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"It has been said that respect for the law, in a democracy, has derived from the fact that the law expressed the will of the citizens... But how could this hold good for the minority?"  
— Emile Durkheim.

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## Preface

*This issue of the Amici newsletter features the first in a new series of symposia on important books in the sociology of law. For this inaugural symposium, common sense dictated to select the first book in our sociological specialty to have received the highest distinction of peer recognition in both our section and our professional organization at large: Legalizing Gender Inequality: Courts, Markets, and Unequal Pay for Women in America, by Robert Nelson and William Bridges (Cambridge University Press, 1999). Lauren Edelman and Erin Kelly offer reviews of the book, and the authors provide a response. The summary is by the Editor. The online version of this symposium features added attractions.*

## Book Symposium: LEGALIZING GENDER INEQUALITY by Robert L. Nelson and William P. Bridges

## Summary

In *Legalizing Gender Inequality*, Robert Nelson and William Bridges argue that male-female pay differentials are significantly shaped by organizational wage-setting decisions, and are not a mere product of the workings of the market, principles of efficiency, or culturally pervasive sexism. Against the dominant economic theory of between-job wage differences (female jobs pay less than male jobs because of market forces), the authors argue in favor of an 'organizational inequality model' that suggests that organizations tend to discriminate workers in predominantly female jobs by denying them power in organizational politics and by reproducing male cultural advantages. The widespread, uncritical acceptance of the economic theory accounts for the ironic fact that while the U.S. Supreme Court (in *County of Washington v. Gunther*, 1981) held that employers can be held liable for pay disparities that result from sex discrimination, women have had little success in challenging such pay disparities in the lower federal courts. By uncritically accepting the market explanation, the courts have in effect 'legalized' inequality by 'giving authoritative approval' to employers' assertions that between-job pay disparities are economically driven.

Nelson and Bridges test their theory on the basis of a study of litigated cases of four, large organizations that were sued for pay discrimination: a state employment system, a state university, a Fortune 500 retailing giant, and a bank. Results of the analysis show that while the specific contexts of the four organizations partly account for sex differences in pay, there remains a substantial gender gap even after control for determinants of wage differences and market influences. Based on these findings, Nelson and Bridges call for a new legal policy to gender-based pay discrimination. Most importantly, the authors urge the courts to adopt a "standard of responsibility, in which the touchstone of liability is wage differentials that cannot be explained by genuine market and efficiency considerations" (p.349). Thus, organizationally driven discriminatory processes may be uncovered for which employers can and should be held legally responsible.

—See *Symposium* page 3.

**From the Chair**

**A LEGAL FRAMING CONTEST AND A MEDIA PROFICIENT PRESIDENT**

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The octogenarian Ben Ferencz is of a different generation than Ann-Marie Slaughter, but neither is inclined to lightly leave an argument, and they currently are on the same side of an important legal framing contest. When Ferencz graduated from Harvard Law School, where Slaughter now teaches, he went off to fight in World War II. By the end of the war he was judging war criminals in crude military tribunals set up in the field by the occupying forces, and after the war he was a prosecutor at Nuremberg. He is still fighting. Within a week of the 9/11 attack on the World Trade Towers, he called for an international criminal tribunal to indict individuals and organizations for committing crimes against humanity. He noted that terrorism is a tricky term and that these were mass murderers whose acts are more meaningfully recognized as crimes against international humanitarian law. Ben is a modern man and you can find his thoughts expressed in a September 19, 2001 interview on the internet with Katy Clark, at [www.globalpolicy.org](http://www.globalpolicy.org).

A little slower on the draw, George Bush entered the media framing contest about these events on November 13, 2001, with his White House press release authorizing use of the military justice system for the "Detention, Treatment, and Trial of Certain Non-Citizens in the War on Terrorism." The President insisted that military justice was necessary in response to the 9/11 attacks because it is "not practicable to apply in military commissions under this order the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts." The President did not even deem it appropriate or necessary to consider the use of the international criminal justice that Ferencz proposed.

Four days later Ann-Marie Slaughter took up the fight alongside Ferencz for the use of an international criminal tribunal in a *New York Times* op-ed piece, arguing that "Al Qaeda Should Be Tried Before the World." Among her compelling new arguments was that the treatment of the terrorists as "nonprivileged combatants" rather than as common criminals would hand them a symbolic victory. Slaughter persuasively observed that "Al Qaeda members are international outlaws, like pirates, slave traders or torturers."

Until the President's press release, the use of an international tribunal was at least a part of the national media debate. After his proclamation the framing of the debate shifted entirely to a competition between the use of military justice and U.S. federal district courts. The President won the framing contest by using his power to shift the terms of the debate. It may have been a poorly crafted legal brief, but it was a winning political move, leaving the President free to ignore the world beyond the American military and domestic courts altogether.

Eventually the President's tactics may prove short-sighted. Ferencz is still optimistic in his ninth decade, arguing that "we have to change the way people think and that can't be done quickly." Ultimately, it is citizens of the world rather than the United States media that must be convinced that justice is being done. Ferencz adds, "I say to the skeptics, follow your procedure and you'll find out what happens. You have seen what happens." The framing contest continues. Best not to count Ferencz and Slaughter out of the contest too early.

*John Hagan is the 2001-2002 Chair of the ASA Sociology of Law Section.*

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**Editorial Note**

*The Editor very humbly apologizes for the belated appearance of this issue of the Amici newsletter.*

*The next issue is planned for the Summer of 2002, in time before the annual meeting in Chicago. Section members are kindly encouraged to contact the Newsletter Editor with any and all matters they deem appropriate for the section's consideration, such as essays, new symposium ideas, and whatnot for our section members. The Editor looks forward to receive your thoughts and queries.*

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**Amici**

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## THE ORGANIZATIONAL BASES OF ECONOMIC EXPLANATIONS FOR THE WAGE GAP

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### Praise For An Impressive Book

In *Legalizing Gender Inequality* (LGI), Nelson and Bridges (N&B) develop a complicated and creative argument about the ways that organizations create the sex gap in wages and the ways that courts legitimate and excuse that form of gender inequality. Employers often claim that local labor markets determine wages; this means employing organizations are not responsible for —much less liable for— the differences between men's and women's wages. But N&B convincingly argue that wage-setting is fundamentally an organizational process and one that is affected by organizational politics. They delve into four organizations to show us how information about the labor market (i.e. the supply and demand for particular types of work, the wages paid by competing employers) is actually used, abused, and ignored in the wage-setting process. N&B demonstrate that organizational actors, including male workers and managers trying to protect their privileged position, selectively attend to and interpret labor market information. In pay equity suits, though, courts largely accept employers' claim that external labor markets determine wages (and some judges even assume it when employers do not make this case). Courts do not recognize the organizational policies and politics that foster the sex gap in pay and so they write off these sex gaps as inevitable reflections of larger market processes.

N&B develop these ideas in an impressive way, and with impressive results. The book is crafted with both creativity and care. N&B made intelligent use of available data —including employers' data, data presented in or prepared for the court cases, and Census data on the local labor market. They turned to informants and court testimony to reveal how managers in these organizations dealt with market data and workers' demands. Furthermore, N&B acknowledge the limitations of their data and remind the reader when their conclusions go beyond the evidence they are able to gather. In the end, LGI makes important contributions to at least four literatures: the new economic sociology, the sociology of organizations, studies of gender inequality, and socio-legal research on the ways that the American legal system challenges or reinforces inequality.

By carefully reviewing the wage-setting process in these four organizations, N&B identify concrete practices that disadvantage women. For example, in a pay system with specified wages for each broad job family, men in male-dominated jobs were more likely to push for, and win, salary exemptions that increased their wages as compared to the wages of other jobs in the same family. In another organization, there was "inconsistent use of

turnover statistics" to adjust wages (p. 187). Managers noticed turnover of about 10% in predominantly male craft jobs and responded with increases in wages, although managers did not increase wages for nurses until turnover rates reached 50% (p. 187). This example illustrates the social process through which seemingly concrete, external conditions, like turnover rates, are translated into organizational rewards, like pay increases.

Yet N&B have not fully exploited this insight in their investigation of the sex gap in wages. Although their research challenges the idea that labor markets determine wages, N&B do not interrogate the equally powerful idea that an individual's investment in training and his or her work experience determine wages. Human capital may affect the sex gap in wages directly. Although more and more women participate in the labor force, most mothers take some time out when their children are young and/or shift to part-time work (Cohen and Bianchi 1999). This was certainly true in the period studied by N&B. Employers may pay workers with intermittent work histories and past periods of part-time work less —even when they have returned to full-time, continuous employment (Jacobsen and Levin 1995, Ferber and Waldfogel 1998). This process contributes to the sex gap in pay since most

But do those differences in pay reflect a rational response to differences in productivity? Although they do not pursue this question, N&B's research shows us how one could do so, i.e. how to investigate the organizational processes, practices, and politics that may affect employers' recognition of and response to "human capital." Of course, it is a difficult project and one that would require a book at least as long and almost as brilliant as LGI. But here I outline how one might interrogate this important explanation for the sex gap in wages.

### Confronting Human Capital Explanations For The Sex Gap

I begin with Judge Posner's opinion in the *American Nurses Association* case, as quoted by N&B. Posner (one of the most influential jurists in American employment law) claims:

virtually the entire difference in the average hourly wage of men and women, including that due to the fact that men and women tend to be concentrated in different types of jobs, can be explained by the fact that most women take time out of the labor force in order to take care of their children. As a result they tend to invest less in their "human capital" (earning capacity); since part of any wage is a return on human capital, they tend therefore to be found in jobs that pay less. (p. 34).

Posner argues that women's family responsibilities lead them to invest less in their "human capital," which includes education, training, and on-the-job experiences that are thought to improve productivity. Women, who on average have less human capital than men, are therefore, on average, less productive than men. Employers are therefore behaving rationally and legitimately when they pay these women less than men.

N&B are critical of jurists who offer "sweeping pronouncements that market forces or efficiency considerations explained the wage differences between

male and female jobs” (p. 353). N&B argue that we need careful assessment of these claims, and they provide such an assessment of labor market explanations for the sex gap in wages. However, they do not take on human capital explanations like the one offered by Posner. Still, their research (on the ways organizations translate labor market conditions into organizational rewards) can serve as a model for investigating how organizations translate accumulated human capital into organizational rewards.

What counts as human capital? Does only full-time, year-round experience count? Are there returns to part-time work and to experience that preceded an absence from the labor force?

Are the benefits of experience and training measured, or assumed? In other words, does human capital, as it is generally understood and measured, create higher levels of productivity, which then lead to higher wages? Is a lack of human capital actually measured, or are women simply assumed to have less human capital (and productivity)? Does reduced work experience (e.g. breaks to raise children, periods of part-time work, even working 40 hours weeks rather than 55 hour weeks) actually result in lower productivity and legitimately lead to lower wages, as human capital theory asserts?

Do organizations penalize workers who do not follow the expected and traditionally masculine career path, regardless of the actual relationship between experience and productivity? Is it possible that what we call “investing in human capital” is simply living up to a particular, and gendered, vision of the ideal worker? If so, human capital explanations may be partly—and in some cases—a cover for discriminatory treatment of women and, in particular, mothers (Williams 2000).

Two elements of N&B’s research should serve as guides in this investigation. First, we should consider organizational variation in how employers assess and reward “human capital” and whether organizations are subtly discriminating against women or mothers with this system. Second, we should try to pinpoint the specific policies, practices, and political battles that affect wage-setting and, in particular, the ways that “human capital” is assessed and rewarded. These concrete practices *might* include:

- 1) Discounting experience or training that occurred before a break in employment,
- 2) Rewarding full-time experience more than similar part-time experience,
- 3) Requiring relocations to move up in the organization (as Sears did in the case N&B review),
- 4) Requiring mandatory overtime for hourly workers, extremely long hours for salaried workers, or after-hours training for any workers,
- 5) Refusing to allow workers to shift to part-time work while remaining in the same or a very similar job,
- 6) Refusing to consider part-time workers for promotions or supervisory assignments,
- 7) Paying part-time workers less than proportional pay,
- 8) Punishing leave-takers or part-time workers with lower performance ratings and less valued projects.

Through their treatment of workers with significant family responsibilities (usually mothers), organizations may help create and recreate the sex gap in wages. All of this may look like a rational and legitimate response to

workers’ investment in human capital—certainly this is what Posner and others argue. But scholars should ask whether experience is so closely linked to productivity or whether experience is used by some employers as an alleged measure of “commitment,” which in practice means performing like a man with no family responsibilities.

The strategy I have outlined is clearly complementary to N&B’s research in LGI. It involves (1) investigating economic theories of the wage gap, (2) by going inside organizations to see how policies, practices, and the organizational culture contribute to the sex gap. What I am proposing is coupling N&B’s scrutiny of the market with similar attention to “human capital” and the way organizations construct and reward “human capital.”

### **A Caveat—Human Capital In Legalizing Gender Inequality**

Of course, N&B do not ignore human capital. They accept human capital explanations as legitimate and they try to incorporate measures of human capital, such as seniority in the firm, experience, hours worked, and education, in their models predicting wages. They generally use these variables as controls, to show that there are gender differences in wages above and beyond gender differences in human capital. In the end, N&B claim that “A variety of human capital characteristics, such as education and seniority, could not account for the gender gap” (p. 312).

However, their measures of human capital are weak. When N&B must turn to Census data, e.g. in the end of their analysis of the University of Northern Iowa case and most of their analysis of the AFSCME v. Washington case, they assume that workers have been employed continuously since they left school. We know that assumption is wrong for many, many women workers, particularly in this period. In the analysis of the Glass v. Coastal Bank case, N&B have measures of education, tenure in the firm, and current job, but no measures of experience with other employers nor of current or past part-time status. These problems with the data make me cautious about N&B’s conclusions about the importance of human capital characteristics in understanding the wage gap.

More importantly, though, N&B do not apply their own insights about the organizational aspects of wage-setting to their consideration of human capital effects. Rather than treating human capital characteristics as controls, we should investigate the social and organizational construction of seemingly economic and external conditions, like the local labor market and human capital. Although we see independent gender effects in N&B’s models, we should still ask whether the assessment of human capital and its translation into organizational rewards is a gendered process, i.e. a process that happens differently for men and women and that reinforces gender inequality.

### **Conclusion**

Why don’t N&B pursue this take on this project in LGI? There are several plausible reasons. N&B have worked long and hard to develop an innovative argument and we

cannot expect anyone—even the winners of our association's top prize for research—to do it all. Also, N&B did not have data available to examine this argument in detail. They may have wanted to do everything I have mentioned, but found they could not do it with the available data.

One important reason that this type of data is not available to N&B is that the law does not currently recognize discrimination against mothers or caregivers, at least in a direct or explicit way. There are a few sex discrimination cases that get close to these arguments, and Joan Williams (2000) proposes using disparate impact claims under Title VII to fight rigid schedules, lower hourly wages for part-time work, and other practices mentioned above. Of course, disparate impact claims must deal with the business necessity defense, which N&B have ably shown to be so convincing to judges that defendants do not even need to voice it in order to win with their cases on those grounds!

To reiterate, there is no legal claim, so there are few legal arguments about how gendered family responsibilities affect human capital and how human capital contributes to the wage gap, so there is no data related to this question in the court documents, so N&B cannot investigate this argument, even if they wished to do so.

This situation is perfectly understandable, but it does highlight the dangers of using legal cases and deconstructing legal decisions in our research. With this methodology, we are focused on—critical legal theory would say we are trapped in—the legal categories as they are understood and used in the legal system today. By using legal cases and the data generated by them, we may completely miss other parts of the story about the development and justification of inequality in organizations.

To conclude, though, the story that N&B do develop is believable and important. N&B provide a model for looking inside organizations to see how pay systems are created, modified, manipulated, and challenged through the efforts of individuals and groups. Using the examples that N&B provide for us, organized groups of women might push for fair pay in organizations—i.e. use the pay system in the ways that men have. Additionally, plaintiffs, expert witnesses, and judges can learn from this research how to better identify and remedy organizational practices and processes that keep women's wages low.

N&B teach us that “the market” and perhaps also “human capital” are not out there, separate from the organization; instead they are recognized, interpreted, manipulated, and to some extent socially constructed by organizations and particular organizational actors. These organizational actors are therefore at least potentially liable for the gender inequality in their workplaces.

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—See *Symposium* page 6.

## Call for Submissions

### STUDENT PAPER AWARDS 2002

The Sociology of Law Section announces its Annual Student Paper Awards. The Section will award prizes for both the best graduate paper and undergraduate paper. Winners will receive their award at the ASA Annual Meeting in Chicago, IL, August, 2002.

Papers may address any topic in the sociology of law, and may be reports of any kind of original research, including empirical and theoretical contributions or evaluations of existing scholarship. Originality, clarity, and analyses of substantive social issues are typically seen as important advantages.

Entries should be double-spaced and not exceed 35 pages in length (including tables, appendices, and references). Entries should follow ASA style. Papers must have been written while the author was a graduate or undergraduate student. Papers that have been accepted for publication or are published at the time of submission are not eligible. Papers may be submitted by students or by professors on behalf of their students. The deadline for submissions is:

**March 30, 2002.**

Send one copy of the paper as well as one copy on disc (in Microsoft Word format), with specification of student standing (undergraduate or graduate), to be received by March 30, 2002 to:

Elizabeth Hoffmann, Assistant Professor of Sociology,  
Purdue University, Stone Hall, West Lafayette, IN  
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The Student Awards Committee consists of Elizabeth Hoffmann (chair, Purdue University), Anna-Maria Marshall (University of Illinois at Urbana-Champaign) Sarah Gatson (Texas A & M), and Kathleen Marshall (University of Minnesota).

## Symposium on *Legalizing Gender Inequality*

### ORGANIZATIONAL FIELDS, MARKETS, AND THE INSTITUTIONALIZATION OF ORGANIZATIONAL INEQUALITY

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*Legalizing Gender Inequality*, by Robert L. Nelson and William P. Bridges, is law and society scholarship at its best. It brings empirical data to bear on the interplay of markets, organizations, and courts in a way that contributes substantially to our understanding of the relationships among these key social institutions.

The methodological contribution of this book alone is substantial, as it both develops and illustrates a novel approach for socio-legal analysis. Legal cases have previously been analyzed for their doctrinal content, deconstructed for their political content, and content coded to analyze trends. But the Nelson and Bridges study employs a novel case study method: for four pay discrimination cases (two public and two private), the authors employ sophisticated statistical (re)analyses of data available to the court; examinations of the judicial decisions, testimony, and evidence; and qualitative analyses of how employers make use of relevant market information (such as wage surveys conducted by consultants, personnel records, turnover rates, labor availability, and efforts by other companies to recruit their employees). The result is a creative analysis of the interplay between market, organizational, and legal forces.

The theoretical contribution is even more important. Nelson and Bridges challenge the two dominant perspectives on gender inequality in pay: the free market model and the comparable worth model. The free market model, based on neoclassical economics, sees the market as gender-neutral and in fact capable of eroding discrimination in the long run, and explains gender-based pay differences primarily in terms of women's choices to invest less in human capital. The comparable worth model, on the other hand, suggests that markets reinforce the social devaluation of women's work, thus providing employers (and courts) with an excuse for gender-based pay differentials.

Nelson and Bridges criticize both the free market and comparable worth models for locating the source of pay inequality in markets, and propose an "organizational inequality model" that calls attention to practices *within* organizations that discriminate against women. They criticize courts both for uncritically accepting organizations' claims that they rely on market rates and for their reluctance to disturb extant wage-setting systems. The authors convincingly show that courts legalize gender inequality by allowing the market to stand as a relatively easy excuse for pay discrimination. But Nelson and Bridges also reject the comparable worth argument that courts ought to mandate job evaluation studies in order to remedy wage

disparities, arguing that the problem lies less in systemic sexist biases in the market than in particular organizational practices that cause women to be paid at below-market rates. Thus, Nelson and Bridges accept the notion that it is rational for organizations to rely upon market rates, but criticize courts for failing to scrutinize some organizations' failure to live up to their rhetoric. They conclude that courts could significantly reduce the gender gap in pay by examining discriminatory practices within organizations and by penalizing those organizations whose practices result in pay rates for women that are substantially below market.

The evidence that Nelson and Bridges present to support the organizational inequality model is compelling. In their four case studies, they find that gender-based pay differentials were less attributable to between-job pay differences at the market level than to organization-level practices, including: the failure to follow wage surveys that required higher wages for jobs traditionally held by women, low-visibility managerial decisions that over-valued male jobs, deference to the power of male employees in negotiating above-market wages, indexing jobs in internal labor markets such that jobs traditionally held by women are tied to lower-paid external jobs relative to jobs traditionally held by men, and the failure to establish or consistently to follow formal pay schemes. In light of these data, Nelson and Bridges argue that women would benefit if courts would carefully scrutinize organizational processes of discrimination that cause women to be paid at below-market wages and would hold organizations to the market standard.

I find Nelson and Bridges' argument novel and creative, and yet troubling. It is novel and creative because it provides judges with a way to find pay discrimination under Title VII without having to give up their attachment to market logic. Were judges to adopt the ideas in *Legalizing Gender Inequality*, at least the most egregious violators would be penalized and the law would potentially provide more of a solution to pay inequity than it does currently. And because Nelson and Bridges' models suggests that judges need to pay far closer attention to subtle organizational practices that place women at a disadvantage, it might extend the reach of civil rights law in contexts beyond pay equity as well.

But at the same time, I find Nelson and Bridges' conclusion troubling because it treats markets, at least relative to organizations, as gender-neutral. While I agree that courts ought to be much more attuned to the internal workings of organizations, and to the particular ways in which organizational processes subtly perpetuate wage and other gender differences, I disagree with Nelson and Bridges' theorization of organizations as entities that can and do act independently of the market. A more sociological conception of the labor market would recognize the extent to which markets embody institutionalized organizational norms.

Labor markets are price-making systems, but they are also social arenas in which ideas about the value of work and workers develop and become institutionalized.

The value that employers attach to women and to their labor both comes from and reinforces broader social valuation of women in the labor market. The construct of "organizational fields" in new institutional organization theory helps to explain how this is possible. Powell and DiMaggio define organizational fields as "a recognized area of institutional life: key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar products and services."<sup>1</sup> The virtue of this construct is that it emphasizes the environments around organizations as a key unit of analysis; it suggests that the behavior and structure of individual organizations is best understood in the context of a broader arena of social and economic exchange.

Organizational fields acquire structure and logic as organizations interact with one another through exchange relations, mimicry, and the diffusion of professional norms. Flows of information about rationalized organizational practices travel particularly easily through professional networks and the materials they promulgate, through lawyers and others who advise organizations, and through the movement of personnel across organizations. Over time, certain rules of conduct, organizational structures, and values tend to acquire a mythical rationality and organizations tend to incorporate these institutionalized models because they seem proper, rational, or necessary. While individual organizations must set pay rates and classification schemes, devise internal labor markets, and set ports of entry to those markets, they do so in the context of how similar decisions are made in other organizations. Organizational decision-makers do not act independently; rather they look to the environments around them and adopt practices that appear to be rational and proper.

Without explicitly discussing organizational fields, Nelson and Bridges acknowledge their presence both by emphasizing the extent to which organizations rely on wage consultants and wage surveys and by indicating that the wage systems in the organizations they study strongly resemble those in other large organizations. Wage consultants and business associations are in fact key carriers and promulgators of institutionalized ideas about the value of labor and the rationality of various wage practices. Thus, although organizations' wage practices will certainly vary in particulars, there are likely to be many commonalities in wage-setting behaviors as organizations incorporate institutionalized models.<sup>2</sup>

<sup>1</sup> Powell, Walter W. and Paul J. DiMaggio. *The New Institutionalism in Organizational Analysis*. University of Chicago Press (1991: 64).

<sup>2</sup> Ideas about wages that become institutionalized at the level of organizational fields not only affect structure and practice at the organizational level; they also affect how employees and potential employees understand and negotiate wages. Employee expectations about wages are clearly shaped by institutionalized notions of the value of different types of work. A potential secretary may demand less than a potential maintenance worker, for example, because she expects less and is conditioned to ask for less. Potential employees' interest

These commonalities in wage-setting are the labor market; they are the values attached to work by organizations in the aggregate, and institutionalized throughout organizational fields. Markets reflect, in essence, the economic logic of organizational fields. Understood in this way, it becomes difficult—perhaps impossible—to distinguish between the discriminatory behavior of employers and the discriminatory trends of the market.

To theorize labor markets as social entities, constructed in large part through institutionalized organizational practices, is not to deny Nelson and Bridges' key claim—that courts should be attentive to how organizations penalize women through their internal practices. Anti-discrimination law would clearly be more powerful if courts would scrutinize the many organizational structures that subtly disadvantage women. But to the extent that markets are understood as comprising institutionalized organizational practices, it becomes difficult to accept Nelson and Bridges' organizational inequality model without also accepting the comparable worth argument that markets perpetuate cultural biases that result in lower pay for women. The very organizational practices that Nelson and Bridges identify as discriminatory—for example, pegging predominantly female jobs to less valued market benchmarks, bending to male political power, and resisting the recommendations of wage consultants who recommend higher pay for female-dominated jobs—reflect ideas that have become widely accepted in organizational fields. The complexity of organizations' internal labor markets and the arbitrariness of organizations' pay practices may reflect deviations from an idealized gender-neutral conception of the market, but these and other gendered practices persist and thrive because of ideas about gender that are constituted throughout organizational fields. Markets cannot be theoretically disentangled from the economic logic that is institutionalized within these fields.

There are, of course, important differences in how organizations enact institutionalized models, and Nelson and Bridges call our attention to these differences in suggesting that in the most discriminatory organizations, women would benefit if wage-setting practices were opened up to market forces. In this sense, their model really calls our attention to *inter-organizational* inequality as much as to discriminatory processes within organizations. But to the extent that organizations themselves establish the norms from which some organizations then deviate, legal (and scientific) acceptance of the market as a gender-neutral entity can provide no correction to sexist practices that are the norm—and therefore constitute the market. While it may

in working at particular jobs for particular wages depends largely on expectations, which are shaped within and through organizational fields. Even whether one seeks a wage at all may depend largely on custom. Certain tasks are socially assigned to the market whereas others are labeled as a normal part of social relationships, with no expectation of compensation. Consider, for example, social understandings of parenting and, on the other hand, of day care.

be politically infeasible to expect courts to redress market discrimination, social scientists should recognize the extent to which markets are social constructs that embrace organizational logic.

In sum, Nelson and Bridges advance socio-legal theory by explaining the critical ways in which organizational practices foster gender-based inequality in pay. Their case studies are extremely rich and show in new detail how organizations discriminate against women in pay. The organizational inequality model is far more powerful than free market perspectives that see the market as a corrective to discrimination, and, it shows that there is much more to pay inequity than pay differences at the market level that reward male jobs more than female jobs, which is the focus of many comparable worth perspectives. Nonetheless, I think the organizational inequality model could be more powerful if it recognized that organizations both help to constitute, and act in the context of, institutionalized market logics that rationalize discriminatory pay practices.

#### Acknowledgment

The author thanks Mark Suchman, Linda Krieger, Howard Erlanger, and Kay Levine for helpful comments on this essay.

—Continued next column.

### Call for Submissions

#### DISTINGUISHED BOOK AWARD 2002

The Sociology of Law Section announces its biannual Distinguished Book Award. The Section will award a prize for the best book in sociology of law published between 1999 and 2001.

**The submission deadline has been extended to March 1, 2002.**

Winners will receive their award at the 2002 ASA Annual Meeting in Chicago. Books may be self-nominated by the author(s) or they may be nominated by other scholars or by publishers.

To nominate a book, please send a brief letter of nomination and four (4) copies of the book (or arrange for the publisher to submit copies) by March 1, 2002 to: Arthur Stinchcombe, Department of Sociology, Northwestern University, 1810 Chicago Avenue, Evanston, IL 60208; phone: (847) 491-5536; fax: (847) 491-9907; e-mail: a-stinch@nwu.edu.

#### ...Amici Quotes...

"I *am* the law. I don't have to do anything!"

— Sheriff Ballard in *Nurse Betty*  
(USA Films, 2000).

### Symposium on Legalizing Gender Inequality

#### THE MOVING TARGET OF GENDER EQUALITY AT WORK

#### Response to Kelly and Edelman

##### William P. Bridges

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We are grateful to Mathieu Deflem for organizing this symposium and to Erin Kelly and Lauren Edelman for their thoughtful and forthright comments. The extensions of our work that they envision in their responses move our original argument in different, but we believe interesting, directions. So much so, that along with others who might wish to pursue their suggestions, we reserve the right to appropriate them ourselves and engage in the sincerest form of flattery: intellectual theft. That said, here is what we think is most worth lifting.

Professor Kelly is disappointed by the relative lack of attention that LGI gives to human capital explanations. This is a valid observation, of course, and she believes that the organizational inequality approach "can serve as a model for researching how organizations translate human capital into organizational rewards." While we are hardly in a position to disagree with this strategy, we believe it should be put into historical context and also critically examined.

LGI emerged out of the legal and sociological matrix of the 1980's, a time when the burning policy question was whether comparable worth was in Clarence Pendleton's words, the "looniest idea since Loony Tunes." Because of persistently high levels of occupational segregation by gender, it was thought that if the disparity in pay between predominantly male and predominantly female jobs could be eliminated that other issues of gender employment equity would perhaps take care of themselves or, at least, would be easier to address. Thus, the problem which took center stage for our inquiry was to understand how gender disparities in pay *between* jobs but *within* organizations, seemed to be immune to both the discipline of the market and the scrutiny of the courts. In looking at the politics, the culture, and the mechanics of pay determination systems, we encountered a world in which abstract discussions of human capital variables, necessarily properties of individuals, gave way to attention to concrete measures of "accountability for results" and "exposure to harsh working conditions," properties of jobs. In most pay determination schemes, points given to factors like years of required vocational training were overshadowed by points awarded directly to performance characteristics of the jobs themselves. In organizations individual differences in human capital had

a larger influence on hiring, job assignment, and promotion decisions.

In many ways, the subterranean status of human capital in LGI reflects the book's adherence to the assumption of the comparable worth debate that gender composition of occupations and jobs could be taken as fixed. This isolated our attention on the structure of pay itself. There are two reasons to relax this stricture, however. First, investigating the causes of differences in gender composition of jobs and occupations does not mean accepting the argument that these differences are caused by childhood socialization, pre-market discrimination, or unfettered choices. In pointing this out, Professor Kelly has made a profound contribution. Organizations make decisions about what individual qualities count as qualifications for jobs. It would be unsurprising if these decisions did not reflect the same mix of interest group politics and hegemonic cultural assumptions found in disputes over pay rates. (In one large city we know of, there was a lively, and racialized, contest over whether job performance evaluations could substitute for points on a formalized test in the police department's promotion system.) Second, the definition of jobs and their alignment into promotion hierarchies may also embody and reinforce beliefs about the importance of experience (and what constitutes experience) and schooling. Thomas DiPrete's (1989) account of the professionalization of the federal civil service in the middle twentieth century provides one particularly compelling example.

The gender pay gap at the dawn of the 21<sup>st</sup> century differs from that in the late 20<sup>th</sup> in both its empirical manifestations and in its political representations. For example, occupational segregation seems to be continuing its slow downward trend while there is purported evidence of a widening wage differential. Recently published research suggests that up to 35% of the overall wage gap between the sexes might be found *within* jobs in organizations (Bayard, Hellerstein, Neumark, and Troske 1999). Leaving the comparable worth debate largely behind, feminist scholar/activists now focus on a new wave of feminism in which concerns about the ability of women (and men) to articulate work and family life call into question the nature of job performance itself. Here, too, Professor Kelly proposes to employ the tools of the organizational inequality model. In our view, this may be a particularly tough hill to climb. It will be crucially important to lay the groundwork in two different ways. Descriptively, one needs to assess how much variation exists in "family friendly" work practices across firms, industries, sectors, and, perhaps critically, across occupational levels within any of these other categories. Legally and politically, one needs to derive new theories under which privileging eighty hour work weeks constitutes a violation of existing civil rights laws. We wish Professor Kelly and her colleagues well in this endeavor.

While the comparable worth conception appears largely irrelevant for Professor Kelly, Professor Edelman appears to be attempting to resuscitate a comparable worth approach through an institutionalist argument that organizational fields heavily shape the valuation of male

and female jobs and are, thus, a source of gender inequality in labor markets. Edelman is troubled because she thinks we conclude that "markets, at least with respect to organizations, [are] gender-neutral."

First, we commend the general thrust of Edelman's comments. It would be enormously interesting and valuable to analyze the effects of organizational fields on wage-setting practices and inequality outcomes in organizations. To our knowledge no one has attempted such an approach. The closest we see in the literature are analyses of sectors (public vs. private), specific industries, or organizations, but these do not attempt to measure simultaneously what is passing through organizational fields and what is happening inside organizational pay systems.

Second, when we begin to think through what such a research project would look like, we begin to encounter some conceptual and empirical difficulties. Edelman asserts that organizational fields equal labor markets. But if we take the DiMaggio and Powell definition of organizational fields that Edelman cites —organizations that produce similar products and services— it is relatively rare that organizational fields can be equated with a labor market. Research universities may produce similar products and services, yet do they comprise one labor market or many? The degree of overlap between organizational fields and labor markets is itself an empirical question. Some labor markets are occupationally defined, some labor markets are spot markets that operate like the free markets of orthodox economic theory, some labor markets are industry-specific, some labor markets are firm-specific or internal labor markets. Organizational fields are only one possible way to classify labor markets, and organizational fields might be quite loosely linked to the markets for certain kinds of labor. To use Edelman's example, are the jobs and rewards of secretaries and maintenance workers dictated by any given organizational field? Or, would the analysis shift to looking at the wage alignment of secretaries and maintenance workers across different organizational fields —perhaps comparing the gender composition and relative earnings of those jobs in hospitals, law firms, universities, banks, and large corporations? Indeed, such an investigation would be interesting, but we probably could not assume that organizational field equals labor market context in such an analysis.

Third, we think that Edelman misreads us if she thinks we see markets as gender neutral with respect to organizations. One of the main thrusts of our book is that there is not a tight linkage between market wage rates and pay practices in large organizations. Indeed we suggest that labor markets are socially constructed in organizations, often in ways that disadvantage the incumbents of female jobs. We argue that the kinds of practices we saw in the four organizations we studied were not mere aberrations, but are fundamental sources of gender inequality in large organizational pay systems. Yet we depart from a comparable worth analysis of labor markets in at least two ways. First, it is possible that competitive market processes may in fact improve the economic position of female and minority workers.

Second, comparable worth offers one solution to all situations rather than a case-by-case analysis of the dynamics of organizational inequality. In our view to understand the sources of gender inequality in pay and to design responses that are fair and effective, it is necessary to analyze each organization's pay system in context.

Fourth, we can draw on the case studies we present in the book to gain some insight into the mechanisms that operate in organizational fields to depress female wage rates. Edelman suggests that "the very organizational practices [we] identify as discriminatory — for example, pegging predominantly female jobs to less valued market benchmarks, bending to male political power, and resisting the recommendations of wage consultants who recommend higher pay for female-dominated jobs— reflect ideas that have become widely accepted in organizational fields." This is not correct. Pay personnel would deny that this is what they do. They would instead insist that they are attempting to devise "rational" pay systems, that are "procedurally fair," that preserve "confidentiality," that adhere to "market rates," and which, therefore, are gender- and race-neutral. Indeed, it is the decoupling between the professed norms of the organizational field and the actual pay practices that is crucial for understanding how these systems of inequality continue to operate and are resistant to change. Only rarely does an alternative conception of pay determination surface in these fields, one which emphasizes "pay equity" concerns. We saw this in our interviews in the Washington state system, in which in the aftermath of the controversy over pay inequity the state sought new pay consultants who would not rely on market rates as the basis for their advice. "Gender neutrality" is thus one of the institutionalized myths that flows through organizational fields and deflects critical reassessments of organizational pay practices.

The broader point of this exchange should be that the analysis of the relationship between organizational fields and organizational pay systems is very much compatible with developing new organizational theories of gender and race inequality. Whether the focus is on the interaction of organization compensation systems with organizational fields or different labor market contexts, it is the variation in those interactions that needs to be mapped. Our book can rightly be seen as a modest beginning in that research program.

It is exciting that these debates about the character of inequality in organizations are taking place on the terrain of the sociology of law. It reflects the growing sophistication of socio-legal scholarship. It may also reflect the fact that the progressive legalization of the workplace that Edelman, Kelly, and others have so ably documented, gives law a new significance in contemporary systems of inequality. Future efforts to track the moving target of inequality at work almost certainly will benefit by tracking the role of law in organizational systems of inequality.

### Citations

Bayard, Kimberly, Judith Hellerstein, David Neumark, and Kenneth Troske. 1999. "New Evidence on Sex Segregation and Sex Differences in Wages from Matched Employee-Employer Data." National Bureau of Economic Research Working Paper.  
<http://www.nber.org/papers/w7003>.

DiPrete, Thomas. 1989. *The Bureaucratic Labor Market: The Case of the Federal Civil Service*. New York: Plenum.

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## CONGRATULATIONS TO MARY VOGEL!

### Winner of the 2001 Best Article Competition of the ASA Sociology of Law Section

The 2001 Best Article Prize of the Sociology of Law section of the ASA was awarded to Mary Vogel, University of California, Santa Barbara, for her article, "The Social Origins of Plea Bargaining: Conflict and the Law in the Process of State Formation, 1830-1860" (*Law and Society Review*, vol. 33, no. 1).

The committee commended Mary Vogel's work as profound, refined, and outstanding among a group of fine nominations. The award committee, Terry Halliday, Abigail Saguy, and Alfonso Morales, agreed that Mary's scholarship was representative of the best scholarly traditions of pursuing research to great depths and consequent insights, and as such it is work truly representative of the sociological imagination. We are therefore very pleased to do honor to "The Social Origins of Plea Bargaining," and we hope it will be read and recognized widely for the many insights it offers.

Ryken Grattet and Scott Phillips were recognized as "honorable mentions" for their paper "Judicial Rhetoric, Meaning-Making, and the Institutionalization of Hate Crime Law" (*Law and Society Review*, vol. 34, no. 3).

On behalf of the committee, Alfonso Morales, Chair.

## CALL FOR NOMINATIONS FOR SECTION OFFICERS

The Nominations Committee of our section is currently seeking nominations for several Section positions, including Chair-Elect, Secretary/Treasurer, and Council Members (3 positions).

Please forward your suggestions to Mark Cooney (mcooney@arches.uga.edu), Nancy Reichman (nreichma@du.edu), or to Scott Phillips (R.Phillips@mail.uh.edu).

## Report from the Past Chair

### 2001 SECTION REPORT OF THE ASA SOCIOLOGY OF LAW SECTION

#### Nancy Reichman

University of Denver  
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The Sociology of Law section is a small but vibrant section of the ASA. It is noteworthy for the commitment of its members to section business. Over 34 members attended the Section business meeting in Anaheim, August 20, 2001. As has been true throughout the section's short life, section members enthusiastically volunteer for committees that enhance and recognize the scholarly contributions of its members. And, as has been the case each year, section members reach into their own pockets to build up the reserves of the section.

Section Chair Nancy Reichman unveiled the new Sociology of Law button as part of our membership campaign activities. She encouraged members to wear the button proudly. Several members noted that they are already drawing attention. Reichman thanked Mia Cahill for her heroic efforts to get the buttons to us on time.

Reichman thanked outgoing officers and members of the council and announced the results of the section elections: Carol Heimer is the new Chair-elect. New council members are Patricia Ewick, Valerie Jenness, and Matt Silberman. John Hagan, Chair-elect, will be the section chair during 2001-2002.

Reichman also announced that the Sociology of Law section day at next year's meeting is the last day of the meeting and will benefit from a new policy that offers an extra session to those sections that are scheduled for the last day of the meeting. As Chair-elect, Carol Heimer chairs the program committee for next year. Short discussion followed about continuing our efforts to co-sponsor sessions with our sections. Plans to do so this year fell victim to the change to a four-day meeting.

John Hagan reported on the Program Committee activities for the past year. In addition to outstanding roundtable presentations, we had great sessions on Law and Social Justice in Transition to Democracy, and on Law and Organizations.

Mark Cooney reported on the activities of the Nominations committee. Reichman thanked all those who were willing to run for election and congratulated those who won. She also thanked Mia Cahill who could not attend the meetings because of an injury.

Alfonso Morales, chair of the Article Prize Committee, reported on the activities of that committee. The winner of this year prize was Mary Vogel for her article, "The Social Origins of Plea Bargaining." Ryken Grattet and Scott Phillips were recognized as 'honorable mentions' for their paper "Judicial Rhetoric, Meaning-Making, and the Institutionalization of Hate Crime Law."

Jerry Van Hoy reported on the Student Paper Prize committee. This year, the prize went to Garry Gray for his paper, "A Socio-legal Ethnography of the Right to Refuse Dangerous Work." As in years past, the

committee encouraged members to publicize the award and promote submissions.

The Publications Committee report focused on the need to improve the quantity and quality of the newsletter. Members were encouraged to submit articles of interest so that the newsletter had a substantive feel rather than repeated announcements that are already sent via email. There was a general consensus for more articles that included a sociology of law "take" on current events (e.g. the presidential election and legal controversies that surrounded it, and what we know about the 'broken windows' policy).

Several members suggested that the Publications Committee consider whether they could or should establish relationships with other socio-legal publication outlets. Would it be wise, for example, to establish a relationship with *Law and Social Inquiry* so that members of our section could receive some discounts on a subscription to that journal or some other benefit.

—Continued next page.

### CONGRATULATIONS TO GARRY GRAY!

#### Winner of the 2001 Graduate Student Paper Competition of the ASA Sociology of Law Section

The 2001 Paper Prize Committee of the Sociology of Law section of the ASA is pleased to announce the winner of the graduate student paper competition. This year's winner is Garry Gray from the Department of Sociology at the University of Toronto. His paper is entitled, "A Socio-Legal Ethnography of the Right to Refuse Dangerous Work." The following represent the thoughts of this year's committee members:

"We thoroughly enjoyed reading this paper. Garry Gray's participant observation yielded rich data that clearly illustrates the gap between 'law on the books' and 'law in action.' Rarely do we have the opportunity to learn, as the author stated, 'what is actually occurring in the work place.' It is directly in the tradition of sociology of law scholarship, framed in the Ewick and Silbey notion of law being shaped in everyday life, not in the legislative chambers. We admired the innovative methodology in this paper and Gray's willingness to go out on a limb to really push his findings in new, exciting directions. Introspecting on his own behaviors during his participant observation in a large Canadian industrial factor is not easy to pull off, but he does it quite well. Garry's data shows us that refusals take many forms and very few are counted in official statistics that most of us rely upon. Importantly, he demonstrated that 'rights' often are serious liabilities. In the face of a power structure and even subtle coercion [employer and co-workers], the worker's 'right to refuse' can silence complaints and leave individuals at greater risk. We are pleased to present the award to Garry Gray."

On behalf of the committee, Kevin Delaney, Chair.

Membership in the section has been flat, if not declining slightly. Members were encouraged to promote the section to their colleagues and graduate students. A general discussion of ways to highlight the activities of the Section followed. One suggestion was to link our program to the overall meeting theme, special sessions and the like. We were also encouraged to think of the tangible benefits of section membership. One suggestion was to better link publications and membership, i.e., to encourage us to think about publications as a vehicle for outreach and a benefit to members.

Council proposed that we introduce internet working groups formed around general themes and/or topics of interest in socio-legal studies, e.g. school violence, technology, etc. These mini-networks within the larger socio-legal networks could become exciting venues for scholarly exchange and might bring new scholars into the Sociology of Law orbit. Suggested "lawnets," as we called them, included law and violence, law and education, professions, law and organizations, and law and science. Reichman offered to look at some of the technological parameters of such an effort.

The Mentoring Program was discussed. There was consensus that it should be revitalized. Mark Suchman volunteered to be the Program's new coordinator.

The meeting adjourned with much excitement about the possibilities for the section in the next year. Since we have such a strong contingent from Chicago, there was much enthusiasm about the possibility of having an off-

site reception. Several members supported the idea of having a speaker at the reception as well as just drinks and snacks. There was general support for continuing to partner with the Crime, Law, and Deviance section.

Immediate Past Chair Nancy Reichman wished new Chair, John Hagan, best of luck!

Respectfully Submitted by Nancy Reichman,  
2000-2001 Chair, ASA Sociology of Law Section

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*...Amici Quotes...*

"If you're the police, where are your badges?"  
"Badges? We ain't got no badges. We don't need no badges. I don't have to show you any stinking badges!"

— Dobbs and 'Gold Hat' in *Treasure of the Sierra Madre* (Warner Brothers, 1948).

**AMICI ONLINE**

[www.amiconline.org](http://www.amiconline.org)

*(Re-)Introducing...*

**THE ASA SOCIOLOGY OF LAW SECTION  
MENTORING PROGRAM**

Mark Suchman, University of Wisconsin, is the new coordinator of our section's Mentoring Program. Originally developed by former section Chair Lauren Edelman, this program serves as a "matchmaking service," pairing assistant professors with more senior colleagues who provide advice and support during the early years of the mentee's career.

Mentoring carries significant rewards for mentors, mentees, and the broader intellectual community, alike. Strong mentorship can give a new faculty member an invaluable boost at a crucial moment in his or her early career. Each mentor-mentee relationship is unique, of course, but common topics of conversation include: formulating job market and publishing strategies; managing teaching and service loads; navigating departmental and university politics; dealing with work/family conflicts; etc. Mentors also sometimes alert mentees to opportunities for funding, employment, or professional recognition. Mentoring relationships carry rewards for the mentor as well as for the mentee, of course. Mentors enjoy the satisfaction of nurturing a junior colleague, repaying the mentoring that they themselves received in the past. Equally importantly, mentors and mentees often build enduring collegial relationships that last well beyond the mentee's junior faculty years.

And mentorship benefits the larger scholarly enterprise, too, creating webs of informal communication and mutual support that knit us together into a more robust and cohesive community. But finding a good mentor (or mentee) on one's own is no small feat. Often, the best mentorships span institutional boundaries, because assistant professors are often (rightfully) reluctant to voice concerns and insecurities to senior colleagues who will eventually have to evaluate their junior colleague's performance. But identifying a like-minded mentor or mentee at another institution can be a daunting task.

The Sociology of Law Section's Mentoring Program answers this challenge. The program operates as a clearinghouse, putting would-be mentors in contact with would-be mentees. Using the latest scientific techniques (e-mail and coin-flipping), we seek to pair junior and senior scholars with similar interests, backgrounds and concerns.

We hope that you will consider participating in the Mentorship Program. If you are interested in participating, please get in touch with Mark via email at: [suchman@ssc.wisc.edu](mailto:suchman@ssc.wisc.edu). You will receive a sign-up form for more details.

Kindly submitted by Mark C. Suchman, Mentorship Coordinator, ASA Sociology of Law Section.

