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Politics, Differences and Economic Rights

Mary E. Becker†

A distinctive feature of feminism in the eighties is an appreciation of differences. To some extent, and for many (though not all) women and men, traditional stereotypes are true. Many feminists today believe that women tend to be more nurturing than men, to identify with others more than men, and to think in terms of preserving connections and relationships rather than applying abstract rights and formal logic. Furthermore, many feminists believe these traits are valuable. We should foster change, they say, not by changing women into men, but by increasing the value accorded women’s traits in our culture.¹

This emphasis on differences is dangerous. Differences have traditionally been used to justify separate spheres for women and men, and separate has not been equal. Feminists today appreciate these risks. But ignoring the reality of women’s actual situation is also dangerous, yielding rules which are inappropriate for women, and masking male norms in the guise of neutrality and equality.²

In this article, I explore some of the economic and political costs of differences. In doing so, the article contributes to two different literatures: the feminist literature on differences and the legal literature on political problems of nondominant groups. In the literature on differences, feminists have not adequately addressed the political costs of differences, and I begin the process here.³

† Professor of Law, University of Chicago School of Law. I thank Linda Golden, Jane Mansbridge, Lisa Moorehead, Judith Resnik, Cass Sunstein, Barbara Welke and members of the University of Chicago Gender and Society Workshop for helpful comments on an earlier draft and Paul Bryan, Marianne Culver, Gregory Ivy, Jeannie Polydorius, Elizabeth Rosenblatt, William Schwesig and Charles Ten Brink for research and other assistance. Research support was provided by the Kirkland and Ellis Faculty Research Fund.

¹ See, for example, Carol Gilligan, In a Different Voice (Harvard University Press, 1982).

² See, for example, Catharine A. MacKinnon, Feminism Unmodified (Harvard University Press, 1987); Mary E. Becker, Obscuring the Struggle: Sex Discrimination, Social Security, and Stone, Seidman, Sunstein & Tushnet’s “Constitutional Law”, 89 Colum L Rev 501 (1989); Susan Estrich, Real Rape (Harvard University Press, 1987).

³ Some political scientists, notably Virginia Sapiro, have discussed many of these issues, though not explicitly in the context of assessing the political costs of the differences feminists in the eighties increasingly value. See, for example, Virginia Sapiro, The Political Integration of Women (University of Illinois Press, 1983).
Legal academics have tended to adopt footnote 4 of *United States v Carolene Products*⁴ as the definitive analysis of the political problems of nondominant groups. According to *Carolene Products*, the courts should generally defer to legislatures by assuming that legislation is constitutional. But footnote 4 suggests that the presumption of constitutionality should be withheld when legislation targets racial and other "discrete and insular" minorities for different treatment.⁵ Courts should scrutinize such legislation carefully because discrete and insular minorities might not enjoy "their fair share of democratic influence" in the "political processes."⁶

Only recently, with the publication of Bruce Ackerman’s influential article,⁷ have lawyers and others begun to question whether this makes any political sense. Ackerman observes that being discrete and insular may foster effective political participation. "Discrete" seems to refer to identifiable, rather than anonymous, groups—groups like African Americans and women who cannot hide their group identity. Ackerman points out that it is a political advantage for members of a group to be identifiable as such; members of such groups cannot be politically silenced by pressure to remain "in the closet."

Similarly, being an insular group—a geographically concentrated group—is an advantage for a minority group. Imagine, for example, a minority group of 5% of the population dispersed evenly throughout the country. That group might not be able to elect a single member to public office. If the group were, instead, a majority in some areas of the country, the group would be more likely to elect group members to office. Ackerman notes that a group’s status as a minority can explain its failure to prevail in the democratic process. If one observed that a majority was unfairly burdened by acts of the legislature, one would be even more concerned about the political process.

Ackerman did not analyze women’s inability to use the political system beyond his suggestion that women’s geographic dispersion is a political disadvantage. Geographic dispersion should equally be a problem for men, since men are geographically dispersed with women. Yet men dominate political life. The explanation for women’s powerlessness must lie elsewhere.

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* *United States v Carolene Products*, 304 US 144, 152-53 n 4 (1938).
* Id. The presumption should also be withheld when legislation appears "to be within a specific prohibition of the Constitution" or to restrict "political processes."
* Ackerman, 98 Harv L Rev at 713.
In this article, I examine a number of problems women face as political actors, problems not fully shared by men nor, in some instances, other nondominant groups. I begin by assessing women’s economic status. In Section I, I consider the extent to which women and men are economic equals in three crucial areas: employment, divorce, social insurance and welfare. I conclude that in each area, despite the presence of an equality norm, women and men are far from economic parity. In Section II, I describe some of the many easily imaginable legislative improvements.

Together, these sections on women’s economic status and potential legislative improvements indicate that the political system is not working for women. Although over half of voters are women, women have not pressed effectively for legislative corrections to the currently skewed distribution of the economic pie. In Section III, I explore some of the ways in which differences between women and men weaken women’s political power.

I. ECONOMIC PROBLEMS UNDER FORMAL EQUALITY

The economic status of women relative to men suggests that there might be a problem with women’s effective political participation. In the legal literature on effective political participation, there is a close link between the notion that a nondominant group is denied effective political participation and the fashioning of an equality standard or other remedy to prevent legislation unfairly disadvantaging the politically ineffective nondominant group. I therefore include some explanation of why the current equality norm is economically so ineffective.

* Overall poverty rates suggest that there is a problem somewhere. Women, especially women unattached to men, are more likely to be poor than similarly situated men. In 1987, the poverty rate for families with male householders (no wife present) was only 12.5%. The rate for similarly situated women (female householders with no husband present) was nearly three times as high: 34.3%. Minority women face even higher poverty rates. In 1987, the poverty rate for African American male householders without a wife was 24.3%, whereas the poverty rate for African American female householders without a husband was 51.8%. US Bureau of the Census, Current Population Reports, Series P-60, No 161, *Money Income and Poverty Status in the United States: 1987* 27, Table 15 (US Government Printing Office, 1988) (“Money Income”). Whether, overall, women’s relative economic position has actually worsened under formal equality is a complex question beyond the scope of this paper. See, for example, Victor Fuchs, *Women’s Quest for Economic Equality* (Harvard University Press, 1988); Diana Pearce, *Welfare is not for Women: Toward a Model of Advocacy to Meet the Needs of Women in Poverty*, 19 Clearinghouse Rev 412 (1985).

* See, for example, Geoffrey R. Stone, Louis M. Seidman, Cass R. Sunstein and Mark V. Tushnet, *Constitutional Law* 624-25 (Little, Brown and Company, 1986) (questioning whether heightened scrutiny is appropriate for sexual classifications since it is unclear that women’s interests are “politically undervalued”).
The current dominant equality standard in law—formal equality—bans differential treatment on the basis of sex. Under it, one must treat similarly-situated women and men the same. I consider whether this standard has generated economic equality between women and men in three areas: employment, divorce, social insurance and welfare.

A. Employment

Data on relative wage rates for women and men reveals inequality in the wage-labor market. Full-time year-round women workers earn only sixty-five cents for every dollar earned by similarly employed male workers. This gap is especially important for minority women because of the devastating effect of combined race and sex gaps. For example, African American women earn eighty cents for every dollar earned by African American men, but only fifty-five cents for every dollar earned by white men.

Part of the sex gap in wages is doubtless due to women's domestic responsibilities and other "differences" between women and men. But most experts believe that differences (such as age, work experience and education) explain at most only half the wage gap. Most women continue to hold "women's jobs," and women's jobs continue to pay substantially less than "men's jobs." And

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10 Formal equality is the only standard available in making constitutional claims. See Personnel Administrator of Massachusetts v Feeney, 442 US 256 (1979). In Title VII cases involving challenges to employment practices, a claim of disparate impact may also be available. See Wards Cove Packing Company, Inc. v Antonio, 57 USLW 4583 (1989).

11 Money Income at 5 (cited in note 8).


13 Some of these differences may, themselves, be the result of discrimination.


15 See, for example, William T. Bielby and James N. Baron, A Woman's Place Is With Other Women: Sex Segregation Within Organizations, in Reskin, Sex Segregation in the Workplace at 27 (cited in note 14); William T. Bielby and James N. Baron, Men and Women at Work: Sex Segregation and Statistical Discrimination, 91 Am J Sociology 759 (1986). There is also racial segregation in the workplace, with African American women tending to hold positions below white women as well as white men. See Elizabeth M. Alquist, Further Consequences of Double Jeopardy: The Reluctant Participation of Racial-Ethnic Women in Feminist Organizations, in Winston Van Horne, ed, Ethnicity and Women 113, 129 (University of Wisconsin System American Ethnic Studies Coordinating
when women do hold men's jobs, they nevertheless tend to earn less than men and to remain disproportionately at the bottom of the promotion ladder.\footnote{See, for example, Patricia A. Roos and Barbara F. Reskin, \textit{Institutional Factors Contributing to Sex Segregation in the Workplace}, in Reskin, ed, \textit{Sex Segregation in the Workplace} at 248-55 (cited in note 14); Brigid O'Farrell and Sharon L. Harlan, \textit{Job Integration Strategies: Today's Programs and Tomorrow's Needs}, in Reskin, ed, \textit{Sex Segregation in the Workplace} at 275-79.}

Almost all employers are forbidden, by law, to discriminate on the basis of either sex or race. But these prohibitions are ineffective for a number of reasons. I discuss three problems: socialization, unconscious discrimination and workplace rules designed for workers with wives.

Socialization influences workers' attitudes in crucial ways as they make decisions about education and training and as they enter the workforce. Both girls and boys try to act in a manner consistent with what is considered appropriate in their society for a person of their sex. Sex-specific norms and rules become a deep part of the personal identity of both girls and boys. As a result, girls become more interested in jobs defined by our culture as nurturing (nursing or teaching small children), whereas boys become more interested in jobs defined by our culture as requiring technical skill or leadership (being a doctor or a politician). Formal equality will not equalize their economic position if she enters the labor force interested in a low-paying woman's job, and he enters it interested in a high-paying man's job.\footnote{See Mary E. Becker, \textit{Barriers Facing Women in the Wage Labor Market and the Need for Additional Remedies: A Reply to Fischel and Lazear}, 53 U Chi L Rev 934, 940-43 (1986), and authorities cited therein.}

A second problem with the current legal standard is that it will seldom identify as discrimination any but the most blatant. Much of the discrimination facing women is unconscious, even inadvertent, and invisible to women as well as men. Empirical studies reveal that both women and men tend to underrate women relative to men.\footnote{See authorities cited in Becker, 53 U Chi L Rev at 942-43; Roberta M. Hall, \textit{The Classroom Climate: A Chilly One for Women?}, in Project on the Status and Education of Women, (Association of American Colleges, 1982); Deborah L. Rhode, \textit{Perspectives on Professional Women}, 40 Stan L Rev 1163, 1187-92 (1988); Angela Simeone, \textit{Academic Women: Working Towards Equality} (Bergin & Garvey Publishers, Inc., 1987). A job held predominantly by women—such as nursing—may be generally undervalued (relative to jobs held by men) because women are undervalued.} For example, if fifty people are given an article written by "John Smith," and another fifty people are given the same article by "Jane Smith," John's article will tend to be rated...
as better and more important than Jane's. Subtle discrimination is likely to be pervasive, and it is untouched by current legal remedies.

A third problem with formal equality in the wage labor market is that jobs are not structured to accommodate employees' caretaking responsibilities. Many jobs are designed for men with wives. Even women's jobs are often rigid and difficult to combine with domestic responsibilities. And in the vast majority of American families, women—even working women—are still primarily responsible for care of children, the elderly, the ill and for domestic labor in general. The inevitable effect of jobs designed for workers without such responsibilities is that women tend to face more limited opportunities than men. Current antidiscrimination standards do not address this problem. As long as women are treated like workers with wives, no sex discrimination is visible to the legal system.

Despite these shortcomings, the legal ban on discrimination in employment has had important positive effects. When the Equal Pay Act and Title VII were enacted in 1963 and 1964, women were often explicitly excluded from jobs or overtly paid less than men. Much of this sort of discrimination has been eliminated as a result of these statutes and associated cultural changes.

Formal equality has, therefore, helped women tremendously in employment, especially women who now hold jobs open only to men in 1964. But formal equality has not—and cannot—assure economic equality in wage labor because it cannot correct for differential socialization, unconscious discrimination or the design of jobs for workers with wives.

B. Divorce

Because women and men are not economic equals in the wage-labor market, the division of responsibilities and property at divorce is critically important to the economic well-being of many women. I turn now to look at whether women and men enjoy eco-

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20 See Becker, 53 U Chi L Rev at 934 (cited in note 17).
21 See MacKinnon, Feminism Unmodified at 36-37 (cited in note 2).
23 The Title VII-mandated elimination of state protectionist legislation may also have hurt some women. See Sylvia Ann Hewlett, A Lesser Life: The Myth of Women's Liberation in America 201-03 (William Morrow and Company, 1986).
nomic equality at divorce.

Most divorced women receive custody of their children and an inadequate package of wages, child support, spousal maintenance and marital assets. Studies from a number of states uniformly report that the divorcing husband can expect his standard of living to improve significantly and the divorcing wife and children can expect their standard of living to decline significantly. For example, in a California study of divorce decrees, researchers found that men could expect their standard of living to increase 42% after divorce, and women (and children) could expect their standard of living to fall by 73%. As this California study suggests, support awards are often shockingly low. In addition, most men pay nothing or only a part of what they are ordered to pay. We do not have either appropriate support standards or effective enforcement mechanisms. These problems could not be more obvious.

Formal equality does apply to legislation governing divorce. Similarly situated women and men must be treated the same. To date, however, the result of applying this norm to family law has been that women's (and children's) post-divorce economic position has actually weakened, rather than improved. Twenty-five years ago divorce law was often sex-specific: Alimony, for example, was something paid by men to women. Under such rules many long term homemakers were given permanent alimony at divorce be-

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26 The average child support ordered and payable per child in 1985 was $1,303 a year (or $108 a month). US Bureau of the Census, Current Population Reports, Series P-23, No. 152, Child Support and Alimony: 1985 2 and 6, Tables B and D (US Government Printing Office, 1987) (“Child Support”). A recent study of divorces in New Haven, Connecticut, reveals that after divorce, assuming men pay all child and spousal support obligations, men nevertheless retain 190% of the pre-divorce per capita median income, whereas the wife’s household has only 69% of pre-divorce per capita median income. McLindon, 21 Family L Q at 387 (cited in note 24).

27 Of the fathers ordered to pay child support during 1985, only about half fulfilled their obligations. About a quarter paid nothing and another quarter made only partial payments. Child Support at 1-2.
cause women and men were not equals, especially in the wage labor market.\textsuperscript{28}

Today, women and men are equal. Many judges assume that a divorced woman can earn a good living\textsuperscript{29} and needs alimony only for some short transitional period. These judges are wrong. The division of labor within and after marriage is likely to have lifelong consequences for the woman, depressing her wages throughout her working life and depressing her retirement income.

Unfortunately, under formal equality, we have lost traditional rules protecting women at divorce in sex-specific terms, but we have not acquired other rules that provide equivalent protection for full or part-time homemakers in more sex-neutral language.\textsuperscript{30} Formal equality requires only that similarly situated women and men be treated the same. It does not require that people who have filled traditional female roles (homemakers) be accorded financial security at divorce equivalent to that enjoyed by people who have filled traditional male roles (breadwinners).

At its best, divorce law can give adequate economic rights only to middle- and upper-income women and children. For lower-income women and children, adequate support must come from the state’s income support systems, which is the third and final economic area I examine.

C. Social Insurance and Welfare

We have a number of income support systems, the most important being unemployment compensation, Social Security old-age and disability insurance, Aid to Families with Dependant Children (AFDC), and Supplemental Security Income, or SSI. Two of these systems were designed for (male) breadwinners: unemployment compensation and Social Security. These are the premier American income support systems. Both are understood to be state-run insurance plans, though the extent to which Social Security can accurately be classified as a form of insurance (rather than


\textsuperscript{29} See, for example, Weitzman, \textit{The Divorce Revolution} at 170 (cited in note 25); McLindon, 21 Fam L Q at 396 (cited in note 24).

\textsuperscript{30} See Becker, \textit{Prince Charming}, 1987 Sup Ct Rev at 214-23 (cited in note 28). Other changes to family law, in response to the new equality norm, have also hurt women economically—especially the change in the custody standard from a maternal preference to a more egalitarian standard which attempts to afford mothers and fathers equal treatment with respect to custody at birth or divorce, despite their quite different child care responsibilities prior to divorce.
a transfer of income from the young to the old) is questionable. Nevertheless, beneficiaries of these systems are not perceived as the recipients of charity; they are collecting insurance proceeds. Beneficiaries do not have to prove that they are poor to qualify; benefits are not means-tested.

In contrast, AFDC was designed particularly for women (and children). SSI was designed as a safety net for the aged and disabled who do not qualify for Social Security—people who were not successful breadwinners. Not surprisingly, about three quarters of SSI recipients are women.

Both AFDC and SSI are means-tested and perceived as forms of charity (or redistribution) rather than insurance. AFDC is especially intrusive into clients' private lives. In addition, income support levels are generally much lower for SSI and AFDC (women's systems) than for Social Security and unemployment insurance (men's systems). For example, in Alabama the maximum AFDC cash benefit for a family of three in 1987 was $118 a month. The average unemployment insurance weekly cash benefit amount, regardless of need, was $120 (or $520 per month). Formal equality does apply to social insurance and welfare systems. But, again, the norm only requires that similarly situated women and men be


32 Most (60%) Social Security beneficiaries are women. Data given in or extracted from 50 Social Security Bulletin, Annual Statistical Supplement, Table 130 at 216 (1987). The proportion of Supplemental Security Income beneficiaries who are women is even higher: 74.6% of those receiving SSI for old age in 1986 were women. Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means, 100th Congress, 1st Session, House of Representatives, Committee on Ways and Means, Table 15 at 533 (March 6, 1987).

33 Most Social Security beneficiaries are women for two reasons: Most of the elderly are women, and Social Security was extended to afford some benefits to the dependents of breadwinners. It is nevertheless true that Social Security affords a better safety net for men than for women. For example, the average male Social Security beneficiary receives greater benefits than the average female beneficiary. See Becker, 89 Col L Rev at 515 (cited in note 2).

34 See, for example, Wyman v James, 400 US 309 (1971).

35 See data cited in note 32.

36 Recipients of the bottom tier safety nets tend to be at or near the poverty line. Recipients of the top tier nets tend to be much better off financially, in part because they tend to receive more substantial payments and in part because they need not be poor to qualify.

37 Id, Table 6 at 336.

38 See, for example, Califano v Goldfarb, 430 US 199 (1977).
treated similarly. Given the "differences" between most women and most men, it is easy to treat similar women and men identically, yet leave most women with inferior income protection systems.\textsuperscript{39} Formal equality does nothing about the fact that full-time breadwinners have better safety nets than full- or part-time homemakers.

I have shown that in each of three crucial economic areas—wage employment, divorce, social insurance and welfare—women and men remain far from economic equals. The problems are not eliminated by formal equality. This standard has helped women in the labor market—especially women interested in traditionally male jobs (like being a lawyer). But it has not solved the serious problem women face in employment as a result of socialization, unconscious bias and the design of jobs for workers without significant domestic responsibilities.

At divorce, formal equality has hurt many ordinary women by contributing to the elimination of traditional rules protecting women without generating rules protecting homemakers in sex-neutral terms. And formal equality has done nothing significant to improve social insurance and welfare systems.

Women face serious economic problems in employment, at divorce and as users of social insurance and welfare systems. But women's economic problems may reflect the difficulty of drafting and fashioning an economic system more responsive to women's needs through legislation rather than women's inability to use the political system effectively. Before concluding that women's economic problems are political problems, I therefore identify legislative changes which would improve women's economic status.

\section{II. Legislative Improvements}

It is relatively easy to imagine legislative improvements in each of the three areas considered in the preceding section: employment, divorce, social insurance and welfare. Women's economic status in the labor market could improve were we to give employers incentives, such as tax credits or government contracts, necessary to change the sexual composition of jobs traditionally

held by men. Legislation could also mandate a comparable worth pay standard, perhaps for all employees or, at least, for governmental employees. These measures could help combat the inequitable effects of sex-role socialization and unconscious bias.

To the extent that women’s poor economic showing in the labor market is the result of the difficulty of combining wage labor and domestic responsibilities, legislation making it easier to combine these activities would help. For example, Congress could strengthen incentives for employers to provide child care. Or Congress could give child care vouchers to working parents, or develop good government sponsored child care. Rights to leaves of absence at the birth of a child for both parents (but especially mothers) would help, as would allowing for caretaking leaves when someone in the family is ill. Economic support during parental leaves—provided by governments throughout Europe and in Canada—would be beneficial.

In divorce law, support standards and enforcement mechanisms could be overhauled. Legislation could increase post-divorce spousal support to ex-homemakers, especially long term homemakers. Legislation could increase child support awards substantially, to reflect more realistically a fair allocation of the high cost of raising a child today. Enforcement could be improved, with government enforcement and a guaranteed minimum level of support for all women and children.

With respect to social insurance and welfare systems, legislation could increase substantially the mandated federal minimums for AFDC and SSI. New laws could also allocate resources for helping mothers complete training for good jobs, with adequate financial assistance for tuition, living costs, and child care. Legislation could eliminate the two tier old age and disability system (Social Security and SSI) and replace it with a single tier safety net for disability and old age, thereby affording the same level of old age financial security to homemakers and breadwinners.

Thus, legislative improvements are easily imaginable. And most voters are now women. In the 1988 presidential election 52% of the voters were women. In the 1984 presidential election,
53.3% of the voters were women. In the next and final section, I consider why, despite their majority status, women have been unable to use the political system to obtain economic equality.

III. POLITICAL PROBLEMS

Overall data on women in high political office suggests that women experience serious problems using the political system. Although over half of voters are now women, and women tend to vote more often than men, there are only two women in the Senate. There are no minority women in the Senate. There are only twenty-three women in the House of Representatives (5.3% of House members). Only one member of the House is an African American woman—0.2% of all House members—though African American women are over 6% of the general population. Women do better at lower levels of elected office, but are underrepresented even there. For example, about 15% of the approximately 7,400 members of state legislatures are women. Only about 2% of these state legislators are African American women.

As suggested both by these figures and women's poor economic status, women face a unique set of obstacles in using the political system. Geographic dispersion is an obvious disadvantage for women relative to other nondominant groups, who tend to live closer together, apart from the dominant group. But men are

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45 U.S. Bureau of the Census, Statistical Abstract of the United States: 1988, Table 418 at 249 (US Government Printing Office, 1987), indicates that while 46.0% of the voting age population voted in the 1986 Congressional election year, 46.1% of women in the voting age population voted.
46 In contrast, there are 22 African American men (or 5%) in the House of Representatives, a figure very close to the percentage of African American men in the general population (5.8%). U.S. Bureau of the Census, Statistical Abstract of the United States: 1988, Table 20 at 17 and Table 409 at 244 (cited in note 45). Yet, African Americans tend to vote less often than whites. While 47.0% of whites in the voting population voted in the last presidential election, only 43.2% of African Americans in the voting population voted. Id, Table 418 at 249.
47 In contrast, 4.2% of members of state legislatures are African American men, a figure close to the percentage of African American men in the population. U.S. Bureau of the Census, Statistical Abstract of the United States: 1988, Table 415 at 247; phone call to Theresa Chambliss, May 18, 1989 (Joint Center for Political Studies, Washington, DC). Women in other minority groups fare poorly as well: While Hispanic women compose approximately 3% of the population in the United States, they compose less than 0.2% of state legislators. U.S. Bureau of the Census, Statistical Abstract of the United States: 1988, Table 19 at 16 and Table 416 at 248.
48 This is the only political problem for women mentioned by Ackerman, 98 Harv L Rev at 742 (cited in note 6).
equally dispersed geographically. Men seem to have no difficulty controlling the political system, despite geographic dispersion. I turn, therefore, to consider other factors that might account for women’s inability to participate effectively in politics.

A. Socialization, Unconscious Discrimination and the Design of Jobs for Workers with Wives

I have already mentioned three factors in the world of work that are likely to affect women’s political success: socialization, unconscious discrimination and the design of jobs for workers with wives. I begin with a brief discussion of how these three factors are also likely to affect women in politics.

Socialization: The political world has traditionally been the paradigm of the public sphere, the arena reserved for men. Even today, children are likely to grow up linking the political world more closely with men than women.9 The vast majority of political leaders, both now and in the history books, are men. We think of politicians as having traits defined by our culture as male traits, such as leadership skill, the ability to grapple with tough, technical issues, and the ability to make war. The political world is a world of power and conflict. Simply repeating these words invokes—in my mind at least—male images.

Unconscious discrimination: Unconscious biases against women are likely to interfere with women’s success as politicians. Because politics tends to be viewed as a man’s world, unconscious discrimination may be especially strong in the context of politics.50 Women candidates may have great difficulty being perceived as competent, especially when running for high office.

Empirical evidence on this point is inconclusive. Not surprisingly, most voters tend to deny that a candidate’s sex would affect
their vote. Some empirical studies of actual voting behavior support this assertion. These studies suggest that when other factors are taken into account—such as status as an incumbent—voters have not, in recent elections, been less likely to elect women candidates than men candidates.

On the other hand, a significant group of voters continue to indicate that they would not vote for a woman for president, and even a small number of biased votes could be enough to lose an election completely. Furthermore, it is possible that those who select candidates do not treat women and men identically. Discrimination at the selection stage could mask voter discrimination. Perhaps, women selected as candidates for high office are better qualified than men selected to run for such offices. If so, in the absence of objective measures of political qualifications, it is impossible to determine whether voters discriminate against women by looking at results.

Some evidence suggests that some voter discrimination on the basis of sex is likely. Los Angeles Times pollsters invented two hypothetical gubernatorial candidates. One was “a business executive, native to New York City, married and with two children.” The other was “a lawyer, native to the Midwest, with three children.” The pollsters then asked Californians which candidate they would vote for. Half the participants were told that the native New Yorker was a woman and the Midwesterner a man—and half were told that the New Yorker was a man and the Midwesterner a woman. Either way, she lost. When the native New Yorker was described as “she,” she lost 54% to 27%. When the native Midwest-

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62 See, for example, John F. Zipp and Eric Plutzer, Gender Differences in Voting for Female Candidates: Evidence from the 1982 Election, 49 Public Opinion Quarterly 178, 194 (1985).
63 See Lee Sigelman and Susan Welch, Race, Gender, and Opinion Toward Black and Female Presidential Candidates, 48 Public Opinion Quarterly 467, 471 (1984) (data from 1974 and 1978 General Social Surveys: 17.1% of white males would not vote for a woman for president; 19.7% of white females would not; 21.9% of African American males would not; and 13.3% of African American women would not).
64 See (in addition to the example given in the text), for example, Jane Allyn Piliavin, Age, Race, and Sex Similarity to Candidates and Voting Preference, 17 J Applied Social Psych 551 (1987); Virginia Sapiro, If U.S. Senator Baker Were A Woman: An Experimental Study of Candidate Images, Political Psych 61 (Spring/Summer 1981-82).
66 Id.
erner was described as she, she lost 48% to 38%. In light of this evidence, it is at least likely that unconscious bias creates significant problems for women who run for political office.

The design of jobs for workers with wives: The political world, like the world of work, is designed for participants without significant caretaking responsibilities. Consider, for example, the problem of commuting between one's home and a state legislature located in a distant city several months a year for the legislative session. Male legislators often leave their families at home, returning only on occasional weekends. But male legislators tend not to be primarily responsible for caretaking activities within the family. The mother of two young children is likely to find the commute a much more serious problem than her male colleagues.

Thus, many of the problems women face in the wage labor market translate into similar problems in the political sphere. But women face a number of other difficulties in the political system, some of which do not have precise parallels in the world of work.

B. Politics and Relationships

In a number of ways, and on a number of different levels, relationships between women and men in our society hinder women's effective political participation. I discuss in some detail six aspects of this problem.

1. The Need to Obscure the Struggle: I begin with a pervasive problem. Both women and men tend to suppress the struggle between the sexes for a number of reasons. Men have an obvious incentive to suppress conflict to preserve the status quo—in which they enjoy a disproportionate share of economic and physical security, leisure time, status, power and sexual satisfaction.

Many women suppress conflict because they have decided to achieve security through economic dependence on a man. Given men's superior economic status and the accepted division of domestic responsibility in marriage, such a decision is often quite reasonable if a woman wants to have children. Having made this choice, a woman "attached" to a man is likely to reject information suggesting that there are risks or costs associated with her eco-

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67 Id.
nomic dependence—because we all tend to suppress information suggesting that a past decision was a mistake or involves continuing risk. As a result, women who hope that the system will work for them often work amazingly hard to distance themselves from other women for whom the system has obviously not worked, even though both groups are subject to very similar pressures and risks. For many women, identification with women in need is likely to highlight problems they prefer to deny.

In addition, once a woman becomes economically dependent on her husband, she needs continuously to convince him that they are a unit with common interests. Taking action inconsistent with the notion that their interests are shared—such as fighting for higher support payments for wives and children after divorce—may undermine his perception of their common interests.

Another reason for suppressing the struggle between the sexes is that most people believe that their best chance for personal happiness is in an intimate personal relationship with a person of the opposite sex. People tend to notice information consistent with deeply held beliefs and to reject inconsistent information. People tend, therefore, to notice positive aspects of the relationships between the sexes and to miss the negative ones.

Both women and men who have had enduring or valued relationships with a member of the opposite sex tend to suppress the struggle between the sexes in order to justify their lives. If change is needed because the traditional relationship unfairly oppresses women, then their relationship has been, in some fundamental sense, illegitimate. If change is needed, she might begin to wonder whether she behaved foolishly, participating in a relationship in which she was exploited. If change is needed, he might begin to wonder whether he behaved selfishly, taking more than he gave.

See, for example, George A. Akerlof and William T. Dickens, The Economic Consequences of Cognitive Dissonance, 72 Am Econ Rev 307, 308-09 (1982).

See, for example, Karen Horney, The Distrust Between the Sexes in Feminine Psychology 107 (W. W. Norton, 1967). This belief is deep-seated indeed; it is the adult expression of the infant’s primal experience of union with a mother who was not perceived as a separate human being. This desire to return to what seemed the perfect union through a union between the sexes skews our perceptions of reality.

Information raising such issues will tend to be rejected. People suppress information inconsistent with their image of themselves as smart and nice—as people who do not make foolish decisions or exploit others.\(^2\)

Heterosexual men, especially older men who have had traditional marriages, but younger men as well, are likely to feel terribly threatened by these challenges. If a man values a relationship with a woman, then the need for change implies that a relationship he considers loving and reciprocal may have been exploitive—and he, the exploiter.\(^3\) Again, the need for change will be repressed because it is inconsistent with his belief that he is a nice person.

Minority women write and speak about additional pressures to suppress the struggle and to support their men. Many minority women conclude that the harms of racism are worse than the harms of sexism. Women and men must, therefore, present a united front in the fight against racism. Also, many minority women feel that the best contribution they can make in the fight for racial liberation is to support their men, to make them feel that they are important, free and effective persons. African American women may feel the need to repress the struggle in order to be free of the taint of matriarchy.\(^4\) As a result of these problems, women may have unusual difficulty making women’s issues political issues in minority communities.

This general desire to suppress conflict between women and men of all races has obvious implications for women’s ability to correct economic problems through political participation. Many women and men are made very uncomfortable by even the articulation of women and men’s conflicting interests. And women who still hope that the system will work for them are unlikely to identify with their sisters for whom the system has not worked, no matter how common the pressures and problems they face. As a result, it is difficult to press effectively for policies which give women a larger piece of the economic pie.

2. Relationships with Men and Divisions Among Women: One problem is that women’s political power is diluted by divisions among women. Women, like men, are divided by class and race.

\(^2\) See, for example, Akerlof and Dickens, 72 Am Econ Rev 307-8 (cited in note 59).

\(^3\) Even a man bitter about a failed relationship will tend to suppress conflicts between the sexes in order to place the blame for the failed relationship more squarely on the woman.

But this division is magnified for women by divisions between women who expect to spend most of their lives economically dependent on men, and women who do not. Women who expect to be economically dependent on men will tend to see their interests as the same as men’s. (Many of these women will, of course, ultimately be disappointed.) Many women without men—single, divorced, widowed women—expect to be economically independent of men for the rest of their lives. These women are likely to see their economic interests as quite different from men’s interests. Within every division created by class and race, women’s political and economic interests are fragmented by whether they expect to depend economically on men.

3. Independence: I have already mentioned that women who are economically dependent on men have difficulty either perceiving or articulating their interests as different from men’s interests. Independent women face a different—but equally debilitating—set of problems in a male dominated society structured around heterosexual couples. Three kinds of women are particularly likely to be independent of men: single women, lesbian women and feminist women. These women are more likely than other women—more likely than non-feminist women in heterosexual relationships—to see and articulate conflicts between women and men and to come down squarely on the side of women.

But women who are single, lesbian or feminist will have difficulty succeeding as politicians. It is very difficult for a woman to be part of the social mainstream—and politically acceptable as a candidate for high office—unless she is part of a heterosexual couple. There are additional difficulties if she is identified as a feminist—as someone who sees and articulates the conflicts between women and men and comes down squarely on the side of women. Her difficulties will mount if she is identified as lesbian. Other nondominant groups do not experience these disabilities, and are not excluded from effective political participation by their failure

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64 “Feminist” has additional negative connotations in minority communities, where feminism tends to be associated with the interests of white women rather than the interests of all women. See, for example, Almquist, *Double Jeopardy*, in Van Horne, ed, *Ethnicity and Women* at 127-28 (cited in note 15).
to be intimately associated with a member of the dominant group or by their identification with their people's cause.

These three biases—against single, lesbian or feminist women—are closely linked in public consciousness. Each is a taboo against the women most likely to threaten the established order. These taboos disarm politically those women most dangerous to the sexual and economic status quo. Today, as in the past, a woman's social and political legitimacy depends on an intimate relationship with an individual man; yet an intimate relationship with an individual man is likely to undermine her ability to push a political agenda designed to make women economically independent.

4. Women's Success and Heterosexual Relationships: A woman's success can threaten a heterosexual relationship. For most women and men, a heterosexual relationship means one in which the man's achievements outside the home are greater than (or at the very least equal to) the woman's achievements. For the majority of people, this is part of the very essence of a heterosexual relationship. Yet women's effective political participation—being elected to Congress for example—will require significant success outside the home. Many women are likely to reject such careers because of the threat success would pose to most marriages. Yet (as I just mentioned) women who are not part of a heterosexual couple—indeed women—who are not part of a heterosexual couple—indeed independent women—face another set of equally debilitating problems.

5. Male Verbal Dominance: In mixed sex groups, men tend to dominate the conversation, controlling the subject matter and ignoring and interrupting women when women do talk. And when women do speak, they are more tentative and approval seeking than men. Empirical evidence supports these assertions. In light of this evidence, the stereotypical perception that women talk too much suggests that women should talk very little indeed. The political implications of this point are obvious; verbal battle is a ma-

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67 See Virginia Sapiro, *Sex and Games: On Oppression and Rationality*, 9 British J Pol Science 385, 406 (1979) (discussing the political effects of the norm of dependence for women: "[I]n no other case does the continued existence of the human species depend quite so much on continued intimacy between members of two groups now involved in an oppressive relationship").


major part of the political battle.

6. Identification: In heterosexual relationships, women tend to identify with men to a greater extent than men identify with women. For more women than men, marriage means a rather dramatic change in identity. Most women still drop their own birth names and adopt their husband's surname. Rare indeed is the man who drops his to adopt hers. Most women still derive their social and economic status from their husbands; but the same is not true for men. Both wife and husband are likely to regard the husband as a larger part of their common identity as a unit. A group which tends to identify with its opponents to an unusual degree will almost certainly come out of the political process with the short end of the stick.

I have discussed only some of the ways in which relationships between the sexes in our society are associated with political ineffectiveness for women. Even if we were to agree that these problems should be eliminated as quickly as possible by any and every means, it would be difficult, perhaps impossible, to eliminate these problems in the foreseeable future. Many are connected to deep, unconscious attitudes.

But—as I suggested in my introductory remarks—the situation is further complicated by the fact that many of these political obstacles are the result of valuable traits (such as listening to and identifying with others) which impede women's effective political participation. The ideal solution is not necessarily for women to try to become like men in all respects—stop listening; interrupt more; engage in more selfish behavior. But what, then, is the solution?

CONCLUSION

Since the end of the Lochner era, the Supreme Court has

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71 See, for example, Sapiro, *The Political Integration of Women* at 67-68 (cited in note 3).

72 I have heard of one such man. More men (though far from most) adopt a hyphenated version of both names.

73 Sapiro, *The Political Integration of Women* at 68 (cited in note 3).

74 It may also be true that minority racial groups identify with whites to a greater extent than whites identify with them. See Derrick Bell, *And We Are Not Saved* 162-77 (Basic Books, Inc., 1987) (Bell's chapter 7, entitled *Chronicle of the Amber Cloud*, suggests that African Americans identify with white Americans to a greater extent than white Americans identify with African Americans.)

deferred to legislative judgments unless the legislation infringes a constitutional right or uses a suspect classification. Racial classifications are particularly suspect—and therefore subject to strict scrutiny—because such classifications are likely to be the result of prejudice, and reflect the fact that minorities have been "deprived of their share of democratic influence." For classifications based on sex, the Court uses only an intermediate level of scrutiny. The Court is apparently not as worried that women have exercised less than their share of political influence.

Women are not, however, effective political participants for a number of reasons. The proof is in the pudding. Although more than half of voters are now women, women receive less than their share of the economic pie—and more than their share of poverty. The intermediate standard of judicial review used in applying formal equality to sex discrimination does not correct for women's ineffective political participation even on a simple economic level.

Formal equality—the current legal standard—does not make women and men economic equals in employment, at divorce or as users of social insurance and welfare systems. Legislation could improve the economic status of women. But legislatures are not likely to adopt the necessary legislation because—for a number reasons, many associated with the structure, meaning, importance and texture of female-male relationships in our society—women are not effective participants in the political system. Many of the traits valued by feminists in the eighties are politically costly. For example, consider women's greater identification with others and women's ability to listen to and support others. Each is likely to interfere with political success in taking an appropriate share of the economic pie.

The solution is not, however, the strict scrutiny standard applied in cases involving race. Strict scrutiny is a slightly tougher version of formal equality; but it is still formal equality. It cannot ensure, for example, that full- and part-time homemakers receive economic support systems and rights at divorce as valuable as those received by breadwinners. This article is not, therefore, an argument for strict scrutiny in the context of gender discrimination.

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76 Ackerman, 98 Harv L Rev at 718 (cited in note 6). See also Carolene Products, 304 US at 152 n 4; Loving v Virginia, 388 US 1 (1967); Regents of the University of California v Bakke, 438 US 265 (1975).

77 See, for example, Michael M. v Sonoma County Superior Court, 450 US 464 (1981).

78 See Becker, Prince Charming, 1987 Sup Ct Rev (cited in note 28) for a more com-
There may, however, be other approaches to women's economic and political problems. Perhaps some entirely new standard of review for economic legislation could correct the problem, at least in part. Or perhaps new approaches to political organization would result in a political system in which more women-identified candidates could run and win. We could, for example, consider separate voting districts for women and men. I hope that this article begins a discussion of what to do about the fact that women's "differences" interfere with effective political participation and ensure, among other things, economic inequality.