proposal call for discussion as part of our subject in these pages. (See page 83.)

The Case against the Amendment 59

59 The case for the amendment is compactly stated in the pamphlet above cited, by the National Woman's Party; also by M. Carey Thomas in “Argument for a Woman's Equal Rights Amendment to the Constitution of the United States,” published as the second section of a discussion for and against the amendment in the Journal of the American Association of University Women, Vol. XVIII, No. 2, January, and No. 3, March, 1925.

Women now, as voters, seeking to equalize their status is life with the status of men, are confronted with a definitely practical problem. The evangelistic phase of the women's rights movement has passed. The principle of equality was officially conceded with the adoption of the equal suffrage amendment, if not before. The thing that is wrong is the practice. The immediate problem before us, then, is how to put the accepted principle into actual practice.

Approached on its legislative side, the problem is one of lawmaking method. How shall the law be changed to give women the rights they still lack, so far as the law can give them? What procedure is best?

61

The proposed amendment undertakes (a) to remove all inequalities at one stroke, by (b) inserting in the federal Constitution a mandate affecting all existing law and all future legislation on this subject, and (c) empowering the Congress to enforce the mandate.
Such an undertaking assumes a number of things that cannot be taken for granted.

1. Its Doubtful Premises and Presumptions

Some of the premises and presumptions of the amendment are implicit in its form and proposed function as a constitutional provision. Others are both implicit and explicit in the statements of its advocates as well as in its form.

(a) The language, “Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction,” amounts to a statement of philosophical principle, expressed in the form of a command. Proposed as a part of the federal Constitution, such language assumes that a philosophical principle can be executed as law.

It is not in the text of law codes or constitutions, but rather in the preambles of such instruments that statements of principle as a rule appear. The Declaration of Independence, in itself one great preamble to the Constitution of the United States, sets forth the philosophy that “all men are created equal,” and “endowed by their creator with certain unalienable rights.” The later and immediate preamble to the Constitution declares the purposes of the instrument to be “to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity,” an embodiment of principles in a statement of purpose.

It is in company with such declarations of principle and purpose that the language of the “equal rights” proposal would be appropriate. To make it an article of constitutional law would be like transposing the preamble to the text of the instrument.

Suppose such transposition were made of the declaration of our purpose as a nation to “establish justice,” writing into the body of the Constitution an article providing: “Justice shall be established throughout the United States and every place subject to its jurisdiction.”

Justice and equality both are principles and purposes of government—but can they be made to function by writing them into a legal document? To make them more than mere words on a printed page, must they not be translated into enforceable terms of the law?
(b) The amendment is premised upon a concept of equality as an absolute thing. It visions “equal rights” as something definite, fixed, determined, or determinable at all times. It ignores all relative values, all dissenting interpretations of the terms in which it is phrased.

Equality as we conceive it is not absolute but relative. The world is not all black and white, all right and wrong, all equal or unequal. Nor is life so simple as that.

(c) Another premise of the amendment is that equality in terms of the law will establish equality in fact. Yet it can be shown that legal equality may produce or aggravate the inequality inherent in some situations in life.

The law must operate upon conditions as they are, in relation to each other. Unless we are prepared to rewrite all law from the beginning, we must write all new laws in relation to the codes already established. To do otherwise is to be futile, or mischievous, or both.

“It may very well be,” writes a well-known constitutional authority, “that inequality in respect to legal rights may be absolutely necessary to insure equality of economic and social opportunity. Blindly to declare that an enforced equality in respect to legal rights must exist may result in such an economic and social handicap to women as no forward-looking person would for a moment favor.”


(d) The proposal of a constitutional amendment presupposes a constitutional obstacle to the end in view. As a matter of fact, everything sought by the “equal rights” amendment can be accomplished without it.

(e) Proponents of the “equal rights” amendment assert for it an analogy with the federal suffrage amendment. But the analogy is wholly superficial, and highly misleading.

There were two great legal obstacles to woman suffrage. One was women's lack of suffrage rights, the very things they were seeking in the amendment, the very thing they had to have to enforce their demands for any legislation, for this or any other purpose. The other legal obstacle lay in the fact that full suffrage is a constitutional right, and complete enfranchisement required in every state a change in the state constitution, which was the most difficult of all legislation for unenfranchised women to secure.

The first of these great obstacles to women's aims does not now exist at all, for women are votes in every state. The second, the constitutional obstacle, never did exist in any state as an obstacle to removing the most 63 serious discriminations against women other than unequal suffrage, viz., the
discriminations of the common law. It exists now as to one disability only—denial of the right of jury service—in seven states, and as to one other disability—the holding of certain public offices—in one state. All other legal discriminations against women existing today can be removed by statute, without amending any constitution, state or federal.

61 *Equal Rights by National Amendment, National Woman's Party.*

In other words, to “carry forward the fight” for equal rights with men, women now have more power to use, but less to use it for.

(f) The assumed analogy overlooks another important difference between the suffrage amendment and the present proposal—the difference between simple and multiple content. The one amendment says, “The right ... to vote shall not be denied or abridged.” The other says, “Men and women shall have equal rights.” The right to vote is a single, tangible, well-defined, unmistakable right, exercised by one specific act. Hardly can the terms of the Nineteenth Amendment be honestly misunderstood, or misinterpreted, or misapplied. It prohibits inequality in respect to that one right, specifically designated. “Equal rights,” on the other hand, may be all things to all kinds and classes of people. That phrase carries a different definition in almost every set of circumstances, from almost every different point of view, while the amendment as a whole is a mandate to perform a task which, even as concerns equality among men only, has baffled the civilized ages of mankind.

(g) Again, the suffrage amendment left no doubt that it would operate constructively—viz., to give to women a right that men already possessed, and take no right away from men. The proposed “equal rights” amendment would operate as a mandate to give to, or to take away from, one sex or the other; with no certainty as to where the gain or loss would fall, but with great probability that doubtful instances would all be loss.

This probability exists because a federal constitutional mandate automatically invalidates all conflicting provisions in state codes or constitutions, but does not substitute new provisions for those invalidated.

2. Its Ineffectiveness

That the amendment would fail to accomplish its own purposes were it written into law would follow from its faulty premises. Like all other constitutional provisions, it would, as its proponents state, “override all existing legislation which denies women equal rights with men and would render invalid every future attempt on the part of any legislation or administrators to interfere with these
rights”; *providing always*, we add, (a) that the nature, content, and form of equal rights for women and men had been determined, and (b) that they could be stated in terms of law. But until then, what?

One thing certain about any constitutional amendment is that it overrides, *ipso facto*, all provisions of law in conflict with it. But which provisions are in conflict with it?

It is fairly well accepted that this amendment is in conflict with laws which deny to women the public rights that are still withheld—such as the governorship in Wisconsin, this and other state offices in Oklahoma, and jury service in twenty-five, possibly twenty-seven, states. Probably it would establish equal guardianship rights in the states that have not yet passed such laws. For these particular rights, in these particular states, presumably no additional legislation would be required to effectuate the purpose of the amendment.

But this is not true for the most part. The law of married women's property, of domestic relations, public health and social welfare and labor, as its exists in nearly all the states, vitally and intimately affecting millions of women—here are involved a multitude of complex questions which would necessitate further legislation, or court action, or both, to define the effects of the amendment upon existing provisions. For example: “At common law,” writes Professor Ernst Freund, 62 “the surviving wife receives only a third or a half of the intestate husband's personal property, the surviving husband receives the whole of the wife's personal estate. The widow has a dower right in one-third of the husband's real estate, the husband a right of curtesy in the entire real estate of the wife, but only if there is issue. The proposed amendment forbids inequality; but how is equalization to be produced? by making the more beneficial provision applicable to both husband and wife? then which is the more beneficial: dower which is one-third irrespective of issue, or curtesy which is the whole but dependent on issue? The difference between dower and curtesy still exists in a number of states; and in these states the courts will be compelled to say that in this particular respect the constitutional amendment is inoperative until aided by legislation.”


In these numerous and vital instances, the amendment would have to depend, for its effectiveness, upon statutory legislation additional to itself, *for which no enabling act is needed*; which legislation therefore would by just as effective without the amendment as with it.

What can be said, then, for the effectiveness of a measure which

(1) Would not accomplish anything that could not by accomplished without it;
(2) Would not accomplish most of its own ends without further legislation which can be enacted independently of it;

(3) Would not accomplish its own ends, even with the requisite additional enactments, without interposing delays and complications and expense of court procedure otherwise not necessary?

3. Its Uncertainties

A part of the ineffectiveness of the amendment is due to its uncertainties. One lawyer after another, upon examining it, has concluded as did Justice Sutherland of the United States Supreme Court (who was consulted on this question he was called to the Supreme Bench): “Of course, no one can predict what construction the courts will put upon the proposed amendment.”

63 Sutherland, George W., in letter dated December 24, 1921.

Corroborating this and other expressed opinions is the net conclusion from the opinions of some forty or more lawyers who were consulted as to the effects of the amendment, should it be adopted, upon the labor laws for women which exist in nearly all the states. At that time (up to 1923) the proponents of the blanket amendment were impliedly supporting the labor laws for women as desirable (their organization has since changed its position to one of avowed opposition to those statutes), and took the further position that the amendment would not invalidate these laws. In support of this contention it assembled opinions from a dozen or more lawyers, all of whom argued that the courts would not decide against the labor laws for women the amendment in effect.

64 Among the attorneys who expressed the opinion that the proposed amendment would not invalidate social and labor legislation applying to women only were J. D. Wilkinson, Shreveport, La.; George Gordon Battle, New York; James H. Webb, Mobile, Ala; Walter B. Wilbur, Charleston, S. C.; Frank P. Walsh, New York; Shippen Lewis, Philadelphia; J. Miller Kenyon, Washington, D. C. Matthew Hale, Boston, Mass; Charles W. Needham, Washington, D. C.; Robert T. Scott, Washington, D. C.; Robert Treat Whitehouse and William Penn Whitehouse, Portland, Me. (Opinions quoted by National Woman’s Party, distributed on mimeographed sheets.)

Exactly the contrary opinion was expressed by a still greater number 66 of lawyers (twenty or more) consulted by critics of the amendment. These lawyers believed that the courts would be compelled to decide, under the requirements of the amendment, that because the contract rights...
of women, but not of men, were limited by the labor laws, this legal inequality would make them unconstitutional. whatever the equalizing effect in practical application.

Among the attorneys holding the contrary opinion i. e., that the proposed amendment would probably invalidate existing social and labor legislation applying to women only, were the following: Roscoe Pound, Harvard Law School; Felix Frankfurter, Harvard Law School; Ernst Freund, University of Chicago; George W. Sutherland, Washington, D. C.; Francis Fisher Kane, Philadelphia; Dean G. Acheson, Washington, D. C.; William Draper Lewis, Philadelphia; Jesse C. Adkins, Washington, D. C.; Harold L. Ickes, Chicago, Illinois; W. H. Holly, Chicago; Clarence G. Shenton, Philadelphia; Jackson Ralston, Washington, D. C.; Henry Heidelberg, San Francisco, Calif; Warren Olney, Jr., San Francisco; Maurice E. Harrison, Hastings College of Law, University of California; Theresa Meikle, San Francisco; Barbara N. Grimes, Law School, University of California; Edward Clark Lukens, Philadelphia; Albert H. Putney, American University Washington, D. C.; Edward P. Costigan, Denver, Colo. (Quoted by National League of Women Voters and National Women's Trade Union League, from letters.)

To arrive at a conclusion here, it is not necessary for the layman to choose between or legal opinions. The courts, be it remembered, are presided over by lawyer. If exactly opposite views are held by different lawyers, as such, when interpreting the constitution, it is hardly to be doubted that the same difference of opinion would appear among lawyers when they are acting in the capacity of judges. And inasmuch as the final opinion on all questions of law reserved to the majority of a supreme tribunal on nine lawyers, the on certain thing in advance would be that the outcome was uncertain. The effect of the proposed “equal rights” amendment, as to this group of laws at least (and why not others?), could not be known, by layman or lawyer, until the court should have ruled in each typical case brought up.

Another group of laws that are evidently jeopardized by the amendment are mothers' aid or mothers' pensions of forty-four states and three territorial jurisdictions. Here again, the spokesman for the amendment contend that it would have no disturbing effect. 66 But Dr. Sophonisba P. Breckinridge, lawyer and associate professor of social economy at the University of Chicago, points out the danger thus:

“...Mothers' pension legislation has its enemies in every jurisdiction. These would surely in many jurisdictions take advantage' of the ambiguity of the amendment to interfere by injunction, while others would doubtless attempt to secure legislation giving to fathers the benefit of the same provision. The proposal to give such recognition 67 to the father makes a plausible appeal, just as the appeal to the principle of equality on the part of those who advocate the Blanket Amendment is so plausible. As a matter of fact, insuring proper care for the widower's child presents quite
different problems from care for the child of the widow, since a grant of money is usually not his most pressing need. Moreover, making grants where the man is supposedly able-bodied has been found to be one of the most insidious attacks on industrial reform that can be invented. Into that subject it is not possible to go here, but to open the way to further agitation for legislation leading to aids to fathers is to return to the practice of aid in lieu of wages, so disastrously tried a century ago.”


The uncertainty of the effect of the amendment in other directions is suggested by such questions as the following, which have not yet been satisfactorily answered, nor do they seem to be answerable until the courts speak: What would be the effect upon dower and curtesy? (The ineffectiveness of the amendment on this point is discussed on page 64 herein.) What would be the effect upon the age for marriage in the states where, for example, without consent of parents or guardian, girls may marry at eighteen and boys at twenty-one? Would girls have to wait until they were twenty-one, or would boys be able to marry at eighteen? Or, for purposes of marriage, having in mind physical maturity and sense of responsibility, are the ages in effect equal at eighteen and twenty-one as at present provided? What would be the effect on the age of majority? Will girls remain minors until they are twenty-one? Or boys become of age at eighteen? Or are they equal, in effect, at eighteen and twenty-one respectively? What will be the effect upon illegitimate parents—in states where the mother only is legally responsible, will the father become jointly responsible equally with the mother, or will the mother’s responsibility be negatived because the amendment must be construed as without power to write any new provision into the existing law? What will be the effect upon age-of-consent laws, and penalties for rape? The amendment would forbid inequality in these or other laws. But what is equality and what is inequality, in laws of these kinds?

68

4. Its Destructiveness

A constitutional amendment nullifies all laws in conflict with it, and from the standpoint of legal equality only, many existing laws are apparently in direct conflict with this amendment. Nullification in some of these instances would be welcome, in others most unwelcome to millions of women who hold economic and social justice to be more vital than equality in legal terms on paper.

Mother’s Aid Laws
The destructiveness of the amendment lies not only in the probability that it would invalidate many statutes now accepted as an important part of the labor codes and of general welfare legislation. As indicated by Professor Breckinridge in respect to mothers’ aid laws (page 66), even an ultimately favorable decision of the court would not prevent serious interference with the operation of the laws that were apparently open to challenge under the proposed amendment. A contested case, such as might arise where a worthless father claimed “equal rights” with the mother of their child to receive the “aid” granted for the purpose of maintaining the child at home and in school—such a case would mean a writ of injunction against the enforcing officers, and until the final court decision had been rendered, the law would be inoperative. This, as Miss Breckinridge remarks, “would be quite long enough to demoralize every piece of skilful administrative machinery in this field of work”; a loss which even a favorable decision in the end would not fully retrieve.

The serious effect of a demoralization such as this can be appreciated when it is realized that approximately 200,000 children are actually receiving the benefits of mothers’ aid laws at present, while fully 400,000 are potential beneficiaries. 68


Destruction of an additional kind would be more than probable where two other large groups of laws are concerned—namely, the non-support laws applying to wives of deserting or neglectful husbands, and the labor laws for women, both of which types, legal authorities believe, would be not only thrown into court but ultimately invalidated.

Non-Support Laws

Of the effect upon the non-support laws, a member of the Philadelphia bar, Mr. Edward Clark Lukens, writes thus: 69 “Most of the states have laws either making it a penal offense for a man to desert and fail to support his wife and children, or enabling the court to compel such a husband or father to make periodical payments for their support, or both. The courts having jurisdiction in this matter are exceedingly busy, and thousands of dollars are collected for destitute families from deserting husbands through their process. There is no provision in these statutes for compelling a deserting wife to contribute to the support of her husband, and the statutory basis for these ‘support orders’ would fall, under the equality amendment. The unfortunate wives who bring their petitions to these courts come asking for ... bread, and shall we give them a stone by telling them that their husbands can desert them with impunity because women have been granted equality?” 69

In reply to Mr. Lukens’ article Mrs. Burnita Shelton Matthews, Legal Research Chairman of the National Woman's Party, writes: “In many jurisdictions [she cites eight] husband and wife mutually owe each other support, the wife is civilly liable for family expenses [she cites three states], which sometimes may include even a diamond stud for the husband, and alimony is payable by a woman or a man [she cites four states].” Mrs. Matthews adds that “where the husband is in destitute and necessitous circumstances and the wife has an earning capacity or is a property owner, she ought to be criminally liable for his support.”

70 **American Bar Association Journal, Vol. XII (February, 1926), pp. 117-20.**

This list of exceptions, however, with a personal opinion as to what the law ought to be, does not refute Mr. Lukens’ contention, which is that in the states where husbands are required by law to support their wives, but no corresponding legal requirement is made upon the wife—in those numerous states, the effect of the amendment would be, in his opinion as a lawyer, to remove the husband's legal obligation to support his wife. This he believes would be the kind of equality effected, because, he says: “I do not think the courts could attain equality by making either spouse liable for the other's support, because that would require reading something into the act. In other words, the force of the act might be cut down by the Constitution, but it could not be enlarged.”

71 Letter, dated March 25, 1926.

The non-support laws of a number of states, then, as well as the mothers’ pension laws of nearly all, would undoubtedly be challenged in the courts, because affecting husband and wife differently. From the standpoint of people who believe in such legislation, and desire to see it preserved, litigation is certainly undesirable, destructive, and expensive interference with the administration of the laws, and possibly would invalidate them entirely.

**Labor Laws**

In the extent of hardship that would result from its operation, however, the destructiveness of the amendment is probably greatest of all in respect to the labor laws for women. By this we mean, not the laws prohibiting employment of women in given occupations, most if not all of which prohibitions could be dispensed with unlamented, but the laws regulating hours and providing for the fixing of minimum wages for women. About three million wage-earning women in the United States are directly affected by laws of this character, which have already run the gauntlet of the courts because of the opposition of the employers who seek “cheap” labor and object to any restriction upon their opportunity to force wages down. These labor laws are deliberately intended to restrict just that kind of exploitation of precisely that wage-earning group (girls and women)
whose bargaining power is insufficient to protect them against it. And the preservation of these laws on the statute books to the present time is the result of prolonged legal battles between opposing forces in the great industrial struggle.

The opponents of the labor laws for women are ready to attack them at every turn in the future as they have done hitherto. And were this amendment in force, they would unquestionably have a new ground for suit, the injunction would issue as usual, and the enforcement of the law would be suspended until the courts had decided. Appeals would be taken from the lower to the intermediate, and then to the higher courts, no doubt, as in the previous history of these laws. And after a period which might easily be years, the United States Supreme Court would rule.

Meantime, while decision was in the making as to whether the legal equality required by the amendment was to supersede the actually equalizing economic effect of these laws, employers who wanted to prolong the workday (an employers' association has tried annually to repeal the forty-eight-hour law in Massachusetts) would put the longer schedule into effect, seizing their opportunity under the injunction they would have obtained. There are thousands and tens of thousands of women in other states now working to the legal limit of nine and three-quarter hours, or ten hours a day—or eleven and twelve hours at night which some states permit—in industries that fight bitterly any attempt to shorten even that legal workday. Can anybody doubt what those industries would do, were the ten-hour or nine-hour law before the courts? Or can it be seriously maintained that for women to work longer than nine to ten hours a day or eleven and twelve hours at night, on power machinery, would be either tolerable from the standpoint of health, or equalizing in its actual effect upon their status as compared with men? Does it equalize the economic position of women and men to remove an eight-hour law and thereby invite longer hours for women than the prevailing schedule for men?

That there is more than a speculative basis for such questions may be seen when states like California and Massachusetts are considered. There the eight-hour day is widely prevalent for men, because (a) many of the great industries employ chiefly men, and (b) men in those industries have organized and fixed their working standards by collective bargaining with their employers, while hundreds of thousands of women, in the women-employing industries, have an eight-hour day, or a forty-eight-hour week by virtue of the law. The "equal rights" amendment would almost certainly nullify the law, and thereby the eight-hour day for most of the women, while the millions of men—for example, in the building trades, the metal trades, the printing trades, and others—would
continue on their eight-hour schedule, untouched by the law or the nullification of the law. Economic equality for women would have been sacrificed for the fiction of legal equality.

It is no answer to say, at this point, that women can organize unions and get their eight-hour day as men have got theirs. Even if they can, they find it nevertheless to their purpose and advantage to use another method as well. Is it equality to interfere with their exercise of that choice?

The unionization of women is fought more bitterly and more successfully by employers than the unionization of men, and for other reasons also it presents a more complex problem. To wait on the solution of that problem to attain economic equality for women and men is to sacrifice the health of thousands while we wait; sacrificing for the shadow, not the substance of equality.

It is, furthermore, to impose upon women a new kind of restriction, a new subjection of their will and their economic interests to those of men. The thing that will bring industrial equality of men and women is equal bargaining power, and for the attainment of this are two accepted methods, law and trade union agreements. Men use both and women use both. But men have been more widely successful with trade union regulation than women have been, and women have made more gains by law than men have made. By what justifiable logic should we deprive women of the instrument they can use to best advantage, and make them dependent on the one which suits men best? Is this equal rights?

Nor is it an answer to say that the amendment “will simply mean that the protective laws can no longer apply to one sex only. In various states and countries these laws have already been equalized so as to apply to men as well as to women. What has been brought about in these places can be brought about everywhere so that there will no longer be a sex basis to industrial laws.”

If, with the amendment in effect, “the protective laws can no longer apply to one sex only,” it will almost certainly be because those laws would have been nullified by the amendment, and therefore would have ceased to apply to either sex. “The various states and countries” in which “these laws have already been equalized” are found, upon examination, to furnish little support to the argument; but to assume, in any case, that “what has been brought about in these places can be brought about everywhere” is ignore alike constitutional facts and political conditions in our own country, and constitutional differences between the United States and other nations. Nothing is plainer nowadays, to the thoughtful reader of international news, than the growing realization of the
differences in national philosophies and methods of government. In particular, where other nations have one sovereign legislature, we have forty-nine, and the new laws we make must be related to each of forty-nine different codes. But side from the obstacles which exits exist in our legislative process, the power exercised by our courts of law to nullify of our legislatures and our Congress is unmatched in other countries. Their parliaments are supreme; our courts can overrule our lawmakers, as they have repeatedly done with labor laws. Besides which the differing philosophies of the labor movements of Europe and America create a very different political situation, and close the legislative possibility in the United States, at present at all events, of extending the women's labor laws to men.

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The situation in the United States, in short, is this:

(a) The proponents of the amendment are avowedly opposed to labor laws, per se, that apply to women but do not apply to men.

(b) Neither the proponents of the amendment, nor the organized women who oppose the labor laws for women, are, as a class, industrial workers, nor have they the corresponding economic status. Therefore they are not in a position to be directly affected by such laws as industrial workers are, or to have first-hand experience of their meaning.

(c) Women to whom the laws apply have always asked for such legislation.

(d) Legislators asked to enact a particular law require some assurance of the consent, at least, if not the active support, of the person most affected by the proposal before them. As the American labor movement stands today, such consent and support would not be given by organized working men of the skilled trades to laws regulating the terms of their employment. It is given, however, by organized working women, to laws for women.

These are facts of record. Supposing, then, that working women were unitedly determined to impose upon working men what the men did not want, would legislators heed the women who made such a demand upon them? And if legislatures would not enact laws for men which men did not want, should women who do want such laws be deprived of what the legislatures have already given them, and future legislation of the same kind, merely because men choose a different route to the same goal? Must women imitate men, in order to be equal with them?
The proponents of the amendment beg the entire question raised by their amendment in its bearing upon labor laws for women. Irrespective of the legislative obstacles to eight-hour and minimum-wage enactments for men, there is this immediate issue to face:

The proposed amendment would not automatically extend the women's labor laws to men. Pending the time when such laws could be so extended, if they could, are the supporters of the amendment willing to inflict upon millions of girls and women, working at or below the poverty line, the hardships of exhausting hours and starvation wages, in order to put the words “equal rights for men and women” into the constitution of the United States? When all that even they desire of “equal rights” applicable to themselves can be enacted without doing so?

Their answer will depend upon whether they prefer the shadow to the substance; and whether they are willing to deny self-determination to 74 millions of women whose problems are different from theirs, but whose rights to judge of the nature of equality are unquestionably equal to theirs on all counts, and morally greater in respect to laws directly bearing upon themselves.

5. Its Slowness

The adoption of an amendment to the federal Constitution requires (a) adoption of a resolution by the Congress of the United States with (b) the favorable vote of at least two-thirds of each house, and (c) ratification by thirty-six or more state legislatures (unless the special convention method be invoked, which never has been done), (d) which ratification requires a majority vote in each house of the legislatures.

To enact a statute requires (a) enactment by a state legislature, or by the Congress, (b) by a majority vote of each house of the legislature or of the Congress. Some states have the additional or alternative possibility of initiative or referendum for statutory enactment, which may be applied also by way of testing public opinion prior to ratification of federal constitutional amendments.

Constitutional amendments, therefore, considered comparatively for investment of time and effort, require action by at least thirty-seven legislative bodies, one of which, Congress, must have completed its action before the others can take their action, and it does not become law in any state until it has been favorably acted upon by thirty-six states; while a statute, on the other hand, is the act of one legislature, and takes effect in that jurisdiction without waiting for action by any other body.
Thus, apart from all political obstacles, which are peculiarly great for any constitutional amendment as such, irrespective of the subject matter, and are proportionally greater if the subject is controversial, the amendment procedure is neither short nor easy. It is so seldom used that only four amendments have been adopted in the last fifty-nine years.

Upon what, then, does the claim rest that a national amendment is “the quickest and least expensive method of securing the equality of men and women before the law”? The proponents point to the suffrage amendment; forgetting apparently that that amendment was the end of a seventy-two-year campaign, and overlooking other significant facts in the situation.

The federal suffrage amendment was sought because there were constitutional obstacles to suffrage—federal and state; because also voteless women had not the needed leverage in their own states to effects a change which otherwise could come only by the unusually difficult process of amending the state constitutions; whereas upon the national Congress, and especially upon the national elections, each state suffrage victory exercised cumulative political influence not felt by one state upon another.

Now, however, the situation is different. Nearly all the legal differentiations between men and women exist not in state or federal constitutions, but in the common law or the statutes, and can be changed by statute. With a few exceptions (the proponents of the amendment cite seven states where jury service is involved and one where certain public offices are closed to women by the state constitution) all the discriminations or differentiations in the law that a federal amendment could remove, for good or ill, in any state, could be removed by direct enactment of that state legislature. And women are voters in every state, with all the leverage their political power can bring to bear—provided they want the law changed in the manner proposed.

At the very least calculation, then, the process of securing Congressional action upon a federal amendment would seem to be an extra process, inserted between the drafting of the desired proposal and state action consequent upon its adoption. And the “equal rights” amendment has now been pending in the Congress for eight years, without making any advance beyond the point of hearings.

Assume for argument’s sake, however, that it had passed—now after eight years, during which, as we have seen (page 14 herein), the various states have enacted scores of equalizing statutes on the subjects presumably covered by the amendment. To those eight years must be added whatever time may be consumed by thirty-six legislatures, most of which are biennial, and which in the amendment
would certainly meet opposition. But suppose it should pass those legislatures in the minimum time required for the mechanics of the process—say two years.

Thereupon, according not only to our showing, but to admissions of the proponents of the amendment, the process of adjustment would begin, in the courts and in the legislatures. How long that process would require nobody knows, or what would emerge at the end of it. But it is safe to say it would last far beyond—would indefinitely prolong indeed—the process now under way of correcting inequalities of different kinds, in the different relationships of life, by carefully drawn enactments directed to specific purposes.

Which is to say that the amendment process, both in the Congress and in thirty-six legislatures, would be just that much more work, requiring just that much more time, than is necessary, for even the mechanics of the task. In accumulated liabilities of delay in actual attainment of equal rights, the possibilities can only be guessed.

6. Its Cost

The cost of the blanket amendment be measured in dollars alone, though its money cost would undoubtedly be greater than the cost of specific legislation because of the additional time required. Women who work for legislation like this must live while they are working, and sometimes they must travel far from home. They must have offices and conduct correspondence.

But there is another money cost which the proponents of the amendment dismiss with a wave of the hand—the cost of the litigation they admit is involved. Court action means attorneys’ fees, and with appeals from court to court the fees would mount.

All this besides the expense, to other women, of delayed decisions by the courts. These others are women who cannot afford to go to court, much less to lose the wages, or the support of their husbands, or the aid that would keep their children in school. For that is what would happen while the courts were deciding the meaning of “equal rights.” Hour laws would be suspended—meaning longer hours at the same or lower pay. Minimum-wage laws would be suspended, meaning a
straight reduction in wages. Non-support laws would be unenforceable, meaning that needy wives would be unable to collect money now collected from their deserting husbands; and needy mothers would see their children sent to institutions, or put to work instead of going to school.

That is where the great cost of this “equal rights” amendment falls—upon women who are already at or below the poverty line. They are to be counted in millions—their hardships to be measured against the right or the need of other women to serve as jurors, to hold public office. Or against the right (which comparatively few women exercise) to sue their husbands for rights to property or for alimony, or more easily to sue them for divorce. How many women, can we estimate, are really suffering hardship in the United States today under the inequalities of the common law as to property rights, or the constitutional limitations upon the holding of public office or jury service? The courts of domestic relations are busy, but the numbers of husbands and wives who seek unfairly to divert their property or their children away from each other are the exception, not the rule; the hundreds, or the thousands—certainly not the millions. It must be remembered that injustices to women as to property rights are correctible by law only where the situation is acute enough to bring the case into court, while political disqualifications rarely cause suffering, however unfair and unequal.

The proponents of the “equal rights” amendment can be cheerful about the cost because they will not pay the cost—or in so far as they pay it, they will be reimbursed by something they desire. It is the millions of non-propertied women, of women who must work for wages, of neglected wives and widowed mothers and little children, who would pay the cost of writing into the Constitution an empty phrase.

7. Its Objectionable Method

The blanket method of the proposed amendment is the basic objection to it in the minds of many of its critics; a method which its proponents would employ in the states as well. In the one state that has thus far enacted legislation of this kind, experience sustains the critics.

A blanket “equal rights” statute, drafted and submitted by proponents of the blanket federal amendment, was enacted by the Wisconsin Legislature in 1921. The text reads: “Section 1. Women shall have the same rights and privileges under the law as men in the exercise of suffrage, freedom of contract, choice of residence for voting purposes, jury service, holding office, holding and conveying property, care and custody of children, and in all other respects. The various courts, executive and administrative officers shall construe the statutes where the masculine gender is used to include the feminine gender unless such construction will deny to females the special protection
and privileges which they now enjoy for the general welfare. The courts, executive and administrative officers shall make all necessary rules and provisions to carry out the intent and purposes of the statute. “Section 2. Any woman drawn to serve as a jury, upon her request to the presiding judge or magistrate, before the commencement of the trial or hearing, shall be excused from the panel or venire.”

The Wisconsin law “thus contains specific provisions and some exceptions to its provisions as well as a blanket provision. It seems to reaffirm some provisions which were already on the statute books. It raises questions with regard to many others. And it leaves all these doubtful cases to be virtually legislated upon by the courts....” “The sum total of the effect of the Wisconsin equal rights law to date seems to have been (1) to clear up the uncertainties as to women's rights to jury service, but at the same time to give them the special privilege of exemption upon request; (2) to give married women the right to become surety on their husbands' notes [and to enter a business partnership with their husbands]; (3) to reveal the possibility of confusion and litigation under blanket legislation; and (4) to demonstrate the necessity for specific legislation to accomplish most of what the blanket law was expected to do.”

Illustrating points three and four of the above criticisms as written in 1924, the same writer adds in 1928: “The right of women to employment as clerks and stenographers of the legislature and legislative committees is now before the Supreme Court of the State. In 1905 the Legislature, in its act providing for legislative employees prohibited the employment of women in such positions. After the Equal Rights Law of 1921 was passed the Attorney General was asked in 1923 for an opinion as to whether that law repealed the prohibition of 1905. The Attorney General held that it did not. In 1925 a bill was introduced to repeal the old prohibition of 1905. It failed to pass. In 1927 a bill to repeal the prohibition passed the Senate but failed in the Assembly. If the votes against passing the repeal could be taken as a vote for the old law then that law has passed since the Equal Rights law of 1921, and the question as to whether the law of 1921 repealed the earlier law, might be assumed to be settled. On the other hand, if the Equal Rights Law of 1921 repealed the law of 1905, then the legislators in trying to repeal it later might be said to be attempting something already repealed and their refused to repeal might be considered futile. The Civil Service Commission at any rate seems to have taken that stand, for in 1927, disregarding the opinion of the Attorney General, they advertised the examinations for these positions as open to both men and women and certified both men and women for employment. “The officers of the legislature did not employ any of the women certified. Moreover, on the theory that the list of certified eligibles was exhausted, they employed...
three men whose names were not even on the certified list. "Mrs. Holt, one of the women certified by the Civil Service Commission, then brought suit, as a taxpayer, to compel the officers responsible for the employment of these three uncertified men to restore to the funds of the state, money paid out, according to her claim, unlawfully. She also asked for and received a temporary injunction against the payment of wages to these employees. The Circuit Judge refused to make the injunction permanent and the Supreme Court of Wisconsin has just upheld the refusal on the ground that the employing officers are responsible to the state and if they are found to have employed certain men illegally, they can be compelled to make good the funds they have spent illegally. The question as to whether these men were illegally employed or not remains to be settled by law, not equity, at a later session of the court. "Thus the question as to whether the Equal Rights Law amended the prohibition against employing women in the legislature; and whether if it did amend the law, its amendment would stand in the face of a later legislative approval of the original law, is still before the Supreme Court of the State. “Another subject which has come up under the Equal Rights Law is the income tax. Under the law as it existed previous to 1921, $800 was the limit upon the exemption to a single or widowed woman for dependents, and $1200 to a man. A married woman's income was assessed to her husband and their total exemption was $1200. The right of a married woman to make out a tax return of her income separate from her husband and to claim exemptions the same as men was never brought before the Courts. The income tax law has since been entirely revised and this question raised by the Equal Rights Law has been cleared up by a change in the tax law. Under the new income tax law, the exemption is a flat amount of taxes in dollars and cents. An individual, male or female, receives 80 an exemption of eight dollars; a family $17.50 plus $3 for each dependent. Husband and wife may make separate returns or join in a single return. In either case the tax is computed on the combined average taxable income; the exemptions are allowed but once and are divided equally, whether the dependent is dependent upon the husband or the wife, and the amount of tax due shall be paid by each in proportion to the income of each. “The Supreme Court has also held that a wife may bring an action against her husband for injuries to her person or character. (Wait v. Pearce, 209 N.W. 475, May 11, 1926). But the court held in this case that this right existed under a law of 1881 and hence was not conferred by the law of 1921.” 79

79 Turner, Jennie McMullin, in letter dated April 24, 1928.

Criticism of blanket legislation as such applies with far greater force to the proposal to locate such a provision in the federal Constitution than it does to a statutory provision. A statute can be repealed by another statute—a mistake of one year can be corrected in the next—by the changing of a majority of one legislature into a minority; a fact which does not jeopardize a forward-moving cause like equal rights for men and women, but does permit adjustment to the developing needs of the future. A constitutional amendment is a virtually permanent thing, its mistakes almost irreparable. Worded as this one is, it would be, for reasons we have discussed, a retrogressive thing, which
would defeat new ideals, including some of its own, and hold down social and labor legislation to a narrow equalitarian individualism, in a present and a future that must expect to deal with social and economic problems in collective terms. It is far more serious than a blanket law in a state code.

It is true a constitutional amendment should be drafted in broad terms. But not definite, abstract terms. This one, attempting to cover in one short sentence the rights of women in all the relationships of life, uses terms that never have been defined, although discussed by all the sages in the history of political philosophy. By its location in the organic law of the Republic, it would operate as a mandate to each and every state.

It might, indeed, operate as a mandate for interstate uniformity, thus multiplying the difficulties of arriving at an undefined equality by requiring that all laws affecting rights of men and women be alike from 81 state to state. It is held by some lawyers and legislators ⁸⁰ that the phrase “throughout the United States and every place subject to its jurisdiction” would mean that “the rights shall be equal and uniform throughout the United States and the territorial and insular possessions, from the District of Columbia to the island of Guam.” This construction would have the effect, in the opinion of these authorities, of withdrawing from the states their power to legislate on any subject touching the rights of men and women, and giving it over to the Congress. Only thus, they think, by federal action, could interstate uniformity be achieved.

⁸⁰ Wolf, Alexander, in latter 1924, restated in letter May 23, 1929.

Waterman, C. W., and Steiwer, Frederick, members of the United States Senate, in Hearing before a Subcommittee on the Judiciary, United States Senate, Seventieth Congress, Second Session, on S. J. Res. 64, A Joint Resolution Proposing an Amendment to the Constitution of the United States Relatively to Equal for Men and Women (Washington, February 1, 1929), pp. 16-17; Young, Benjamin Loring, in Hearing above cited, p. 55.

Here lie the possibilities, the probabilities, and indeed the certainties, of so much and such prolonged litigation as to justify the criticism that such a constitutional provision would virtually give over the powers of the legislatures and of the Congress, where the relationships of men and women are concerned, to the courts.

“Could a more adequate formula be devised?” Professor Freund asks the question, and answers, “I doubt it. The constitution is not a fit instrument to reform complex civil relations.” ⁸¹

Questions Raised by the Treaty Proposal

In February, 1928, at the Sixth International Conference of American States at Havana, Cuba, the proponents of blanket “equal rights” legislation in the United States made a corresponding international proposal the form of the draft of a treaty in virtually the same language as their proposed constitutional amendment, viz.: “The contracting states agree that upon the ratification of this treaty, men women shall have equal rights throughout the territory subject to their respective jurisdictions.”

Again, a constitutional question is involved, as well as a question of public policy, in this case national and international.

Treaties are negotiated between governments, through their plenipotentiaries and chief executives. In the United States the President “shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.” Unless the treaty is self-executing, however, the action of the President and the Senate would not establish its provisions or permit their enforcement. This would remain to be done by act of the Congress in the present instance, because the rights of men and women are the subject of widely varying legislation, state and federal, which would have to conform to some definition of “equal rights.” In other words, this treaty would not be self-executing, and could not come into force until the Congress had passed the necessary legislation to that effect.

The treaty-making power of the President and the Senate is, moreover, always limited by the Constitution, in the provision that “This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.” Treaties, therefore, “are not the supreme law of the land by themselves, but in connection with the Constitution and law of the United States. ... No treaty can violate any of the provisions of the Constitution.”

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The question as to whether any given treaty does violate the provisions of the Constitution must of course be determined by the United States Supreme. And while a treaty takes precedence over any statute, state or federal, if the subject of the treaty is held to be within the treaty-making power of the government, this particular treaty proposal apparently is subject to a question of constitutionality. It involves the same question that arose in the United States delegation to the Havana Conference, with reference to the projected code of private international law, which was submitted by the Conference to all the member nations—the question of federal jurisdiction vs. the reserved powers of the states. On this ground, the United States delegation, headed by Mr. Charles Evans Hughes, declined to subscribe to that proposed international code (see page 114 herein).

So far as the United States is concerned, the “equal rights” treaty proposal seems therefore to raise not only the same controversial issues involved in the proposal for “equal rights by national amendments,” but to inject still more. “No theory has been more earnestly debated,” writes Justice George Sutherland, “nor has given rise to more pronounced differences of opinion, than that which challenges the validity of a treaty stipulation disposing of a matter which otherwise would fall within the reserved powers of the states; and especially which would fall within their police powers.”

For other than the purely constitutional reasons, moreover, it may well be concluded that any possibility adherence by the United States Government to such a treaty as that proposed for “equal rights” is extremely remote. It would from the outset encounter the same opposition that has been aroused by the proposed “equal rights” amendment, for it were allowed to become the law of the land it would be equally destructive. It would, if accepted, add to our law as it stands the same indefinite, indeterminate kind of provision that is contained in the proposed amendment, and thus would act as a mandate to the states with the same effect the constitutional amendment would have. State laws could be challenged as being in conflict with the legalistic definition of equality. The same groups of laws that would be endangered or nullified by the “equal rights” amendment would be thrown into similar confusion or jeopardized by the treaty, and some would be nullified outright. All laws that differentiate between the women, whether involving health or physical capacity, sex functions, economic or political status, or any difference whatsoever, would at once be called into
question. The same destructive effects on labor and social legislation applying to women only must be expected.

In the Latin American states, where women are not yet enfranchised, there would be much more to gain by the treaty proposal, should it be valid, than in the United States. Latin American women would gain the vote and other political rights, no doubt. To that extent the treaty would have more constructive results than would the proposed amendment to the Constitution of the United States and more constructive results than the treaty would have in this country.

Otherwise, however, in Latin America the effects would be problematical. Undoubtedly the treaty would rise the same questions of definition that the amendment raises. What are equal rights, what is equality for men and women under the law? The interpretation of a Latin court on the basis of the Spanish or French or Portuguese development of the Roman law, may be very different from the interpretation of a United States court, on the basis of the English common law and its development in the United States. Just how the treaty, if accepted, would affect, in the Latin American states, existing laws for women which are desired by women, as well as laws which the women of those states desire to change, is, therefore, a subject which should have thorough study before any such treaty proposal is presented for action. Opinions of Latin American jurists are needed to clarify this question.

From a North American point of view, however, the proposed “equal rights” treaty would seem to collide specifically with at least three other international conventions already ratified in some Latin American states, and at present pending before the legislative bodies of others; namely, the conventions for maternity benefits, for regulation of night work by women, for protection against the lead poisoning. The Havana Conference itself, the very day the “equal rights” treaty draft was offered, recommended to all the Pan American states maternity protective legislation of the very type which is actively opposed by the legalistic equalitarians, a type of legislation which in the United States would be jeopardized by the enactment of the proposed “equal rights” constitutional amendment, and also by the acceptance of the treaty.

Recapitulation- As to the Amendment

Underlying the proposal for equal rights by national amendment are two wrong assumptions that lead inevitably to further error. The proposal assumes, first, that equal rights for men and women are something fixed and absolute.
It then assumes that this fixed and absolute something can be decreed by law. Then, the decree issued, in the form of a constitutional amendment, it would be enforced with equal bearing upon men and women, ignoring their relative condition or status in life and assuming that the inherent equality of rights of these two classes of persons has not been disturbed by circumstances characteristics of their respective life experience.

It is essentially a doctrine of individuals and laissez faire—“Each for himself, and let the devil take the hindmost.”

This was eighteenth thought; now, however, superseded by the philosophy of social responsibility, and the ideal of social justice.

The fact is that men and women, though we may agree they are equally entitled to all the rights and essentials of life that law and government bestow, do actually stand on unequal footing, not only in law, but in most of the relationships of life. However unjustly and unfairly brought about, their status is unequal.

The amendment as constitutional law would apply in the same way to all those inequalities of status. “Nothing is more unequal,” quotes Dr. John A. Ryan, “than to treat unequals equally.”

But the amendment sins not only in concept. It is not only anachronistic in the narrow equalitarian individualism of its philosophy, but is uncalled for by the existing state of the ills it proposes to cure. No enabling act is required to correct the inequalities of the law affecting men and women. The full legislative authority now exists. It is doubtful whether the amendment would remove, ipso facto, more than a few of the inequalities it is intended to remove, and certain that it would create others. It is virtually certain that it would destroy, or seriously impede the operation, of valuable legislation affecting millions of women who are already subject to great hardships. It necessitates a long and complicated legislative process in addition to the inescapable process of correcting unequal statutes separately, and the cost would fall chiefly upon women who do not want or need it, but do want and need many of the laws it would endanger or destroy outright.

And all that it would gain for any woman can be accomplished without it.

We conclude that the proposed amendment, and probably any other that might be proposed to cover such a variety and complexity of rights and human relationships, would be ineffective,
uncertain, destructive, tedious, and expensive, besides being, as method, the wrong way to make good law.

As to the Treaty Proposal

Unless public sentiment in the United States should permit the adoption of the proposed “equal rights” constitutional amendment, it is hardly conceivable that this government would adhere to the proposed equal rights” treaty, drawn in virtually the same language. In this 86 country, the effect of such a treaty as the law of the land would be the same as the effect of the constitutional amendment.

The effects of such a treaty in other countries would depend upon the constitutional and codes of those countries, their courts, and the national psychology. In the Latin countries, both of Europe and of the Americas, where women cannot yet vote, the treaty would mean their enfranchisement and presumably full political rights. To that extent, and possibly more, it would be constructive.

Otherwise, “equal rights” would still have to be defined, and before acceptance the proposal should be examined in all its possible bearings in each country. Where the constitutional amendment would be destructive in the United States, especially with reference to the civil rights involved in labor laws for women, maternity protection, and mothers’ pensions; where it would confuse the laws of domestic relations without equalizing them, and be disturbing to the vexed legislative problems of the economic exploitation of women, age-of-consent laws, etc.,—in all these same fields of social legislation, the treaty raises questions which call for careful study. If it is not to be a mere scrap of paper, we must find out whether it would jeopardize the progress already made toward equalization of rights and opportunities of men and women according to the sound and scientific procedure of special treatment for the special problems involved.

In so far as the treaty would nullify social legislation now existing in Latin American countries (and other countries if the application of the treaty should be extended), it would aggravate, even more seriously than would the amendment in the United States, the existing industrial injustice and inequality, in proportion as those wrongs are greater in those countries. To that extent it would not equalize rights, but would perpetuate wrongs.

INTERNATIONAL ISSUES AND COMPARISONS- Different Concepts of Sex Equality
The issues that have arisen within the woman movement of the United States are not peculiar to this country. Nor are they of recent origin. It was characteristic of the Anglo-Saxon feminists, especially in their days, says Havelock Ellis, writing in 1911, to want women to enter men's fields of action, to measure women's self-fulfillment in terms of men's achievement, and count women's position inferior unless it was the same as that of men. The German feminist goal, expressed in a movement which developed much later than the Anglo-Saxon, was freedom for independent self-fulfillment, including opportunities in education, in professional and business life, and in industry, but always and whatever else might be, fulfillment in her own peculiar realm as woman.

Thus, paradoxically, this philosopher finds the radical Anglo-Saxon feminist seeking to be so far as possible like men, and measuring the world by men's standards of men's self-development. The radical German feminist wants women to develop the attributes which belong to women especially, measuring women's success by their own standards.

“If we attempt to define in a single sentence the specific object of this [Teutonic] agitation we may best describe it as based on the demands of woman the mother, and as directed to the end of securing for her the right to control and regulate the personal and social relations which spring from her nature as mother or possible mother. Therein we see at once both the intimately emotional and practical nature of this new claim and its decisive unlikeness to the earlier woman movement. That was definitely a demand for emancipation; political enfranchisement was its goal; its perpetual assertion was that women must be allowed to do everything that men do. But the new Teutonic woman's movement, so far from making as its ideal the imitation of men, bases itself on that which most essentially marks the woman as unlike the man.”

88 Ellis, Havelock, *The Task of Social Hygiene* (Boston and New York; Houghton Mifflin co., 1912), pp. 95-96. Also: “In England, especially, the woman's movement has in the past largely confined itself to imitating men and to obtaining the same work and the same rights of men. Putting the matter more broadly, it may be said that it has been the aim of the woman's movement to secure woman's claims as a human being rather than as woman. But that is only half the task of the woman's movement, and perhaps not the most essential half. ... And the full fruition of that movement means that women, by virtue of their supremacy in this matter [motherhood], shall take their proper share in legislation for life, not as mere sexless human beings, but as women, and in accordance with the essential laws of their own nature a women.” (Pp. 86-87.)

“At the same time the new movement of German women, however it my arise from or be supported by political or scientific movements, is fundamentally emotional in its character. If we think of it, every great movement of the Teutonic soul has been rooted in emotion. The German literary
renaissance of the eighteenth century was emotional in its origin and received its chief stimulus from the contagion of the new irruption of sentiment in France. Even German science is often influenced, and not always to its advantage, by German sentiment. The Reformation is an example on a huge scale of the emotional force which underlies German movements. ... When we hear in mind this general tendency to emotional expansiveness in the manifestations of the Teutonic soul we need feel no surprise that the present movement among German women should be, to a much greater extent than the corresponding movements in other countries, an emotional renaissance. It is not, first and last, a cry for political rights, but for emotional rights, and for the reasonable regulation of all those social functions which are founded on the emotions.” (Pp. 94-95.)

88

Today both English an American feminism seem to have broadened toward the “full fruition” of the movement described by Havelock Ellis, determined to “take their proper share in legislation for life, not as mere sexless human beings, but as women, and in accordance with the essential laws of their own nature as women.” In the United States unquestionably, and in England apparently, it is but a minority of feminists who still cling to the old objective. Not words in the law, not identical rights with men, not the same measuring rod for women and men, are relied on by most women to attain equality, but equal opportunity in terms of the needs of each sex, or of both, as the case may be. To be different from men and to have different needs is not to be inferior. Differentiation sometimes does, but often it does not mean discrimination. Frequently it is merest common sense.

The predominance of this attitude among American women is indicated by the strong alignment against the proposed “equal rights” amendment, with its blanket formula.

In other countries, the division comes on other questions, but the major issue is the same, and always the same necessity appears for definition of the terms of equality and equal rights. Just as this is the basic issue between the liberal feminists of the National League of Women Voters and the strict equalitarians of the National Woman's Party, it is also the essential line of cleavage between the “new feminists” and the old Feminists,” as they term themselves, of the British National Union of Societies for Equal Citizenship, and between dissenting sections of the International Alliance of Women for Suffrage and Equal Citizenship. It explains also the alignment of trade union and labor party women, in every country, with the liberal feminists, and against the legalistic equalitarians.

**Equal Rights Legislation Abroad**

In most of the countries of Northern and Middle Europe, women have been voting longer than in most of the states of the United States. They have been elected to their national parliaments and
have been appointed to public office. As voters they have put organized effort behind legislative programs for equalizing the status and opportunities of women and men, thus translating to some extent their principles and purposes into law, as American women have done since their enfranchisement. How does European progress compare with ours? And what is the concept of equality reflected in their legislative programs?

Without contemplating anything like a complete enumeration for each country in our list, or an inclusive list of countries, brief mention can be made of some of the recent laws of Great Britain which have been sought by organized feminists; some of the social legislation of those North European countries long recognized as advanced in their legislation for women's rights, namely, Norway, Sweden, Denmark, and the Netherlands; of the new post-war republics of Germany, Czechoslovakia, Austria, Esthonia, and Lithuania, including also the Free City of Danzig, these six governments being entitled to special notice not only because new and progressive, but because sometimes cited as models, with respect to sex equality, which the United States might do well to copy. 89 It will be useful to include also the Latin American states, which have their own characteristics attitude on this question. Then, as suggesting the most recent political and social thought of many of these countries, it will be worth while to note the character of several international conventions proposed for consideration by the participating governments.


International comparisons, it is true, when a political principle is involved, or legislative and judicial powers and procedure are in question, are always subject to important reservations with respect to the United States. Nowhere in the Old World does there exist the structural or psychological counterpart of our federal union of sovereign states. Nor does there exist anywhere the same power in the courts to nullify acts of the national and state legislatures.

90

When it is considered, furthermore, that different systems of law underlie the existing codes of different nations, and that these codes have been developed in different national environments according to the genius and ideals of different races of people, it is obvious that international uniformity, even if theoretically workable or desirable, is not likely to be achieved. To postulate legislative action in our country on the procedure of the British Parliament, of the national assemblies of the continental countries, or even of the new republics of South and Central America, is therefore somewhat futile. The same procedure, the same legal terminology in one country might produce considerably different results in another country, depending upon the content of the code to which it was added, depending upon the interpretation by the courts, and depending probably
upon other machinery of government, not to mention differences in social, political, and industrial conditions.

Nevertheless, in view of the importance of study and clear thinking as to what constitute equal rights for men and women, it will be useful to make such international comparisons as our available material affords; enough to show the prevalence (or not) of differential social legislation in countries where sex equality is a more or less accepted principle, as well as where it is not.

**Great Britain**

Equal suffrage for men and women is but just achieved in Great Britain, for the Reform Bill of 1918 enfranchised no women under thirty years of age, though men vote at twenty-one. A renewed agitation during the past few years won from a reluctant Parliament the passage of the Equal Franchise Act of 1928, giving women, as well as men, the right to vote at twenty-one years of age. 90

90 Equal Franchise Bill, July 3, 1928.

Other legislation for equal rights has not, however, stood still meanwhile. Among the Acts of Parliament recorded as notable achievements from the standpoint of the National (British) Union of Societies for Equal Citizenship are the following: The Parliamentary (Qualification of Women) Act of 1918, making it possible for women to be elected to Parliament. The Sex Disqualification (Removal) Act of 1919, which “opened the legal profession, in both its branches, to women,” “enabled women to sit on Juries and to act as Magistrates,” and made clear to Oxford and Cambridge University authorities that they were 91 free to open the privileges of the institution to women, and to confer its degrees upon women as upon men. The Married Women's Property Act (Scotland) of 1920, which gives to married women the same rights over their property as single women, and brings Scottish legislation in line with English on this subject. The Maintenance Orders (Facilities for Enforcement) Act of 1920, which makes it possible for sums payable under maintenance orders to be recovered from husbands who have gone to other parts of the Empire. The Summary Jurisdiction (Separation and Maintenance) Bill of 1922. This bill (based on the Separation and Maintenance Orders Bill of the National Union of Societies for Equal Citizenship), introduced by the Government, provides that a married woman need no longer leave her husband before applying for a separation order on grounds of cruelty and neglect, and facilitates enforcement and payment of maintenance orders. The Criminal Law Amendment Act of 1922, which raises the age of consent to sixteen years, and takes away the plea of “reasonable cause to believe” a girl to be over sixteen, except in cases of young men of twenty-three and under, on occasion of first offense. The Law of Property Act of 1922, which came into effect in 1924, gives husbands and wives equal inheritance rights in real
property. The Infanticide Act of 1922, which provides that manslaughter, instead of murder, shall be the verdict in cases where it can be shown that the mother was still suffering from the effects of confinement. The Matrimonial Causes Act of 1923, which permits divorce to women on the same grounds as to men. The Bastardy Act (England and Wales), 1923, which doubles the amount obtainable by the mother from the father of an illegitimate child. 91


It should be remembered, of course, that Acts of the British Parliament govern England, Scotland, Wales, and a part of Ireland, while on this side of the Atlantic corresponding changes of law are for the most part made by forty-eight states legislatures for their several state 92 jurisdictions. The subject matter of the British laws above cited, however, together with further legislation proposed in the program of the British feminist organizations, concerning illegitimacy, guardianship of children, opportunity for women in the civil service, and various other civil and social problems, corresponds closely with the content of measures achieved or still to be achieved by women voters in the United States.

Of the laws secured, greatest importance was attached, perhaps, after suffrage, to the Sex Disqualification (Removal) Act of 1919, attempting as it did to remove a number of inequalities at one stroke. This Act provides that—“A person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation, or for admission to any incorporated society (whether incorporated by Royal Charter or otherwise), and a person shall not be exempted by sex or marriage from the liability to serve a juror.”

It also provides that women shall be admitted as solicitors after having received the same training as men, and authorizes the admission of women to universities, notwithstanding any other statutes or any charter.

The Act contains, however, provisos that “notwithstanding anything in this section, His Majesty may by Order in Council authorize regulations to be made ... [for] admission of women to the civil service” and for the conditions of appointment, giving power to reserve to men any branch or posts overseas or in a foreign country; and, concerning jurors, that the judge or magistrate may at his discretion or on the request of the accused, order that the jury be composed of men only or women only, or may exempt women from service at their request on the ground of the nature of the evidence or the issue to be tried. 92
Supplementary legislation has been sought by British feminists, especially with reference to the civil service provisions and the exercise of public functions, for notwithstanding the provisions of this Act, British peeresses are still excluded from the House of Lords, and “the recent adverse decisions in the High Courts relating to married women teachers make the present time opportune for a Bill to amend the Sex Disqualification Removal Act,” in the opinion of a feminist leader. The same writer, setting forth the program of the National Union of Societies for Equal Citizenship for the year (1926), added, “In order to safeguard the married woman worker other Bills will deal with the selection of women jurors and the position of married women under the law of coverture.”

Parallels and difference alike, as relating to American experience, seem to indicate for Britain as for the United States the importance of specific legislation, amending specific statutes.

In much of their program, British feminists have had support from British Labour. The Sex Disqualification Removal Act was first introduced by the Labour Party, and the Labour Government in 1924 brought in an Equal Franchise Bill. British Labour has also urged, although without the support of feminist organizations, the Factory Acts limiting hours of labor for women in industrial occupations and regulating their employment at night (1920) and in specified processes where lead is used. Maternity benefits for employed women, to whom employment is prohibited for a period before and after confinement, were provided by an Act of 1924. A Factories Bill now pending, sponsored by Miss Ellen Wilkinson and other Labour Members, would reduce the hours of women, and apply numerous other provisions especially to women.


96 International Labour Office, Geneva. *Legislative Series: 1920*, G. B. [Great Britain] 9 (pp. 1, 7, 8), night work; 1920, G. B. 10, lead processes; 1920, G. B. 9 (pp. 3, 4, 7, 8), hours of work; 1921 (Part II), G. B. 4, lead processes; 1922, G. B. 2, lead processes; 1924, G. B. 6 (p. 14), maternity benefit; 1924 G. B. 6 (pp. 38, 39, 81, 89), national insurance act consolidation, women represented on insurance committees; 1925, G. B. 4, lifting weights (limit for men 150 lb., women 65 lb.); 1926 G. B. 9(p. 1), weights; 1926, G. B. 11 (p. 1), lead paint.
Labor laws for women, however, have now become a source of controversy among British feminists, as well as between feminist and labor groups, which had long been the case. At the present time, the controversy has provoked within the feminist movement itself a lively debate and an actual cleavage on the question, “What is Equality?” (See pages 119-24.)


Denmark

Denmark, which granted suffrage to women in 1915, and is commonly regarded as one of the countries most advanced in legislation affecting 94 women's rights, differentiates between men and women in several respects. It fixes the legal age for marriage (without consent of parents or guardians) at twenty-one for men and eighteen for women. It fixes an age of consent (twenty years) for girls only. Special provision is made for employed women when pregnant and after childbirth, and various regulations are applied to the conditions of women's work, especially in occupations which the Labor Department may designate as dangerous or prejudicial to health.

Norway

Women were enfranchise in Norway in 1913. In this country, however, although men and women both must reach the age of twenty-one before they are free to marry without the consent of parents or guardians, qualifications when consent is given are so differentiated as to recognize men of twenty and women of eighteen upon the same terms. The age of consent, however, is sixteen for boys and girls alike.

Labor laws of Norway prohibit the employment of women underground in mines, prohibit them from cleaning moving machinery, or “attaching straps, cord, or such like to rotatory discs”; and make special provision for pregnant women.

Sweden

It was not until after the World War, in 1919, that Sweden granted women suffrage. The marriage laws of Sweden differentiate as to the age of men and women under some conditions, fixing twenty-one years for men and eighteen of women. The age of consent (fifteen years) applies to girls only.
Maternity benefits for working women are provided by law, and Sweden is one of the countries that has ratified the international convention for protection of women against industrial poisoning in lead processes. There is also a night-work law for women, and against employing women in mines.

**The Netherlands**

The laws of the Netherlands, where women have been voters since 1919, differentiate between men and women as to age of marriage, which is eighteen for men and sixteen for women, and the age of consent (twelve years under certain conditions, sixteen year otherwise) applies to girls only. The labor laws of the Netherlands fix a fifty-five-hour weekly maximum for women, sixty-six hour for men, and apply a special restriction to women who have charge of a household. Numerous provisions regulate the conditions of women's work, including a night-work law, and seat regulations in shops.

**Germany**

In Germany the organized woman movement was relatively young and insignificant in strength in 1918 when the revolution occurred and the new republic was born. German women, however, who came into full citizenship under the constitution of their new republic, were enfranchised before either of the two oldest suffrage movements (English or American) had reached the goal.

The German constitution fixes the age qualification for voters, men and women alike, at twenty years. It then prescribes: Chap. II, Sec. I, Art 109: “All Germans are equal before the law. “Men and women have fundamentally the same civil rights and duties.” Chap. II, Sec. II, Art. 119: “Marriage, as the foundation of family life and of the maintenance and increase of the nation, is under the special protection of the Constitution. It is based on the equal rights of the both sexes. “The maintenance of the purity, the health, and the social advancement of the family is the task of the state and of the municipalities. Families with numerous children have a claim to equalizing assistance. “Motherhood has a claim to the protection and care of the state.” Chap. II, Sec. II, Art. 128: “All citizens without distinction are eligible for public office in accordance with the laws and according to their ability and services. “All discriminations against women in the civil service are abolished.” Chap. II, Sec. V, Art. 157: “Labor is under the special protection of the Commonwealth. “The Commonwealth will adopt a uniform labor law.” Chap. II, Sec. V. Art. 161: “For the purpose of conserving health and the ability to work, of protecting motherhood, and of guarding against the economic effects of age, invalidity and
the vicissitudes of life, the Commonwealth will adopt a comprehensive system of insurance, in the management of which the insured shall predominate.”


Under this constitution, Germany has elected more than thirty women to every National Assembly, and has enacted many special laws for women. The concept of sex equality here very obviously includes special treatment of women under the several headings of social and family welfare, motherhood, and labor. In other words, under the very constitutional provisions for equal rights of men and women which are cited by some American feminists as a precedent for American legislation, Germany has enacted the very kinds of special laws for women to which the absolute equalitarians of the United States and England are most opposed; namely, laws which add to the basic eight-hour provision for men and women a special limitation of overtime for women; regulate night work for women; regulate the employment and method of payment of women in inns and public houses; regulate the working time of women on farms; prohibit the employment of women in mines and lead processes, provide maternity benefits for employed women, and make various other special provisions for women.

99 International Labour Office, Geneva. Legislative Series: 1919, Ger. [Germany] 1, hours of work; 1919, Ger. 3, agriculture; 1919, Ger. 7, maternity benefit; 1921, Ger. 6, maternity benefit; 1922, Ger. 3 (pp. 6, 11), employment exchanges, separate for women; 1923, Ger. 4 (p. 3), homework, morality; 1923, Ger. 7 (pp. 2, 4), hours; 1923, 2 (p. 5), 4 (pp. 7, 8), women representatives; 1924, Ger. 3 (pp. 1, 2, 4-6), hours; 1924, Ger. 9 (p. 2), homework, representation; 1927, Ger. 2 (p. 2), hours of work, overtime 1 hr. for women, 2 hr. for men.

Germany's Agricultural Labour Act, of January 24, 1919, provides that women who have the care of a household shall be released from work “early enough to reach home one hour before the chief meal of the day, and on days before Christmas, Easter, and Whitsuntide they shall be exempted from work.” Women who have to provide meals for laborers outside the family shall be allowed to work as farm laborers “only so far as their household duties are not seriously prejudiced.”

99 International Labour Office, Geneva. Legislative Series: 1919, Ger. [Germany] 1, hours of work; 1919, Ger. 3, agriculture; 1919, Ger. 7, maternity benefit; 1921, Ger. 6, maternity benefit; 1922, Ger. 3 (pp. 6, 11), employment exchanges, separate for women; 1923, Ger. 4 (p. 3), homework, morality; 1923, Ger. 7 (pp. 2, 4), hours; 1923, 2 (p. 5), 4 (pp. 7, 8),
women representatives; 1924, Ger. 3 (pp. 1, 2, 4-6), hours; 1924, Ger. 9 (p. 2), homework, representation; 1927, Ger. 2 (p. 2), hours of work, overtime 1 hr. for women, 2 hr. for men.

Lithuania

Not essentially different from the German concept rights is that which seems to be registered in the constitution of the Republic of Lithuania, adopted August 1, 1922, which provides: 97 Chap. II, Sec. 10: “All citizens of Lithuania, men and women, are equal before the law. No special privileges can be given to, nor shall the rights of citizens be restricted because of race, creed, or nationality.” Chap. II, Sec. 24: “All qualified Lithuanian citizens, men and women, not less than twenty-one years of age, shall have the right to elect representatives to the Seimas, and those not less than twenty-four years of age, to be elected”. Chap. V, Sec. 69: “All citizens are equal before the Courts....” Chap. XIII, Sec. 97: “The working power of the people shall be guarded and protected by special laws....” Chap. XIII, Sec. 98: “The basis of the family life shall be motherhood. Equality of right for both sexes shall be made its basis. “The social welfare and family health shall be protected and maintained by special laws. “Maternity shall be under the special protection of the State.” Chap. XIII, Sec. 99: “Public morals and health shall be protected by special laws.”


Lithuanian law provides that “a day's work done by a woman shall be deemed equivalent to one done by a man.” It also provides that the Labour Inspection Department shall “in particular pay attention to health and life of women, children, and young persons.” The widow of an estate worker who has died during employment on the estate, or was killed in war, is allowed “free grants” if she maintains members of the family who are incapable of work or are under ten years of age (fourteen years if in school), and there are also maternity provisions for agricultural workers. Other special provisions apply to women domestic workers.

101 International Labour Office, Geneva. Legislative Series: 1924, Lith. [Lithuania] 3 (p. 1), Labour Inspection Department “in particular to pay attention to health and life of women, children and young persons”; 1924, Lith. 1. (p. 3), maternity benefits for agricultural workers, also widow's grant; 1924, Lith. 4 (p. 3), women domestic servants.

Austria

The Austrian Constitution, 102 adopted in 1920, provides in Article 7 of its first chapter:

98 “All Austrian citizens are equal before the law. Privileges, based upon birth, sex, rank, class, or religious belief are abolished.”

Article 10 of this chapter provides that “the Federal State shall have powers of legislation and execution in respect to the following matters,” among which are “labor law and protection of workers and other employees not engaged in agriculture or forestry; social insurance and contract insurance.” Article 12, which provides that “the Federal State shall have the power of legislation as to fundamental principles, but the states shall have the power supplementary legislation and the power of execution in respect to the following matters,” lists among those matters “protection of maternity, infancy and adolescence,” and “labor law and protection of workers and other employees in agriculture and forestry.”

The suffrage, eligibility to election to the National Assembly, to the Presidency of the Republic, and to other offices, national, state, and municipal, is guaranteed in the second and fourth chapters of the Constitution.

Austrian law, however, includes in its Agricultural Code (Lower Austria) a section entitled “Welfare of Women,” which provides that married women employed on farms shall have sufficient time for their household duties, and that exceptions to the law shall be allowed for necessary work in the care of animals and milking; that women in charge of large households, especially those who have to provide meals for laborers outside the family, shall only be allowed to work so far as their household duties are not seriously prejudiced; that pregnant women shall not be employed on dangerous work, nor during the four weeks before and after confinement.

103 International Labour Office, Geneva. *Legislative Series: 1919*, Aus. [Austria] 7, night work; *1919*, Aus. 11, mines; *1921*, Aus. 2, Lower Austria, Agricultural Code, (pp. 9, 10) hours of married women, exemption from work during pregnancy and after confinement; *1921*, Aus. 3, Upper Austria, Domestic and Agricultural Code, (pp. 13, 14) hours of married women, exemption during pregnancy and after confinement; *1921*, Aus. 1, contract of service of private employees —commercial assistants, (p. 4) remuneration six weeks following confinement, (p. 5) prohibits dismissal on account of incapacity due to pregnancy and confinement; *1922*, Aus. 3, theatrical contract of service, (pp. 3, 4) provides for remuneration and against dismissal during pregnancy and after confinement, (p. 9) on demand of husband actress may give four weeks’ notice and dissolve contract within two months after marriage; *1922*, Aus. 6, sickness insurance (p. 4) remuneration during pregnancy and after confinement; *1923*, Aus. 1, lead and lead compounds, (pp. 4, 12) prohibits employment of women in specified processes, works regulations, (pp. 21-23,
27) forbids fluttering clothes at certain machines, limits hours of work; 1924, Aus. 4, employment of disabled men, (p. 1) preference in employments to war widows.

The Industrial Code of Austria 103 provides that women working at machines shall not wear fluttering articles of clothing or hanging plaits

103 International Labour Office, Geneva. Legislative Series: 1919, Aus. [Austria] 7, night work; 1919, Aus. 11, mines; 1921, Aus. 2, Lower Austria, Agricultural Code, (pp. 9, 10) hours of married women, exemption from work during pregnancy and after confinement; 1921, Aus. 3, Upper Austria, Domestic and Agricultural Code, (pp. 13, 14) hours of married women, exemption during pregnancy and after confinement; 1921, Aus. 1, contract of service of private employees—commercial assistants, (p. 4) remuneration six weeks following confinement, (p. 5) prohibits dismissal on account of incapacity due to pregnancy and confinement; 1922, Aus. 3, theatrical contract of service, (pp. 3, 4) provides for remuneration and against dismissal during pregnancy and after confinement, (p. 9) on demand of husband actress may give four weeks’ notice and dissolve contract within two months after marriage; 1922, Aus. 6, sickness insurance (p. 4) remuneration during pregnancy and after confinement; 1923, Aus. 1, lead and lead compounds, (pp. 4, 12) prohibits employment of women in specified processes, works regulations, (pp. 21-23, 27) forbids fluttering clothes at certain machines, limits hours of work; 1924, Aus. 4, employment of disabled men, (p. 1) preference in employments to war widows. 99 or loose hair, and that their sleeves must be caught closely at the wrists. “Night work of women and young persons in industrial undertakings” is regulated by law, and women are forbidden to work in mines and in certain lead processes. The same regulations as in the agricultural code apply to pregnant women in industry.

Esthonia

Briefer than the Lithuanian provisions, the Estonian Constitution, adopted June 15, 1920, contains the following provisions: Chap. II, Par. 6: “All Estonian citizens are equal in the eyes of law. There cannot be any public privileges or prejudices derived from birth, religion, sex, rank, or nationality. In Estonian there are no legal class divisions or titles.” Chap. II, Par. 26: “The rights and freedom of citizens referred to in paragraphs 6 [above quoted] to 24 do not exclude other rights emanating from the principles of this constitution or which are in agreement with it.” 104

Under this constitution, Esthonian prohibits the employment of women in “unhealthy and heavy occupations,” as determined by the Ministry of Labor, and specifies mining and the cleaning, greasing, or repairing of shafting, belts, ropes, and chains. It also prohibits the employment of women at night in specified occupations. 105

105 International Labour Office, Geneva. *Legislative Series: 1924*, Est. 1 (p. 4), night work, mines, heavy lifting by pregnant women, minister to list heavy occupations.

**Czechoslovakia**

The Constitution of the Czechoslovak Republic, 106 adopted in February, 1920, besides providing specifically for equal suffrage and the equal right of men and women to election as members of both chambers of the National Assembly, contains the following clauses:


“Privileges due to sex, birth, or occupations shall not be recognized.” “Wedlock, family and motherhood shall be under the special protection of the law.”

100

Special laws for Czechoslovak women 107 include regulation of overtime in industrial occupations, regulation of night work, and prohibition of the employment of women in mines or in white lead processes.

107 International Labour Office, Geneva. *Legislative Series: 1919*, Cz. [Czechoslovakia] 1, 2, and 3, eighty-hour day; 1924, Cz. 4 (p. 29), maternity benefit.

**Free City of Danzig**

The features common to the constitutions of the new republics of Europe appear also in the basic law of the Free City of Danzig, adopted August 11, 1920. 108 In this instrument it is provided that—


Part I, ii, Art. 8: “Men and women shall have equal suffrage rights.” Part II, i, 72: “All citizens of the Free and Hanseatic City shall be equal before the law. ... Persons of both sexes shall have the same civil rights and duties.” Part II, i, 79: “Marriage as the foundation of family life shall be placed under
the special protection of the state. It shall be based on the principle of equal rights of both sexes. Large families shall have a claim to compensatory support. Motherhood shall have a claim to the protection and support of the state." Part II, i, 81: “The legislation shall extend similar conditions of physical, intellectual, and social development to illegitimate children as for children born in wedlock.” Part II, ii, 90: “Either sex eligible to positions in the public service.” Part II, v, 113: “In order to promote health and efficiency for work, to protect motherhood and to provide against the economic consequence of old age, weakness, and the vicissitudes of life, including unemployment, the state shall provide a comprehensive system of insurance....”

Women's Rights Legislation in Latin America

Although the Latin America countries are alike in that all withhold the suffrage from women—except the Mexican states of Chiapas 109 and San Luis Potosi 110—they are by no means alike in respect to the civil and

110 Ibid., Vol. LVI, No. 3 (March, 1923), p. 309
111 social rights accorded to women, or even government rights other than suffrage, 111 Some Latin American women have attained important political positions. There is a woman mayor in the city of Ranquil, in Chile, 112 and the Ministry of Public Health, Social Welfare and Labor appointed two women labor inspectors in 1925. 113 Nicaragua has twice appointed a woman consul, one now serving at Hoboken, New Jersey. 114 In 1992, a woman was elected judge of the Supreme Court of Justice in the Mexican state of San Luis Potosi, and two women were elected members of the city councils of Merida and Yucutan. 115 A woman lawyer is in charge of the government libraries of Mexico. 116

111 The State of Rio Grande do Norte, in Brazil, which recently granted suffrage to women, (Ibid., Vol. LXII, No. 1, January, 1928, p. 108) has since revoked the law (cable to editor of the Bulletin of the Pan American Union, May, 1928).
113 Ibid., Vol. LIX, No. 9 (September, 1925), p. 963.
114 Ibid., Vol. LXII, No. 3 (March, 1928), p. 324.
116 Information from the Pan American Union.
In the professions, in some states, are to be found women lawyers and university professors, and at least one woman engineer.

Much greater advance, however, has been made in the civil than in then political status of women of Latin America. The civil codes of all the states are based on the old Roman law, as derived through the Spanish in nineteen states, and in two state through the Portuguese and the French, respectively. Modifications, of varying kind and degree in these twenty-one countries according to their respective ideals—social, political and religious—have been brought about in greater or less degree throughout all Latin America.

Rights of Married Women

As to property rights of married women, the community property principle is the basis, the husband being his wife's “curator” in all the things. Writing in 1925, the late Mr. William C. Wells, legal expert of the staff of the Pan American Union, summarized the property rights of the women in Latin America as follows: “The general tendency in all Latin America is towards a more complete development of marriage settlements permitting any arrangement of property rights agreed on by the parties before—or even after—marriage to be made effective; but where no such marriage settlements are entered into, to allow the husband a more or less full control over his wife's property real and personal (potestad marital) subject to review or control by the court. This in the main is the law of Chile. In Argentina the code allows for gifts or devises to the wife under the condition that the property given or devised shall not be subject to the husband's control. This is in effect the old English chancery law of 'sole and separate estate.' “The general rule in all Latin America is that wife's property is in no way to be subject to the husband's debts. In Argentina and in some of the other countries this rule is made effective by a special article of the code. “In Uruguay, while in general the husband has administration of the wife's property not otherwise provided for in the marriage settlement, the Code in very full detail protects the wife's rights in most essential respects. “In all of the Latin American countries it is possible for the wife to acquire the status of sole trader so as to carry on business entirely disassociated from the husband, but generally it is necessary to have a publicly recorded document to this effect. “The most radical legislation in Latin America has been enacted in Honduras. Under the code it is provided that 'the contracting parties may, before or after celebrating marriage, make a complete settlement respecting property. This agreement must be set out in a public writing duly recorded.' So far the provision is in line of Latin American legislation in general, but the code continues 'If there be no marriage settlement each party remains owner and may fully dispose of antenuptial property and of that afterwards acquired by any title.' Under another section of the code the wife has complete liberty of contract without consent of
her husband or of the court and without the entering into any public agreement to that effect. In Honduras the old law of ganancieales was repealed in 1906 and now each party owns and controls all that he or she may acquire. “This may be said to be the extreme of legislation in Latin America, but it represents in all probability the position toward which many of the other countries, notably Uruguay, Argentina, and others, are moving.”


In the year of the following publication of Mr. Wells’ article, Argentina adopted a new code of “Civil Rights for Women” (Law No. 11.357, September 1, 1926), which by its terms, and especially by its implications as to former conditions, registers an advance for women from complete nonentity before the law to a status more advanced than that in some parts of the United States of North America. This Argentine law provides, in part: Art. 1.—All women, of full legal age, spinsters, divorcees, or widows, are invested with full capacity for exercising all such rights and civil functions permitted by law to men, of full legal age. Art. 2.—An unmarried mother has full parental power over her children, with the same amplitude as the legally married mother; such rights are also granted to the unmarried father, who has voluntarily recognized his children. Art. 3.—The married woman, of full legal age, has the following rights:

(1) She may retain and exercise her parental authority over her children, by a previous marriage;

(2) Without requiring any permission from her husband, or of a judicial character, she is authorized to

(a) Dedicate herself to work at any profession, trade, employment, or industry of an honest nature, and may administer and freely manage the funds produced by such: she may acquire with the money produced by her profession, trade, employment, business or industry, and class of property, with the right to administer and dispose thereof, as she may think fit. She may stipulate in the deed of purchase, that the funds used to that end, were the result of any of the aforesaid origins; and such a statement will be considered as a “juris tantum.”

(b) She may be form part of civil or commercial partnerships, as well as become a member of cooperative associations.

(c) She may administer and sell her own property, and such as may belong to her, in case of judicial separation from her husband. It is however understood that her husband has the faculty of administering her property, without any obligation to render accounts, therefor, as long as she does
not register her contrary intention, on a special register, opened for that purpose, or on the official register of power of attorney, in case there be no other.

(d) She may administer the property belonging to the children of a previous marriage, whose products will not belong to the newly married couple.

(e) She can accept or repudiate the recognition, made of her by her parents.

(f) She may accept inheritances, with the option of refusing same, when inventory be made thereof.

(g) She can appear in court in all civil causes, or in criminal cases, which may affect her person, or her property, or the persons or property of her children (under age), of a previous marriage.

(h) She may act as guardian, executor, or witness in case of attestation of public instruments, and may also accept donations.

Art. 4.—During her married life, she may, with judicial permission, dispose of the property belonging to her husband, as well as of such as be acquired in that period, and under the administration of her husband, in order to attend to the wants of her children, under eighteen years of age, whenever her husband be imprisoned for two years or more, and if they had no other means of subsistence. Art. 5.—All property belonging to the wife, and such as may have been acquired by her, does not respond to debts contracted by her husband, nor does property belonging to the latter nor money earned by him respond to debts contracted by the wife. Art. 6—Each one of the married couple is solely responsible up to the value of his or her income from his or her property, and up to the value of the income produced by the property belonging to both, and under his or her administration, for debts contracted by the other, when such debts have been contracted in order of preserve property belonging to both. Art. 7.—A married woman, (under age) shall enjoy the same civil rights as a married woman of full legal age, except that in order to be able to dispose of her property, she will require the authorization of her husband, when the latter be of full legal age. In case the husband be not of full legal age, or were to refuse his authorization to that effect, then she will have to obtain authorization from the Judge. Art. 8.—Guardianship over younger sisters, (under age) may be exercised by sisters of full legal age, whether spinsters, married, divorcees, or widows, in such cases as when guardianship can not be undertaken by their grandfathers or brothers. Guardianship exercised by the father or by the mother, if legally incapable thereof, may be exercised by daughters of full legal age, whether spinsters, married, divorcees, or widows, in cases when sons can not undertake same. 118

Social and Labor Legislation

Social and labor legislation in Latin American, like the civil code, has a different history from our own. Corresponding, however, to the Elizabethan humanitarianism in England, the period of Spanish colonization in South America was characterized by a series of royal order which in the sixteenth century, according to Don Moisés Poblete-Troncoso, former assistant secretary in the Chilean Ministry of Health, Social Welfare, and Labor, and Professor of Social Economics in the University of Chile, reached the point of including, under King Philip II, an eight-hour day for workers employed in the construction of fortresses and other military works. The “Laws of the Indies” under the Spanish kings also “contained a number of provisions for the protection of native women and children”; and, remembering the history of women in mines in Great Britain, and the prohibition of such work by women in 1842, it is of peculiar interest to note that in the Spanish colonies of the Indies “the prohibition of work in mines for Indians was introduced in 1548 for the reason that ‘it constitutes the greatest source of ill treatment and vexations for them,’” and that there was “a series of legislative provisions for the protection of Indians working in the manufacture of textiles, which, especially in Peru, was the most important industry existing during the colonial period.”

Again, “the laws of the Indies prohibited the employment of women on farms and estates.” All this under the rule of Spain.

As in England, however, and later in the United States, the humanitarian period was succeeded by an era of laissez faire; and negro slavery was introduced in South America as in the United States. The abolition of slavery began in South America with a decree in Argentina and in Chile in 1811. Nevertheless, when many years later the first civil codes of the independent republics were established, Sr. Poblete-Troncoso says: “Thus, in the Argentine, Chilean, Ecuadorian, Colombian, and other civil codes there is complete absence of freedom of contract and in many cases an express declaration of the legal inferiority of workers, salaried employees, and persons employed for pay generally, although some mining laws, based on the Spanish legislation, contained special provisions favorable to the worker as regards wages, contracts of employment, and accidents. “In the Latin-
American countries the action of the State in favor of the legal protection of the workers has been
everintensified during recent years, especially since the war, and it can not be denied that
this movement has been greatly hampered by the theories of the classical individualist school.
Economic individualism has prevailed without any counteracting influence in the majority of the
countries of South America, in university teaching, in educated opinion, and among statesmen and
rulers.”

With the rapid and increasing development of industrialism in certain Latin American countries,
however, he continues, “…a profound and radical transformation is taking place in the old
predominant ideas on the problems of labor and the way they should be solved. A powerful current
of public opinion, in the intellectual classes and in the parliaments, has made its influence felt in the
adoption of the social reforms advocated in more advanced countries....” 123

123 Ibid., pp. 593-94.

The present-day social legislation in the Latin American republics is a development of the last
twenty-five years, and especially of the ten years since the World War. It has been inspired, says Sr.
Poblete-Troncoso, 107 not by the United States, but by the most advanced of the counties of Europe.

Their background of European culture had led the Latin American countries to take active and
prominent part in the conference of the International Labour Organization created by the treaty
of Versailles, and many of them have submitted and some have ratified the most important
conventions recommended by the International Labour Conferences, held at Washington and
Geneva. “Even the terminology of labor legislation of Spanish America is the terminology of
European social legislation, and not that of North America. The influence of the United States, which
has been so strong in the economic and financial sphere, has been null in the sphere of social
policy.”

Of the international labour conventions concerning the employment of women (see page 111
herein), Chile has ratified two of these, the governments of Argentina, Cuba, Brazil, Paraguay, and
Uruguay have all presented proposals for ratification of one or more, and other countries are said
by Sr. Poblete-Troncoso to be contemplating similar action. Argentina has an eight-hour law for
women, 124 a night-work law, and prohibits employment of women in “dangerous or unhealthy ...
occupations,” such as lead processes, manufacture of explosives, etc., and in contract home work.


Chile and Cuba furnish examples of a most unusual type of labor legislation. In Chile, a decree of the
Minister of the Interior provides that women are henceforth to be employed in preference to men in
any positions in the postal and telegraph services which women are able to fill. A similar decree was issued in Cuba a few years ago providing that at least fifty per cent of the positions in certain establishments shall be held by women. The Cuban decree was apparently ineffective, for two years later, the Pan American Bulletin reports, an association of women clerks, claiming 2,000 members seeking employment, entered protest with the Cuban Department of the Interior, stating that the law requiring that at least fifty per cent of the employees in commercial establishments should be women was not being enforced. “It is estimated that this law, if put into effect, would throw at least 50,000 male workers out of employment.”

125 Bulletin of the Pan American Union, October, 1927, p. 1048.  
126 Vol. LX, No. 3 (March, 1926), p. 309.

Some of the reasons given by the Chilean Minister of the Interior who issued the decree for that state are even more interesting than the decree. He says that women should be encouraged to seek economic independence; that admittance to further careers will encourage their further cultural development; that the employment of women in positions requiring little physical effort “releases men for more virile labor”; and “that women in general are more conscientious, painstaking, accurate, and more amenable to discipline in work, and home fewer material needs.”

The italics are ours. It is those alleged “fewer material needs” and amenability to discipline which have so long correlated with women's lower wage scale and constituted so serious a problem for all labor, men and women alike.

**International Conventions and Recommendations**

Questions involving the rights of women and the necessity for definition of the terms of equality between men and women are now before all nations of the civilized world as a result of international conferences held since the World War. These conferences, participated in by official representatives of the respective governments by whom they were organized, have been held at Washington, Genoa, and Geneva by the International Labour Organisation; at Geneva by the Advisory Commission (to the League of Nations) on Traffic in Women and Children; and at Santiago, Chile, and at Havana, Cuba, by the Pan American Union.

These international conferences have dealt with the rights of women as involved in legislative proposals on several different subjects; proposals some of which are still in preparation, some of
which are now pending before the legislative bodies of the different countries, and some of which have been ratified by some of the countries.

**Work of the Advisory Commission on Traffic in Women and Children**

The conferences of this Commission, upon which the United States Government is officially represented, have brought into the field of the Commission's work not only the problem of preventing international traffic in women but the question of the age of consent and the age of marriage 109 as directly hearing upon means of prevention. 127 Such a volume of legislation has had to be examined that the Commission has not yet formulated its recommendations. But it has voted to consider the age up to which boys and girls should have legal protection, and thence the question of equal rights of men and women under the law. At what age shall each sex be held accountable to the law as adult citizens? And shall the age be the same for men and women? The same, also in all countries? Can a way be found to penalize men and women alike for an offense in which their physical differences determine different forms of guilt? Can the same language be applied to both sexes with an equal in measure of justice in the outcome? Or shall we accept differentiation in treatment of the sexes as necessary to attain equality in results? Different verbal treatment, at all events.

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**International Labour Conventions**

The “Labour Charter” of the Treaty of Versailles, which is contained in Part XIII and was drafted by an international body which included official representatives of the organized labor movement of the United States provides for the establishment of an International Labour Organization, which shall function according to nine stated principles. One of those principles is that “men and women shall receive equal remuneration for work of equal value.” Another requires at least one woman technical adviser for the International Conference when questions affecting women are being considered. Still another requires a recommendation that each state make provision for “a system of inspection in which women shall take part, in order to insure enforcement of laws and regulations for the employed.”
Eleven conferences have thus far been called by the International Labour Organization, the first at Washington in 1919, the second at Genoa, and the subsequent ones at Geneva. Twenty-six draft conventions have been submitted to the participating nations most of which, the International Labour Office points out, apply to men and women both. “In addition, however, to these general Conventions and Recommendations which apply, without distinction, to men and women engaged in industry, 110 some of the decisions of the Conference relate to men only, others to women only, others again to children and young persons only.”


The eight-hour convention, proposing legislation for an eight-hour day and a forty-eight-hour week, applies to men and women equally. It was the first draft convention submitted to the countries participating in the International Labour Conference, but it has thus far been ratified by only nine of those countries—namely, Belgium, Bulgaria, Chile, Czechoslovakia, Greece, India, Luxemburg, Portugal, and Rumania. Among the great industrial nations conspicuously absent from that list are Great Britain, Germany, France, and Italy, all of which are members of the International Labour Organization, and the United States, which is not a member. Germany and France, though they have not ratified the convention, have eight-hour laws of post-war date, but these have weakened under the pressure of economic conditions, despite the protest of the organized workers. Neither Great Britain nor the United States has a general eight-hour law for men, and while the reasons for this are not identical in these two countries, such legislation has not been politically possible in either jurisdiction.

129 Chart of Ratifications, dated March, 1929, International Labour Office.

All four of these countries, however, limit women's hours of labor.

In other words, the length of the working day has always been one of the crucial, hardest-fought issues of the struggle between employers and employed, and the reduction of hours, from the daylight to darkness schedule of earlier generations, has been won bit by bit, and group by group, by protests, by strikes, or by law, as might be. By law, it was won for children first; then for women, the next weakest bargainers, in whose interest public opinion expressed itself through the legislatures; and lastly for men, who have needed the laws less because of their stronger bargaining power. In the United States and Great Britain, it is only in occupations peculiarly hazardous to themselves, to the public, or to both, that men are protected by eight-hour laws. So it is that these countries have not yet been willing to ratify the eight-hour convention for men and women both.
The international labor conventions applying to women only are as follows (excerpts in each case):

130 The International Labour Organization and Women's Work (Geneva: International Labour Office, 1926), Appendices I, II, and III.

111 Concerning the Employment of Women Before and After Childbirth:

In any public or private industrial or commercial undertaking or in any branch thereof, other than an undertaking in which only members of the same family are employed, a woman—

“(a) Shall not be permitted to work during the six weeks following her confinement.

“(b) Shall have the right to leave her work if she produces a medical certificate stating that her confinement will probably take place within six weeks.

“(c) Shall, while she is absent from her work in pursuance of paragraphs (a) and (b) be paid benefits sufficient for the full and healthy maintenance of herself and her child, provided either out of public funds or by means of a system of insurance, the exact amount of which shall be determined by the competent authority in each country, and as an additional benefit shall be entitled to free attendance by a doctor or certified midwife....

“(d) Shall in any case, if she is nursing her child, be allowed half an hour twice a day during her working hours for this purpose. “Where a woman is absent from her work in accordance with [the provisions of] this Convention ... it shall not be lawful ... for her employer to give her notice of dismissal....”

This convention has been ratified by Bulgaria, Chile, Cuba, Germany, Greece, Hungary, Latvia, Luxemburg, Rumania, Kingdom of the Serbs, Croats, and Slovenes, and Spain.

Concerning the Employment of Women during the Night: “Women without distinction of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed.” “For the purpose of this Convention, the term ‘night’ signifies a period of at least eleven consecutive hours, including the interval between ten o'clock in the evening and five o'clock in the morning.” Exceptions to the above provisions are— 112 “In cases of force majeure, when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character. “In cases where the work has to do with raw materials or materials in course of treatment which are
subject to rapid deterioration, when such night work is necessary to preserve the said materials from certain loss.”

This convention has been ratified by Austria, Belgium, Bulgaria, Cuba, Czechoslovakia, Esthonia, France, Great Britain, Greece, Hungary, India, Irish Free State, Italy, Luxemburg, the Netherlands, Rumania, Kingdom of the Serbs, Croats, and Slovenes, South Africa, and Switzerland.

_Concerning the Protection of Women and Children against Lead Poisoning:_ “The General Conference recommends to the Members of the International Labour Organisation that in view of the danger involved to the function of maternity and to the physical development of children, women, and young persons under the age of eighteen years be excluded from employment in the following processes:

“(a) In furnace work in the reduction of zinc or lead ores.

“(b) In the manipulation, treatment, or reduction of ashes containing lead and in the desilverising of lead.

“(c) In melting lead or old zinc on a large scale.

“(d) In the manufacture of solder or alloys containing more than ten per cent of lead.

“(e) In the manufacture of litharge, massicot, red lead, white lead, orange lead, or sulphate, chromate or silicate (frit) of lead.

“(f) In mixing and pasting in the manufacture or repair of electric accumulators.

“(g) In the cleaning of workrooms where the above processes are carried on.

“It is further recommended that the employment of women and young persons under the age of eighteen years in processes involving the use of lead compounds be permitted only subject to the following conditions: 113

”(a) Locally applied exhaust ventilation, so as to remove dust and fumes at the point of origin.

”(b) Cleanliness of tools and workrooms.

”(c) Notification to Government authorities of all cases of lead poisoning and compensation therefor.

”(d) Periodic medical examinations of the persons employed in such processes.
"(e) Provision of sufficient and suitable cloak-room, washing, and mess-room accommodation, and special protective clothing.

"(f) Prohibition of bringing food or drink into workrooms.

“It is further recommended that in industries where soluble lead compounds can be replaced by non-toxic substances, the use of soluble lead compounds should be strictly regulated.”

This convention has been ratified by Austria, Belgium, Bulgaria, Chile, Cuba, Czechoslovakia, Estonia, France, Greece, Latvia, Luxemburg, Poland, Rumania, Spain, and Sweden.

Pan American Conference

The Sixth International Conference of America States, held at Havana, Cuba, January 16 to February 20, 1928, dealt with the rights of women in three important actions, namely, the adoption of a project for uniform legislation, which embodies an improved civil status for women; the adoption of a resolution recommending maternity protective legislation; and the creation of an Inter-American Commission of Women “to prepare the juridical information necessary for a proper consideration at the Seventh Conference of the civil and political equality of women.”

Project for Uniform Legislation

There was presented to the Havana Conference the report of an International Commission of Jurists containing the Project of a General Convention of Private International Law, as recommended by a meeting of the Commission at Rio de Janeiro in 1927. The projected code, which was the work of Dr. Antonio Sanchez de Bustamante y Sirven, of Cuba, was submitted to the (Conference) Commission on Private International Law and Uniform Legislation, and, with slight modifications, was recommended to the Conference. Although with reservations in many instances, 114 twenty of the delegations (all but that of the United States) accepted the project, which now goes before their respective governments for ratification and the necessary supplementary legislation.

The United States delegation, of which Mr. Charles Evans Hughes was chairman, entered reservations as to the whole convention, on the ground that subjects covered in the projected code were not within the federal jurisdiction of the United States, but lay within the powers reserved to the states; in consequence of which fact the United States, as a federation of states, could not, for the present, at least, adhere to the convention. The exact language (translation furnished by the
United States Department of State was: “The Delegation of the United States of America regrets very much that it is unable at the present time to approve the Code of Dr. Bustamante, as in view of the Constitution of the United States of America, the relations among the States members of the Union and the powers and functions of the Federal Government, it funds it very difficult to do so. The Government of the United States of America firmly maintains its intention not to dissociate itself from Latin America, and therefore, in accordance with Article Sixth of the Convention which permits any Government to adhere later thereto, it will make use of the privilege extended by this article in order that, after carefully studying the Code in all its provisions, it may be enabled to adhere to at least a large portion thereof. For these reasons, the Delegation of the United States of America reserves its vote in the hope, as has been stated, of adhering partly or to a considerable number of the Code's provisions.”

The reasons for the position taken by the United States delegation become apparent when the text of the code is examined.

It is drafted in terms applicable to the basic law of Latin America, which is Roman, and which would naturally be amended in terms not readily to be fitted, if at all, upon the basic Anglo-Saxon law of the United States. And it is not difficult to see that if such a code were nevertheless applied to such a different basis, it might produce very different and possibly undesired results. The code is intended, moreover, for application chiefly by unitary governments, like those of Latin America, its present form being therefore highly unworkable inn a government like ours, 115 which federates forty-eight sovereignties, with forty-eight varying codes of their own. 131

131 To suggest those reasons concretely, and to indicate at the same time the importance of this code in its bearing on the rights of women, it will be sufficient to list its titles and chapter headings: (See Project of General Convention of Private International Law, International Commission of Jurists, Rio de Janeiro, April 18 to May 20, 1927. Published by the Pan American Union, Washington, D.C., 1927, 68 pp.)

Book One—International Civil Law

Title I. Persons

Chapter I. Nationality and Naturalization

II. Domicile

III. Birth, Extinction and Consequences of Civil Personality
IV. Matrimony and Divorce
1. Legal Conditions Which Must Precede Their Celebration
2. Form of Marriage
3. Effect of Marriage in Respect to the Persons of the Spouses, Art. 43, 44, 45.
4. Nullity of Marriage and its Effects
5. Separation and Divorce

V. Paternity and Filiation

VI. Maintenance among Relatives

VII. Paternal Power

VIII. Adoption

IX. Absence

X. Guardianship

XI. Prodigality

XII. Emancipation and Majority

XIII. Civil Registry

Title II. Property

Chapter I. Classification of Property

II. Property

III. Community Property

IV. Possession
V. Usufruct, Use and Habitation
VI. Servitudes
VII. Registries of Property

Title III. Various Modes of Acquisition
Chapter I. General Rule
II. Gifts
III. Successions in General
IV. Wills
V. Inheritance

Title IV. Obligations and Contracts
Chapter I. Obligations in General
II. Contracts in General
III. Contracts concerning Property in Respect to Marriage
IV. Sale, Assignment and Exchange
V. Leases
VI. Annuities
VII. Partnerships
VIII. Loans
IX. Bailment
X. Aleatory Contracts
XI. Compromises and Arbitration
XII. Security
XIII. Pledge, Mortgage and Antichresis
XIV. Quasi-contracts
XV. Concurrence and Preference of Debts
XVI. Prescription

Book Two—International Mercantile Law
Title I. Merchants and Commerce in General
II. Special Commercial Contracts
III. Maritime and Air Commerce
IV. Prescription

Book Three—Penal International Law

Book Four—International Law of Procedure
Title I. General Principles
II. Competence
III. Extradition
IV. The Right to Appear in Court and Its Modalities
V. Letters Requisitorial and Letters Rogatory
VI. Exceptions Having International Character
VII. Evidence
Maternity Protection for Employed Women

Accepting recommendations of the First Pan American Conference on Eugenics and Homiculture, which was held in Buenos Aires in 1925, the Havana Conference of the Pan American Union in 1928 adopted a resolution recommending “that the countries, members of the Pan American Union, enact in their legislation the principle of obligatory leave for a prospective mother for a period of forty days before and forty days after childbirth, with the right to full pay during that time.”

This recommendation, it will be noted, is similar to the convention on the same subject which was recommended by the International Labour Conference at Washington in 1919, and has now been accepted or is pending ratification in several of the Latin American Republics (see page 111 herein). As a result of the action at Havana, however, the Pan American Union is now charged with the duty “to have all the conclusions by the various conferences complied with”; which fact should tend to accelerate action by such states as have not already adopted the International Labour convention.

Inter-American Commission of Women

The treaty proposal, referred to elsewhere in these pages (page 59) as a variant of the program of the same feminist group that has proposed a blanket “equal rights” amendment to the Constitution of the United States, was brought forward by this group at the Sixth International Conference of American States (Pan American Union) at Havana, Cuba, January 16 to February 20, 1928, for action by that body. The language of the proposed treaty is as follows:

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132 Organization and Functions of the Pan American Union as Affected by the Conventions and Resolutions Adopted at the Sixth International Conference of American States, Havana, Cuba, January 16-February 20, 1928 (Report submitted to the Governing Board of the Pan American Union by the Director General, March 7, 1928), p. 27.

Art. 1. The contracting states agree that upon the ratification of this treaty, men and women shall have equal rights throughout the territory subject to their respective jurisdictions.

Art. 2. The provisions of this treaty shall apply only to the contracting states and the other states which adhere to it in the manner hereinafter provided.

Art. 3. The treaty shall go into force, for the states which ratify it, upon the deposit of the respective ratifications, provided it is ratified by at least two states.

Art. 4. The ratifications shall be deposited in the office of the Pan American Union; which shall transmit a copy thereof to each of the contracting and adhering states.

Art. 5. Non-contracting states desiring to adhere to this treaty shall notify the office of the Pan American Union, which in turn shall inform the existing contracting and adhering states. Immediately thereafter the State interested may deposit in the office of the Pan American Union the instrument of adherence, and shall be bound by this treaty from the date of adherence.

Art. 6. If any of the contracting or adhering states should wish to withdraw from this treaty, it shall notify, in writing, the office of the Pan American Union which shall immediately transmit a certified copy of the notification to other states. The withdrawal shall take effect a year after the notification has been received in the office of the Pan American Union and shall affect only the state which has sent such notification.

Art. 7. The office of the Pan American Union shall keep a register of the deposit of ratifications, and receipt of adhesions and withdrawals, and shall send certified copies of the register to every contracting and adhering state requesting it.


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The Havana Conference took no action on the treaty proposal, but it did adopt the following resolution: “That an Inter-American Commission of Women be organized to prepare the juridical information necessary for a proper consideration at the Seventh Conference of the civil and political equality of women; this commission to be composed of seven women designated by the Pan
American Union from different countries of America, and eventually to consist of representative from all the Republics.” 135


Subsequently, the chief advocate of the treaty at Havana was appointed chairman of the Commission, and delegates from the other countries participating in the Conference drew lots for six of the seven positions on the Inter-American Commission of Women. Argentina, Colombia, Haiti, Panama, Salvador, and Venezuela were thus designated as the countries to be represented at the outset, the Commission to include ultimately a representative from each of the twenty-one countries in the Pan American Union. All of the seven women who are to constitute the Commission as thus composed have since accepted appointment, and an office has been duly assigned them in the Pan American Building at Washington.

As elsewhere pointed out (page 83), a treaty in the language proposed at Havana would raise the same questions in every country that are now under discussion among women's organizations in England and in the United States. It would, furthermore, raise those same issues with reference to some of the draft conventions already submitted by the International Labour Office; with reference to maternity protection as recommended by the Havana Conference; and with reference also to the questions now being considered by the International Advisory Commission on Traffic in Woman and Children.

Again, the question of definition of equal rights. And shall we construe differentiation as discrimination?

Feminist Issues Abroad

A fundamental difference between Anglo-Saxon and Teutonic feminist aims was described by Havelock Ellis in 1911, as quoted elsewhere in these pages. That difference in a degree, and other differences as well, seem to be reflected in the proceedings of international organizations of 119 women, such as the International Alliance of Women for Suffrage and Equal Citizenship, the International Council of Women, and the former International Federation of Working Women, now merged in a Women's Committee of the International Federation of Trade Unions.

British feminism today, however, as compared with that described seventeen years ago, seems to have broadened and deepened its current, or at all events to be in the process of doing so. As noted elsewhere (page 93 herein), a lively debate is now in progress, and, as British feminists themselves
term it, “a deep cleavage” has recently taken place in their movement, seemingly along the very line which is said formerly to have distinguished the Anglo-Saxon and Teutonic movements. The British situation seems now to resemble the cleavage in the United States, except that in Britain there is no blanket legislative proposal to complicate the fundamental issue, and there is apparently more support in the feminist movement there for the laissez faire equalitarian view.

**British “New Feminism” versus the Equalitarians**

The present British discussion came to a climax in the National Union of Societies for Equal Citizenship at its annual meeting in March, 1927, on the question of definition of the function of the National Union; i.e., whether the “primary function” which is stated to be “to secure a real equality of liberties, status, and opportunity between men and women” may properly be interpreted to permit the organization to support legislation for “family allowances, including provision for married women and children under the National Insurance Acts,” and “freedom of married women who desire it to obtain information on birth control at welfare centres in receipt of Government grants”; also whether it shall be the policy of the National Union to consider the workers’ own viewpoint with reference to Factory Acts applying to woman only.

136 The Woman's Leader, March 11, 1927, pp. 36-37.

On these issues, the vote of the Council meeting in 1927 favored the broader interpretation, thereby turning what had been a minority into a majority. The minority did not allow the issue to subside with this vote, apparently, but the opportunity to advance the Equal Franchise Bill during 1927 and 1928 led to action at the 1928 Council meeting postponing the reopening of the question until the fate of the then pending suffrage bill should be known. 137

137 The Woman's Leader, March 16, 1928, p. 48.

A year later, according to the official organ of the National Union, the Woman's Leader of March 22, 1929, “The Women's Programme” was summed up as follows, on the occasion of a deputation to political leaders on behalf of the several societies composing the Equal Rights General Elections Campaign Committee: “Broadly speaking there was complete agreement on equal opportunity and pay in the civil service, and under municipal authorities; on the abolition of sex differentiation in industrial legislation; on the abolition of the law relating to prostitution and solicitation; on the right to retain their nationality on the part of married women; on the raising of the legal age of marriage for both sexes; on the employment of women police; on the admission of peeresses in their own right to the House of Lords; on equality for men and women in the League of Nations.... “Other
matters regarding which some of the co-operating societies were not agreed or had not pronounced an opinion, were introduced by the National Union of Societies for Equal Citizenship. These included the proposal for legislation for testamentary provision for spouses and children; family allowances on their merits and as a means of attaining the goal of equal pay for equal work; and information of methods of birth control for married women who desire it at maternity centres subsidized by the Ministry of Health.”

Meantime, the debate has continued between the different feminist groups, and has developed two clear-cut views of equality, together with the names “new feminists” and “old feminists” set over against each other in an interesting opposition.

As President of the National Union of Societies for Equal Citizenship, Miss Eleanor Rathbone, who has lately retired from that office, stated one view of the matter as follows: “As I see it, the women’s movement comprises a large number of reforms, all of which are ‘feminism’ but only some of them ‘equality.’ The ‘equality’ reforms are necessary and immensely important. They consist in breaking away the fetters and restrictions which prevent women from developing their capacities and doing their best work. But this aim of enabling women to be and do their best will not have been accomplished even when every sex barrier has fallen. Those who think it will are suffering, I suggest, from a sort of ‘inferiority complex’ bred in them by generations of sex subjection, which prevents them from thinking except ‘in terms of men.’ To every proposal for the good of women they apply the test ‘do men do it; do men want it for themselves,’ and if the answer is in the negative, they are suspicious of the proposal or at least set it aside as not part of feminism. We of ‘the new feminism’ apply a different test, ‘Is it good in itself? does it meet the needs of women’s natures and women’s lives; do women want it for themselves?”

138 Time and Tide, London, March 12, 1926 (Correspondence).
“...the difference between ourselves and some of our colleagues,” Miss Rathbone says elsewhere, 139 “is not that we are indifferent, while they are enthusiasts, on the subject of Equality. It is that we interpret Equality differently. To Mrs. Abbot and those who think with her, equality reforms are limited to those which concern the achievement for women of a right or opportunity already possessed by men, or the removal from women of a prohibition or restriction not placed upon men. The rest of us likewise desire equality in this sense, and that is important. But we extend the meaning of the term to embrace also the securing for women of certain rights which are not at present possessed or desired by men as such, but which are necessary to enable women to attain the same freedom of self-development or self-determination that men enjoy.”

139 Time and Tide, February 25, 1927, p. 192.
The opposing point of view, called “old feminism” by the “new feminists” and defined as “solely equalitarian” by its adherents, is stated it follows on behalf of a feminist group which has formed a new organization under the name of the “Open Door Council”:

140 The Woman's Leader, December 16, 1927, pp. 360-61.

“[To secure that women shall be free to work and protected as workers on the same terms as men, and that legislation and regulations dealing with conditions and hours, payment, entry and training shall be based upon the nature of the work and not upon the sex of the worker. And to secure for women, irrespective of marriage or child-birth, the right at all times to decide whether or not they shall engage in paid work, and to ensure that no legislation or regulations shall deprive them of this right.] “That official ‘Object’ looks comprehensive and sufficiently clear to describe a body which is solely equalitarian—feminist in the sense that in every direction it combats the hydra-headed inequalities conditioning the status and work of professional and wage-earning women. It is not a case of believing in ‘equality up to a point’ and then conceding modifications. It is a really single-minded practice of submitting every conceivable law, custom or proposal to one touch-stone: Does it secure absolute equality of status, pay, opportunity, professional and industrial conditions as between men and women? In a word, it is an attitude of mind which invariably puts equality first and other desirable things second; and this from an innermost and unshakable conviction that without that solid foundation all superstructures are at their best insecure—so insecure, indeed, that at any moment they may sift, and from an intended good become an unmistakable—and at their worst a contemptuous implication that women are not to be regarded as reasonable adult creatures.”

The women composing the Open Door Council, who are not themselves industrial workers, have undertaken what they term “a wide and thorough education of the industrial women,” distributing circulars and handbills at Labour Women's Conferences and Trade Union and Labour Party meetings, to convince the industrial workers of the error of their ways. For in England or in America—indeed, beginning long ago—the feminists of this school find themselves arrayed not only against their own feminist colleagues, but against the women of a third group.

**British Labour Women and the Feminists**

Labour women are that third group. Organized far more strongly in England than in the United States, in the Labour Party, Trade Unions, and Cooperatives, they number more than a million. Through their official representatives, the Standing Joint Committee of Industrial Women's Organisations, they have issued a statement on the question of equality with reference to labor laws which contains the following paragraphs: “The Standing Joint Committee is in favour of all legislation
which improves conditions of employment for the worker, and is especially concerned in securing these for the worst paid and least organized sections; unfortunately women belong to this section. Moreover, the Committee is especially concerned in securing adequate care and protection for women exercising the function of maternity.” 123 “Protective legislation for women can be divided into three classes:—

“1. Provisions that would be good for men as well as women, but which can be obtained for women and not for men at the present time. “Legislation regarding hours of work comes under this heading. We can in factory legislation secure regulation of women's hours, and even the present Government (a year ago at least) was willing to enact a 48-hour week for women. Not all the efforts of Labour, and of agreements at International Labour Conferences, have been sufficient to secure 48-hour legislation for all workers. We prefer to take what regulation we can get rather than to delay it.

“2. Regulations that are more needed for women than for men, because women are less fitted than men for certain dangerous and specially heavy muscular work. “Under this heading comes the exemption of women from all forms of active service; their prohibition in dangerous industrial processes, such as work in underground mines, outside window-cleaning, the cleaning of dangerous machinery; also regulations as to the lifting of heavy weights, exposure to excessive heat, and the handling of poisonous substances which may be specially injurious to women. The prohibition of nightwork, in so far as nightwork is necessary, may be placed in the same category.”

“3. Some forms of protection are necessary for women because of their functions as mothers. “Under this heading come the provisions proposed by the Maternity Convention adopted by the International Labour Conference in 1919. This Convention, which has not yet been ratified by our country, declares that women workers should be prohibited from working for six weeks after childbirth, have the option of not doing so for six before and should have adequate maintenance during the whole period. “Our position, therefore, is that we take whatever we can get under all three heads, and if we cannot get it for men, or it is not necessary for them, we endeavor to secure it for women alone.”

124 “The worker who cannot be exploited at the employer's will because the law does not permit it, gains a stronger and not a weaker position in the industrial world. Legislation has had to step in to give women a chance of achieving a more equal footing with men. Without such protection it is not equality that the woman achieves but far greater inequality.” 141

Between organized British feminists and British labour women the question of labor laws for women became an issue in the general elections campaign to such an extent as to cause a definite break. According to the *Labour Woman* (November 1, 1928, page 163), the Standing Joint Committee of Industrial Women's Organisations had been represented on the Equal Political Rights Campaign Committee, “which was composed of representatives from organisations striving to gain equal franchise between men and women,” but “the Committee had decided to celebrate the gaining of equal franchise and to inaugurate a campaign for 'pseudo-equality' by an attack on protective laws for women workers. As the Standing Joint Committee and organised working women generally are so fundamentally opposed to this view it was decided to withdraw from the Equal Political Rights Campaign Committee and to inform the Press of the decision.”

**“Equal Rights” and Women of Latin America**

It has been the opinion of Latin American women delegates to various international conferences that political rights would be the last and hardest to obtain from their respective governments. This opinion was voiced repeatedly by Doña Bertha Lutz, of Brazil, president of the Inter-American Union of Women which met in conference in Washington in 1925. In accordance with this conviction, feminist leaders in those countries have chosen a strategy just opposite to that of the organized woman movement in the United States and England; i.e., they have sought educational, social, civil, and economic freedom first, as a way toward suffrage, instead of seeking suffrage as a means to freedom in other respects. Such a course, they say, accords better with the Latin psychology, both male and female.

This attitude is reflected, moreover, in the fact that the Fifth Conference of the Pan American Union, held in 1923 in Santiago de Chile, included among its recommendations for consideration at the next (Sixth) 125 Conference in Havana in 1928, “Legislative measures for extending to women the same civil rights as those enjoyed by adult males,” and “Legislation designed to prevent the loss of nationality by a woman because of marriage”; but no recommendation concerning women's political rights. In 1928 for the first time the term “political equality” was discussed before a conference of Latin American governments, a fact which was obviously due to the bolder tactics of North American women and Cuban suffragists, on the ground in Havana, where the Conference was held.

So far as suffrage and all other political rights, and also some civil rights and social rights are concerned, this action has undoubtedly advanced the cause of women in Latin America. At the same time it has injected an issue not necessarily apparent on the surface, and apparently not at all
understood at Havana, where the emphasis was almost exclusively upon suffrage and other political rights.

The purpose of the North American women proponents of the “equal rights” treaty, as shown by their campaign for their proposed “equal rights” amendment to the Constitution of the United States, is absolute legalistic equality. They oppose all laws that differentiate between men and women, and would have the law ignore the sex differences of men and women in their functions as parents or their rôles in family life.

But is this what those Cuban women meant who joined with the group of North American feminists at Havana in their petition to the Havana Conference? Did the Cuban women intend to repudiate such legislation as the recent Cuban maternity law for working women, the recent Argentine eight-hour law for women, and various other types of social and labor legislation lately written upon the statute books in Latin America?

These issues did not emerge in the discussions, and probably are the more obscure because, as stated by Sr. Poblete-Troncoso, “none of the countries of Latin America have included labor legislation in their general or civil legislation. They have legislated by means of separate laws, which have not been incorporated in the positive civil legislation. This manner of proceeding is fundamentally different from that of most European labor legislation, which in its early stages was generally incorporated in the civil legislation.”

Thus “civil rights,” to the layman, does not necessarily connote labor rights, and labor rights, which may conflict with some other civil 126 rights and have to be especially provided for, are easily overlooked by non-labor groups. Yet the law and the courts deal with the labor contract as a civil contract, and too often, unfortunately, do not recognize the distinction which justifies the protection of labor against the superior bargaining power of the employer. So it could easily happen that Latin American women, thinking of civil rights, would not realize that absolute, undefined equality of civil rights would, as the law operates in the United States and possibly elsewhere, destroy economic rights guaranteed to women by labor laws which do not apply to men; laws which perhaps—as in laws for protection of maternity—could not be made to apply to men.

Indeed, the Club Feminino of Havana, which petitioned so effectively at the recent Pan American Conference, and the Cuban Federation of Women's Clubs were founded within the last ten years by a feminist leader who was distinguished for her advocacy of protection of working women and children. As described in 1923: “The trends among the women of Cuba simply obey a world-wide
movement which makes for the physical improvement of women and recreative sports, the better protection of women and children, better laws, and above all the obtaining for women full civil and industrial rights." 143


A similar juxtaposition of protective legislation and civil and political rights appears in the demands of the Women’s Congress on Social Welfare which was held at Buenos Aires in 1926, the program of which included, specifically, “protection of the working mother; ... maternity benefits; day nurseries; ... amendment of the law on the labor of women and children; ... equality of civil and political rights; and means for improving women's social and educational position.” 144


So also the Inter-American Congress of Women in Washington in 1925, and in Panama in 1926, discussed ways and means toward political and civil equality for women in terms inclusive of legislation for the specific needs of the woman worker. The 1926 Conference adopted a resolution providing for a petition to the legislative bodies of all the countries there represented “asking for a law which will vest in women all the civil rights that the man has,” and abolish all laws contrary thereto. And at the same session this Conference adopted another resolution 127 providing for maternity benefits for employed women, and for penal laws “to the end that there may be real protection of women's honor.” 145

145 Panama Star and Herald, June 26, 1926.

Special protection for motherhood and potential motherhood is apparently never missing from the efforts of feminist organizations in Latin America. So far as their proceedings show, their concept of equality never excludes the idea of differentiation, but on the contrary seems always to contemplate legislating especially for women, according to their special needs.

The issue should be clear. But it cannot be clear until women of all nations know just what they mean by “equal rights.” And then it must be understood that they do or do not mean the same thing in all countries. It is not merely a matter of word equivalents in different languages. It is a matter of knowing the meaning of equal rights in terms of the law of each country, as distinguished from common usage of the term.

The effects of the proposed “equal rights” amendment to the Constitution of the United States would be destructive to much legislation that the great majority of feminists in this country desire. This much has been established. Now an international treaty, phrased the same way and offered by the
same minority feminist group, is proposed to countries with different basic codes of law, different constitutions, and different-minded courts. What would be the effect of such a treaty, if adopted, upon existing law in each of those countries?

That is a question for feminists of the different nations to study thoroughly before committing themselves to the proposal.

The Question in the International Alliance of Women for Suffrage and Equal Citizenship

Organized in 1902 “to secure the enfranchisement of the women of all nations and to educate women for their task as citizens,” under the name “International Woman's Suffrage Alliance,” this organization brought together the suffrage and feminist societies of the world before the vote had been won in most countries. Suffrage victories in one country after another among those represented in the membership of the Alliance have naturally widened the interests of the international body to other

128 citizenship problems, and its program now includes not only political rights by personal rights, domestic rights, educational and economic rights, and moral rights. The agenda of the triennial congress covers still more topics than does the permanent program, special commissions being appointed to study and report their assigned subjects, which, at the last triennial congress, the Tenth, at Paris, in May and June, 1926, included the following:

I. Woman Suffrage

II. Peace and the League of Nations

III. Like Conditions of Work for Men and Women

IV. Equal Moral Standard and Against the Traffic in Women

V. The Unmarried Mother and Her Child

VI. The Nationality of Married Women

VII. Family Endowment or Allowances
VIII. Women Police

IX. Women in Diplomacy

X. Civil Rights of Married Women

XI. Women in Prison Administration


The unification of forty different national viewpoints, on question upon which feminists within the respective countries are themselves not finally agreed, is necessarily so large and so gradual an achievement that the resolutions adopted by the international congresses naturally bear the scars of the battle of debate. This is notably true of the 1926 resolutions on “Like Conditions of Work for Men and Women,” which as finally adopted, read as follows:

“(1) That education for professions and trades should be equally available for women as for men.

“(2) That all professions and all posts in the Civil Service in all its function, administrative, judicial and executive, should be open to women as to men, and that advancement to all higher posts should be equally open for both sexes.

“(3) That women should receive the same pay as men for the same work, and that the only interpretation of the expression ‘Equal Pay for Equal Work’ which is acceptable to the Alliance is that 129 men and women shall be paid at the same rate, whether this be computed by time or by piece, in the same occupation or grade.

“(4) That the right to work of all women be recognized and:

(a) That no obstacle shall be placed in the way of married women who desire to enter and to continue in paid work.

(b) That laws relative to women as mothers should be so framed as not to handicap them in their economic position.

(c) That no special regulations for women's work different from regulations for men should be imposed on women contrary to the wishes of the women concerned; and that all future regulations should tend towards equality for men and women.
“(5) This Congress, believing that liability to many forms of industrial disease is an individual and not a sex liability, calls upon the I. L. O. [International Labor Organisation] to undertake a scientific study of the principal industrial diseases with a view to recommending such measures as shall safeguard all workers irrespective of sex and such special regulations as shall, if necessary, eliminate those individuals, male or female, who are found to be specially prone to any particular industrial disease.

“(6) This Congress further calls upon the I. L. O. to use all its influence to induce the Government members of the League of Nations to conform to Article 3 of the League Convention creating the International Labour organisation which concerns the participation of women in the national delegations sent to the I. L. O. Conferences.

“(7) That this Congress urges that legislation with regard to pregnancy and maternity should be on the lines not of forbidding women to select and continue in their own work, but of providing for them such economic and physical conditions as should make it possible for them to give birth to their children in the most favourable conditions.

“(8) This Congress holds that any international system of differential legislation based on sex, in spite of any temporary advantage, may develop into a very real tyranny and result in segregation of women workers and the imposition of fresh handicaps on their capacity as wage-earners.

130 “It therefore urges upon its Auxiliaries the necessity of careful and detailed scrutiny of all such proposals with a view to immediate and effective action when necessary.

Examined with reference to the content of equality for men and women, another group of resolutions of the Alliance also is of interest to our discussion, namely, that under the heading of “Equal Moral Standard and Against the Traffic in Women,” the first of which is— “That all laws, measures, or regulations dealing with public morals shall be so framed as not to differentiate between the sexes, either in wording or in enforcement.

And again under the heading, “The Unmarried Mother and Her Child: “...legal proceedings must be facilitated and must ensure that men shall not escape their legal responsibilities—which shall be as follows:

(a) To pay maintenance for the mother before, during and after confinement, the latter long enough to enable her to nurse her child if she is willing to do so.

(b) To give maintenance and education for the child according to the father's capacity to pay and the education he could afford for a legitimate child.”
The question presents itself here: How does the strict equalitarian measure equality for purposes of framing, or of executing provisions like these? How is it possible not to differentiate in the wording of such measures?

In the following resolutions, under the head of “Family Endowment or Allowances,” not the laissez faire equalitarian, but the social-equalitarian viewpoint comes to the surface: “That this Congress, recognizing that the rearing of future generations is a matter which concerns the whole community and not merely individual parents, demands for mothers and children security of economic status and a share of their own in the wealth of the world. “That this Congress express no opinion as to whether the cost of Family Allowances should ultimately be met by employers through Equalisation Funds or by an extension of the system of contributory Social Insurance or by the State alone, as it recognises that the method chosen must be influenced by the economic and political conditions of each country. This Congress holds, however, that there are certain principles which should be followed in all systems adopted, viz.,

(a) That the allowance is not part of the remuneration of the wage-earner, but a recognition of the value of the child to the community.

(b) That the allowance should be paid to the mother.

(c) That the allowance shall be payable for the dependent children of women earners equally with those of men wage-earners.

(d) That the allowance, so far as the conditions of the system adopted makes possible, should be adequate for the maintenance of the child.

(e) That family allowances shall be accompanied by equal pay for equal work as between men and women.

(f) That all systems of Social Insurance should include allowances for the wives and children of sick and unemployed persons. That there should be a system of pensions for widows and orphans paid by the State.”

The Question in the International Council of Women

This organization was founded in 1888 by a group of suffragists which included Susan B. Anthony, Anna Howard Shaw, and Mrs. May Wright Sewall, and suffrage and equal rights for women have
always been an important part of its program. Composed as it is, however, of national organizations of women having a wide range of interests, the international body extends its activities accordingly. Its standing committees deal with questions of peace and arbitration, suffrage, legal status of women, equal moral standard, public health, education, emigration and immigration, trades and professions, and child welfare. As indicating the content of “equality” to the minds of the membership of the International

148 Simmern, Elsie M., in *Time and Tide*, March 19, 1926 (Correspondence).

132 Council, the following resolutions, adopted at the last Quinquennial Meeting, in Washington, 1925, may be listed: For the formation of “an International Standing Committee of Women, whose object shall be to work unitedly for the appointment of suitable women on commissions or other bodies in the League of Nations where women's opinion should be represented.” Urging appointment of women lawyers on League of Nations Commission to consider Codification of International Law, especially to represent women's interests in the question of nationality of married women. Urging preparation of complete digest of laws of each country affecting women and children. Urging ratification of Convention of Geneva, 1921, for the protection of women and children (against traffic in women and children). Urging the “institution in all countries of Women Police, with the same status and responsibilities as men in the same service.” Urging formation of women's groups within the respective political parties in all countries, “in order to get the best results from their voting power.” Urging equal pay for equal work in the teaching profession. “That the statistics concerning the death rate of legitimate compared with illegitimate children under one year be circulated, and that the affiliated National Councils be asked to investigate what remedial measures they recommend.” Urging appointment of women officials in legations and consulates. “The International Council of Women opposes the professional inequality of women, and demands for them equal opportunities and rights within the various employments.” “The International Council of Women affirms the principle of ‘equal pay for equal work,’ which signifies that wages should be established on the basis of the occupation, and not on the basis of sex.” “The International Council of Women desires that the prohibition to work in the weeks before and after confinement be accompanied by a maternity provision.” 133 “The International Council of Women declares itself against any limitations of the work of married women apart from provisions for maternity.” 149


Equality as Defined by International Labour Groups

Labor women, to defend the laws regulating conditions of their employment, thereby strengthening their bargaining power, and equalizing the economic position of working men and women, have
taken action through several organizations to counteract the opposition of non-labor feminist groups to women's labor laws.

The International Federation of Working Women, which held three congresses, in 1919, 1922, and 1923, adopted the following resolution at the congress of 1923 in Vienna: “Nationally and internationally, there should be minimum standards of such work as the 8 hours day, but the method by which such standards are to be obtained, whether by Trade Union agreement or by law or by both means, should be determined by the organised workers of those countries, according to the economic and political conditions in each country:— “Therefore, the International Federation of Working Women declares in favour of legislation for women in countries where the organised working women wish to use this method to improve the industrial conditions.”

150 International Federation of Working Women, Proceedings of Congress if 1923, Vienna.

The following year the International Federation of Working Women was merged with the International Committee of Trade Union Women, organized under the International Federation of Trade Unions, and this Committee, on the 29th and 30th of July, 1927, brought together some fifty women trade unionists from thirteen countries of Europe and from Palestine. The resolutions adopted by this 1927 International Congress of Trade Union Women included the following: “Protection of Women Workers. “The women workers affiliated with the I. F. T. U. [International Federation of Trade Unions], at their conference in Paris on the 29th and 30th July, 1927, declare their firm determination to ensure the achievement of their demands in respect of all women working for wages or salaries. These demands aim at:

“(1) The protection of the woman as a worker ; comprising all measures providing for the protection of labour, such as the eight hours day, factory inspection, sickness insurance, trade union liberty, and the fixing of minimum wages.

“(2) The protection of the woman worker as a woman , comprising the ratification of the Washington Conventions relating to the rest of women before and after childbirth, the prohibition of night-work for women, and the extension and application of the Washington and Geneva recommendations (to be regarded as minimum demands) relating to the protection of women engaged in certain unhealthy industries and in agriculture.”

“Women's Work for Wages. “The International Conference which met at Paris on the 29th and 30th July, 1927, places on record, in connection with the report of Comrade Hanna concerning the economic importance of women's work for wages, that economic and social progress necessitates in all countries a steady increase in the number of women working for wages. All efforts to exclude women from specific trade work are in contradiction to this line of development. “The feeling against
woman's work which is so often to be found to-day is due to the fact that the wages of the working-class are imperilled by the lower wages paid to women. This feeling can only be eradicated by the attainment of all trade-union demands, especially the demand for ‘equal pay for equal work.’ “This aim can only be attained by recruiting women for trade unionism to the utmost possible extent. The International Conference of Trade Union Women appeals to the working women of all lands to join the trade unions, and to devote their capacities wholly to the service of trade unionism. In doing this, it feels sure that the men who are in the trade unions will do all they can in support of the unremitting cooperation of the women which is indispensable to the attainment of trade union aims.” 151


Résumé

Nationally and internationally, then, it appears, the issue is joined between individualistic, laissez faire equalitarianism on the one hand, and socially-minded collective action on the other. Liberal feminists, trade unionists, and other collectivists, look to regulation as the means to liberty, equality, and social justice.

Nationally and internationally, also, there exists a confusion of terms, a need for clarification, which arises even within the same language, and is increasingly important as different languages are involved. Legal terminology is different in different countries, an common usage blurs the legal meaning. “Civil rights of women” mean to the average woman her property rights, her right to make a contract affecting her real estate or personal property, her rights to sue and be sued, her right to her own wages, her right to guardianship of her children, and so on. Not so often are they understood as involving her economic rights as affected by a labor law, or such other social legislation as mothers’ pension laws, age-of-consent laws, or maternity protective laws. “Civil codes” are commonly thought of a distinct from “industrial codes,” “agricultural codes,” or “social legislation.” Yet civil rights are involved in all of them.

And when “civil rights“ have been defined for the lay understanding, we have still to arrive at some common meaning for “equal rights” and “equality.” Or else it must be understood that these terms are definable only case by case.

Nationally and internationally, we must define our terms, and we must think the problem through.
GENERAL CONCLUSIONS

In conclusion, we would re-emphasize the character of our problem. It sets up a many-sided task; dealing, not with fixed but with relative values, not with simple but with complex relationships, and requiring the use, not of one exclusive instrument, but of several. It is a problem of definition and method.

Equal rights for women and men is a principle of justice, and ideal of democratic government, which should be embodied in law. But while the law in one means to equality, it is only one, and must be used in relation to the other forces which are at work. Equality itself is a relative thing, and different things may be equal.

Men and women in fact are different though equal. They have their respectively characteristic roles to play in the life of the human race, and are equally entitled to all the rights and opportunities life can give. But the world has treated men and women not only differently, as in many respects it should, but unequally, as it should not. Thus, whatever might have happened had they been always treated equally, whatever the rights and wrongs of the past, the fact we face as the result of their unequal experiences is their unequal footing today.

Our corrective efforts are necessarily applied to the unequal situation that exists. But the inequalities are so irregular, so different in source and character, that they cannot safely be dealt with wholesale, by one single formula, lest we disturb the balance here, while adjusting it there. If we shall have first translated the question at issue into realistic terms which define the particular rights (a) that women want, and (b) that are attainable by changing the laws that now differentiate between men and women, (c) without creating inequalities of another or a worse sort, then we are in position to frame the new laws we want. But not until then.

In other words, in the proposal of changes in the law, we are seeking to use but one of several instruments. Using it upon the different conditions of life of different orders of people. Using if for the attainment of an end which is in itself a variable, relative thing.

A pragmatic answer, then, is the only answer to our problem; a pragmatic policy the only safe course for progress. In so far as the 137 answer can be written into law, the provisions of law should be framed not only with a legal equality in view, but with the legal principle weighed and verified by
the principles and especially the practices of actual life, in the family, the industrial world, and the community, in each and every phase of public and private relationships.

Such an answer, to be workable and practical and just, must rest upon specialized knowledge of the particular inequalities in question, considered not as abstract or isolated issues, but in relation to the other aspects and the concrete problems of life.

“For some purposes men and women are persons, and the law should, for these purposes, treat them as persons, subjecting them to the same duties and conferring upon them the same ‘rights.’ But for other and vital purposes men and women are men and women—and the law must treat them as men and women, and therefore subject them to different, and not the same, rules of legal conduct.” 152


GENERAL REFERENCES


*History of Women Suffrage*


*Time and Tide*, London. Published weekly.


*The Woman's Leader*, London. Published weekly by the National Union of Societies for Equal Citizenship.