

Barriers Facing Women in the Wage-Labor Market and the Need for Additional Remedies: A Reply to Fischel and Lazear

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Fischel and Lazear perceive a world in which women's jobs pay less than men's jobs either because women face barriers to entry into male occupations or because women choose jobs that pay less. They believe that barriers to entry can effectively be eliminated by direct remedies, especially Title VII and the Equal Pay Act. Were these perceptions shared by all, comparable worth would not be the hot issue it is today.

Fischel and Lazear suggest that women may "choose" lower paying, more flexible, less skilled, jobs because of their specialization in non-wage labor.¹ Although this theory seems intuitively plausible, it is not likely to explain, for example, why tree trimmers are paid more than nurses.²

Other more precise empirical studies³ suggest that this choice, or human capital theory, does not explain sexual segregation of the wage-labor market and the associated wage gap.⁴ Women with less

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¹ Fischel & Lazear, *Comparable Worth and Discrimination in Labor Markets*, 53 U. CHI. L. REV. 891, 897 (1986) (citing Polacheck, *Women in the Economy: Perspectives on Gender Inequality*, in 1 U.S. COMM'N ON CIVIL RIGHTS, *COMPARABLE WORTH: ISSUE FOR THE 80's* 34 (1984)). Polacheck maintains that "close to 100% of the wage gap can be explained" by the choice, or human capital, theory. *Id.* at 45.

² See Killingsworth, *The Economics of Comparable Worth: Analytic, Empirical, and Policy Questions*, in *COMPARABLE WORTH: NEW DIRECTIONS FOR RESEARCH* 86, 100 (H. Hartmann ed. 1985) [hereinafter cited as *NEW DIRECTIONS*] (this disparity was at issue in *Lemons v. City and County of Denver*, 620 F.2d 228, (10th Cir.) *cert. denied*, 449 U.S. 888 (1980)). Crowding may not explain the disparity either; nurses' wages have not risen during shortages. See Killingsworth, *supra*, at 110-11.

³ Such studies, for example, rely on time-specific data, unlike the Polacheck study, which uses census data and combines male and female jobs. See, e.g., Blau, *Occupation Segregation and Labor Market Discrimination*, in *SEX SEGREGATION IN THE WORKPLACE: TRENDS, EXPLANATIONS, REMEDIES* 117, 139 (B. Reskin, ed. 1984) [hereinafter cited as *TRENDS*].

⁴ For reviews concluding that Polacheck's thesis—that women's lower wages are due to their lower lifetime participation in the labor force and to the division of labor within the family—is not supported by the empirical evidence. See, e.g., COMMITTEE ON WOMEN'S EM-

continuous employment experience are about as likely to be in male fields as women with more continuous employment experience, and the depreciation rates associated with temporary withdrawal from the wage-labor market are not significantly higher for male jobs than for female jobs.⁵ Skill differences explain little of the gap in pay because the manual skills of many predominantly male jobs are negatively correlated to earnings, and male and female jobs are "nearly equal" in demands for the skills positively correlated to earnings.⁶ Single women are only slightly (1%) more likely to be in nontraditional fields than are married women, and the probability of a woman being in a nontraditional field actually increases with the number of children (0.4% per child).⁷

There is a more basic flaw in Fischel and Lazear's narrow description of discrimination: the neoclassical models they use are inherently incapable of describing many of the barriers women face in the wage-labor market. Fischel and Lazear present the two models developed by neoclassical economics—discrimination caused by a taste for discrimination and discrimination based on statistical differences—augmented by an occasional reference to discriminatory socialization. But, sexual segregation of labor and the subordinate status of women did not begin with capitalism. Capitalism developed in societies in which women were regarded as less important than men, were subordinate to men, and performed different tasks than men. Any economic system which develops in a society in which power and opportunities are differentially allocated on the basis of sex is likely to operate in a manner that will perpetuate those differentials, regardless of the particulars of eco-

PLOYMENT AND RELATED SOCIAL ISSUES, *WOMEN'S WORK, MEN'S WORK: SEX SEGREGATION ON THE JOB 70-73* (B. Reskin & H. Hartmann, eds. 1986) [hereinafter cited as *WOMEN'S WORK*]; Blau, *Occupational Segregation and Labor Market Discrimination*, in *TRENDS*, *supra* note 3, at 117; see also Osterman, *Sex Discrimination in Professional Employment: A Case Study*, 32 *INDUS. & LAB. REL. REV.* 451 (1979) (rejecting human capital explanation on basis of firm-specific data).

⁵ Corcoran, Duncan & Ponza, *Work Experience, Job Segregation, and Wages*, in *TRENDS*, *supra* note 3, at 171, 189; England, *Wage Appreciation and Depreciation: A Test of Neoclassical Economic Explanations of Occupational Sex Segregation*, 62 *SOC. FORCES* 726, 741-42 (1984); England, *The Failure of Human Capital Theory to Explain Occupational Sex Segregation*, 17 *J. HUM. RESOURCES* 358, 369 (1982).

⁶ England, Chassie, & McCormack, *Skill Demands and Earnings in Female and Male Occupations*, 66 *SOC. & SOC. RESEARCH* 147, 163-64 (1982). The study on skill differences is important since, as its authors note, "the greater productivity of males seems unlikely unless male occupations require more skill. Otherwise, it is unclear how men's greater human capital manifests itself in greater productivity." *Id.* at 148.

⁷ Beller, *Occupational Segregation by Sex: Determinants and Changes*, 17 *J. HUM. RESOURCES* 371, 384 (1982).

conomic theory. For example, opportunities and wages may be allocated on the basis of productivity and potential in a capitalist economy, but productivity and potential are assessed by those with the ability to pay. As a result, the preferences, values, biases, and blind spots of the powerful determine the allocation of wages and opportunities, and the meaning of "productivity" and "potential." Thus, neoclassical models of discrimination cannot describe many of the barriers women face in the wage-labor market.

Equally troubling is Fischel and Lazear's characterization of discrimination based on accurate statistical differences between men and women as "non-invidious."⁸ I will take up the problem of statistical discrimination here, and then discuss the difficulties with remedying the other forms of discrimination Fischel and Lazear identify and the forms of discrimination they ignore. I will conclude with a brief discussion of comparable worth.

I. EFFICIENT DISCRIMINATION: "NON-INVINDIOUS?"

According to Fischel and Lazear, women are treated differently from men in a "non-invidious" way when male sex is an accurate statistical proxy for such factors as productivity, attachment, and commitment to wage labor.⁹ Anti-discrimination legislation should not unnecessarily prohibit efficient discrimination;¹⁰ comparable worth should, therefore, be rejected. Thus, if the pay gap between men and women is the result of employers paying less for women's jobs because the incumbents are predominantly women (and women as a group have been less attached to the wage-labor market in the past¹¹), discrimination is

⁸ Fischel & Lazear, *supra* note 1, at 913-15.

⁹ Fischel and Lazear present an economic definition of discrimination—i.e., that discrimination occurs only when groups with the same average productivity receive different average compensation—as if it were widely accepted in other contexts. It is not. *See, e.g.,* Lundberg & Startz, *Private Discrimination and Social Intervention in Competitive Labor Markets*, 73 AM. ECON. REV. 340, 341-342 (1983) (noting that economists and the legal system address different concerns with the term "discrimination").

Recent research suggests that even when groups appear to differ, statistical discrimination may be inefficient and discriminatory (in the economic sense described above). *See id.* (arguing that statistical discrimination leads to underinvestment in human capital); Schwab, *Is Statistical Discrimination Efficient?*, 76 AM. ECON. REV. 228 (1986).

¹⁰ Some non-invidious discrimination is illegal under existing anti-discrimination legislation, but Fischel and Lazear maintain that the only possible reason for the prohibition is the difficulty of distinguishing between "non-invidious" and invidious discrimination. *See* Fischel & Lazear, *supra* note 1, at 913-15.

¹¹ Such assumptions are often inaccurate. *See* Lloyd, *The Division of Labor between the Sexes: A Review*, in *SEX DISCRIMINATION AND THE DIVISION OF LABOR* 1, 17 (C. Lloyd ed. 1975) [hereinafter cited as *SEX DISCRIMINATION*].

“non-invidious” and should be legal.

This view—that, ideally, anti-discrimination legislation should not prohibit efficient discrimination—deprives equality of opportunity of all meaningful content by equating it with the norm of efficiency. But equality of opportunity (whatever it means¹²) is a quite different norm from efficiency.

Using gender as a proxy for desirable attributes denies equal opportunity in every sense to women who would prefer nontraditional roles. “Efficient” statistical discrimination is a vicious circle, perpetuating the subordinate status of women in the wage-labor market. Women can be paid less than men because women have been the primary caretakers of children and primarily responsible for housework. Women will therefore continue to have these responsibilities (and to be economically dependent on men) because their alternative opportunities are less attractive than their husbands’. Individual women will thus have no opportunity to break out of the circle. All women can be relegated to subordinate status on the basis of gender without any discrimination visible to neo-classical economists.

More fundamentally, the acceptance of efficient discrimination as non-invidious ignores the fact that efficiency (which is based on willingness to pay) is a product of existing distributions of wealth, entitlements, and preferences, all of which have been affected by discrimination based on gender. Given the context in which efficient, statistical discrimination occurs, three additional objections may be made on moral grounds.

First, statistical discrimination, even if accurate on average, may not be efficient: it may impose a greater cost on women than the costs saved (or losses avoided) by employers. Women should be able to overcome this obstacle by making it worthwhile for employers to search for better information.¹³ But because of the existing distribution of wealth (and transaction costs), women may be unable to offer employers enough to cover the additional costs even though the benefits to women may outweigh these costs.¹⁴

Second, even if statistical discrimination is consistent with the preferences of women, their preferences may be “adaptive,” be-

¹² See, e.g., ALISON JAGGER, *FEMINIST POLITICS AND HUMAN NATURE* 17, 193-97 (1983) (discussing the meaning of “equality,” “opportunity,” and “equal opportunity” from a feminist perspective).

¹³ See Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1 (1960).

¹⁴ See, e.g., Dworkin, *Is Wealth a Value?*, 9 J. LEGAL STUD. 191, 191-94, 204 (1980); Kennedy, *Cost-Benefit Analysis of Entitlement Problems: A Critique*, 33 STAN. L. REV. 387, 392-93, 401-03 (1981).

cause of the human tendency to adjust one's desires to what is attainable.¹⁵ Women might have quite different preferences if their opportunities were not limited because of their gender.¹⁶

Third, statistical discrimination, even when accurate, can have systemic distributional effects when the costs of individual errors and inefficiencies are borne disproportionately by an economic minority.¹⁷ Even accurate and efficient statistical discrimination against women will tend, systematically, to make men ever wealthier relative to women.

One can view efficient discrimination as non-invidious only by focusing almost exclusively on the person in power.¹⁸ But the primary reason for ending discrimination should not be to make those in power better persons, or more rational. Instead, the primary purpose should be to eliminate real-world problems faced by the victims of discrimination. Women paid less because of their gender face the same real-world consequences regardless of the motives and possible good faith of the discriminator.¹⁹

II. SOCIALIZATION

Fischel and Lazear concede that the crowding of women into female-dominated occupations may be the result of discriminatory socialization. They argue that direct remedies are superior to comparable worth²⁰ but they never suggest any concrete remedy. Even ignoring its lack of a concrete remedy, their proposal is impractical. The effects of discriminatory socialization cannot be eliminated easily and quickly by direct remedies because, among other things, many direct remedies would be considered unconstitutional.²¹ It is also too late for direct remedies for many women and men who are already socialized. Comparable worth should therefore be considered, along with other partial and indirect remedies.

If wages for women's jobs under comparable worth are closer

¹⁵ See generally JON ELSTER, *SOUR GRAPES* (1983).

¹⁶ See MARY WALSHOK, *BLUE-COLLAR WOMEN* 155-70 (1981) (describing how women's job preferences are created by their job opportunities and on-the-job experience).

¹⁷ See RICHARD POSNER, *THE ECONOMICS OF JUSTICE* 355 (1981).

¹⁸ See Freeman, *Legitimizing Racial Discrimination through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 *MINN. L. REV.* 1049, 1052-57 (1978).

¹⁹ Any additional hurt caused by overt hostility pales, in the long run, next to the life-long psychological and economic effects of being paid less on the basis of gender.

²⁰ Fischel & Lazear, *supra* note 1, at 909-10.

²¹ A comprehensive direct remedy would require wide-ranging governmental regulation of speech to prevent discriminatory socialization, including, for example, regulation of books, movies, television, parental speech and practices, and the teachings of historically male-dominated religions.

to the wages that would prevail in a nondiscriminatory world,²² comparable worth would be an appropriate way to compensate some women, in part, for the effects of discriminatory socialization. Comparable worth has the further potential to change socialization practices. If, as Fischel and Lazear suggest, more men would be interested in becoming nurses if nurses were paid more than janitors, girls and boys would be less likely to be socialized to consider nursing women's work. Comparable worth will not—any more than any other possible remedy—immediately eliminate discriminatory socialization. But it should, over time, help to weaken current socialization patterns, and should be pursued together with other partial or indirect remedies.

III. CURRENT REMEDIES FOR "NEOCLASSICAL" DISCRIMINATION

Fischel and Lazear identify two forms of invidious discrimination: an employer's conscious preference for men over women because of the employer's own taste for discrimination or the tastes of employees or customers, and an employer's mistaken use of male sex as a proxy for desired traits actually shared equally by women.²³ Title VII and the Equal Pay Act were probably designed with such discrimination in mind; at the time, discrimination was often overt as well as conscious.

To some extent, Title VII and the Equal Pay Act have been effective. Perhaps their greatest effect has been to change cultural norms; no longer is explicit discrimination on the basis of sex widely regarded as natural and unobjectionable. Explicitly different wage scales for men and women no longer exist and most jobs are no longer formally closed to women.

These statutes are not, however, effective remedies for covert discrimination. Unless the plaintiff can produce a smoking gun, individual cases alleging differential treatment are notoriously hard to win. The plaintiff must, for example, convince a judge that an employer refused to hire her because she is a woman. The employer typically responds that the decision was based on some neutral factor and some difference between applicants can always be found to support the claim. Judges are very reluctant to second-

²² See Holzhauer, *The Economic Possibilities of Comparable Worth*, 53 U. CHI. L. REV. 919, 930 (1986).

²³ See Fischel & Lazear, *supra* note 1, at 914. Fischel and Lazear do not use the word "conscious," but in each of their detailed examples, an employer decides to treat men one way, and women another. Such discrimination is "conscious" in the sense that the employer knows it is treating men one way and women another.

guess employers' judgments in such cases.²⁴

In addition, Title VII and the Equal Pay Act often give the victim little incentive to sue. Monetary relief, under both statutes, is often limited to back pay for a relatively short period. If the victim is able to find other employment (which she is obligated to try to do), the monetary award is usually relatively small. She is also unlikely to be interested in a court order forcing the discriminator to hire her. If she is still an employee, there are obvious reasons not to sue if she is interested in continued employment. For any victim, a suit against an employer or potential employer may damage her chances for successful employment elsewhere.

Although Fischel and Lazear consider the novelty of comparable worth a reason to avoid it, the fact that it is, to some extent,²⁵ a break with traditional approaches to discrimination is one of its advantages. Comparable worth—because it does not require proof of any decision to treat men and women differently—is a more viable remedy for a period like the present in which discrimination is seldom documented and is less likely even to be conscious.²⁶

Comparable worth also insulates most recipients from the consequences of suing employers. If even one nurse, for example, is willing to sue for a comparable-worth adjustment to wages, all the nurses employed by that employer will benefit. And individual women will have more incentive to seek a comparable worth remedy because, if successful, the remedy is more likely to increase earnings for life.

IV. OTHER BARRIERS FACING WOMEN

Women face many barriers to access and advancement in the wage market for labor, many of which have nothing to do with any conscious decision to prefer men over women.

1. *The ideology of gender and sexual identity.* At a very young age, girls and boys are taught an ideology of gender²⁷ under

²⁴ See, e.g., *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 254-57 (1981).

²⁵ Comparable worth is entirely consistent with the disparate impact strand of Title VII; it would allow women to challenge employers' use of facially-neutral market wages which have a disparate impact on women. See *Stone, Comparable Worth in the Wake of AFSCME v. State of Washington*, 1 *BERKELEY WOMEN'S L. J.* 78, 81, 101-12 (1985).

²⁶ See *infra* notes 32-45 and accompanying text.

²⁷ Fischel and Lazear discuss differential socialization of girls and boys as a form of discrimination, *Fischel & Lazear, supra* note 1, at 905-06. But they do not discuss the internalization of the ideology of gender as part of personal sexual identity. Their discussion suggests that men and women simply have different interests and expectations as a result of socialization.

which girls and boys (women and men) are essentially different with different roles and abilities. Both girls and boys are pressured to make the ideology of gender part of their personal sexual identity. A girl can become a true woman, a boy a true man, only if each acts in a manner which accords with the reigning ideology of what is appropriate for her or his sex. An important part of the unconscious personal identity of each is, therefore, the internalization of sex-specific behavioral norms and roles.²⁸

If an individual chooses work traditionally performed by the other sex, she faces considerable tension between her work and her sexual identity, and threatens the sexual identity of those around her. Employers are often reluctant to hire a woman for a man's job because it requires behavior inconsistent with their view of femininity.²⁹ There are, therefore, powerful barriers to women performing men's jobs and vice versa. The internal barriers appear to be especially strong for men who might otherwise enter certain nurturative female fields, such as nursing.³⁰

Since gender ideology has become part of sexual identity, it is not surprising that the workplace has been resistant to integration. Moreover, both the ideology of gender and the sexual segregation of work preceded capitalism; we have no reason to think that capitalism can eliminate either. Traditional remedies, requiring only that women be treated like men if they want a job traditionally held by men, and vice versa, do little to change this aspect of socialization.

Comparable worth, however, would weaken male reluctance to enter female fields by lowering the economic disincentive for men who have other options, and easing some of the social and personal stigma attached to male entry into a female field. If, for example, nursing were higher paying, nursing might be regarded as more appropriate work for men. If more men perform jobs traditionally held by women, women would have greater opportunity to pursue jobs traditionally held by men, and employers might be more will-

²⁸ See Mason, *Commentary: Strober's Theory of Occupational Sex Segregation*, in *TRENDS*, *supra* note 3, at 157, 164-169; Marini & Brinton, *Sex Typing in Occupational Socialization*, in *TRENDS*, *supra* note 3, at 192, 195-99.

²⁹ See, e.g., UNITED STATES COMM'N ON CIVIL RIGHTS, *WOMEN STILL IN POVERTY* 16 (1979) [hereinafter cited as *STILL IN POVERTY*] (e.g., an employer refused to hire a female auto mechanic with two years of experience because "she'll get too dirty.").

³⁰ As the nursing example suggests, the risk of a man being labeled homosexual often seems higher than the analogous risk for women. In addition, the homosexual label may be more threatening to men. For evidence that "the occupational aspirations of males are . . . more highly sex typed than those of females," see Marini & Brinton, *Sex Typing in Occupational Socialization*, in *TRENDS*, *supra* note 3, at 192, 200.

ing to hire women for male jobs if fewer men were available.³¹

2. *Unconscious bias in valuing the work of women.* Sexual segregation is troubling because women are valued less than men in most cultures,³² and in our own. The work of women is devalued, just as women are devalued. Hence, jobs held predominantly by women pay less because of unconscious, and even inadvertant, discrimination in valuing women. In addition, in our society, only a few positions are regarded as women's jobs, whereas men have a wide range of occupations open to them. As a result, employers are likely to have an abundance of those employees whose work they regard as least valuable. Market forces will, therefore, only further depress the wages of undervalued women.

This is the core of the moral case for comparable worth. Study after study reveals that a woman is likely to be rated less competent and less valuable than an identical man.³³ For example, in one study female and male students regarded an article as less important when it was presented as having a female author than when presented as having a male author.³⁴ It is not surprising that women's jobs pay less than men's jobs.

Moreover, subordination and undervaluation of women preceded current job evaluation studies and contemporary notions of the relative productivity and difficulty of specific tasks.³⁵ We tend to rate as undemanding and unskilled tasks requiring "feminine" skills, and to rate as more demanding and skilled tasks requiring objectively similar "masculine" skills.³⁶ Job evaluation studies are "highly illuminating," not because they reveal actual differences in

³¹ See Holzhauser, *supra* note 22, at 931.

³² See, e.g., *Leviticus* 27:3-4 (men to be valued at 50 shekels, and women at 30, the same ratio as the current pay gap).

³³ See, e.g., Dipboye, Arvey & Terpstra, *Sex and Physical Attractiveness of Raters and Applicants as Determinants of Resume Evaluations*, 62 J. APPLIED PSYCHOLOGY 288 (1977); Etaugh & Kasley, *Evaluating Competence: Effects of Sex, Marital Status, and Parental Status*, 6 PSYCHOLOGY WOMEN Q. 196 (1981); McArthur, *Social Judgment Biases in Comparable Worth Analysis*, in NEW DIRECTIONS, *supra* note 2, at 53, 55-64; Mischel, *Sex Bias in the Evaluation of Professional Achievements*, 66 J. EDUC. PSYCHOLOGY 157 (1974); Placente, Penner, Hawkins & Cohen, *Evaluation of the Performance of Experimenters as a Function of Their Sex and Competence*, 4 J. APPLIED PSYCHOLOGY 321 (1974).

³⁴ Goldberg, *Are Women Prejudiced Against Women*, TRANSACTION, April 1968, at 28.

³⁵ Employers are often price setters rather than price takers, see Holzhauser, *supra* note 22, at 924, and internal wages for many jobs are based on formal or informal evaluations of such factors as relative skill and difficulty.

³⁶ For example, the Department of Labor's Dictionary of Occupational Titles for 1974 rated the positions of nursery school teacher and foster mother as less skilled than the position of horse pusher (someone who feeds, waters, and tends horses en route to train). See M. WITT & P. NAHERNY, *WOMEN'S WORK—UP FROM .878, REPORT ON THE DOT RESEARCH PROJECT 24-25, 29-33* (1975).

skills between female and male jobs, but because they reveal a sexual hierarchy so pervasive that it is often invisible.³⁷

The choice theory cannot answer the moral claim for comparable worth. Even if it were true that most women freely choose women's jobs (rather than being socialized to serve such functions), it would still be immoral to pay workers less *because* they are women, members of the low-valued second sex.

Fischel and Lazear characterize the moral claim for comparable worth as either a rhetorical flourish or as a penalty arbitrarily imposed on innocent employers to compensate roughly for discrimination elsewhere in society.³⁸ But the moral claim for comparable worth is that this employer is paying these people doing women's work less than it would pay in a world without discrimination, in a world in which the work of women is not undervalued and in which as many (and as valuable) opportunities are open to women as to men.³⁹

Neither Title VII nor the Equal Pay Act provides direct remedies for the undervaluing of tasks performed predominantly by women. Comparable worth, however, would be an appropriate and fairly direct remedy for such discrimination. By forcing employers to pay more for women's work, comparable worth should result in the work of women (and women themselves⁴⁰) actually being valued more,⁴¹ both when women work in women's jobs and when women work in integrated jobs or in men's jobs.

3. *Unconscious use of stereotypes to fill in information gaps.* Most employment decisions are made on the basis of incomplete evidence. Empirical data indicates that when decisions must be made in such circumstances, sexual stereotypes (perhaps accurate, perhaps inaccurate, but in any event discriminatory) are used to fill in the gaps.⁴² This tendency to rely on stereotypes in the ab-

³⁷ Phillips & Taylor, *Sex and Skill: Notes Towards a Feminist Economics*, 6 FEMINIST REV. 79, 84 (1980).

³⁸ Fischel & Lazear, *supra* note 1, at 906-07, 908.

³⁹ I assume, here and elsewhere, that wages under comparable worth would better approximate wages in a nondiscriminatory world than do existing wages. See Holzhauser, *supra* note 22, at 930.

⁴⁰ Because of space constraints, I do not discuss an important and pervasive problem with traditional remedies. Women are unlikely to perceive discrimination because they, almost inevitably, share their culture's view: men are superior, more powerful, and so on. Here, too, comparable worth may help; if women are paid more, we may regard ourselves as more valuable.

⁴¹ See McArthur, *Social Judgment Biases in Comparable Worth Analysis*, in NEW DIRECTIONS, *supra* note 2, at 53, 58 (evaluators' ratings of difficulty and worth of job are strongly correlated to the salary of incumbents).

⁴² Fischel and Lazear do discuss the use of male sex as a proxy for productivity, etc.,

sence of other evidence is likely to disadvantage women, relative to men, when they apply for higher-paying traditionally male jobs. Men are likely to be preferred because of common stereotypes holding that men have more attachment to the wage market, are better supervisors, or are more assertive.⁴³ Women are likely to be given more routine tasks and fewer opportunities for training or advancement.⁴⁴

Comparable worth may be more effective (though less direct) as a remedy for these forms of discrimination than existing anti-discrimination legislation.⁴⁵ If work done by women is seen as more valuable, women will be seen as more valuable, and stereotypes which assume that men are better, more effective, or more reliable workers should begin to break down.

4. *Sex-linked external and internal barriers to women's advancement in jobs traditionally held by men.* In both blue-collar and white-collar settings, the fact that women must advance into male territory to succeed creates a number of external and internal barriers to success.⁴⁶ I mention only a few. A woman entering a traditionally male, blue-collar field often faces hostility from co-workers who resent the intrusion.⁴⁷ Often, such women face sexual harassment.⁴⁸ Much training in skilled crafts is informal on-the-job training given by older workers to newcomers; it may be difficult for a woman to get such training from hostile fellow workers.⁴⁹ And women may be required to prove that they can really do a man's job by, for example, performing unusually arduous tasks.⁵⁰ A female apprentice does not "fit in" the way a male apprentice does.⁵¹

but always in the context of a conscious decision to treat men one way and women another. See Fischel & Lazear, *supra* note 1, at 914.

⁴³ See ROSABETH KANTER, *MEN AND WOMEN OF THE CORPORATION* 197-205 (1977) (also explaining that the stereotype image of a female supervisor describes the behavior of male and female supervisors without real power); Rosen & Jerdee, *Influence of Sex Role Stereotypes on Personnel Decisions*, 59 *J. APPLIED PSYCHOLOGY* 9 (1974); Terborg & Ilgen, *A Theoretical Approach to Sex Discrimination in Traditionally Masculine Occupations*, 13 *ORGANIZATIONAL BEHAV. & HUM. PERFORMANCE* 352 (1975).

⁴⁴ See sources cited *supra* note 43.

⁴⁵ Title VII and the Equal Pay Act are not likely to be effective in most instances, for the reasons given *supra* at notes 24-26 and accompanying text.

⁴⁶ In subsection 1, *supra* at notes 27-31 and accompanying text, I discussed barriers to entry to a job held predominantly by members of the opposite sex. In this subsection, I discuss barriers to advancement.

⁴⁷ See M. WALSHOK, *supra* note 16, at 13, 188, 192-93, 211-12, 221-32.

⁴⁸ See *id.* at 23, 228-32, 239-40, 259-60.

⁴⁹ See *id.* at 186, 193, 210-11, 221.

⁵⁰ See *id.* at 223, 259. Because of their sexual identity, male workers may have difficulty admitting that a woman can do their job.

⁵¹ See *id.* at 231-32.

Similar obstacles face women trying to advance into traditionally male levels of upper management. Again, I mention only a few. Women are often protected by those around them, and thus denied the opportunity to be effective in difficult tasks.⁵² At this level, having a powerful mentor is an important prerequisite for success, and women are less likely to have a mentor since mentors usually sponsor younger employees with whom they can identify.⁵³ As one employee put it, "Who can look at a woman and see themselves?"⁵⁴ For these reasons and others, employees tend to perceive a woman as less likely (than a similar man) to have substantial upward mobility or real power.⁵⁵ These perceptions are often self-fulfilling.

Those at the top tend to promote people of the same sex with similar social backgrounds for another reason. Such people are seen as more trustworthy and more likely to behave in a manner consistent with the behavioral code of those at the top. To promote a person of another sex to a high policy-making position is to introduce an unnecessary element of uncertainty.⁵⁶

In addition, male bonding (learned in clubs, sports, and other activities from which women are excluded) is a barrier to the advancement of women into high levels of management.⁵⁷ A woman simply does not fit in with the guys the way a guy does.

The first women who enter into previously all-male groups feel these barriers particularly acutely.⁵⁸ In addition, they feel considerable pressure to perform well so as not to hurt the chances of the women who will follow them, yet they lack any intra-group support system analogous to that enjoyed by men.⁵⁹ Internalization of sex-

⁵² See Kanter, *supra* note 43, at 187-88.

⁵³ See *id.* at 181-84.

⁵⁴ *Id.* at 184. Also, men often have difficulty relating to women on a professional, non-sexual basis. This difficulty may directly deter powerful men from sponsoring younger women. Powerful men may also avoid sponsoring younger women because of the possibility of rumors that the relationship is sexual.

⁵⁵ See *id.* at 181-84, 197-205; Terborg & Ilgen, *supra* note 43, at 374 (also, success of a woman is more likely to be attributed to luck, whereas a man's success is more likely to be attributed to competence; therefore, a so-far-successful woman is less likely to be seen as having as much upward mobility as a similar man).

⁵⁶ See Kanter, *supra* note 43, at 48-63, 222; Wiley & Eskilson, *Scaling the Corporate Ladder: Sex Differences in Expectations for Performance, Power and Mobility*, 46 *Soc. PSYCHOLOGY Q.* 351, 357-58 (1983).

⁵⁷ See Kanter, *supra* note 43, at 58-59; Nazario, *Gentlemen of the Club*, Wall St. J., Mar. 24, 1986, § 4, at 19D (part of *A Special Report—The Corporate Woman*); Freedman, *How To Do Everything Better*, Wall St. J., Mar. 24, 1986, § 4, at 25D.

⁵⁸ See Macke, *Token Men and Women*, 8 *Soc. WOMEN & OCCUPATIONS* 25 (1981).

⁵⁹ See generally Kanter, *supra* note 43; Walshok, *supra* note 16.

specific behavioral norms, by the women breaking in and those around them, makes finding an effective and comfortable style in a male environment difficult.⁶⁰ If the work place is to be desegregated, woman after woman in department after department in company after company must survive—indeed, succeed—amid such pressures and isolation.

Theoretically, Title VII is available as a remedy for much discrimination of this type, though not all. For example, Title VII provides no remedy for differential treatment by customers or students.⁶¹ Even when Title VII affords a remedy, it is not an effective one. Filing a sex discrimination suit is more likely to end a woman's career than to lessen the pressures she faces and provide a more supportive environment.

The only effective way to eliminate these barriers is to integrate the workforce at all levels. Strong affirmative action quotas or goals would be an effective direct remedy, but such legislation has not been enacted. Comparable worth should help (though indirectly) since it gives both men and women more incentive to pursue jobs held predominantly by the other sex.⁶² If fewer men are available for traditionally male jobs, women may be seen as more valuable for such positions, and may receive more acceptance and support from male colleagues.

5. *Institutionalized rules unnecessarily restrict the entry or advancement of women in male jobs.* Many traditionally male jobs are unnecessarily geared to male employment patterns. There is, for example, no reason why continuity of employment should be critical for employment in a unionized skilled craft, though not in nursing. But seniority systems, established to secure jobs for certain workers when discrimination against women was both legal and overt, are now formidable barriers to women's entry and advancement in many male fields.⁶³

Similarly, age limits on apprenticeship programs and other common conditions of apprenticeships are compatible with male employment patterns. Women, however, are likely to be interested in skilled trades only after learning something about the realities

⁶⁰ See Kanter, *supra* note 43, at 221-30; Walshok, *supra* note 16, at 190-244; ANNE MACKE, *SEX-TYPED TEACHING STYLES OF UNIVERSITY PROFESSORS AND STUDENT REACTIONS* 171-77 (1980).

⁶¹ Title VII provides a remedy only when an employer's decision is based on biased preferences of customers or students.

⁶² See Holzhauer, *supra* note 22, at 931.

⁶³ See Roos & Reskin, *Institutional Factors Contributing to Sex Segregation in the Workplace*, in *TRENDS*, *supra* note 3, at 235, 242, 248-50.

of life and their need for financial independence; at that point, it is often impossible for women to enter apprenticeship programs.⁶⁴

These "neutral" requirements and conditions are likely to crowd women into women's jobs because of the differences between the life patterns of young men and young women, though often these differences could easily be accommodated. Direct remedies to overcome these institutionalized barriers have not been enacted. Comparable worth should help to overcome these barriers, although indirectly, since employers may be more willing to make traditionally male jobs flexible enough to accommodate (valuable) women, especially if there are fewer men interested in such jobs.⁶⁵

6. *Information problems.* Information about opportunities in skilled, traditionally male, blue-collar jobs is often unavailable to women. Such information is typically passed through male networks, or presented in a form suggesting that the jobs are for men.⁶⁶ Traditional remedies do not reach such practices. Under a comparable worth regime, women may be seen as more valuable. Employers may therefore be more interested in making information available to women in a form indicating that the job is open to them. If more men work in traditionally female jobs, the shortage of men for traditionally male jobs may result in employers making real efforts to give information to valuable women.

7. *Steering of women into women's jobs.* Women continue to be steered into women's jobs by guidance counselors, employment agencies (including governmental agencies), and personnel departments.⁶⁷ Remedies, even when theoretically available, will not be pursued if women do not know about their missed opportunities. Under comparable worth, employers would no longer have an incentive to maintain a dual labor market—one for men and one for women.⁶⁸ If women have to be paid comparably to men no matter what they do, employers and their agents will have less incentive to steer women into women's jobs, and shortages of males for male jobs⁶⁹ would give employers an incentive to change their practices.

⁶⁴ See STILL IN POVERTY, *supra* note 29, at 21.

⁶⁵ See Holzhauer, *supra* note 22, at 930.

⁶⁶ See Roos & Reskin, *supra* note 63, at 237-38, 241, 245. When given information about blue collar jobs in a form indicating that the jobs are also for women, women are interested. *Id.*; see also Walshok, *supra* note 16, at 155-70.

⁶⁷ See STILL IN POVERTY, *supra* note 29, at 19-23.

⁶⁸ See, e.g., Bergmann, *The Economic Case for Comparable Worth*, in NEW DIRECTIONS, *supra* note 2, at 71; Holzhauer, *supra* note 22, at 931; Madden, *Discrimination—A Manifestation of Male Market Power?* in SEX DISCRIMINATION, *supra* note 11, at 146, 156-68.

⁶⁹ See Holzhauer, *supra* note 22, at 931.

V. CONCLUSION

The case for comparable worth is even stronger than suggested thus far. We are all socialized to undervalue women and the work of women, and women are channeled into only a few occupations. Women, as a result, tend to earn less than men, to consider themselves (and their careers) less important than their husbands (and their careers), and to have less power in marriage. Further, women tend to be channeled into a few low-paying jobs regardless of individual potential and interest.

But there is more. Girls are socialized to serve others, to be interested in women's jobs, to be primarily responsible for child care, and to regard their roles as wage earners as secondary to their other maternal responsibilities. Boys, but not girls, are raised with the expectation that they will be primarily responsible, financially, for their children. These assumptions are mirrored in employers' attitudes: "Women get penalized for having children, and men get promoted for having children to support."⁷⁰

But marriage is no longer a reliable institution. Most divorced fathers do not pay child support. Most divorced mothers (90% of whom have custody) are the only source of support for their children, and virtually all non-welfare custodial mothers are the primary source of support for their children. Most support their children, often in poverty, by performing low-paying women's jobs.⁷¹

Comparable worth will not eliminate all of the barriers women face in the wage-labor market, any more than existing anti-discrimination legislation has. But comparable worth would be a fairly direct remedy for much discrimination—i.e., unconscious

⁷⁰ SYLVIA HEWLETT, *A LESSER LIFE* 360 (1986) (quoting school teacher in England). For empirical support, see Hill, *The Wage Effects of Marital Status and Children*, 14 J. HUM. RESOURCES 4 (1978); Osterman, *supra* note 4.

⁷¹ See generally LENORE WEITZMAN, *THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* (1985).

⁷² In their reply, Fischel and Lazear criticize me for failing to explain how a comparable worth remedy would work. As they note, I have not identified when comparable worth should be used "to intervene in markets, against whom, and how much." Fischel & Lazear, *Comparable Worth: A Rejoinder*, 53 U. CHI. L. REV. 950, 951 (1986).

In the limited space allocated to me, I have purported only to note problems with the objections to comparable worth which Fischel and Lazear consider compelling. They conclude that the "standard market critique of comparable worth is not entirely convincing," since "[m]any situations exist where market prices are not accepted as final." Fischel & Lazear, *supra* note 1, at 894. Fischel and Lazear attempt to build a case against comparable worth independent of the difficulty of measuring worth with a non-market standard. Their

and inadvertant undervaluing of women's work—and would be valuable as an indirect remedy for many other forms of discrimination. In light of the diversity of barriers facing women, and their need adequately to support their children, we should pursue as many means as possible.⁷²

objections to comparable worth hold even if comparable worth would eliminate discrimination reflected in market wages. I therefore assume, throughout my discussion, that wages under comparable worth would more closely approximate wages in a world without discrimination than do market wages. *See supra* text accompanying notes 22 & 39. The purpose of my discussion has been to show that the objections Fischel and Lazear regard as compelling are not. In this, it seems that I have been successful. The debate must therefore shift to whether comparable worth would be a workable and effective remedy.