

EPOCH OF GENDER EQUITY: RECENT PROGRESS AND UNCERTAIN  
FUTURE

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INTRODUCTION

An epoch is a period of time marked by highly significant or momentous events. This book is about such a time in which women's rights made unparalleled progress in legal, cultural, social and economic development. The four decades from the enactment of the Civil Rights Act in 1964, until the present marks an era in which accepted practices were scrutinized, analyzed and revealed as to their latent discriminatory effects that prejudiced the liberty and equality of opportunity of women.

The overall progress of women's rights in Western Civilization has, of course, occurred over an extended period roughly corresponding to the rise of literacy and knowledge, and accompanied by a corollary decline in ignorance, myth and superstition. If one were to attempt to identify a watershed from which discrimination against women began to recede, perhaps the "Age of Reason," as Will Durant termed it, the mid-to-late 18th Century must be chosen. While it is true that during the French Enlightenment few measurable advances for women were actually achieved, nevertheless, the foundation stones for the reason and rationality on which such rights would ultimately rest began to emerge, shaping all events thereafter.

At the heart of the idea of progress emerging from the Enlightenment was the optimism that human beings could influence their own destinies and that the human condition was not a forgone conclusion. Women had made few social strides in the millennia before the Enlightenment, a time when pessimism loomed and prevailed regarding temporal existence and the limited human capacity to conceptualize any notion of progress was retarded. The idea of progress did not emerge principally because of the religious myth that confidently and erroneously explained all aspects of nature without a gesture to rationality and reason. Bury notes that the idea of progress was stifled by Augustinian certitude and pessimism. He says in his *Idea of Progress*:

For Augustine, as for any medieval believer, the course of history would be satisfactorily complete if the world came to an end in his own lifetime. He was not interested in the question whether any gradual amelioration of society or increase of knowledge would mark the period of time which might still remain to run before the Day of Judgment. (Bury, 1920, p.15)

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Such stultification of the human intellect was instrumental in sustaining the Dark Ages, when there was very little advancement of learning and, of course, little modification in the social condition of anyone – women or men. Western thought was thus retarded by the control of the minds visited upon illiterate people who were subjected to dominant authority of the Church. From Constantine forward, a male-dominated religion created and implemented convenient, persuasive, simple and expedient “revelations” to perpetuate control over women. Most such explanations reflect, strengthen and justify discriminating customs and laws that are promulgated by men who are the more physically and economically powerful in society.

In *The Closing of the Western Mind* (2004), A. Freeman has lately observed that rather than providing some illumination from the shadows of the Dark Ages, the Church was largely responsible for the darkness, and for the perpetuation of the gloom well into the Fifteenth Century. The interesting result of such suppression on a broad scale was that it limited the oppressors as well as the oppressed. Galileo’s situation is the sterling example of the struggle against the heavy hand of authority that had for so long contracted the spectrum of knowledge. One is struck by the fact that the suppression was so complete and unmitigated that not only was scientific pursuit of knowledge stifled, but even more importantly, the entire social structure of the Western world was subjugated to the vicissitudes and solicitations of a few in authority and this larger suppression went virtually unnoticed and unchallenged for so long.

In reading the bestseller *Galileo’s Daughter*, by Dava Sobel (1999), one is struck not so much by the trials and tribulations of Galileo himself in his well-documented confrontation with the Church, but rather the social condition that relegated Galileo’s thirteen-year-old daughter to life imprisonment in a convent. Galileo, in his self-interest, lamented his own search for scientific truth, but he failed to comprehend the larger sexual oppression all around him that so materially affected the lives of his own daughters. Custom, culture and religion had conspired to diminish opportunity and subject women to lives of entrapment and deprivation of liberty.

Throughout the ages, even until the relatively recent past in the western world, women have been considered “different” and less worthy than their male counterparts (Sobel, 1999, p.17). In the Sixteenth Century the principal philosophical construct by which those of any relative depth of intellect posited their theories was that of the Church or in the alternative the more anciently based Aristotelian logic. The Church and the society that it restrained were male dominated and controlled with little concern for freedom of women. Yet women could find no philosophical underpinnings of the Greeks or any other viable precedents that would naturally advance their course and alleviate their sorry status and confinement. Aristotle was certainly no help. In his exposition on the story of philosophy, Durant observes the futility of women in ancient Greek culture as perceived by Aristotle in the “clay” metaphor (1961, p.56). In explaining the difference between man and woman and “form and matter,” Aristotle explained that male is the active, “formative principle and female is

the passive clay, waiting to be formed” (Durant, 1961, p.56). Thus newborn females are incomplete and tangible evidence of the “failure of form to dominate matter” (Durant, 1961, p.56). In this view, matter is the potential of form; matter is nothing and form is something. “Matter obstructs, form constructs” (Durant, 1961, p.56). Thus, Aristotle not only condoned gender inequality, but, provided rationale to justify it.

In 1642, the year Newton was born and Galileo died, and thereafter for more than 100 years, the plight of women went virtually unnoticed. The great classics of the time concerning liberty were generally directed to the divine right of kings and the emergence of a democratic idea that had been latent since Rome and Athens (Wooten *ed.*, 1986). The philosophy and laws that emerged from the civil war in England from 1642 to 1649, concerned the balance of power between the monarchy and the people and the political and military standing of men, giving virtually no consideration to the condition of women and of the poor. The refinement of social concern for women that was to evolve in concert with universal education in later years that would lead to a greater cognizance of slavery and sex discrimination.

The equality of the sexes had been of only marginal concern to philosophers in both the conjugal and political sense since the reduction of the absolute authority of the Catholic Church in the Reformation. Without the dominating dogmatism of the Church, philosophers were required to cast about for reason and rationality in justifying inequality of the sexes. The story of Genesis was richly glossed to prove, by both Protestant and Catholic ideology, that Eve, as woman, must be subjected to the will of her husband. By extension, theologians concluded that the subjection of wives to husbands, women to men, was a logical basis and metaphor for the foundation of governmental power whereby hereditary monarchies were justified. Even the great Hobbes felt compelled to notice the woman question as he defined the “laws” of nature and the necessity of sovereigns to pass on inter-generational authority to their progeny (Hobbes, 1651). In so doing, Hobbes speaks of the “right of Dominion by Generation” and the right that the “Parent hath over his Children,” a right he calls “Paternal” (Hobbes, 1651, 1968, p.253). In arriving at his justification for dominion by generation,<sup>1</sup> Hobbes saw a kind of implicit contract between the child and the parent, requiring the child’s consent (Hobbes, 1968, p.253). According to Hobbes, the child is equally subject to both mother and father. In this parental sense, the sexes are equal. However, Hobbes further reflects that the child cannot obey both mother and father, because “no man can obey two masters.” To resolve this dilemma of two masters, Hobbes chose between mother and father, and he came down on the side of the mother (Hobbes, 1968, p.253). Hobbes disagreed with those who argued that man was the “more excellent sex” and he says that they who believe such clearly “misreckon” the situation (Hobbes, 1968, p.253).

The critical question of whether woman or man controls the child had much to do with how Hobbes viewed succession in the commonwealth. The rightful contractual control of the child within the family, and therefore by

extension, the right of succession in the sovereignty of the state, according to Hobbes, can only be decided by the “state of meer Nature” (Hobbes, 1968, p.253). Natural law as interpreted by Hobbes required that the right of dominion over the child rests in the will of the mother. The child is dependent on the mother for nourishment and preservation, and by implicit contract owes preservation of its life to the mother and the *quid pro quo* is obedience to the mother. Thus, the mother controls the child in the state of nature. Yet even though Hobbes makes a good case for the woman to control the destiny of the child according to the “laws of nature,” his rationale also provides that control of the state can also be legitimated by conquest, raw power and strength. The brute strength of the male is a relevant and legitimate exercise of control that also emanates from the “state of nature.” The woman controls in the Paternall world of the family, but Hobbes acknowledges that raw power can give the male control of both family and government (Hobbes, 1968, pp.255-256).

The issue of sex discrimination and the perception gained from the rationale of Hobbes’ “laws of nature” have historically had particular interest to those persons in positions of power who have sought to extend their political dominion by heredity to their progeny in perpetuity. Without Hobbes’ state of nature argument, woman’s authority over generational succession is greatly reduced and becomes inconsequential in deference to the male power, conquest, or despotic acquisition and control of the commonwealth. On the other hand, the extension of Hobbes’ Paternall or family rationale for succession gives the female greater philosophical leverage in the struggle for both Paternall and political power, elevating the issue of equality of the sexes to higher levels of respectability and credibility.

Yet, few paid much attention to Hobbes’ natural law argument, not even the eminent Locke. Writing 30 years later in 1681, Locke addressed the issue of equality of the sexes and rendered less equality to women than did Hobbes (Wooten, *ed.*, 1993). Locke referred to women as the “weaker sex” and gave deference to prevailing custom and law, and in so doing asserted that “the chief end” of a woman’s being is “the propagation of mankind” (Wooten, *ed.*, 1993).<sup>2</sup> Much of what Locke had to say about the equality of the sexes was in response to radical fundamentalist Biblical interpretations that relied on the Garden of Eden story in subjecting women to a lower status than men in the household, society, and government. The church doctrines that alleged that God granted Adam prerogatives and privileges above those of Eve, “investing thus man with dignity and authority, elevating him to dominion and monarchy,” (Wooten, *ed.* p.242)<sup>3</sup> had been either the explicit or implicit accepted faire of the Christian Church for a thousand years. Locke did reduce this Biblical nonsense of fundamentalists by pointing out that it would be a strange God who, while punishing Adam and Eve for their sin and turning them both out of Paradise, would “in the same breath” decide to elevate Adam to the chair of universal sovereign and monarch over all of mankind on earth, and thereby subjugate Eve and all women. Locke found it humorous that anyone would accept the Christian fundamentalist beliefs of the Adam and Eve myth of

creation would be seriously used to subject women to a lower societal and governmental status. Locke said that having just committed the “Original Sin,” it was no time in which “Adam could expect any favors, any grant of privileges, from an offended maker” (Wooten, *ed.*, p.243).

Moreover, Locke found no credence in the Biblical interpretations that suggested that the Garden of Eden episode gave any sort of valid presumption in favor of man over woman and invested in the male any “original grant of government” over the female (Wooten, *ed.*, p.244). Nor did the mythology of Genesis provide any rational support for the argument that a contract of marriage that gave any conjugal power to man could extend to government rule. According to Locke, the act of marriage could not be used to justify the political subjection of women in matters of state. Referring to English monarchy, Locke observed it would be inconceivable that had either Queen Mary or Elizabeth married one of her male subjects, that she would have been put in political subjection to him (Wooten, *ed.*, p.245).

However, Locke would ultimately disappoint those who looked to his writings or his era to constitute an epoch that contributed very much to equality of the sexes in the family or in government. (Wooten, *ed.*, p.285-86).<sup>4</sup> Locke’s failure to take into account the vagaries of custom, illiteracy, and culture in shaping laws that unevenly bestowed benefits and detriments on men and women is an important shortcoming. In view of the American founding fathers, reliance on the writings of Locke was in turn an indirect influence the Constitution of the United States and the Bill of Rights,<sup>5</sup> neither of which provided for education, equality of opportunity, or equality of the sexes. Thus, pre-Enlightenment was a time of little real movement toward equality of the sexes or anything else.

The Enlightenment itself, the watershed in human conduct in the western world, made the ultimate contribution to rationality in displacing myth with reason. The Age of Reason that emanated from the Enlightenment laid the foundation for the social and political thought processes that would ultimately draw into question the social inequalities that are still being addressed today. Yet, as is discussed in Chapter One of this book there was scarcely little attention paid to gender inequality in the writings of the leaders of the Enlightenment. The *Encyclopedia*, edited by Diderot and d’Alambert, an attempt to summarize knowledge at the time, was a male document interestingly defining “woman” as the “female of man” with the word “man,” capitalized as encompassing both man and woman (Steinbrugge, 1995, pp.25-26). The male in nature was defined broadly as to his relationship with the whole of nature while the female was defined solely within her own limited sexual nature (Steinbrugge, 1995, p.32). Even Rousseau, the personification of the Enlightenment, implicitly denied the equality of women and men, generally holding that women, as Steinbrugge explains, have about them a moral goodness, while men, less good, have the weighty advantage of rational understanding (Steinbrugge, 1995, p.66). To Rousseau, “the art of thinking,” as it applied to women had the limitation of falling within the boundaries of the

moral duties of wives and mothers, and not in broader concerns of the affairs of the state. In spite of such myopic views of women, the contribution of the Enlightenment to the concept of equality did intellectually stimulate the Western World and provided the fertile ground for the long-range beneficial effects of women's rights that emerged more fully in the Civil Rights Era of the last third of the Twentieth Century in the United States.

While the maturation of the idea of equality was uneven, nevertheless, the foundation for universal education and its progress from the early 1800s contributed materially to a mode of logical thought that increasingly questioned discrimination based on race and gender. Though slow and sporadic, the irrationality of inequality resulted in advancements for women such as the Infants' Custody Act of 1839, in England and later the English Divorce Act (See: Wilson, 2002, p.306) extending some measure of equality to domestic life. However, there were periods of retrogression on both sides of the Atlantic, roughly marked by the all-consuming Civil War in America and the period from the 1860s to the 1880s in England. A.N. Wilson viewed this time as a "paradoxical step backwards," a "further diminution of women's rights in English Law" (Wilson, 2002, pp.308-309). The most manifestly discriminating of this period was probably the Contagious Diseases Act of 1864,<sup>6</sup> that blamed "fallen" women for venereal diseases, branding them as the source of contamination (Wilson, 2002, pp.308-309). The law sought to wipe out prostitution, which created a "crime of women" with no corresponding crime of men (Wilson, 2002, p.309). Wilson points out that "so monstrous was the phallogocentric ideology which so unthinkingly framed the Contagious Diseases Acts in their particular form that abuses caused by the Acts and the debates that led to their repeal worked as a powerful stimulus to the Women's Movement (Wilson, 2002, pp.309-310).

This retrogression, in the form of official ordinances deterring rights of women was not, however, reserved to only on one side of the Atlantic. The issue of suffrage arose time and again during the mid-to-late 19<sup>th</sup> Century with perhaps the nadir being tolled by the U.S. Supreme Court in 1874 in *Minor v. Happersett* (88 U.S. 21 Wall.162, 22 L.Ed. 627, 1874), which denied a woman's right to register as an elector. The Court unaccountably held that all citizens were not vested with the right of suffrage by the U.S. Constitution. This case, while not changing the position of women, clearly divorced the Constitution from an official recognition of the rights of women (Pole, 1978, p.305).

In 1869, ironically the same year that John Stuart Mill penned *The Subjection of Women*, Elizabeth Cady Stanton and Susan B. Anthony formed the National Women's Suffrage Association (NWSA) in America to begin a push to secure passage of a constitutional amendment to extend the franchise to women. A suffrage amendment had been introduced in Congress in 1868, the same year as the ratification of the Fourteenth Amendment, and another version was introduced in 1878, referred to as the "Anthony Amendment." Each year after that, an amendment was proposed until 1896, when it was no longer to be

found on the Congressional agenda. Finally it was resurrected in 1913 (Becker, Bowman, Torrey, 2001, pp.10-11). Thus at the end of the Nineteenth Century, women still did not have a constitutional right to vote. Only after World War I, with the passage of the Nineteenth Amendment in 1920, was this end achieved.

Progress in Great Britain was similarly plodding and deliberate where women's suffrage was attained for freeholders, wives of freeholders and women over 30 in 1918, and was not extended to all women until 1928 (Eleanor Flexner, as cited in Becker, Bowman, and Torrey, 2001, pp.12-13). Thus it was not until the era of the Great Depression and the run-up to World War II that women gained the fundamental essence of the democratic form of government.

The 1930s and the Depression in America offered little chance for women's opportunities to progress. The labor shortage during World War II did, however, create an environment where women were needed to enter the workforce to replace men who were drafted. Yet, even then, women were paid less and when the war ended they were replaced in their jobs by returning male veterans. During the 1950s, there was little sustained recognition of the need to expand women's interests. In 1954, however, the U.S. Supreme Court, in the landmark *Brown v. Board of Education* (347 U.S. 483, 743 S.Ct. 686, 1954) gave new meaning to the Fourteenth Amendment's Equal Protection Clause, suggesting that the dormancy of the rights of both African-Americans and women would be judged thereafter with a new and enlarging standard of equality.

It was not until President Kennedy set a tone of expansion of opportunity that the unrealized ideal of the Enlightenment took on new meaning. The revival of the ideal was given immediate impetus by President Kennedy in 1962, when he established the President's Commission on the status of Women (PCSW) and appointed Eleanor Roosevelt as its chair. The newfound cognizance of the issue led to a strategy, which called for engaging the courts in the use of the Fourteenth Amendment as a vehicle for the expansion of women's rights. This was a compromise with PCSW that favored an Equal Rights Amendment (ERA), but saw it as a long-range goal. Adding to the intellectual rationale for an expansion of women's rights was the influential best seller, *The Feminine Mystique* by Betty Friedan.

These precursors created a foundation and set in motion the events that would lead to the passage of the Equal Pay Act of 1963, requiring equal pay for equal work for women and men, and the Civil Rights act of 1964 that marked the beginning of what we call in this book the "Epoch of Equity" for women. Title VII of the Civil Rights Act of 1964, The Equal Protection Clause and Title IX of the Education Amendments of 1972 formed the legal basis for a series of U.S. Supreme Court decisions that would have a profound effect on the status and condition of women in the United States. In *Reed v. Reed* (404 U.S. 71, 1971), the female plaintiff represented by Ruth Ginsburg, now Associate Justice of the Supreme Court prevailed in striking a state statute creating preference for male estate executors. Even though the Supreme Court in *Reed*

did not elevate sex to a level of strict judicial scrutiny, nevertheless sex was given a more prominent status above the mere rational relationship test. Later in *Craig v. Boren* (429 U.S. 190, 1976), the Supreme Court held unconstitutional state statutes that discriminated against females in the purchase of alcoholic beverages. The *Craig* Court shifted its concept and terminology from “sex” to “gender” and chiseled into the law the “intermediate” level of scrutiny for classifications based on gender. From this case forward, a law that distinguished between men and women be based on an important governmental objective and must be substantially related to the attainment of such an objective. In all, from 1971 through 2000, the Supreme Court rendered 29 opinions which, taken in totality, substantially elevated the legal status of women in the United States. Combined, these precedents gave statutory and constitutional substance to the earlier dreamed-of ideals of equality of the sexes.

Nevertheless, in spite of the progress measuring from conceptualization of equality in the Enlightenment to the four decades of the “Epoch of Equity,” complete equality for women has not been fully achieved. The Equal Rights Amendment (ERA) was never passed and is seldom mentioned today, and the Supreme Court has not yet elevated gender to the top level of judicial scrutiny.

Though diminished, gender discrimination still exists in various economic and social sectors. Current issues that emanate from the four decades of progress juxtaposed against the limitations that an increasingly conservative Congress and judiciary now visit upon the nation is the nature of the unfinished business at hand. Today, the central government in the United States has become more accepting of inequality, whether it be based on gender, race or economic condition. Kawachi and Kennedy have recently observed that most Americans today are content with large income disparities and social inequalities (2002, pp.86-87). Accordingly there is a rising belief that inequality is necessary and even desirable as the engine of growth, productivity and performance (Kawachi and Kennedy, 2002, pp.86-87). With an apparent growing diminution of public dedication to the earlier ideals of equality, further advances in gender equity may be problematic. Herein lies the growing dilemma of the future.

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END NOTE

<sup>1</sup> *Leviathan*, 1651, written to partially justify the succession and return of Charles II after Cromwell had executed Charles I.

<sup>2</sup> *Ibid.*, pp.240-242. 'Virtus'(1681; from Locke, 1661).

<sup>3</sup> John Locke, *The First Treatise of Government*, 1681, Chapter Five: "Of Adam's Title to Sovereignty by Subjection of Eve," Wooton, *Ibid.*, p.242.

<sup>4</sup> John Locke, *The Second Treatise of Government*, Chapter Six: "Of Parental Power," See: Wooton, *Ibid.*, pp.285-286.

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<sup>5</sup> The limitations that Locke pondered are illustrated by the fact that there was no reference to equality in either the U.S. Constitution of 1787 or the Bill of Rights. The Equal Protection Clause of the Fourteenth Amendment did not emerge until 1868, and even today has not been interpreted to strictly scrutinize governmental acts to show a compelling reason in discriminating between women and men.<sup>5</sup> The first Act was passed in 1864, and was amended in 1866, 1868 and 1869. The Acts were repealed in 1886.