

GENDER DISCRIMINATION LITIGATION IN HIGHER EDUCATION:  
THE UNITED STATES AND ENGLAND

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INTRODUCTION

In 1978, shortly after becoming head of the Equal Employment Opportunity Commission, set up to enforce anti-discrimination legislation in the United States, Eleanor Holmes Norton visited England. She told a Manchester Guardian reporter, "All I know is that before there was a law, nothing happened. Now there is a law, and this is a law enforcement operation....No one who is serious about the equality of the sexes would advocate the British system."<sup>1</sup> England does have anti-discrimination laws, but it does not allow class actions or damages—two elements that make the American laws tougher. This study focuses on a segment of the employment scene—women faculty and staff in higher education in each country. Twenty five years after Norton made her comment, one can look at the relative progress against discrimination in the U.S. and the U.K., then examine applications of the law in both countries, and come to some understanding of just how right about the need for tough laws Eleanor Holmes Norton was.

Comparing how two different countries deal with a social problem may suggest that one approach may be more effective than another, although different approaches may also reflect certain fundamental differences in national character, values, and attitudes towards laws or litigation as an approach to reform. Also, in both countries, women faculty in higher education have sought to deal with discrimination in a variety of ways besides litigation.

They have drawn on the modern feminist movement to exert pressure on institutions of higher education, both internally and externally, to hire and promote more women; and women on both sides of the Atlantic have successfully called attention to the need to eliminate sexual harassment in the workplace. Furthermore, a lot of cultural interchange has existed between the U.S. and the U.K.

However, this paper focuses only on the use of anti-discrimination legislation to achieve equality. Furthermore, the emphasis here is on British and American women faculty in higher education. One reason for selecting academic women (used in this paper to refer to women faculty, not women students) is that they work in an environment which is perceived in both countries "as having a set of values which are in direct opposition to discrimination," especially when compared with most other work settings.<sup>2</sup> The comparison will include a discussion of background conditions leading to the passage of major legislation in both countries, the differing nature of the laws themselves, their implementation, the use of affirmative action in the U.S.

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and “positive action” (a somewhat less aggressive approach to affirmative action) in England, the role of trade unions, and of the European Union, and, finally, will raise the question of what we might learn from comparing the litigation experiences of academic women in each country. Does tougher legislation yield results?

In dealing with discrimination issues historically, the obvious difference is that while England promoted slavery in some of its colonies, it had no direct experience with slavery or Jim Crow segregation, as did the U.S. Following World War II, the civil rights movement gained momentum in the U.S., resulting in the passage of the Equal Pay Act in 1963, and Title VII of the 1964, Civil Rights Act, where the word “sex” was added at the last minute to legislation designed to counter racial discrimination in the job market.<sup>3</sup> Title VII was much more sweeping than the Equal Pay Act in that it covered all kinds of job discrimination, from the initial advertising of a position to hiring, pay, promotion, and retirement. While it initially did not cover women in public higher education, that changed with an organized women’s movement and, as a result, broader 1972, legislation.<sup>4</sup> By contrast in England, legislation outlawing sex discrimination in the workplace came before legislation banning racial discrimination. The U.K. instituted its Equal Pay and Sex Discrimination Acts in 1975,<sup>5</sup> (having passed its Equal Pay Act in 1970) and outlawed race discrimination the following year.<sup>6</sup>

At the time these laws were passed, women academics in both countries were under-represented in administration and in the higher ranks and were paid less than their male counterparts. Because in England in the 1970s, only 5% of academics in general held professor rank compared to 35% in the U.S., to get a rough sense of the relative percentage of women academics in the upper ranks, one approach is to equate the rank of professor in the U.S. with the ranks of professor, reader, and senior lecturer in England to reach the upper one-third of academics in both countries.<sup>7</sup> Doing that and using survey data from 1969, women academics in the U.S. were 12% compared to 9% in England.<sup>8</sup> Another analyst in 1975, claimed that British women were more likely to become departmental chairs in medicine and the social sciences, but that American women were doing better than their British counterparts in chairing humanities and applied science departments.<sup>9</sup>

The British Sociological Association did a poll in the mid-1970s, that substantiated the earlier data for England and also documented a lot of blatantly offensive practices. For example, British women complained about job interviews, where “questions centered disproportionately on engagement, marriage, and children.” One woman who had published more than her department chair claimed that she “was passed over for promotion in favour of a man of the same age, less qualified, less experienced and with virtually no publications.” Still another said that when she complained about being listed second as the co-author of a book when she had published more than her male counterpart, her university told her that because “she was married, it was not her bread and butter” and terminated her employment.<sup>10</sup> Even a positive

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development, the appointment of a woman as Professor of International Law at the University of Manchester, underscored the generally bleak picture. She apparently was the first woman in England to hold a chair in law.<sup>11</sup> It's important to remember that in the mid-1970s, bad as the situation in England might sound, women academics in the U.S. were not significantly better off.<sup>12</sup>

## EFFECT OF DAMAGE AWARDS

In 1975, British women academics had high hopes for change with the passage of the Equal Pay and Sex Discrimination Acts. If hiring and promotion continued to be handled "irresponsibly," a woman could now file an individual complaint with the courts or ask the newly created Employment Opportunities Commission, analogous to the Equal Employment Opportunities Commission in the U.S., to do an investigation. A British woman could expect as a remedy a declaration of her rights, including the award of monetary damages for "injury to feelings," a court injunction, or court recommendations.<sup>13</sup> However, the British legislation in practice turned out to be much weaker than the American legislation.

To begin with, the British law said that discrimination cases had to go to the existing employment tribunals, which already dealt with other employment related issues, such as redundancy payments (unemployment compensation in the U.S.).<sup>14</sup> Relatively informal and local, these are panels of three people, "a legally qualified chairman [sic], a union adviser and someone representing the employer."<sup>15</sup> A study of sex discrimination cases showed that few women actually made use of the tribunals. Of those that initiated tribunal action, over half withdrew before their hearing. Of the remainder, only a handful actually won their cases. The actual number of women filing from 1976 to 1984, varied from a low of 150 in 1982, to a high of 310 in 1984. The percentage prevailing ranged from a low of 6.3 in 1981, to a high of 23.4 in 1983.<sup>16</sup>

Applicants to the tribunals withdrew for a variety of reasons. In only a small number of cases did employers at that stage volunteer to make amends in the form of a pre-hearing settlement. Withdrawal was usually related to the high degree of personal and work-related stress compared to the low level of the potential reward if the applicant prevailed. The system involved the use of conciliation officers, who tended to be perceived as being on the employer's side and who underscored the very negative risk/reward ratio for applicants. Those who managed to prevail in the legal process often reported retaliation. For example, one woman said that due to the newspaper publicity, she was unable to get another job. Another said that lack of a reference from her former employer was keeping her unemployed. On top of that, if the tribunal ordered a monetary payment to the applicant, it was actually the applicant's duty to collect it from the employer that she had sued. Most employers did not pay promptly. (While it's hard to understand why the tribunals don't take a more active role in seeing that employers pay the damages they have ordered, the fact

that they don't illustrates their low status or lack of "clout"). Furthermore, the amount most employers were asked to pay was exceedingly low, less than 200 pounds (ca. \$300.00). The author of this analysis suspected that tribunal recommendations and declarations were similarly flouted. In conclusion, employers could "ignore tribunal decisions with impunity."<sup>17</sup> The low compensation for "injured feelings" or damages may be something that the British pride themselves on, in the sense that they don't want to be overly litigious, like the Americans. However, to Americans, the low level of compensation seems absurd. On top of the low compensation, most tribunal applicants "need a good attorney or representative to win."<sup>18</sup>

The possibility of high damage awards in the U.S. is a major difference. While federal law caps Title VII damage awards at \$300,000 for each person, many states have no caps, providing a loophole for much larger awards.<sup>19</sup> To illustrate the potential for a high damage award in gender discrimination litigation in academia in the U.S., a 1999 court jury ordered Trinity College in Connecticut to pay a former chemistry professor, Leslie Craine, \$12.7 million after it found Trinity guilty of gender discrimination, violating her contract, and intentionally inflicting emotional distress by denying her tenure. The circumstances were that her department regarded the laboratory manual that she had co-authored and her one article in a leading refereed journal sufficient to meet the research requirement, but the administrative committee that reviewed the chemistry department's recommendation disagreed. That same year, that administrative committee approved tenure for a male historian who had two articles pending publication in a state journal and a book-length manuscript with no publication commitment at that point. Craine argued disparate treatment in the application of the criteria for tenure. The jury for the trial became especially upset when members of Craine's department, who had strongly supported her tenure case, backed off in their trial testimony. As her attorney explained the damage award, "We asked the jury to send a message to Trinity that discrimination would not be tolerated, and that's what it did." The president of Columbia University Teachers College, Arthur Levine, remarked that the award would cause colleges in general "to think more intelligently about tenure and evaluation" and to "act much more legalistically."<sup>20</sup> The jury's award may well have been the highest for denial of tenure, but it didn't hold. First, the judge reduced the award. Then Trinity College appealed to the Connecticut Supreme Court, which decided no gender discrimination had occurred. However, that court did find that Trinity had violated Craine's contract by not following its faculty manual's directive to give her sufficient and timely feedback in advance of its negative tenure decision. That brought the final award to Craine down to \$721,000. While in the end, the case didn't advance the legal concept of gender discrimination, it did uphold the court's willingness to intervene in tenure decisions on the basis of violation of contract procedures.<sup>21</sup> The British not only have a more centralized legal system, but they are also reluctant to use damage awards in this aggressive American fashion. As for tenure cases, the British have abolished academic tenure.<sup>22</sup>

When it comes to actually making a legal case for discrimination on an individual basis, changes have occurred in both countries over time. The 1980s was Reagan in the U.S. and Thatcher in England. Both leaders had a lot of influence on how anti-discrimination laws were interpreted and enforced. As a result, both countries made it more difficult for victims to legally establish discrimination. In England, the plaintiff may have some initial advantages in forcing the employer to give an explanation. However, employers are not required to keep statistics. Furthermore, the relative informality of employment tribunal hearings without skilled cross-examination makes it more difficult to establish the more common but subtler forms of discrimination. Finally, on top of the low damages, the tribunals do not even award successful applicants compensation for attorney's fees and costs. The result is a lower level of "professionalism" in arguing discrimination cases in England.<sup>23</sup> By contrast, U.S. courts finding discrimination in favor of the plaintiff have the power to order the defendant to pay triple fees to the plaintiff's attorney. The purpose, of course, is to encourage attorneys to take very difficult cases to argue on a contingency basis.<sup>24</sup>

#### CLASS ACTIONS VS. INDIVIDUAL CASES

However, what really makes the American approach much more aggressive than the English approach is that the American approach allows for class actions, something excluded from British law. Occasionally, someone in Britain responds with what sounds like envy of the American system in this regard. For example, the \$35,000,000 class action settlement against AT&T in 1978 caused a British reporter to comment about the U.S., "The name of the game is class action—the legal provision for one woman...to sue for everyone else in the same group....No such provision exists here, nor is it likely to....On top of the financial penalties come orders which are euphemistically described as 'goals' and 'targets,' but which are in fact quotas."<sup>25</sup>

In the U.S., class action has been used successfully against some universities. For example, the 1980 settlement of the Rajender case against the University of Minnesota resulted in the establishment of special masters to handle over three hundred complaints of discrimination from women academics and to eventually settle a salary petition by setting aside three million dollars to increase the base pay of women faculty.<sup>26</sup> According to a 2002 newspaper report, the settlement eventually covered over 3500 women and cost the university \$40 million.<sup>27</sup> (In calculating \$40 million, a large chunk of that was annually recurring adjustments to base salaries). The plaintiff, Shyamala Rajender, was a temporary chemistry professor whose contract was not renewed. The settlement covered all aspects of the employment situation, from hiring to promotion to salary to retrenchment.

During this case, Rajender's attorney, Paul Sprenger, decided to focus

class action employment discrimination. Leaving the law firm where he had done a lot of personal injury defense work that guaranteed him an hourly fee, he formed a new firm that would argue one big class action discrimination case at a time on a contingency basis, meaning that if he prevailed, he could collect his costs and triple fees. However, these cases were very risky, difficult to prove, and time-consuming. If he lost, he would be out probably over a million dollars. To compensate for the risk, his firm decided to balance civil rights work with other legal cases where clients paid them regardless of the outcome. Nevertheless, the risk became too great for Sprenger's two partners. After they left, Sprenger decided that he would balance the risk of "one big class action at a time" by expanding "his class action operations to handle ten, twelve, however many he could staff." That way, a big win in one case could finance the next couple cases.<sup>28</sup> Sprenger went on to pioneer the concept of class action sexual harassment or hostile workplace in the Eveleth Mines case and had other significant wins, such as "a \$31 million settlement from American Express, including expected legal fees of \$10 million to be" shared proportionally with a firm with which he had partnered. In looking back on his career, Sprenger attributed his success to careful selection of cases and luck.<sup>29</sup> As for his motivation besides potentially high fees, it appears to have included a desire to get to know and work with the same clients over a long period, a love for the intellectual challenge of this area of the law, and an aptitude for high stakes courtroom battle.<sup>30</sup> From the standpoint of clients with ordinary incomes, class actions and contingency fees make quality legal representation possible. A legal practice such as Sprenger's would not be possible in the U.K.

Other universities have also settled class action gender discrimination cases. One of the first, Brown University also agreed to a settlement that was similar to, though less effective, than Rajender.<sup>31</sup> In one of the most recent, women faculty at St. Cloud State University in Minnesota have reached a class action settlement granting them \$830,786 in back pay and salary adjustments.<sup>32</sup> However, if the description of the fifty-five academic discrimination cases supported by the AAUW Legal Advocacy Fund between 1981 and 1999 is any indication, very few academic employment discrimination cases are class actions.<sup>33</sup> Needless to say, England has no organization similar to the AAUW Legal Advocacy Fund, which will offer token monetary support and the use of its name to selected women bringing discrimination cases against their universities. British women have to rely more heavily on their unions, which are not always forthcoming in either country.<sup>34</sup>

In the U.S., the Reagan-influenced Supreme Court by the late 1980s was making class action suits more difficult.<sup>35</sup> In 1979-80, University of Minnesota chemistry professor Shyamala Rajender was able to allege class-based discrimination by citing the cases of five faculty plaintiff-intervenors and supportive testimony from the University of Minnesota's own affirmative action director, Lillian Williams. Williams described her inability to keep search committees from subjectively eliminating women, even when she knew they were doing it, and other ways that rendered her ineffective.<sup>36</sup> When she

was asked to estimate the percentage of women faculty, she guessed 6 to 7%.<sup>37</sup> The university had no statistical data at that time to refute her. Subsequent data indicates that she may have cut the actual percentage of women faculty by more than half. The court-mandated collection of statistics put the percentage of women faculty at 16.5% in 1982.<sup>38</sup> The Rajender case helped some other class actions. Among them was *Melani v. Board of Education*, a case women faculty brought in 1976 against the City University of New York. Settled in 1983, it resulted in substantial pay increases and salary adjustments for the plaintiffs. To succeed with a class action, women needed a high degree of unity. Rajender faced no serious opposition from other women faculty in the late 1970s.

Not so lucky were the 350 faculty women at Illinois State University who joined a pay equity lawsuit in 1996. There a number of other women faculty were vocal in telling The Chronicle of Higher Education of their opposition. They claimed that salary differentials between men and women faculty were due to their respective concentrations in different fields.<sup>39</sup> Also, by this time, discriminatory employers had become “sneakier or trickier” in the words of Minnesota Human Rights Commissioner Janeen Rosas, making discrimination much more difficult to establish.<sup>40</sup>

At this point, it may be useful to look at some specific sex discrimination cases in British academia. British newspapers do not appear to have paid much attention to such cases until the latter half of the 1990s. In 1996, the former personnel director of Cheltenham and Gloucester College, Evelyn Henson, charged that it had unfairly dismissed her and that she had experienced “victimisation, sex discrimination,” and pay discrimination. The college avoided a hearing before an industrial tribunal by settling with her for 40,000 pounds [ \$60,000]. Her case was the third against that college alleging sex discrimination in two years. As a result, the lecturers’ union, Nathe, was calling for an investigation of the college’s internal grievance mechanism.<sup>41</sup> While Henson was successful in obtaining a monetary settlement, not in regaining her job, two other cases to attract media attention in the late 1990s were losses.

Gill Evans, a history lecturer desiring a promotion at Cambridge University, used both the employment tribunal and the High Court several times on the grounds that Cambridge had violated its statutes not to discriminate by denying her a promotion. Her statistical evidence was that, as of 1997, only thirteen out of 247 professors at Cambridge were women. Her case may have forced some reforms in the promotion procedures at Cambridge because in 1998, for the first time, faculty could apply for promotion and, if tuned down, receive written feedback as to why. Evans, who had published thirty-four books and 140 refereed articles, claimed that her feedback was a single general paragraph that gave her no direction as to what to do for the next promotion round nor did it guarantee that her entire record had been considered. Because she was arguing bias due to her noisy campaign to get Cambridge to reform its promotion procedures, the appeals court judge directed Cambridge to set up “an independent panel to consider her applications for promotion.” In

1999 seven outside academics wrote to the vice-chancellor of Cambridge, objecting to the bias against Evans, who by then had published four more books and was earning “top marks for teaching.”<sup>42</sup> In 2001, Cambridge again refused to promote Evans to professor even though she had the recommendation of her faculty.<sup>43</sup> In July 2002, the High Court refused to accept her argument that her case was a contractual one that fell under its jurisdiction.<sup>44</sup> However, her persistence finally paid off several months later when Cambridge University promoted her to professor of medieval logic. In the meantime, she had provided assistance on over a hundred other cases, studied law part time, and earned the right to practice law. On winning promotion, she announced that she would offer advice free to others.<sup>45</sup>

Although not a class action case because English law doesn’t allow them, Gill Evans’ lawsuits did have a policy impact. In 2000, Cambridge University had arranged for an independent audit that “found that Cambridge’s predominantly white, male leaders were propagating a macho and intimidating culture and were largely blind to the needs of female, ethnic minority and disabled colleagues.”<sup>46</sup> While women accounted for 14.7% of Cambridge’s academic staff, they were only 6.25% of the professors. As a result, Cambridge had officially announced a program of “positive action,” meaning deliberate attempts to encourage under-represented groups to apply for positions, a re-evaluation of promotion procedures, and the publicizing of employee rights and benefits. However, a Cambridge lecturer of English complained that she had difficulty learning about the university’s unusually generous maternity leave policy.<sup>47</sup> Previously, the director of personnel at Cambridge suggested that the university would “look at staff profiles” to try to diversify the faculty in filling vacancies.<sup>48</sup>

A third example is that of engineering lecturer Violet Leavers at Manchester University. Leavers charged that her supervisor was bullying and harassing her. Manchester University successfully argued that that supervisor bullied and harassed everyone he supervised, regardless of gender. Hence, no sex discrimination had taken place. While Leavers technically lost her case, Manchester did reprimand the supervisor and remove him from supervisory responsibilities. He subsequently left the university.<sup>49</sup> It’s possible that the publicity these cases generated was more effective than the rulings themselves.

A couple other recent British examples are salary cases. A DeMonfort University senior lecturer, Lorna Chessum, learned that she was making “6,000 pounds less than a similarly qualified male colleague.” The court awarded her 10,000 pounds. However, Chessum advised other women contemplating legal action “to be ‘emotionally prepared’ for the flak” and to proceed only if “they are confident of winning.” Even though her university agreed to reconsider its equity policy, she commented, “It is just no good individuals fighting case by gruelling case. The process puts a lot of people off.” Furthermore, a lot of women fail as individuals to get redress from the legal process. Maggie Torres, an hourly employee earning about half the lecturer’s rate for teaching Spanish history at the University of North London, talked to lawyers about arguing sex

discrimination to highlight her difficulties as a single parent in academia. However, when she couldn't find a comparable single male parent, she dropped her case.<sup>50</sup>

Just as British law does not allow class action cases, it does not aggressively use contract compliance reviews either. In 1967, in the U.S., President Johnson used the mechanism of executive orders to prohibit federal contractors from discriminating on the basis of sex.<sup>51</sup> Since virtually all universities are federal contractors as the result of accepting student loan money or other grants, they came to be subject to federally conducted compliance reviews.

In the U.S., sometimes a compliance review of an institution coinciding with an individual court case can have considerable impact. An example is accounting professor Ceil Pillsbury's battle for tenure at the University of Wisconsin, Milwaukee. In December 1989, fourteen business school professors had voted against her being tenured to six in favor. She claimed that her record, which included an outstanding teacher award and an article in a top journal, was at least as good as that of three men the business school gave tenure to at that time. Furthermore, the business school had no tenured women among its twenty-six tenured professors. Pillsbury sued. She also "turned into a one-woman publicity machine—faxing reporters regular updates on the progress of her battle and calling to alert them that the NBC television news show, "Street Stories," would be featuring her case. Specific acts of discrimination that she cited were comments from some of her colleagues that questioned her second pregnancy and a memo from the professors who had denied her tenure justifying their actions by claiming that she "welcomed sexual banter." As proof, the professors cited a sweater that she had worn to their Christmas party that, as the male professors put it, "had a small boot suspended from each breast." It turned out that the sweater had a design of a fireplace with THREE boots suspended from the mantel. The University of Wisconsin, Milwaukee's equal opportunity director commented that it was "not a seductive sweater," and even if someone chose to regard it as such, it had no relationship to her academic record.<sup>52</sup>

Meanwhile, the Department of Labor began doing a compliance review of the University of Wisconsin, Milwaukee. It discovered that the campus had neglected "for five years to file a federally required affirmative action plan. The federal review also criticized the campus for "patterns and practices' in the hiring and promotion of women." As a result, in 1993, the chancellor for the Wisconsin system offered Pillsbury another tenure hearing, which resulted in Pillsbury rejoining the business school at the University of Wisconsin, Milwaukee. Wisconsin also reimbursed Pillsbury for the legal and publicity expenses that her banker-husband had front-ended.. However, individual relief wasn't the only result. The Milwaukee campus instituted "a series of measures aimed at improving the climate for women...including mandatory training for administrators on handling sex discrimination and harassment complaints." The state also passed a law setting up "an independent appeals process for

Wisconsin scholars who feel they were denied tenure on ‘impermissible’ grounds, such as race or gender.” What may have made Ceil Pillsbury so effective was that she was a Republican, “born-again Christian,” not a feminist, according to Merry Weisen-Hanks, then director of the campus’s Center for Women’s Studies. In fact, at the successful conclusion of her case, Pillsbury still refused to call herself a feminist, preferring her own word, “equitist,” instead. Her individual case never would have had its class implications if it hadn’t been for the federal government’s compliance review and a sympathetic response from the Wisconsin legislature.<sup>53</sup>

In England in the 1980s, over seventy local governments under the control of the Labor Party instituted contract compliance, mainly for the construction industry. However, the Tories took the position that the effectiveness of contract compliance had yet to be proven in England. Furthermore, at the national level, the Conservative-controlled Employment Select Committee issued a report in 1987 declining to endorse the approach. This 86 paragraph report devoted only “one sentence to the impressive experience in the U.S., a miserable acknowledgment of the significance with which the policy is seen in the U.S.”<sup>54</sup> according to a Manchester Guardian reporter.

#### AFFIRMATIVE ACTION AND POSITIVE ACTION

Related to compliance reviews is the subject of affirmative action, known in England as “positive action.” Back in 1980, some members of the British Equal Opportunities Commission raised the possibility of affirmative action on the American model, by which they seem to have meant “goals and timetables” for hiring women. Actually, a better explanation of affirmative action in the U.S. would be making extra efforts to publicize job openings among women and minorities and monitoring search procedures for fairness. Statistics are normally used to monitor progress, not force specific hires. Where preferences for women and minorities play a role, it is in the context of other preferences, such as a desire for diverse views, and the fairness of the preference is crucial.<sup>55</sup> The exaggerated misrepresentation of the American system by the British Employment Opportunity Commission may actually indicate reluctance, if not some bias, against hiring women. Most on the British Equal Opportunities Commission opposed that “goals and timetables” concept while being sympathetic to such proposals as more nursery facilities and positive action education efforts.<sup>56</sup>

Eight years later, an article claimed that “positive action in the UK is based on different principles from US affirmative action.” Specifically, positive action as described in this article was women banding together at the grass-roots level to work for institutional change rather change being imposed from above on institutions, as in U.S. affirmative action. Unfortunately, the networking group the authors described at a technological university in Britain had little to show for its efforts, partly because its members typically worked

under short-term contracts and the group was hampered by high turnover plus some resentment of the women in the better academic jobs.<sup>57</sup> In another case in 1992, when all twenty-seven promotions to professor at Oxford went to men, women there organized and collected signatures for a petition challenging the secretive nature of the process. They used the media quite successfully, with the result that a push occurred to get more women into the reader level in order to eventually enlarge the women in the pool to be considered for professor.<sup>58</sup>

A recent example of women faculty coming together at the grassroots level to positively affect change in the U.S. occurred at MIT. In 1994, fifteen tenured women faculty began collecting evidence showing that comparable male faculty were getting more than their share of research support, including laboratory space, higher salaries, and more important departmental service assignments. Rather than react defensively, their dean, Robert J. Birgeneau, agreed. He instituted an action program for women faculty that included salary adjustments, more research funds and laboratory space, and more important departmental committee assignments. Also, he hired more women faculty. MIT received nationwide publicity for its efforts, including front-page stories in the New York Times and The Boston Globe. The Clintons invited the chair of this faculty committee, Nancy Hopkins, to the White House, in the hope that MIT's positive actions would be imitated elsewhere. Meanwhile, the MIT women received many messages from women on other campuses who had done similar reports or pushed individual cases of discrimination, only to have their administrators dispute their data and circumstances. Some of these women responded with lawsuits.<sup>59</sup> The response to the MIT situation underscores that bias against women faculty is widespread in the U.S., with enlightened administrators, like Dean Robert J. Birgeneau, a rarity. Even so, as of 1999, women were only 12% of the faculty at MIT's science college.<sup>60</sup>

In the U.S., there seems to be more recognition that if women faculty are to organize in order to affect anti-discrimination policies and programs, they need a sympathetic ear in the upper ranks of administration. Some class action settlements, such as the Rajender one, have called for the establishment of campus equity commissions to achieve institutional change.<sup>61</sup> University presidents are also encouraged to take the lead in promoting equity on their campuses.<sup>62</sup>

Some British companies and institutions do choose to voluntarily imitate some U.S. affirmative action practices, such as appointing "equality action" officers and incorporating affirmative action statements in their ads. With such statements being voluntary, though, they do sometimes arouse some suspicion. For example, one woman academic at Westhill College of the University of Birmingham in England commented that she thought affirmative action statements in an ad may actually put off some women from applying.<sup>63</sup> She was probably referring to a certain edginess in choosing to make an issue out of affirmative action when it is voluntary. On the other hand, she noted that in spite of large numbers of women on the Westhill faculty, both the college principal and the dean were "blokes."<sup>64</sup> That was the year 2000.

Publicity to encourage “positive action” plus the authority to investigate and prosecute precedent-setting cases are the major duties of the British Equal Opportunities Commission, set up at the time Parliament passed the Sex Discrimination Act in 1975. In fact, its precedent-setting role was used as an argument for not allowing class action cases to be brought under the Sex Discrimination Act. Supposedly, they wouldn’t be necessary. It is also a political body in the sense that appointments to it are designed to represent diverse interests and are not to be the instrument of “knowledgeable feminists.” Both industry and labor have seats on the commission, and they tend to collude in not wanting to change the existing relationship of unions to management.<sup>65</sup>

In England, especially during the Thatcher years of the 1980s, women’s rights had low political priority.<sup>66</sup> A common saying among feminist women today in Britain in recalling Margaret Thatcher, England’s only woman prime minister, is, “She’s a woman, not a sister.”<sup>67</sup> As a result, the Equal Opportunities Commission has been something of a disappointment. During its first year, it did nothing to utilize the law to combat discrimination in education.<sup>68</sup> However, in 1978, it supported a couple precedent-setting cases in academia by arguing that discrimination plaintiffs needed access to files of relevant men to make their cases.<sup>69</sup> In the mid-1980s, the Equal Opportunities Commission published a guide for England’s entire educational system, from the primary grades through higher education, noting among other things that women were under-represented “in senior posts.” This guide also *suggested* that institutions “formulate an equal opportunities policy and implement it by a series of commitments, strategies and procedures.”<sup>70</sup> The U.K. tried again with in 2001 with its Equality Challenge Unit, an advisory service offering guidelines, workshops, and conferences. However, its head, Professor Joyce Hill, admitted, “There will be no instant fixes.”<sup>71</sup>

## THE EUROPEAN UNION AND LABOR UNIONS

One outside source of pressure to do more to achieve equity for women workers that Britain experiences, but not the U.S., comes from Britain’s membership in the European Union. The European Union has shown more commitment to the issue than has Britain and done so in the form of directives, which means that the U.K. has treaty obligations to bring its own laws into conformity with those directives. The major area where England has had problems in this regard is that the European Union wants adequate provisions in the laws of member states “to remove discriminatory provisions from collective bargaining agreements.”<sup>72</sup> Another issue was the British exempting small companies and private households from having to comply with sex discrimination legislation. Consequently, when the Thatcher government revisited sex discrimination legislation in 1986, it did make some moves to comply with the European Union directives as well as eliminating discriminatory mandatory retirement ages and some long-standing protective legislation relating to maximum hours that women could work.<sup>73</sup> However,

unions are a lot stronger in Britain than on the continent; and their interests dovetailed with Thatcher's moves towards deregulation. As a result, the 1986 Sex Discrimination Act flagrantly disregarded the collective bargaining agreements provision of the European Union directive.<sup>74</sup> The impact of the European Union in this area seems, in practice, to be more a moral force than a legal one due to lack of an enforcement mechanism.

The unions in British higher education have made some superficial responses to this pressure and also pressure from their women members. The two influential unions are Nathe, the lecturers' union, which in 1998 had a total of 29,367 members of which 46% were women, and AUT (Association of University Teachers), with 12,484 members in 1998, 30% of them women. In 1997, Joanna de Groot, an elected officer of the latter, published an academic article in which she offered a feminist critique of "the competitive, individualist and output-oriented aspects of academic life and activity and their links to male privilege."<sup>75</sup> She saw women bringing their feminist commitment to the academy while still supporting the security that she implied the union offered.<sup>76</sup>

Tom Wilson, head of the university section of Nathe, also felt the need to speak out, but did so in a more specific way, talking about women who don't apply for jobs that go to less qualified men, do more than their share of teaching at the expense of their research, and who hold more than their share of part-time appointments that are underpaid if equated on an hourly basis with full-time pay. He claimed that these kinds of discrimination were rampant; but that few women had the willingness or courage, even with Nathe's backing, to seek redress through the legal process.<sup>77</sup> One wants to say to him, don't just support those women in the legal process, but do something about that process. Go after tougher laws. In fact, some people are trying to use the political clout of unions to do just that. In 1999, the Association of University Teachers submitted a motion to the Trades Union Council (representing most unions in Britain), calling for "a national commission on pay discrimination across the public sector [drawing] particular attention to higher education, where it states that pay discrimination is accepted on all sides."<sup>78</sup> In lobbying for and negotiating a variety of workplace issues, it remains to be seen how high a priority the U.K. academic unions will place on gender equity.

## COMPARATIVE RESULTS

Statistics of women in British academia tend to show women moving up but not quite as much as U.S. women, especially with respect to academic administration. Going back to a 1991 study of fourteen British colleges, only a total of three departments had women heads. Women were also scarce on governing boards—around 17%.<sup>79</sup> That year in the U.S., around 300 women served as heads of colleges and universities. In England at that time, no woman had even reached the vice chancellor level.<sup>80</sup> One researcher found that when

she wanted to compare ten American women college presidents in 1996, with ten of their British counterparts, she had to use women whose titles might be principal, mistress or vice-chancellor. Furthermore, in addition to alluding to the comparative scarcity of women at the very top in England, she also noted some general differences as to family backgrounds and career paths. American women at the top were a more ethnically and racially diverse group than their British counterparts.<sup>81</sup> Top U.S. women administrators tended to come up through the academic ranks. In England, the women who made it into the upper ranks of administration often were hired from outside of academia. For example, two of the ten in one study had served as British ambassadors to other countries. Others came from government posts outside higher education.<sup>82</sup> An indication of a general difference in social class background is that more British women in this sample of ten had parents who attended college than the ten American women college presidents sampled.<sup>83</sup> A British woman administrator expressed concern that underlying values had not changed and that those women who did the best were those who agreed “to function as honorary men” and not as feminists or with those values and characteristics usually attributed to women.<sup>84</sup> By 2000, in the U.K., half a dozen women had reached the vice chancellor level out of 115 administrators that constituted the Committee of Vice-Chancellors and Principals.<sup>85</sup> Another source listed twelve women heads out of a pool of 168 British institutions of higher education.<sup>86</sup> Meanwhile, in the U.S., the number of women heads of colleges and universities continued to grow, with two Ivy League schools, Brown and the University of Pennsylvania, appointing women presidents.

Regarding the percentage of women faculty in the two countries, U.S. women also appear to be doing a bit better than their British counterparts. However, it is difficult to compare senior women faculty in England and the U.S., not only because of different academic ranks below professor but also due to major changes and expansion in the British system of higher education in the late 1980s/early 1990s, when the U.K. elevated its vocationally oriented polytechnics to university status. As for senior faculty posts, English women had increased their percentage from 17% in 1993, to 25% by 1999.<sup>87</sup> That figure compares favorably to U.S. women, who constituted 26% of tenured faculty in 1995.<sup>88</sup> For 2001-02, women were 32% of U.S. university faculty and 17% of faculty at professor rank.<sup>89</sup> In the U.K. in 2001, 12% of professors and 24% of senior lecturers were women. However, since professor rank is harder to obtain in England, the relative position of women faculty in the two countries may be closer than the raw statistics indicate.<sup>90</sup>

With respect to salary, U.K. academics, both male and female, are low-paid by American standards.<sup>91</sup> In England in 2000, women academics averaged 15% less than their male counterparts, with a discrepancy of 19% less for Scotland and Wales. The average British male academic made 32,274 (\$51,638 using 1.60 per pound) compared to 27,240 (\$43,584) for the average woman—a gap of 5,034 pounds (\$8054).<sup>92</sup> In the U.S. in 2001-02, women at public doctoral universities averaged \$55,603 or 21% less than their male

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counterparts. At private doctoral universities, women averaged \$62,875 or 22% less than their male counterparts. Pay discrepancies were less at masters level institutions, with women at both public and private colleges averaging about 12% less than their male colleagues.<sup>93</sup> Percentagewise, the pay gap between men and women academics in the U.S. and the U.K. appears to be roughly comparable.

## CONCLUSION

What does all this data say about the relative effect of more aggressive laws in the U.S. than in the U.K.? In the U.S., women are more likely to turn to a higher level court than something like an employment tribunal, have the option of doing class actions and can benefit from government-instituted compliance reviews. Affirmative action is a more aggressive concept than the English voluntary “positive action.” England also has nothing comparable to the American Association of University Women’s Legal Advocacy Fund to support women plaintiffs. The English, on the other hand, pride themselves on being less litigious than the Americans. One wonders if the American legal structure doesn’t simply appear to be more aggressive on the surface than it really is. Judicial appointments in the 1980s had a definite anti-affirmative action bias, and the commitment of both the Thatcher and Reagan administrations to the cause was weak to negative. Reagan, for example, had appointed about half of the federal judges by the end of his term in office.<sup>94</sup> The first President Bush appointed Clarence Thomas, a man known for his opposition to tough affirmative action and who may have been guilty of sexual harassment, to the Supreme Court. The current President Bush is backing a legal assault on an affirmative action point system used by the University of Michigan for student admissions. An aggressive structure without aggressive staff may not be very aggressive in practice. Tough legislation can be undermined with uneven or weak interpretation and enforcement. One would expect that with tougher laws in the U.S., American women academics would be much better off than their British counterparts, but that is not so. Furthermore, the continuing discrimination against women academics in both countries is an indication of continuing discrimination against women in general; and a reminder that tough legislation combined with strong enforcement continues to be needed in both countries.

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