

Cambridge University Press

978-0-521-62750-4 - Legalizing Gender Inequality: Courts, Markets, and Unequal Pay for Women in America

Robert L. Nelson and William P. Bridges

Frontmatter

[More information](#)

# *Legalizing Gender Inequality*

## *Courts, Markets, and Unequal Pay for Women in America*

Equal pay for men and women in the work force suffered a series of defeats in U.S. courts during the 1970s and 1980s and became the object of attack by a conservative administration and conventional economic wisdom. Yet the issue persists, unsolved, and continues to attract scholarly and popular attention. Building upon a new generation of research about institutions and the social construction of the market, the authors of *Legalizing Gender Inequality* challenge the existing theories of gender-based pay inequality and present a new, more realistic way to analyze the relationship between the market, pay differentials, and the law.

Major legal precedents have been built upon the notion that labor markets, not employers, are the source of inequality. Robert Nelson and William Bridges contend that the courts have, by uncritically accepting the market explanation for male–female wage disparity, tended to legitimate and legalize a crucial dimension of gender inequality in American society. The authors argue to the contrary that male–female earning differentials cannot be explained adequately by market forces, principles of efficiency, or society-wide sexism.

Through a careful, sophisticated examination of data on wage-setting practices from four landmark pay discrimination cases, Nelson and Bridges demonstrate that employing organizations tend to disadvantage workers in predominantly female jobs by denying them power in organizational politics and by reproducing male cultural advantages. Much of the gender inequality in the system is, therefore, the direct result of organizational decision making. The authors argue further that comparable worth is an inappropriate remedy, as it misdiagnoses the causes of gender inequality and often falls prey to the same organizational processes that initially generated this differential.

In addition to its new theory on wage determination, this book contains important insights into how the dynamics of litigation affect the use of social science theory and data. This book promises to change the way that scholars and analysts – whether from the perspective of sociology, law, labor economics, or gender studies – think about wage inequality.

Robert Nelson holds a J.D. and Ph.D. from Northwestern University. He is a Senior Research Fellow of the American Bar Foundation and Professor and Chair of the Department of Sociology at Northwestern. He has published widely in the sociology of law, with particular attention to studies of the legal profession, organizations, and inequality. His most recent book is *The Hollow Core: Private Interests in National Policymaking* (with John Heinz, Edward Laumann, and Robert Salisbury) (1993).

William Bridges is Professor and Head of Sociology at the University of Illinois at Chicago. His research interests span the sociology of labor markets, the sociology of employment relationships, and the more general study of social inequality. With Wayne J. Vellemez he is author of *The Employment Relationship: Causes and Consequences of Bureaucratic Personnel Administration* (1994).

Cambridge University Press

978-0-521-62750-4 - Legalizing Gender Inequality: Courts, Markets, and Unequal Pay for Women in America

Robert L. Nelson and William P. Bridges

Frontmatter

[More information](#)

## Structural Analysis in the Social Sciences

Mark Granovetter, editor

Other books in the series:

1. Mark S. Mizruchi and Michael Schwartz, eds., *Interorganizational Relations: The Structural Analysis of Business*
2. Barry Wellman and S. D. Berkowitz, eds., *Social Structures: A Network Approach*
3. Ronald L. Breiger, ed., *Social Mobility and Social Structure*
4. David Knoke, *Political Networks: The Structural Perspective*
5. John L. Campbell, J. Rogers Hollingsworth, and Leon N. Lindberg, eds., *Governance of the American Economy*
6. Kyriakos Kontopoulos, *The Logics of Social Structure*
7. Philippa Pattison, *Algebraic Models for Social Networks*
8. Stanley Wasserman and Katherine Faust, *Social Network Analysis: Methods and Applications*
9. Gary Herrigel, *Industrial Constructions: The Sources of German Industrial Power*
10. Philippe Bourgois, *In Search of Respect: Selling Crack in El Barrio*
11. Per Hage and Frank Harary, *Island Networks: Communication, Kinship, and Classification Structures in Oceania*
12. Thomas Schweizer and Douglas R. White, eds., *Kinship, Networks and Exchange*
13. Noah E. Friedkin, *A Structural Theory of Social Influence*
14. David Wank, *Commodifying Communism: Business, Trust, and Politics in a South China City*
15. Rebecca Adams and Graham Allan, *Placing Friendship in Context*

The series *Structural Analysis in the Social Sciences* presents approaches that explain social behavior and institutions by reference to *relations* among such concrete entities as persons and organizations. This contrasts with at least four other popular strategies: (a) reductionist attempts to explain by a focus on individuals alone; (b) explanations stressing the causal primacy of such abstract concepts as ideas, values, mental harmonies, and cognitive maps (thus, “structuralism” on the Continent should be distinguished from structural analysis in the present sense); (c) technological and material determinism; (d) explanations using “variables” as the main analytic concepts (as in the “structural equation” models that dominated much of the sociology of the 1970s), where structure is that connecting variables rather than actual social entities.

The social network approach is an important example of the strategy of structural analysis; the series also draws on social science theory and research that are not framed explicitly in network terms, but stress the importance of relations rather than the atomization of reductionism or the determinism of ideas, technology, or material conditions. The structural perspective has become extremely popular and influential in all the social sciences, and this series brings together such work under a single rubric. By bringing the achievements of structurally oriented scholars to a wider public, the *Structural Analysis* series hopes to encourage the use of this very fruitful approach.

Cambridge University Press

978-0-521-62750-4 - Legalizing Gender Inequality: Courts, Markets, and Unequal Pay  
for Women in America

Robert L. Nelson and William P. Bridges

Frontmatter

[More information](#)

Structural Analysis in the Social Sciences 16

# Legalizing Gender Inequality

## *Courts, Markets, and Unequal Pay for Women in America*

Robert L. Nelson

*American Bar Foundation and  
Northwestern University*

William P. Bridges

*University of Illinois at Chicago*



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press

978-0-521-62750-4 - Legalizing Gender Inequality: Courts, Markets, and Unequal Pay for Women in America

Robert L. Nelson and William P. Bridges

Frontmatter

[More information](#)

CAMBRIDGE UNIVERSITY PRESS

Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press

The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

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

Information on this title: [www.cambridge.org/9780521621694](http://www.cambridge.org/9780521621694)

© Robert L. Nelson and William P. Bridges 1999

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 1999

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloguing in Publication data*

Nelson, Robert L., 1952–

Legalizing gender inequality: courts, markets, and unequal pay for women in America / Robert L. Nelson, William P. Bridges.

p. cm. – (Structural analysis in the social sciences; 16)

Includes bibliographical references and index.

ISBN 0-521-62169-0 (hb). – ISBN 0-521-62750-8 (pbk.)

1. Pay equity – Law and legislation – United States. 2. Pay equity – United States. I. Bridges, William P. II. Title. III. Series.

KF3464.N45 1999

331.2'153'0973 – dc21

98-38432

CIP

ISBN 978-0-521-62169-4 hardback

ISBN 978-0-521-62750-4 paperback

Transferred to digital printing 2007

Cambridge University Press

978-0-521-62750-4 - Legalizing Gender Inequality: Courts, Markets, and Unequal Pay  
for Women in America

Robert L. Nelson and William P. Bridges

Frontmatter

[More information](#)

---

To Lisa and Barbara

Cambridge University Press

978-0-521-62750-4 - Legalizing Gender Inequality: Courts, Markets, and Unequal Pay  
for Women in America

Robert L. Nelson and William P. Bridges

Frontmatter

[More information](#)*Contents*

<i>List of Figures and Tables</i>	<i>page</i> xi
<i>Acknowledgments</i>	xv
1 Law, Markets, and the Institutional Construction of Gender Inequality in Pay	1
<b>Part I Theory and Method</b>	
2 Legal Theories of Sex-Based Pay Discrimination	25
3 Toward an Organizational Theory of Gender Inequality in Pay	53
4 Methodological Approach: Law Cases, Case Studies, and Critical Empiricism	101
<b>Part II The Case Studies</b>	
<b>A Public Sector Organizations</b>	
5 Paternalism and Politics in a University Pay System: <i>Christensen v. State of Iowa</i>	119
6 Bureaucratic Politics and Gender Inequality in a State Pay System: <i>AFSCME v. State of Washington</i>	171
<b>B Private Sector Organizations</b>	
7 Corporate Politics, Rationalization, and Managerial Discretion: <i>EEOC v. Sears, Roebuck &amp; Co.</i>	205
8 The Financial Institution as a Male, Profit-Making Club: <i>Glass v. Coastal Bank</i>	244
ix	



Cambridge University Press

978-0-521-62750-4 - Legalizing Gender Inequality: Courts, Markets, and Unequal Pay  
for Women in America

Robert L. Nelson and William P. Bridges

Frontmatter

[More information](#)*Figures and Tables*

## Figures

2.1	Paradigms of sex-based pay discrimination	<i>page</i> 48
3.1	Trends in male-female earnings, 1955–1996	55
8.1	Earnings distribution by sex at Coastal Bank, 1974	254
8.2	Total earnings by salary grade	255
8.3	Percentage of officers who are male in five banks, 1968–1980	258
8.4	Monthly income by market points and control points, Coastal Bank, 1978	283
8.5	Total compensation by job evaluation points, Coastal Bank and selected financial services companies	292
9.1	Benchmark jobs in hypothetical organization	341
9.2	Hypothetical salary lines with gender-typed families	342
9.3	Hypothetical salary lines with status-level families	342

## Tables

2.1	Plaintiffs' success rates in sex-based pay discrimination cases by type of legal theory (federal district courts, 1982–1996)	37
2.2	Plaintiffs' success rates in sex-based pay discrimination cases by type of legal theory (federal appellate courts, 1982–1996)	38
3.1	Earnings and female/male earnings ratios for full-time/year-round workers by sex, 1955–1996	55



Cambridge University Press

978-0-521-62750-4 - Legalizing Gender Inequality: Courts, Markets, and Unequal Pay for Women in America

Robert L. Nelson and William P. Bridges

Frontmatter

[More information](#)

xii	<i>Figures and Tables</i>	
3.2	Female to male earnings ratios by country in 1983 and 1992	57
4.1	Characteristics of cases examined for this research	106
5.1	Employment trends in selected industries in Waterloo–Cedar Falls SMSA, 1970–1978 (establishment-level data)	133
5.2	Employment and unemployment by occupation in Waterloo–Cedar Falls SMSA, 1979	134
5.3	Wage levels for selected occupations in Waterloo–Cedar Falls SMSA, November 1973 (BLS data)	136
5.4	Wage levels for selected occupations by industry type in Waterloo–Cedar Falls SMSA, 1979 (census data)	138
5.5	Characteristics of individuals in two pay systems	143
5.6	Characteristics of jobs in two pay systems	145
5.7	Cross-tabulation of jobs granted starting pay exception by sex composition and market salary	155
5.8	Turnover rates by job family and salary level relative to market, University of Northern Iowa, 1974–1975	159
5.A1	Gender effects on individual earnings in two pay systems, University of Northern Iowa	169
6.1	Distribution of number of jobs and workers by benchmark status of job, Department of Personnel, State of Washington, 1982	179
6.2	Mean size of job and deviation from benchmark job by sex composition of job, Department of Personnel, State of Washington, 1983	180
6.3	Comparison of earnings functions in benchmark and nonbenchmark occupations in selected industry categories, 1980 census of population data	182
6.4	Major stages of the wage survey, State of Washington, Department of Personnel	195
6.5	Favorability of salary adjustment decisions by role of agency or employee organization by sex composition of jobs, Department of Personnel, State of Washington, 1982	197
7.1	Composition of checklist jobs at issue in <i>EEOC v. Sears</i>	217

Cambridge University Press

978-0-521-62750-4 - Legalizing Gender Inequality: Courts, Markets, and Unequal Pay for Women in America

Robert L. Nelson and William P. Bridges

Frontmatter

[More information](#)

	<i>Figures and Tables</i>	xiii
7.2	Characteristics of jobs at issue in <i>EEOC v. Sears</i> compensation claim	219
7.3	Trends in male and female average salaries, Sears “at issue” work force, 1976–1980	223
7.4	Components of male-female wage gaps in Sears checklist jobs	225
7.5	Effect of changing gender composition on changing within-job salary ratios	227
7.6	Sex composition of checklist jobs by corporate functional location, 1973–1980	227
7.7	Contributions to overall gender gap by corporate function and source of difference	229
7.8	Estimates of adjusted percent salary difference in <i>EEOC v. Sears</i>	230
7.A1	Coefficients of determination between actual and estimated mean salaries by gender and year	242
7.A2	Jobs classified by functional location	243
8.1	Distribution of earnings by gender: Coastal Bank, 1974 (full-time employees only)	253
8.2	Percent male at each rank, by bank by year	259
8.3	Female representation by job category in five banks, 1973 EEO-1 data	260
8.4	Individual characteristics at Coastal Bank, by gender and officer status, 1974 and 1977	261
8.5	Job characteristics at Coastal Bank, by percent female in job and officer status, 1974 and 1977	262
8.6	Sex segregation indices for job titles, officer position numbers, and “officer rank titles” at Coastal Bank, 1974 and 1977	263
8.7	Salary determinants for officers and nonofficers, Coastal Bank, 1974 and 1977	265
8.8	Salary determinants by officer status, Coastal Bank, 1977	266
8.9	Summary of models with job-level effects including percent female by officer status, Coastal Bank, 1974 and 1977	268
8.10	Summary of models with job-level effects including percent female, external market salaries, and salary grade at nonofficer level, Coastal Bank, 1974	271
8.11	Summary of models with job-level effects	

Cambridge University Press

978-0-521-62750-4 - Legalizing Gender Inequality: Courts, Markets, and Unequal Pay  
for Women in America

Robert L. Nelson and William P. Bridges

Frontmatter

[More information](#)

xiv	<i>Figures and Tables</i>	
	including percent female, external market salaries, and salary grade at officer level, Coastal Bank, 1977	274
8.12	Consultant's summary of cost of adopting new nonofficer pay structure, 1970–1971, by grade, percent female in grade, and other variables, Coastal Bank	280
8.13	Voluntary terminations by reason and gender for nonofficers, Coastal Bank, 1978	287
8.14	Changes in salary resulting from appeals to compensation committee, by gender, Coastal Bank Officers, 1977	296
8.15	Reasons for salary changes by type of change and gender of employees, Coastal Bank Officers, 1977	296
8.16	Voluntary terminations by reason and gender, officers, Coastal Bank, 1978	298

Cambridge University Press

978-0-521-62750-4 - Legalizing Gender Inequality: Courts, Markets, and Unequal Pay for Women in America

Robert L. Nelson and William P. Bridges

Frontmatter

[More information](#)

## *Acknowledgments*

Over the long course of this project we have benefited from the support and advice of many institutions and persons. The American Bar Foundation provided significant financial and scholarly support from the very inception of this work, which dates back to the time John Heinz was director, through the tenures of William Felstiner and Bryant Garth. Jack, Bill, and B.G. not only offered institutional support, but important intellectual guidance as well. The project also was supported by grants from the National Science Foundation (SES-8800627) and by a year at the Center for Advanced Study in the Behavioral Sciences for the first author (SES-9022192). Under Philip Converse and Robert Scott, the Center proved a wonderful environment for developing and writing the ideas that make up the core of this book. Northwestern University and the University of Illinois–Chicago provided several kinds of resources for this project, including most crucially a set of colleagues and students who were interested in the work we were doing.

Several individuals were essential to the production of this book. Most important is Lorrie Wessel, who typed several drafts of this manuscript and its constituent chapters and articles. Bette Sikes skillfully edited the manuscript and organized the presentation of the tables. Kathleen Much of the Center for Advanced Study edited an early draft of chapter 5. Mark Dubnoff, Elizabeth Warren, and Monique Payne provided excellent research assistance. Bill Bielby gave thorough comments on the entire manuscript. Ian Ayres, Jim Baron, Dick Campbell, Lisa Douglass, Lauren Edelman, Paula England, Carol Heimer, Robert Inman, Aldon Morris, Laura Beth Nielsen, Deborah Rhode, Dorothy Ross, Peter Siegelman, Art Stinchcombe, and Don Treiman read and commented on various parts of the manuscript. We also are grateful to our editors at Cambridge University Press. Mark Granovetter, editor of this series, offered important intellectual encouragement and advice. Elizabeth Neal guided us through the first stages of submitting our manuscript. Mary Child gave us valuable substantive and editing suggestions. Brian MacDonald carefully copyedited the final manuscript. While all the above

Cambridge University Press

978-0-521-62750-4 - Legalizing Gender Inequality: Courts, Markets, and Unequal Pay  
for Women in America

Robert L. Nelson and William P. Bridges

Frontmatter

[More information](#)

---

xvi     *Acknowledgments*

institutions and individuals were invaluable to this effort, we bear ultimate responsibility for our claims and mistakes.

Finally, we want to thank our families for the emotional and intellectual support they have given us throughout this project. Their patience, love, and understanding sustained us throughout this work.