# 1

## *Law, Markets, and the Institutional Construction of Gender Inequality in Pay*

The pay equity movement won its largest legal victory in 1983, when Judge Jack Tanner of the federal District Court of Western Washington found that the State of Washington had discriminated against workers in predominantly female jobs and awarded the plaintiffs a $400 million judgment.[1] The *AFSCME* decision (so named because the American Federation of State, County, and Municipal Employees brought the lawsuit) catapulted the pay equity issue into instant prominence. In its immediate aftermath, the number of states conducting pay equity studies doubled to thirty-four, and the number of articles on pay equity in leading newspapers quadrupled (McCann 1994, 54–59). The victory was shortlived, however. In 1985, the Ninth Circuit Court of Appeals reversed the *AFSCME* decision. Then judge, now justice, Anthony Kennedy pronounced, "Neither law nor logic deems the free market a suspect enterprise. . . . Title VII does not obligate [the State of Washington] to eliminate an economic inequality it did not create" (*AFSCME*, 1407). According to Justice Kennedy, the plaintiffs not only lacked a legal basis for redress, but the very nature of their thinking – their logic – was wrong. The Ninth Circuit authoritatively denounced plaintiffs' theory of gender-based wage inequality as inconsistent with a core institution of American society – the free market.

The reversal of the *AFSCME* decision had a devastating effect on the pay equity movement. Other courts followed the *AFSCME* precedent in rejecting similar claims. Reform activity in states and municipalities slowed to a trickle. Media coverage of pay equity matters fell by more than one-half (McCann 1994, 54–59). Some wage reforms were won through state legislation and collective bargaining, but even these garnered only mixed results. The conventional view among the press, policy makers, and academics was that comparable worth was essentially dead

1 *American Federation of State, County, & Municipal Employees v. Washington*, 578 F. Supp. 846 (D. Wash. 1983), rev'd, 770 F.2d 1401 (9th Cir. 1985) (hereinafter *AFSCME*).

on arrival, an unrealistic reform program that lacked broad-based political support and now had lost its tenuous foothold within federal antidiscrimination law. Reflecting on the aftermath of *AFSCME*, the director of the National Committee on Pay Equity summed up the common perception in the media: "I thought this issue died in 1985" (McCann 1994, 85).

Fourteen years later we are attempting to probe more deeply into the circumstances that surrounded the sudden death of pay equity as a law reform movement. Pay equity reform was derailed by the dominant discourse on the role of law in addressing between-job wage inequality.[2] Justice Kennedy's opinion can be taken as representative of that discourse. His views were echoed by a chorus of prominent judges, scholars, and policy makers who dismissed the claims of pay equity advocates as empirically unfounded and potentially dangerous to the American economy (see, e.g., Killingsworth 1985; Livernash 1980; O'Neill 1984; Fischel and Lazear 1986). Clarence Pendleton Jr., chairman of the Civil Rights Commission, may have coined the most colorful phrase when he referred to comparable worth "as the looniest idea since Looney Tunes" (Bureau of National Affairs 1981, 35–46).

The legal and ideological success of the dominant view revolves around the analysis of an empirical question: What is the source of wage differences between jobs held primarily by women and those held primarily by men within the same organization? The legal opinions and orthodox labor economics that make up the dominant discourse give two answers. First, differences in wages are produced outside the employing organization – that is, they are the product of "the market" rather than of decisions by the employer. Second, differentials are based on efficiency considerations – that is, the reasonable, noninvidious, economic motivations of employers. If one accepts the dominant interpretation of male-female wage differences, doing so mutes the entire policy debate on pay reform, for it follows that neither the courts nor legislatures should intervene in the pay policies of employers.

This book argues that the core empirical claims of the dominant discourse are largely untested, have far more limited application in the American economy than the discourse acknowledges, and, in several significant organizational contexts, are demonstrably wrong. We assert that a substantial portion of the pay differences between "male" and "female" jobs, especially in large organizations, cannot be attributed to the market and does not rest on efficiency principles. Rather the differ-

2 By "between-job" inequality we mean the differences in pay between different jobs, such as the truck drivers versus the secretaries of a firm. "Within-job" pay differences, by contrast, consist of pay differences among workers within one job category, such as the truck drivers employed by the same firm.

ences are the product of organizational processes for which employers could be held legally responsible and which could be the target of political action by groups of women within the workplace.

Our results also raise questions about the role of courts in offering authoritative interpretations of the reasons for gender inequality in organizations. As we confronted the empirical data in the pay discrimination cases, we were led to wonder why the courts so quickly and uncritically accepted the dominant conception of between-job gender inequality in the face of relatively weak evidence to support it. We have come to see the courts as important participants in the institutional construction of markets and the gender gap in pay. The courts adopted and reinforced the orthodox explanation of male-female earnings differentials. In doing so, they contributed to the construction of a false dichotomy between "markets" and gender equality. And they gave legal sanction to a persistent aspect of gender inequality in organizations. Without a sound basis in market necessity or efficiency principles, the courts legalized gender inequality in pay.

Our analysis does not, however, lead us to support comparable worth as the solution for gender inequality in pay. Our reasons are theoretical and practical. First, although many of the criticisms that comparable worth advocates mount about orthodox labor economic explanations of earnings differentials are valid and have been enormously important to the theoretical debate, we think they have failed to develop a persuasive theory of the wage gap. In short, they misanalyze the sources of male-female wage differences. Second, we see other avenues of change as more promising and politically feasible. The call for comparable worth as the touchstone of wage reform contributed to a false opposition between the market and the law against pay discrimination: It accepted the orthodox economic view that pay differentials originated in the "market," but it also entailed the intractable position of rejecting markets as a valid basis for wage setting. Despite our disagreement with comparable worth, we suggest that the death of pay equity in the law was premature. Our findings imply the need to reopen the question of how antidiscrimination law should be applied to sex-based, between-job pay differences.

We revisit the relationship between law, markets, and gender inequality in organizations through empirical case studies of four significant pay discrimination lawsuits that were litigated in the 1970s and 1980s. These case studies provide a unique vantage point on organizations as systems of gender inequality. They also reveal how litigation and legal judgments construct competing images of both gender relations in organizations and the role that antidiscrimination law should play in organizational practices.

Our argument thus touches on three significant concerns: theories of gender inequality in organizations; theories of law, markets, and gender inequality; and social policies on pay equity. In the remainder of this chapter we locate this project with respect to these theoretical and practical concerns, outline our methodological approach, and describe the organization of the book.

## Gender Inequality in Organizations

This book is foremost an analysis of gender inequality. We seek to advance theories of inequality by explicitly examining the relationship between market and organizational processes and by explicating the mechanisms through which organizations reproduce gendered pay hierarchies.

The economic inequality of men and women is a fundamental aspect of the stratification systems of modern societies. In the United States gender-based pay inequality is intimately connected to the nature of gender relations. At least in part because women tend to make less than men, women are more likely to stay at home to care for children than are men, women are more likely to follow their spouses when they pursue career opportunities than the reverse (even though such moves may have a destructive effect on women's careers or wage-earning prospects), and, if unmarried, women are more likely than men to subsist at or below the poverty line. These tendencies are part of a broader culture of male dominance that tends to relegate women to "women's roles," both in the family and the workplace. It is sometimes difficult, therefore, to disentangle the causes and effects of gender-based wage inequality. Yet in any number of real-life contexts, the simple material reality that men earn more reinforces the unequal position of women in society.

It is not surprising then that the wage gap in pay between men and women has been a central, recurrent topic for empirical investigation and theorizing by economists and sociologists. The two disciplines offer divergent interpretations of the phenomenon. Most labor economists, while recognizing the possibility of sex discrimination in pay (see, e.g., Becker 1971), argue that whatever gender inequality exists reflects differences in choices men and women make about investment in human capital, occupational selection, and labor force participation, and the rational responses of employers to labor market conditions (see, e.g., Polachek 1975; Mincer and Ofek 1982; O'Neill 1985).

In the sociological literature, the role of markets is minimized on the basis of the view that large segments of the work force are employed in internal labor markets (Doeringer and Piore 1971; Althauser and

Kalleberg 1981) or bureaucratic personnel systems (Edwards 1979; Jacoby 1985), each of which institutionalizes nonmarket, organizational influences that hinder the market determination of wage rates. Indeed, a significant portion of organization-specific research in the field, that done on government agencies, is sometimes justified explicitly on the grounds that wages in this context (net of "background characteristics") reflect only employer discretion and are unaffected by market forces (see, e.g., Taylor 1979; Grandjean 1981). The difficulty is that these studies assume away market influences on compensation rather than examine how organizational compensation systems interact with the labor market. Other sociologists theorize about the structural characteristics of labor markets that serve to disadvantage women. They posit that premarket socialization and discriminatory hiring practices limit women to stereotypically female jobs. As a result, female occupations tend to be "crowded" and to receive lower wages. Other scholars argue that labor markets are segmented between better-paying, stable jobs at the core and low-paying, unstable jobs in the periphery. Women and minorities, it is argued, are denied access to jobs in the core of the economy, and consequently suffer economically marginal employment (generally see Marini 1989; England 1992).

Thus there is a tendency for economists to reify the effects of markets on wages, while sociologists either ignore market forces or construct alternative aggregate models of tainted markets. Theories of inequality need to consider both organizational and market factors. In our view, the impasse between these contrasting viewpoints stems from the failure to develop and test theories of income determination in large organizations that address the relationship between organizational and market influences on compensation systems.

While much of our argument will be conducted in the negative by presenting evidence that counters market and efficiency-based explanations of female-male wage differentials, we seek to develop a new sociological framework for the analysis of gender inequality – what we call the organizational inequality model. We propose that much can be gained analytically by thinking of gender inequality in pay as an aspect of organizational systems of inequality. Our approach has its roots in a classic Weberian conception of organizations as systems of legitimate domination. In this conception organizations involve hierarchical relationships between leaders and staff that must be legitimated by appeals to shared values. Modern institutional theorists, from Selznick (1969) to Meyer (Meyer and Rowan 1977) to DiMaggio and Powell (1983), have elaborated on the basic theme that organizations cannot be understood solely as a set of exchange relationships or as a configuration of vested interests. Rather, they also are normative entities that give rise to shared

understandings and expectations about organizational practices. The crucial issue then becomes what (or whose) values become institutionalized as organizational practice, with what consequences for various members of the organization and for the survival of the organization as a whole.

What both the classic tradition and more recent institutional theory has slighted, however, is the role of gender in structuring these relationships, as well as the consequences of organizational practices for gender inequality. Steinberg (1992, 576) asserts the feminist view:

> Masculine values are at the foundation of informal and formal organizational structures. Masculine styles of authority are legitimated by reliance on bureaucratic and hierarchical organizational forms. Images of masculinity and assumptions about the gendered division of labor organize institutional practices and expectations about work performance. . . . Regardless of their position in the organizational hierarchy, men have a vested interest in maintaining their gendered advantages. Men are not just passive recipients of organizational advantages but also actively recreate their dominance every day. They maintain organizational arrangements and institutional policies that appear to be gender neutral, but that, in fact, advantage men.

Contemporary scholarship on organizations and inequality has not made much progress on this theoretical front, despite an infusion of interest in gender inequality and some rethinking of organizational theory by feminist theorists. It has been more than fifteen years since Baron and Bielby (1980) called for "bringing the firm back in" to studies of gender inequality. Still, most research on male-female wage differentials is done in the aggregate, using cross-sectional samples of individuals, occupations, or subgroups within particular industries (see, e.g., Anderson and Tomaskovic-Devey 1995). Case studies in particular organizations provide insight into the local dynamics of gender inequality and demonstrate that there is considerable variability in the character of gender inequality in organizations, depending on historical and industrial contexts (see, e.g., Kanter 1977; Cohn 1985; Diprete 1989; Milkman 1987; Baron et al. 1991; Cockburn 1991). But they stop short of developing a general organizational approach to gender inequality. Organizational analyses of the diffusion of equal employment opportunity structures have not investigated the effects of structural changes on pay inequality within organizations (Edelman 1990, 1992), although such work has begun to examine how legal rights become transformed in the context of employing organizations

(Edelman, Erlanger, and Lande 1993; Edelman, Abraham, and Erlanger 1992).

One reason for the underdevelopment of organizational theories of gender inequality is that some feminist and critical theorists reject bureaucratic forms of organization as inherently antithetical to their visions of justice and individuality (Ferguson 1984; Frug 1984). In their view, women and minorities should not formulate strategies for succeeding within bureaucratic hierarchies but must instead seek to dismantle bureaucracies. While radical critiques of bureaucracies are valuable for unearthing various ways in which bureaucratic structures operate as gender and race hierarchies, they do not develop a theory that would explain variations in the quantity or character of inequality in bureaucratic organizations. We see such theory as important because bureaucratic organization dominates in society. Such organizations not only impose systems of inequality; they also can promote values of gender equality and fairness. As Selznick observes in response to contemporary critics of bureaucracy:

> In our preoccupation with subtle forms of oppression and with high aspirations for fairness and well-being, we may forget that resistance to domination must begin with the obvious and the unsubtle. Arbitrary power is all too often blunt and crude; the pain it inflicts is readily apparent; there is no need for a guide to suffering, no need for consciousness-raising. Rather we require elementary constraints on the abuse of power. When these are discounted – as "mere structures" or as "liberal legalism" – people are left unprotected where protection is most urgent. This posture often signals a failure to appreciate the gains other generations have won and that are now taken for granted. (1992, 263–64)

Indeed, there are indications that women and minorities may find bureaucratic employment settings more congenial. Bridges and Villemez (1994) found that women and minorities were more likely to work in firms with developed personnel systems.

Perhaps the main reason why organization-level analyses have not played a more prominent role in the pay equity debate is that such analyses are inconsistent with how comparable worth advocates have theorized the problem of between-job, male-female wage differences. Advocates of comparable worth tacitly assume that employers follow similar cultural templates in devaluing work done primarily by women. Accordingly, they have concentrated their efforts on aggregate-level demonstrations of such effects (see England 1992). They have shown little interest in analyzing whether organizations vary in the nature of

between-job wage differences or whether such differentials are produced through different mechanisms in different organizations. They have been satisfied that such variation is probably not important, given that most job evaluation studies show about the same level of "underpayment" to female job categories.

In our view this has left a serious gap in our understanding of how gender inequality is produced at the organizational level. As we note later, the lack of an organizational theory of pay setting can frustrate attempts to make pay systems more fair. Ironically, this theoretical tack also may have made pay equity proposals vulnerable to market-based arguments. By attributing wage differentials primarily to society-wide forces that operate outside the employing organization, comparable worth advocates come perilously close to reaching the same conclusion as orthodox economists: employing organizations are not individually responsible for the wage gap that exists in their organizations. For the economists, the employers are price takers. Comparable worth advocates might agree, with the added stipulation that the employers' pricing behavior is based on cultural bias against women.

We suggest that it is valuable to begin to theorize explicitly about how organizational characteristics influence patterns of gender inequality in organizations. Among the variables of interest are whether the organization is in the public or the private sector, the size and complexity of the work force, the degree to which the firm constitutes an internal labor market or otherwise has a large number of skilled jobs that are idiosyncratic to the firm's operations, the role of unions in management-employee relations, the degree to which the firm has developed a bureaucratic personnel system that attempts to centralize and rationalize personnel decisions, the nature of the product and labor markets in which the organization is located, and the historical and social characteristics of the industry in which the organization is embedded.

The configuration of these variables and the nature of their effects on gender inequality in organizations is likely to vary by historical period. For the most part, our case studies concern large bureaucratic organizations in the early to mid-1970s. Although we are examining only a small number of organizations, we detect discernible period effects. Most obvious is the relatively recent application of antidiscrimination laws to these organizations in the early 1970s. The cases all represent new efforts to determine the reach of laws against pay discrimination. Another period effect is the historically specific shape of managerial ideologies as it affected pay systems. For example, the four organizations we studied redesigned their pay systems based on the advice of consultants. The pay consultants literally acted as agents for disseminating similar pay rationalization schemes among organizations in the same economic sector.

The role of consultants raises another potentially important variable: the effect of organizational field on pay-setting practices. The neo-institutionalist school of organization theory (see Meyer and Rowan 1977; DiMaggio and Powell 1983) asserts that the structures and practices of organizations, including those relating to equal opportunity, are significantly influenced by what similar organizations do (Edelman 1990). This, too, is apparent in our cases.

In asserting the importance of organizations in generating gender inequality, we do not mean to deny the significance of forces external to organizations. Indeed, one task of an organizational theory of gender inequality is to map variation in how organizations incorporate or mediate the nature of gender relations in the broader society. Some organizations have crudely exploited categories of workers – minorities, immigrants, children, and women – through their monopsonistic position in the labor market (see, e.g., Thomas 1985; Milkman 1987). Cohn's (1985) insightful comparison of the British Railways and the British Postal Service in the nineteenth century illustrates how one organization pursued an overt strategy of "feminizing" its work force as a means of reducing labor costs, while another did not, in a period when women were at least informally (and sometimes formally) barred from certain kinds of work.

In contemporary American society, these processes typically occur in more subtle ways, as organizations recruit from gender-stratified occupational labor markets, as organizations construct firm-specific models of skill and capability that build on and transform gender stereotypes, as groups of management or groups of workers compete for resources within organizations by deploying "gendered" strategies (e.g., hard bargaining) or invoking "gendered" values (e.g., the family wage, "aggressiveness").

Some of these practices may be intentional. But many aspects of gender hierarchy in organizations are the "naturalized" products of gender relations from an earlier period in the organization (Bourdieu 1977). The gendered character of these practices is rendered invisible to the current incumbents of organizational positions. They often did not invent them. They merely are working within a set of taken-for-granted understandings that do not explicitly concern gender. Only in certain moments will the "hidden" dimension of gender emerge. In our case studies those moments included a time when a frustrated employee claimed a promotion was based on politics, not merit, when an outside consultant analyzed pay and promotion data by gender and found unexplained gender differentials, and when a woman unwittingly learned over a drink with a male co-worker that he mysteriously made more than she did even though they were doing the same job.

The gender ideologies of organizations are likely to be continuous with gender ideologies in the organization's environment. This is true in part because organizations are populated by professionals and other experts who were trained outside the organization. Personnel officers in large organizations, for example, will be imbued with the personnel philosophy of their organization. But their practices also are likely to reflect prior experience and training in other organizations, such as the military. Thus theoretical and practical understanding of gender inequality will depend on the interaction between organizations and environments on employment issues.

While there is a need for sociologists to begin to develop a systematic theory of gender inequality in organizations, this book proceeds inductively. We selected our case studies to tap aspects of organizational and market differences that we think are salient determinants of between-job gender inequality. But these four cases are only a beginning. We cannot claim to have captured the kinds of variations in organizational characteristics that would form the basis for a comprehensive theory. Instead, we have gone into as much depth as possible in a small number of cases. This approach allows us to discover and evaluate mechanisms that contribute to or alleviate gender-based pay inequality in these organizations.

The four case studies illuminate how organizational processes interact with and mediate market forces in the generation of gender-based wage inequality. There is a sharp contrast between public sector and private sector organizations in how this mediation takes place. In public sector organizations, in which the wage structure is more rigidly determined by job, we find explicit interest group behavior with respect to the pay levels for particular jobs. Female-dominated jobs tend to be less well represented in these political processes. The politics of pay are more muted in private sector firms, in part because there is less information available about who gets what, in part because norms of equity and employee participation are less salient than in the public sector, and in part because pay levels are less rigidly set by job. Nonetheless, organizational politics of a different kind play a pivotal role in structuring pay levels and producing and reproducing patterns of gender inequality in pay.

The *Sears* case represents an instance in which the tension between different parts of the organization (the "field" and the "parent"), along with the organizational imperative of rapid growth and deployment during an earlier era, produced a highly decentralized pay system. By entrusting almost total wage-setting discretion to subunit managers, this system fostered a pattern of discriminatory pay premiums to male workers. In the Coastal Bank case (a pseudonym), we find patterns of