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> If we continue to speak this sameness, if we speak to each other as men have spoken for centuries, as they have taught us to speak, we will fail each other. Again ... words will pass through our bodies, above our heads, disappear, make us disappear.[1]

This issue, which appears on the centenary of women's suffrage in Aotearoa, reflects the uneasy positioning of women in relation to the political (public) sphere. After 1893, many commentators lamented the slow progress of New Zealand women. It seems that the centenary of that date is being invoked to obscure women's current political battles. The tensions around this year's celebration expose the reality that 'women' and 'public' still don't go. The state-sponsored suffrage festivities have placed women, especially feminist women, in a position from which it is extremely difficult to speak.

This position may be clarified if we look at the suffrage centennial alongside the 1990 commemoration of the signing of the Treaty of Waitangi. In that year the state staged a much more extensive party to 'celebrate' an agreement with Maori that the state itself had never honoured. The Treaty of Waitangi was hailed as the means by which Maori were granted equal responsibilities and rights in the New Zealand political system. Women's Suffrage bestowed these privileges on women. I am not suggesting here some exact alignment between the position of women and Maori in Aotearoa, but the juxtaposition helps to point to what is going on here. A group of people who are systematically excluded from a system of power are expected to celebrate their own inclusion — according to the dictates of the system that excludes them. For women in 1993, as perhaps for Maori in 1990, there is that odd feeling of being called on to celebrate a victory that doesn't feel like one.

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This feeling prompted some Dunedin women to give voice to the tensions around suffrage through a poster and leaflet campaign. The campaign borrowed its format from The Guerrilla Girls, who attack the male art establishment in the United States. The aim was to express the inconsistency between celebrating a victory for women's political rights and the realities for contemporary women in Aotearoa. I've printed a sample of what was circulated:

THE ADVANTAGES OF BEING A WOMAN WITH A VOTE:

Getting to bring $6.50 instead of a plate.
Not having the embarrassment of being taken seriously.
Getting to vote for Jim, Mike or Winston.
Putting bills through parliament and knowing nothing is going to change.
Not knowing the difference between a bottle and a penis.
Being one of the girls at the age of 43.
Being lucky enough to be part of Mankind.
Having the opportunity to be a Bachelor or a Master.
Not having to bother about defining our sexuality because we're all heterosexual anyway.
Getting to use Maori language because it belongs to all of us—just like the land (Kia Ora!).
Being able to care for all the old, the young and the sick with no competition for our services.
Having one token year to celebrate, one hundred years later.
Believing you are part of it because you get to do the Waiata.
Not having to worry about racism because we live in a bi-cultural society.
Not having to live as long as Pakeha.
Having 36 out of 1127 reps in parliament.
Enduring only one sexual offence every four hours.
Being given the opportunity to creatively live in poverty (making the dollar stretch).
Knowing that after a depression there'll be a war.

Please send donations and comments to:
Vulvas With A Vote—Will the suffering ever end?
P.O. Box 6231 Dunedin North

The gap between apparent political rights and women's position in society has been articulated by feminists for the whole of the last hundred years. There seems to have been little recognition of this, or of the extensive feminist scholarship around the failure of the concept of equality itself. Feminists have argued that the equality permitted by entry to the male political system can only ever be equality to be the same. The terms of this privilege require women to act as honorary men. It should not surprise us, then, that the benefits of suffrage for women have been limited, nor that this year-long party is of dubious value. The suffrage celebrations can be seen to work to reinforce our status as outsiders who have been allowed in. The onus is on us to make the most of our privilege or to show our gratitude. There is a significant lack of autonomy in this exchange. We are unwittingly involved in congratulating an institution that was good enough to admit us, obscuring that institution's role in excluding us, and further validating its status as the political centre.

What if we want to say that a vote may be all very well but if it hasn't changed the system it seems a booby prize? Where do we say this, and to whom? The political system, that which is supposed to give us a voice, is the place in which women are least able to speak as women. If we reject the role of the grateful, assimilated *other*, we are in danger of remaining the alienated *other*, who doesn't deserve to belong in the system after all. It sometimes seems that we have to disenfranchise ourselves to be allowed to voice our own demands. Sandra Wallace, in tracing the careers of women politicians in New Zealand describes one sort of balancing act this positioning can lead to. Women who stood for parliament had to base their claims to political authority on their status as women — their success as wives and mothers, for example — but this difference worked to disqualify them as serious politicians.

Just as the terms of our sameness to men are set by the male institution, our difference also gets defined by male norms. While we are forced to act as honorary men within the political system, we are constantly represented as totally different from men when it suits male political purposes. From Bridget Waldron's review essay, we can see these contradictory messages at work in the representation of Kate Sheppard. The focus on 'leaders' of the suffrage movement obscures the thousands of other women

involved and represents the women's campaign in terms of male political models. At the same time, Sheppard is constantly dangled before us as an example of perfect decorum and femininity. Images of women of the 1890s can easily serve to emphasise notions of the unchanging nature of 'woman' and leave living women struggling with a sense of being frozen into acceptable images of womanhood. As Waldron points out, we do those earlier women an injustice if we let stereotypes obscure their complex reality; difference among women was not invented in the late twentieth century.

Ironically, feminism has often developed its own version of acceptable womanhood and has been reluctant to examine the gaps in the theory and practice of sisterhood. Bronwyn Dalley's account of feminist responses to prison reform points to some of these gaps in first-wave feminism and warns against an uncritical rewriting of early feminism. Dalley's piece also raises questions around some women's access to power and what they do with it. She points out that some early feminists concentrated on using it to police the behaviour of their poorer sisters rather than to challenge the system which created poverty.

In our own time, the pay equity campaign must stand as the most concerted effort by contemporary women to use the full force of the political and legislative system to achieve feminist goals. Margaret Wilson points out how women worked within the system, influencing party policy and monitoring the course of the legislation. However, both Wilson and Linda Hill make clear that the Pay Equity Act was a hollow victory before it was won. The Labour Party's policies were already committed to a deregulated labour market and the legislation was compromised so as not to contradict the thrust of those policies. The Labour Party could be seen to be delivering for women with one hand while the other hand was removing women's protection from exploitation. Linda Hill suggests that women's political interests can at one and the same time coincide with and conflict with those of the state and the result is contradiction in government policy. Both these discussions of pay equity illustrate that feminist goals are not easily served by direct involvement in political decision-making.

If, as Linda Hill says, the political arm of the state is not a neutral ground for women, then Elisabeth McDonald's article reminds us that the legal arm is also designed and administered by

and for men. The nineteenth-century women's movement drew attention to the low value placed on women's lives then, and one hundred years and two waves of feminism later, men are still being sanctioned for killing women (whether in New Zealand or in Bosnia). Our legal system, reflecting the wealthy white male as the norm, is still unable to envision or enact justice for women, or for anyone who deviates from this standard. Women who work in the system (and that's all of us) are in a difficult position. The more successfully we integrate the values of our male-defined political structure, the less qualified we become to represent ourselves as different, to represent any others, including the *other* in ourselves. It is this conundrum which underlies the placement of Mai Chen's piece in this suffrage issue of the journal. As a Chinese immigrant woman in Aotearoa, Chen writes from the perspective of one who must become invisible to survive at all. To be accepted as a citizen of her country, Mai Chen must cover her Chineseness and prove she deserves to belong by being like everyone (i.e., white men). Only on these terms will she be let speak, but on these terms, she is silenced before she opens her mouth.

The warning that this implies is underscored by the absence of Maori women's voices in this issue. We planned to include material produced by Maori women; the failure of this enterprise is lamented. It also points to something important for our editorial collective and for other Pakeha feminists in positions of some power. Pakeha women do manage to have a considerable political voice in Aotearoa, whatever juggling acts are necessary. We need to look closely at how we are using it. Is it just too easy to follow the rules and be as much the same as possible? Is our distance from Maori women a measure of our implication in white male power? If we want to challenge male political norms, then we must be brave enough to speak with the voices of all our differences. The danger is that the voice of the exceptional Pakeha woman may create more silence than it breaks, may voice more sameness than feminist difference. Silence does speak louder than words, particularly when words make the pluralities of 'us' disappear.

Maud Cahill

Notes

1. Luce Irigaray, 'When Our Two Lips Speak Together', *Signs*, 6:1 (1980) p. 69.

Discrimination, Law, and Being a Chinese Immigrant Woman in New Zealand[1]

Mai Chen

Introduction

This is an article about a Taiwanese immigrant woman in New Zealand. It concerns the experiences which impelled her to become a law teacher and to take an academic interest in the law relating to discrimination. It is part of my personal story, but it also offers lessons for anti-discrimination law, and an understanding of the pervasiveness of discrimination in New Zealand.

New Zealanders sometimes pride themselves on being freer of prejudice than people from other countries. Although most are willing to acknowledge some discrimination against women and Maori, they are reluctant to admit that it permeates society. Discrimination is not perceived to be a significant problem. That is partly why New Zealand's anti-discrimination laws are undeveloped and in a poor state of repair.[2] This attitude of pride and confidence does not square with the history of discrimination and the institutionalised racism in New Zealand's past immigration legislation. My personal experiences as an immigrant Taiwanese woman in New Zealand also challenge this belief.

Until all the groups that experience discrimination are encouraged to speak out and tell their stories, this incompleteness in our self-image as New Zealanders will remain and the problem of discrimination will be underestimated. As a result, there will not be the political will to instigate the legal and non-legal measures necessary to prohibit discriminatory behaviour to the greatest extent possible commensurate with the personal autonomy and

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the rights of freedom of association, freedom of expression and privacy. In addition, understanding and tolerance will not be fostered between all the groups suffering discrimination. Problems of silencing of other groups who experience discrimination by white women and Maori, as well as by the Pakeha majority will need to be overcome.[3]

The other focus of this article is the richness which experiences of discrimination can bring to writing in anti-discrimination law, primarily in understanding that discrimination attacks the spirit (by which I mean one's sense of identity and individuality) as much as the victim's pocket. Thus, any remedies for such actions must act to revive and promote the spirit as well as redress damage to property through loss of employment or accommodation. It is on this basis, among others, that I reject arguments for self-regulation in discrimination and support the need for anti-discrimination laws.

The methodology used in this article to make these points is not a traditional legal criticism of anti-discrimination laws nor a comparative analysis. Rather it uses experiences as a basis for analysing the law. Some would argue that telling 'stories' is not scholarship; that as a method, it is biased, emotive and not value-neutral. However, others (including those in the critical race theory, feminist legal theory and critical legal studies schools)[4] would argue that it is false to presume the validity of traditional methods of legal analysis which have always claimed to be objective and value-neutral. Winter argues that the recent *return* to narrative in the United States is occurring because the legal community is coming 'increasingly to doubt its former confidence in the neutrality and objectivity of standard legal analysis, [and that] as it retreats from its faith in abstractions, it inevitably seeks solace in the more concrete'.[5]

Using experiences as a basis for analysing the law can challenge prevailing legal ideologies; it can 'enlist empathy and understanding from [people] whose own experiences do not ordinarily lead them to challenge official views';[6] and it can introduce perspectives which are usually excluded. Furthermore, experiences of discrimination can illuminate particular values and suggest particular solutions to the problems of discrimination. As Professor Mari Matsuda states:

> [o]utsider scholars have recognized that their specific experiences and histories are relevant to jurisprudential inquiry. They reject narrow evidentiary concepts of relevance and credibility. They reject artificial bifurcation of thought and feeling. Their anger, their pain, their daily lives, and the histories of their people are relevant to the definition of justice. . . . If you have been made to feel, as I have, that such inquiry is theoretically unsophisticated, and quaintly naive, resist! . . . These proposals add up to a new jurisprudence — one founded not on an ideal of neutrality, but on the reality of oppression.[7]

It is impossible to separate out my experiences of sex discrimination and race discrimination since they often intersect to create a set of experiences unique to immigrant Chinese women.[8] Thus, I will deal with the experiences together. Recounting my experiences of discrimination is difficult since it means reflecting on experiences that caused me pain. In addition, there is the fear that such significant and disturbing personal experiences may not be believed by others, or their significance disputed. It is difficult to bear the insult this can add to injury. As a six year old newly arrived from Taiwan, I recall that my teachers at a Christchurch primary school, where my sisters and I were the only Chinese, would say, 'Oh I don't believe that, the other children would not treat you like that just because you're a Chinese girl. Now run along and don't be silly'.

Despite the risks inherent in recounting my experiences, I hope that other New Zealanders will start to comprehend the crippling impact that discrimination can have, and the extent of that intolerance in their society, even to members of 'successful' minorities, like Chinese immigrants. Such a growth in understanding would be timely as Asia becomes a significant source of immigrants and refugees to New Zealand,[9] as the world becomes increasingly more global and as our economic future increasingly lies in Asia and the South Pacific.

The Experiences That Shaped Me

I was born in Taiwan into a family of four daughters. Chinese value sons more than daughters,[10] and as the youngest, my mother always

told me that I was their last attempt to have a son. They had been so sure that I was going to be a boy because I had kicked a lot in the womb. My parents gave up trying to have a son after I was born. My sisters and I grew up constantly hearing the extended family and my parents' friends saying, 'Four daughters, huh, what bad luck. Well at least you will have someone to look after you in your old age'. My uncle (who had four sons) took pity on my parents and offered to give my parents their youngest son in exchange for me. Thankfully, my parents turned down his generous offer.

My family emigrated to New Zealand in 1970, settling first in Christchurch, and then in Dunedin. There were few coloured minorities in the South Island. On the first day we were in New Zealand a kindly neighbour offered to take us girls for a walk down to the park. While the neighbour was trying to explain to us how to push the button at the pedestrian crossing, we heard an almighty crash. It was later recounted to us, via the neighbour talking to my father who spoke some English, that the offending driver had been so amazed by the sight of four Chinese girls dressed in identical red Chinese suits that he had not noticed the red light and had ploughed into the car in front of him, triggering a series of crashes down the line of traffic.

There were Chinese people in Dunedin, many being offspring of those who had come to Otago during the gold rush in the 19th century, but they were mostly immigrants from China and relations between Taiwan and China were, and still are, hostile. They also spoke Cantonese or Hockien, while we spoke Mandarin. We became New Zealand citizens in 1974. Until 1975, there was no other Taiwanese family we knew of in the South Island. By 1980, we knew of only two Taiwanese families apart from our own. My father taught physical education at Teachers' College, so I spent a lot of my childhood taking part in sport. My mother gave up her teaching career to raise us, but continued to work part-time at various jobs to keep the family afloat financially.

There was a great deal of ignorance about Taiwan in Christchurch and Dunedin in the 1970s. The children at school used to ask me if we wrote in the sand in Taiwan and if we lived in tents. 'Did you have television?' 'Did you eat rats?' There was derision and a sense of smug superiority in their voices. I had never had to deal with these insinuations of inferiority

before. They teased us about the way we looked, and about our inability to speak English. We were ugly, slit-eyed, squashed-nose and yellowy-brown. Somehow being Chinese made us so different, so 'bad' that the other children did not want to be our friends.

As I grew older, I learned to stick up for myself. I could now speak English. If I could not stop the teasing any other way, I would punch the offender and make a run for it. My parents, however, spoke with a strong accent and it hurt me deeply when people said: 'What's that you're saying, I can't understand you' or gestured at my parents as if they were deaf, dumb or stupid.[11] I will always remember the time my proud parents accompanied me to the South Island Finals of a National Speech Competition for secondary school students and were challenged (when nobody else was) by the usher as to their right to be present. Most of those attending were parents and relatives of the contestants and the usher obviously never thought that there could be a Chinese contestant in an English speech competition. The anger and helplessness I felt over this and other incidents has never left me. Immigrant children have a difficult time in a new country but the parents have it worse. They often experience a usurpation of their parental role since their children learn the new language, culture and etiquette faster and soon overtake the parents.

I observed that I was not given the same treatment as pakeha around me and had to work harder to get helpful or polite treatment. I found that I was far less likely to be discriminated against if I was with my British-born, white husband or with his family. It was as if their whiteness gave me legitimacy. However, when I was on my own, or with members of my family, the difference in treatment was marked. The contrast helps me to understand why white New Zealanders find it difficult to comprehend that shop assistants, among others, could be rude and unhelpful to coloured minorities just because of their race. The world is a very different place for them — it is generally full of polite people, who try to be friendly and helpful.

The message I received from these and other experiences was clear. Being Chinese was a handicap. Since I was Chinese, I was inherently handicapped. I responded by over-compensating, by throwing off every vestige of Chineseness and fully embracing New Zealand culture. I wanted people to know that I was not really

Chinese because I did not want to be treated like a Chinese. For me, becoming Kiwi was the path of least resistance in a life which already had too much resistance. It was a way of surviving.

At the age of 24, I had just returned from overseas, and my parents wanted to take me to pick paua as they had when I was younger. It was a beautiful day. My father set up his fishing gear and my mother and I started poking about in promising looking places in the rocks. We had not been there long when a man in his mid-twenties strode towards us and started shouting and gesturing with his hands. He tackled my mother first. 'Not more than ten pauas' he was saying, and then held up ten fingers since he presumed she did not understand English. My mother tried to respond politely which sent the man into a tirade: 'You Asians come in and take all the paua! We have laws you know, and you can only take ten'. Unable to keep quiet any longer, I informed the man that we were perfectly able to understand English and to count without visual aids, so he could put his fingers down. I was well aware of the Fisheries (Amateur Fishing) Regulations 1983, and what authority did he have to harass people going about a lawful activity in a public place?

Not surprisingly to me, the man was not a fisheries officer. But my response just made him angrier. He wanted to continue arguing and he insisted on inspecting our buckets. I told him he had no right to look. Throughout, my parents looked mortified and my father kept telling me that they did not want any trouble. My father then started packing up his fishing gear and my mother gathered up our scattered coats and picnic goodies to go. They almost ran out of that place with me in tow raving that the man had no right to talk to us that way and that we should stand our ground because the beach was a public place. Our happy outing had been ruined and in the car on the way home, my mother tried to change the subject. All I could think of was how, after twenty years in New Zealand, after all the struggles and the eventual triumphs to thrive and succeed in this new country, our legitimacy to be here could still be challenged by one insignificant racist.

I also realised that, while discriminatory behaviour may not take the form of an actual refusal to allow a person to use a public place (in our case, the beach), the effect can be the same by making the racial minority feel so ashamed by the discriminatory

treatment that they will relinquish the right to avoid perpetuating the treatment. Discrimination has the effect of bruising the psyche so that people submit more easily to this type of degrading treatment.

This incident particularly stood out in my mind because of my recent arrival back from overseas. I remembered saying to my husband that it was really good to be home. While we waited at Christchurch airport for our flight to Dunedin to be reunited with our families, my husband stretched out on seats some distance away to sleep. I was left to guard all the hand luggage, of which there was a great deal after two years abroad. Some white New Zealanders came and sat a small distance from us. A woman said, 'Look at that Chinese woman with all that hand luggage. God, they're taking over the country. I wouldn't be surprised if she's just arrived from Hong Kong and is going to stay. Probably bring her whole family out next'. She made no attempt to lower her voice and they all stared at me as they nodded in agreement.

I felt an overwhelming desire to retaliate by telling them that I spoke English and understood what they were saying, that I was a law academic who had just come back from postgraduate studies overseas, that I understood what this country had given me and wanted to make a contribution in return, and that I came from a family who were all making a significant contribution to their society. However, my experience has been that achievements do not provide full protection from discrimination. No amount of education, achievement and acculturation can make you legitimate, because some people do not respect achievements. Anyway, why should it make any difference that I could speak English and was a law academic? What if I had just arrived from Hong Kong and could not speak English? What if I was about to try to bring out my family? I understand that some New Zealanders are nervous about Asian immigrants taking their jobs in the current economic climate, but surely all people are worthy of respect regardless of their colour, achievements or abilities because of the inherent dignity of human beings. This principle is so fundamental that it underlies all major international human rights documents. For example, article 1 of the Universal Declaration of Human Rights states: '[a]ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience

and should act towards one another in a spirit of brotherhood and [sisterhood]'.[12]

I considered marching over and punching the woman, my successful childhood strategy; but having just said how nice it was to be home, the sad irony of the whole situation hit me, and I suddenly felt very tired by my inability to escape discrimination.

My mind cast back to other instances of discrimination — I remembered how a class-mate had said to me when I won a major scholarship to study abroad that it should have gone to a 'real' New Zealander. After my first week in a constitutional law course at Harvard Law School, I went to see the professor to get permission to tape his classes until I had adjusted to his American accent and the new vocabulary of American constitutional terms. He talked very fast. His secretary announced my name and my inquiry, so I did not have a chance to speak. The professor took one look at me, presumed I was a postgraduate student from China for whom English was a struggle, and said to me, 'If you are finding the lectures difficult to understand now, then you will never last the distance. From my experience, it would be much better if you just dropped the course right now.' I tried to explain that I was a graduate student from New Zealand and that English was not a problem. He just held up his hands in protest, said that he was too busy to talk, and put his head down to continue with his work. It took a long time to recover my confidence in his class. I also felt ashamed that I had been put in the position of having to effectively say that I was not really Chinese (in terms of language ability), that I just looked like it. What if I had really been a postgraduate student from China with language difficulties?

No matter how much I achieved, the cloud of suspected incompetence never seemed to go away. When I was accepted into Harvard Law School, a New Zealand law professor remarked that he had heard that they were 'looking for women'. When I returned from working at the International Labour Office in Geneva to take up a lectureship at Victoria University, an academic from another institution asked me if I had been hired because the Law Faculty was looking for women.

After recounting many of her experiences of discrimination as a black woman, Professor Adrien Wing states:

> [t]o some people, such incidents of micro-discrimination may appear trivial and not worthy of discussion, especially in a law journal. After all, I should be thankful that I haven't been raped, beaten or lynched as were countless numbers of my people. Yet the cumulative impact of hundreds or even thousands of such incidents has been devastating to my spirit. ... [B]lack women are lifelong victims of ... 'spirit-murder'. [Patricia] Williams only addresses the racial aspect, noting that racism is 'a crime, an offence ... deeply painful and assaultive ...'.[13] I would go further and add sexism to her characterization by saying that the combined impact of racism/sexism 'is as devastating, as costly, and as physically obliterating as robbery or assault; indeed they are often the same'. Racism/sexism 'resembles other offences against humanity whose structures are so deeply embedded in culture as to prove extremely resistant to being recognised as a form of oppression. It can be as difficult to prove as child abuse or rape, where the victim is forced to convince others that he or she was not at fault, or that the perpetrator was not just "playing around". As in rape cases, victims of racism must prove that they did not distort the circumstances, misunderstand the intent or even enjoy it.' To me, spirit-murder consists of hundreds, if not thousands, of spirit injuries and assaults — some major, some minor — the cumulative effect of which is the slow death of the psyche, the soul and the persona. This spirit-murder affects all blacks and all black women, whether we are in the depths of poverty or in the heights of academe [footnotes omitted].[14]

The worst effect of discrimination is self-hatred, hatred of what you inherently are, and rejection of those things that make you less worthy in the eyes of others. This is compounded for coloured women by the combination of racism and sexism. You suffer low self-esteem and a loss of confidence. Since the offences are primarily to the spirit and not necessarily to the pocket, remedies must address the first mischief and not just the grievances to property. This does not mean that, in itself, passing anti-discrimination laws will result in victims of discrimination moving beyond self-hatred to a love of self, to an understanding that they will never win acceptance from those outside, but that love must come from within. But the passage of such laws can help, as I argue below.

The Benefit of Experience

Lawyers who have experienced discrimination can bring a unique and valuable contribution to the law. It was my experiences of discrimination that first attracted me to the law. I studied law because I saw it as a tool to redress the powerlessness and discrimination that I, and those I loved, had experienced. I came to the law, not to perpetuate the status quo, but to change it and so I chose an academic career where I could write and think about how the law could be better. I also wanted to teach so I could support students who did not fit the traditional lawyer mould.

My own experience of legal education had been difficult. The struggle of minority women, especially those who are immigrants, to achieve legitimacy makes it difficult for them to assert their difference.[15] For me, this meant that even when I wanted to question the impact of certain laws on the oppressed, and to query the 'fairness' of laws, I sometimes said nothing.[16] When you are naturally an outsider, the desire to conform and to be one of the crowd is very strong. Fear of rejection and discrimination provide strong incentives. Yet I found the cultural context in which the law is developed and practised very different from the one I had grown up in. I did not fit the mould and I agonised over whether I had any contribution to make to the law. Ten years after I started my law degree, the realisation dawns on me that much of the contribution I have been able to make to the law is directly due to my difference.[17] It is that realisation which made me determined to return to the university to encourage students who did not fit the traditional lawyer stereotype that they could make a contribution to the law, that they can survive law school and make a difference. I was Advisor to Women Students in the law faculty from 1990 to the end of 1992 and I have mentored, and continue to mentor, women students, many of whom are coloured.

My experiences of discrimination have brought insights to my work that would otherwise be missing and, in particular, have enhanced my research on anti-discrimination law. For example, in my article 'Law and Economics, Discrimination and Public Law',[18] I try to refute the arguments to repeal all employment discrimination laws in the private sphere such as is propounded by Richard Epstein.[19] It is partly on the basis of my experiences of

discrimination that I conclude that Professor Epstein's arguments are flawed. He takes no account of the cost that discrimination inflicts on the spirit and of the benefits that anti-discrimination laws can have in reviving and promoting the spirit.[20]

Epstein argues that discrimination in the private sphere of employment holds little risk of social or private peril and should be permitted since free entry into the market and multiple employers provide ample protection for all workers. If 90 percent of employers do not want to hire you, then you can concentrate on doing business with the other ten percent. Although the universe of potential trading partners is smaller, Epstein states that the critical question for my welfare is not which opportunities are lost but which are retained.[21] There are many problems with his arguments even if traditional methods of criticism are used. For example, why should victims of discrimination have to incur greater information costs to find the ten percent of 'willing' employers? Their range of choices is also diminished, along with their bargaining power, since the employer knows that 90 percent of the other employers would not hire such a person.

My experience of discrimination adds a further dimension to my analysis in leading me to argue that the effect of being turned away nine times may well devastate the spirit and undermine a person's confidence so that they may not try a tenth time. There is no point saying that the victim should not give up. The reality is that such people do get dispirited, and who could blame them? Those who are discriminated against are often 'discrete and insular' minorities, or from groups who have a long history of discrimination, and are relegated to the position of political powerlessness, even though the characteristic that is their badge of distinction may bear no relation to ability to perform or contribute to society, and is an immutable characteristic that is either inherent or uncontrollable.[22] The fear of rejection may be an invisible 'barrier to entry' for victims of discrimination. The barrier is strengthened by the unpredictability of discrimination. What if the next employer is not part of the ten percent who will be willing to employ you? Epstein's arguments for repealing anti-discrimination laws in employment are flawed because he fails to factor damage to the spirit, and the ability of anti-discrimination laws to revive the spirit into his cost/benefit analysis of such laws.

Anti-discrimination laws can revive and promote the spirit by reaffirming the principle that discriminatory treatment on the basis of characteristics such as race or sex is wrong, that it is contrary to the public interest and censured by the state. Such laws can aid discriminated groups to move beyond self-hatred to a love of self, and may also encourage those who believe themselves to be vulnerable to discrimination to assert rights they would otherwise abandon. As Fiss states, '[r]eliance on self-regulation entails a silence that may be pregnant with contrary implications for the likely victim'.[23]

Anti-discrimination laws also provide a necessary minimum safeguard to ensure that minorities are able to exercise and enjoy their rights on an equal basis with other New Zealanders. On returning from overseas, my husband and I went flat-hunting in Wellington. We had followed up an address in Mt Victoria which was a vacant flat under the landlord's house. We had come from work, so we were smartly dressed. While my husband parked the motorbike, I walked towards the flat and greeted the Greek landlord who was sitting on the veranda. He stared at me very disapprovingly and did not respond to my greeting. When my husband arrived, the landlord removed his gaze from me for the first time and said to my husband, 'The flat is gone'. He then entered his house slamming the door behind him. The flat was not taken — I checked.[24]

Although I was furious about the incident, the shame of having to confront being rejected on the basis of my race held me back from complaining to the Race Relations Conciliator. My earning ability allowed me to get accommodation elsewhere, so I justified my inaction on the basis of not compounding the difficulties of settling into a new city and a new post at Victoria University Law Faculty. I understood that my privileged position allowed me at least to mitigate my powerlessness to some extent. I thought hard about what I would have done if we had been desperate to find accommodation and how much more, in those circumstances, that discriminatory treatment would have knocked my confidence.

To the critics of anti-discrimination legislation who argue that we can never change people's prejudices, I respond that that is not the whole aim of such legislation. Landlords may continue to think racist thoughts, but the law can prevent them from

acting on those prejudices to prevent coloured minorities from getting accommodation. As Maya Angelou states, 'you cannot legislate love, but what one can do is legislate fairness and justice. ... Legislation affords us the chance to see if we might love each other'.[25]

Until the passage of the Human Rights Act in August 1993, the scope of anti-discrimination laws in New Zealand was limited, and New Zealand's laws breached international law in some respects.[26] The Human Rights Act 1993 was a long time coming. It has been five and a half years since a major review of anti-discrimination laws by the Human Rights Commission suggested that comprehensive reforms of the anti-discrimination laws were needed.[27] And this is the first major overhaul of the Human Rights Commission Act since it was enacted over 15 years ago. The new Act also falls short in some areas. For example, discrimination in clubs is still exempt from the jurisdiction of the Act, the procedure for dealing with complaints places unnecessary hurdles in the path of the Human Rights Commission taking a complaint to the Equal Opportunities Tribunal, and there is no right of appeal to the Court of Appeal.[28]

Why has there been such a lack of political will to reform these laws? Could it be that New Zealanders do not think they have a real problem with discrimination, and thus politicians see reforming such laws as a lot of political aggravation for little political gain? How can that attitude be justified considering the history of discrimination in New Zealand, and the continuing discrimination against Maori, women, Asians and other minorities? Could that understanding of the pervasiveness of discrimination grow as groups who experience discrimination are encouraged to tell their stories? Why have more not spoken out before now?

The Problem Of Silencing

During the introduction of the Human Rights Commission Act in 1977, the then Minister of Justice stated:

> The human rights policy was the first of the major planks made public by the National Party in 1975. That is an indication of how important it is to the National Government that we should do all we can to preserve and enhance the rights and dignity, the worth and value, of the individual

> citizen of this country. Indeed, I hope I am not too bold when I say that one of the attractions of New Zealanders in the world abroad is their sense of the value of individuals around the world. They can walk and talk with a duke or a dustman without distinction or discrimination; and this, I believe, has come to us from our beginnings. It is certainly something that is greatly valued by all of us who have been overseas and seen how welcome we are, for that reason as well as others.[29]

Maori would certainly challenge the validity of this statement on a number of grounds, and I challenge it on the basis of the history of institutionalised racism in New Zealand's immigration legislation.[30] States can operate immigration policies of exclusion without being discriminatory since such exclusion may be justified by competing national and individual interests, foreign relations ramifications, the economic impact of immigrants and the social, cultural and racial questions raised by immigration.[31] It is arguable that being excluded for these reasons does not harm the spirit. But New Zealand's immigration laws implemented a 'keep New Zealand white' policy, which was specifically designed to exclude 'coloured' immigrants. Racially-based laws were not repealed until 1964 with the enactment of the Immigration Amendment Act. They include:

- the Chinese Immigrants Act (No 47) 1881, which required every Chinese to pay a £10 poll tax, and placed a quota of one Chinese per 10 tons of cargo on ships carrying Chinese immigrants. This was increased to £100 and the quota was further restricted to one Chinese person for every 200 tons of cargo by the Chinese Immigrants Act Amendment Act (No 19) 1896;

- the Chinese Marriages with Europeans Act 1888, which required an annual return to be prepared and laid before the House of Representatives showing (1) the number of Chinese in the colony who were married to European women; (2) the number of Chinese half-caste children in the colony; (3) the provincial districts in which such Chinese half-caste children were born and were residing;

- the exclusion of 'Chinese and other Asiatics, whether naturalised or not' from receiving the pension under section 64 of the Old-Age Pension Act (No 14) 1898. Pensions became universal only in 1993.

- the Chinese Immigrants Amendment Act (No 79) 1907 which imposed an additional reading test on all Chinese, to read 'to the satisfaction of customs officials' one hundred words of English picked at random; and

- the Consolidated Statutes Enactment (Immigration Restriction Act) 1908, which provided that 'no letter or certificate of naturalisation shall on any ground whatsoever be issued to any Asiatic, being a Chinese', and that all Chinese immigrants and all Chinese residents seeking re-entry permits were to be finger-printed, since Chinese were all considered to look alike.

I never learnt about these laws in primary or secondary school, or even Law School. If I had, it would have made the discrimination I suffered more comprehensible and thus reduced its potential to harm my spirit.

In writing about the Immigration Restriction Act of 1920, which implemented the keep New Zealand white policy to prevent Asian settlement in this country, P. S. O'Connor is puzzled by the silence about these anti-Chinese laws in New Zealand's history books.[32] It receives scant mention in the general histories of Professors Sinclair and Oliver,[33] and none at all in R. M. Burdon's detailed study of New Zealand between the two world wars.[34] These omissions seem particularly curious when similar policies adopted in Australia drew extensive criticism from Australian historians.[35] Racial prejudice was as important in the formation of New Zealand's policy as were economic considerations. Asians were widely regarded as inferior beings and the prospect of miscegenation was viewed with irrational horror.[36] O'Connor concludes that it is the refusal of historians to be interested in this history of racial prejudice which has allowed New Zealand to escape, in its own eyes, the opprobrium incurred by Australia for a similar policy. It has resulted in an incompleteness in New Zealand's self-image which allows New Zealanders 'to believe that

the national character is freer from racial prejudice than is that of benighted Australians'.

Most New Zealanders are willing to acknowledge the existence of some discrimination against women and Maori.[37] However, discrimination against Chinese is not generally acknowledged or universally condemned. This phenomenon of the majority group determining which group's experiences of discrimination to legitimate is itself an example of discrimination, and its effect is to silence the groups whose experiences are not legitimated.[38]

Chinese are not perceived by Pakeha to have suffered much of the hardship that other coloured minorities, like Maori or Pacific Islanders, have been subject to.[39] They are successful academically,[40] and economically, they are under-represented in the prison population[41] and in the ranks of the unemployed. An Asian American, David Quan, states that '[t]he mid-1960s popular press labelled Asian Americans the "Model Minority", ... But at the same time the label has created the misperception that the entire Asian American population has already "made it" and does not need the sort of special help other racial minority groups receive to encourage their full participation in all aspects of American society'.[42] Yet Asians, like other coloured minorities, have experienced the same long history of invidious discrimination.[43] They lack role models in the professions.[44] Specifically in the study and practice of law, there are also unique barriers posed by Chinese cultural characteristics.[45]

Chinese comprise the largest non-European, non-Polynesian ethnic group in New Zealand.[46] Yet I found no affirmative action programmes for Chinese. The programmes targeted mainly Maori and Pacific Islanders.[47] Manying Ip also concludes that 'the New Zealand Chinese are grossly and unjustifiably understudied. The New Zealand Chinese women in particular, have been sadly neglected'.[48]

The anti-Chinese legislation has been repealed, but anti-Asian sentiment remains in New Zealand, motivated by similar reasons, one might argue, as the wave of racism which has swept Germany in the wake of reunification and escalating unemployment. With a steady stream of Asian migrants in a depressed economic climate with high unemployment, this prejudice is stronger now than when

my family first arrived in New Zealand 23 years ago.[49] As Dr Raj Vasil stated:

> Asian numbers started ballooning only in the last five years or so, when New Zealand relaxed immigration policies to attract Asian skills and funds. ... Last year out of New Zealand's 3.5 million population, about 49,000 were immigrants. About 35,000 of them are of Chinese origin. The figure looks large to New Zealanders given their small population ....
>
> The past eight years of recession have deeply wounded New Zealanders. The hurt is not only to their pockets, but also to their pride and self-esteem as they see Asia's rising wealth. ... Now they have to go these countries with their hands spread, looking for trade ... To rub salt into the wound, wealthy Asians are streaming in, and, right before their eyes, are buying up big houses and luxury cars.[50]

The recent spate of anti-Chinese incidents sparked off by a derogatory newspaper article called 'The Asian Inv-Asian',[51] and fuelled by the National Party's Auckland Division remit to prevent immigrant children from going to school until they were proficient in English,[52] has brought the issue of discrimination against Chinese out into the open. The latter issue was raised in the context of the 'huge problem' in some primary schools of Asian children with limited English skills; the suggested solution was a charge on immigrants to fund an entry programme since 'most immigrants are wealthy'.[53]

Chinese are beginning to speak out against their discriminatory treatment and to fight back. The newly-arrived immigrants to New Zealand, who have borne the brunt of much of the recent anti-Asian backlash, are generally well-educated, articulate and well enough resourced to counter the criticism directed at them. The 'Asian Inv-Asian' article was met with complaints to the Race Relations Office and the Press Council.[54] A rebuttal of the article by Chinese groups was published[55] and a signature campaign was launched for 'Racial Harmony in New Zealand'. A creative director of an advertising agency, who is Chinese, even took out a full-page advertisement in the *Sunday Times* condemning the anti-Asian sentiments in New Zealand.[56] Not all of the debate has been

balanced, but there is beginning to be a greater understanding of the experiences of Chinese in New Zealand.

Women and Maori have helped to increase tolerance of difference in our society; however, they have also acted, knowingly or not, to marginalize other groups who experience discrimination. Some Maori see Chinese as another minority competing for scarce resources, and resent the comparison sometimes made between Chinese and Maori to make the point that Maori could achieve well too if they tried harder.[57] As the secretary of the Auckland District Maori Council stated:

> We're not anti-Asian — we don't want any immigration. ... Maoris are at the bottom of the heap and don't want foreign interests stacked on top of that already weighty pile. They're already getting squeezed enough. If the Council is being racist, then so is the government. Its enthusiasm for importing Asians is based on racial stereotypes (albeit positive): the theory is that their hard working, frugality and cunning entrepreneurial brains will drag New Zealand out of the mire. Trying to convince us that immigration is the answer, they exaggerate Asians' virtues and at the same time tell us that we are lazy.[58]

This attitude does not make for a sympathetic reception of Chinese immigrants' stories of discrimination and hard times in New Zealand. Another concern of Maoridom is the current failure to assess the cultural compatibility of migrants and to give migrants any understanding of the place of the tangata whenua and of the Treaty of Waitangi in New Zealand society.[59] More attention must be paid in future to the Maori/immigrant minority interface, to Maori claims to the right to consultation about immigration policy and to determining the place of immigrant minorities under the Treaty of Waitangi.

Feminist writing in New Zealand has started to acknowledge that the experience of some women of colour, such as Maori and Pacific Island women, differs from the experience of white women.[60] However, an approach that Black American feminist legal theorists call 'gender essentialism'[61] has dominated the discourse. Gender essentialism assumes that there is a monolithic 'women's experience' that can be described independent of other facets of experience such as race and class.[62] By stressing that, after

all, women are women and we are all oppressed by men, gender essentialism promotes solidarity amongst a very diverse group of women against a common enemy.[63] The force of the women's movement is not dissipated by those claiming different needs and agendas.

There is obviously some merit in this argument. However, gender essentialism elevates sex discrimination above race discrimination.[64] It suggests that gender is more deeply embedded in self than race. Moreover, gender essentialism has the effect of privileging the experiences of whites over all others and serves to reproduce relations of domination seen in the larger culture. Yeatman speaks of 'dominant and marginalised voices within feminism'.[65] And Minnow states:

> Assertions of a unified 'women's experience' deny the history of conflicts between women. White women, for example, have found a source of power in supervising women of color. ... Majority and minority women stereotype each other, but the majority's stereotypes of minorities carry more power to implement the control and exclusion that stereotypes imply. Stereotypes remaining within feminist theory and practice provide clues to who has the power to define agendas and priorities within feminist communities. Ignoring differences among women may permit relatively privileged women to claim identification with all discrimination against women, while also claiming special authority to speak for women unlike themselves.[66]

Gender essentialism contends that the experience of coloured women is just like that of white women, 'only more so'.[67] It fails to acknowledge that coloured women's experiences are fundamentally different, and that their experiences need to be heard and must be accommodated in the goals, strategies and visions that are adopted for women's advancement.[68]

My own experience is that the combination of race discrimination and sex discrimination affected me profoundly. There were always other women to validate my experiences of sex discrimination, but virtually no-one could understand, or validate, my experiences of race discrimination or the impact of the intersection of race and gender discrimination. When so few people share your experience of race and sex discrimination, you do not object

to the assumptions that your experience has been the same as that of other white women. You keep quiet about the differences and try to seek out the similarities between yourself and other women.

Valuing Difference

New Zealand is no different from other multi-cultural societies in having a problem with discrimination. An appreciation of that fact will be achieved only if all groups that have experienced discrimination are encouraged to tell their stories. Marginalisation of some groups who experience discrimination by others, such as Maori and white women, and by the Pakeha majority, needs to be recognised. Groups experiencing discrimination must also overcome the injury discrimination inflicts on their spirits to tell their stories. Otherwise myths concerning 'successful' minorities and their ability to 'make it' without special help will continue. Discrimination will not be viewed as a pervasive problem and few resources will be devoted to its elimination.

New Zealand needs to maintain effective anti-discrimination laws as a minimum safeguard of people's ability to exercise and enjoy their rights without discrimination, and to reaffirm the principle that discriminatory treatment on the basis of characteristics such as race or sex is wrong. This is important for affirming and reviving the spirit, damage to which is a major cost of discrimination. Such laws can encourage groups which are discriminated against to express that difference without fear of denigrating and humiliating treatment, to be proud of their differences instead of responding to the incentives that discrimination creates to conform with the Kiwi majority. Anti-discrimination laws may also bring people together by challenging the basis of people's prejudices and showing them up for what they really are — unfounded.

When I was growing up, I resented my differentness because people discriminated against me as an immigrant Chinese female and that made my life hard. But the passage of time has brought the realisation that what may be perceived by others to be weaknesses can be turned to strengths. It is these differences and the experiences which stemmed from them that have enriched

my research on anti-discrimination law and made me a stronger person.

Well-meaning people often say to me that they do not notice that I am Chinese. They think of me just as one of them. As much as I appreciate the sentiment, the fact is that I am not the same. We are all different, one from each other, and that is something to be valued, not denied.

* * *

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Notes

1. An extract from this article was published as 'Discrimination in New Zealand: A Personal Journey', in E. McDonald and G. Austin (eds.), *Claiming the Law: Victoria University of Wellington Law Review*, 23:2 (1993) pp. 137–147.
2. See M. Chen, 'The Inadequacy of New Zealand's Discrimination Law', in *New Zealand Law Journal*, (1992) p. 137.
3. See 'The Problem of Silencing' below.
4. For examples of scholarship in these areas, see R. Delgado, 'The Imperial Scholar: Reflections on a Review of Civil Rights Literature', *University of Pennsylvania Law Review*, 132 (1984) p. 561, pp. 574–75; S. Estrich, 'Rape', *Yale Law Journal*, 95 (1986) p. 1087; M. J. Matsuda, 'When the First Quail Calls: Multiple Consciousness as Jurisprudential Method', *Women's Rights Law Reporter*, 11 (1989) p. 7; M. J. Matsuda, 'Public Response to Racist Speech: Considering the Victim's Story' *Michigan Law Review*, 87 (1989) p. 2320; R. Delgado 'Storytelling for Oppositionists and Others', *Michigan Law Review*, 87 (1989) p. 2411; and P. J. Williams, *Alchemy of Race and Rights* (Harvard University Press, Cambridge, Mass., 1991).
5. S. L. Winter, 'The Cognitive Dimension of the Agon Between Legal Power and Narrative Meaning', *Michigan Law Review*, 87 (1989) p. 2225, p. 2227.
6. K. L. Schelleple, 'Foreword: Telling Stories', *Michigan Law Review*, 87 (1989) p. 2073, p. 2074.
7. Matsuda, 'When the First Quail Calls', p. 8.
8. See, for example, M. Hong-Kingston, *The Woman Warrior: Memoirs of a Girlhood Among Ghosts* (Picador, London, 1975), and A. Tan, *The Joy Luck Club* (Ballantine, New York, 1989).

9. Chinese numbers have gone up 87.9% since the previous census. *1991 New Zealand Census of Population and Dwellings: Provisional National Summary*, Wellington, p. 11. During the 1981–1986 intercensal period, there was a 17.1% increase in Chinese in comparison with only a 2.3% increase in people of European origin. *New Zealand Official 1990 Yearbook* (94th ed., 1991) Table 6.27, p. 181. The *New Zealand Working Party on Immigration: Report of the Working Party on Immigration*, March 1991, p. 5 stated that: '[t]he percentage [of immigrants] coming from the United Kingdom fell from 36 percent in 1986 to 16 percent in 1990. A number of countries which were previously not major sources of immigration to New Zealand have become so. In particular Hong Kong, Taiwan and Malaysia have become important countries of origin'. *New Zealand Official 1992 Yearbook*, (95th ed., 1992) states at p. 76 that 'As a result of the conflict in Indo-China, about 7000 Indo-Chinese refugees have been resettled in New Zealand since 1975. This has accounted for over 90 percent of New Zealand's total refugee intake from this time'.
10. Hong-Kingston relates old Chinese sayings: '[g]irls are maggots in the rice'; 'It is more profitable to raise geese than daughters'; 'When fishing for treasures in the flood, be careful not to pull out girls', p. 45 and p. 53. When we were children in Taiwan, we used to play a game where you had to cluster in groups to make up whatever sum of money was called out. Boys were worth $1 and girls were worth 50 cents.
11. See M. J. Matsuda, 'Voices of America: Accent, Anti-discrimination Law, and a Jurisprudence for the Last Reconstruction', *Yale Law Journal*, 100 (1991) p. 1329; and M. Chen, 'Supplementary Submission to the Justice and Law Reform Select Committee on the Human Rights Bill 1992', April 1993, where I argued for a ground of non-discrimination on the basis of accent.
12. The preamble to the Declaration also states: '[w]hereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'.
13. P. J. Williams, *Alchemy of Race and Rights*, p. 73.
14. A. Wing, 'Brief Reflections Toward a Multiplicative Theory and Praxis of Being', *Berkeley Women's Law Journal*, 6 (1991) p. 181, pp. 185–186.
15. See M. Chen, 'Drawbacks of the Tough Law School Environment in New Zealand and the United States. Is Reform Women's Work?',

Unpublished paper prepared for a Comparative Legal Education course at Harvard Law School, 1987, (on file with author).

16. See Matsuda, 'When the First Quail Calls', for a similar description of how 'women-of-colour consciousness' affects the way coloured women students view the law. Matsuda calls this 'the multiple consciousness of the disempowered'. See also Matsuda, 'Voices of America', p. 1330.
17. See M. J. Matsuda, 'Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground', *Harvard Women's Law Journal*, 11 (1988) p. 1 for a description of how another coloured female academic has been able to make a contribution stemming from her difference.
18. Mai Chen, 'Law and Economics, Discrimination and Public Law', in *The University, Ethics and Society* (Victoria University Press, Wellington, forthcoming)
19. Richard Epstein, *Forbidden Grounds: The Case Against Employment Discrimination Laws* (Harvard University Press, Cambridge, 1992).
20. Matsuda, 'When the First Quail Calls', p. 9.
21. Epstein, p. 30.
22. See *United States v Carolene Products Co.*, 304 US 144, 152 ; 58 Supreme Court p. 778, p. 783; 82 L ed p. 1234, p. 1241 (1938). See W. Sadurski, 'Judicial Protection of Minorities: the Lessons of Footnote Four', *Anglo-American Law Review*, 17 (1988) p. 163.
23. O. M. Fiss, 'A Theory of Fair Employment Laws', *University of Chicago Law Review*, 38 (1971) p. 235, p. 249.
24. The problem of minorities discriminating against other minorities requires an article in itself, and I will not elaborate on it here.
25. B. Laker, *I Dream a World: Portraits of Black Women Who Changed America* (Stewart, Tabori and Chang, New York, 1986) p. 162.
26. See M. Chen, 'Reforming New Zealand's Discrimination Law', *New Zealand Law Journal*, (1992) p. 172, p. 181.
27. *Review of the Human Rights Commission Act 1977*, Report to the Minister of Justice, Human Rights Commission, 1987. A similar amendment bill was introduced in 1990, but was shelved by the incoming National Government.
28. See M. Chen, 'Self-Regulation or State Regulation?: Discrimination in Clubs', *New Zealand Universities Law Review* (forthcoming) and M. Chen, 'Submission to the Justice and Law Reform Committee on the Human Rights Bill', 12 February 1993, and 'Supplementary Submission to the Human Rights Bill', 28 April 1993.
29. *New Zealand Parliamentary Debates*, Vol. 411, 1977, p. 1474, Hon. David Thomson.

30. See P. S. O'Connor, 'Keeping New Zealand White 1908–1920' *New Zealand Journal of History*, 2 (1968) p. 41, for a helpful overview of the policy and the laws which implemented it. A list of the major anti-Chinese laws (including racially-based immigration law) and incidents is also set out in Manying Ip, *Home Away From Home: Life Stories of Chinese Women in New Zealand* (New Women's Press, Auckland, 1990) p. 177ff.
31. See S. Legomsky, *Immigration and The Judiciary: Law and Politics in Britain and America* (Clarendon Press, Oxford, 1987).
32. P. S. O'Connor, p. 41.
33. K. Sinclair, *A History of New Zealand* (Penguin, Harmondsworth, Middlesex 1959, 1969, 1980) at p. 166; W. H. Oliver, *The Story of New Zealand* (Faber and Faber, London 1960) at p. 154. But see more recently, K. Sinclair, *A Destiny Apart, New Zealand's Search for National Identity* (Allen and Unwin, Wellington, 1986) at pp. 91–93; and W. H. Oliver (ed) with B. Williams, *The Oxford History of New Zealand* (Oxford University Press, Wellington 1981) p. 304, where Chinese issues are discussed in greater detail.
34. R. M. Burdon, *The New Dominion: A Social and Political History of New Zealand 1918–39* (A. H. and A. W. Reed, Wellington, 1965).
35. C. M. H. Clark, *A History of Australia* (Melbourne University Press, Melbourne, 1987) Vol. IV pp. 117, Vol. V pp. 352–354. Beverley Kingston, *The Oxford History of Australia*, (Oxford University Press, Melbourne, 1988) Vol. 3 pp. 311–313. For example, see Raymond Evans, Kay Saunders and Kathryn Cronin, *Race Relations in Colonial Questions* (Univ of Queensland Press, 1975); G. H. Burchett, *China and the White Australia Policy* (Australia-China Co-operative Assoc., Melbourne, 1944); J. A. Burke, 'Australia's Laws Against Asiatics', *Current History Forum*, XIII (1921); P. C. Campbell, 'Asiatic Immigration into Australia', *Economica*, I (1921) pp. 56–61; F. Chidell, *Australia — White or Yellow?* (Heinemann, 1926); R Fitzgerald *From the Dreaming to 1915: A History of Queensland* (University of Queensland Press, 1982) 220 ff; A. Huck, *The Chinese in Australia* (Longmans, 1967); and A. Markus, 'White Australia? Socialists and Anarchists', *Arena* (1973) pp. 32–33.
36. Manying Ip cites examples like the foundation of an Anti-Chinese League in Nelson in 1857 against the possible infiltration of 'Mongolian Filth' even though there were no Chinese in the district yet. *Nelson Examiner*, 19 and 22 August 1857; In October 1871, a petition was sent to Parliament by 155 white miners of Otago urging '... the necessity of placing an effectual ban to the further influx of Chinese ...'. The petition carried the warning that 'unless the

most stringent measures are taken, the result would be bloodshed and anarchy'. The chief complaints referred to gambling, opium-smoking, the non-observance of the Sabbath and un-Christian behaviour, and possible immorality because of the lack of females among the population. The Committee found that the Chinese were 'industrious, frugal, orderly, were no special risk to morality, and were not likely to introduce infectious diseases'. It concluded that there were not sufficient grounds for their exclusion from the colony. New Zealand General Assembly, House of Representatives, *Journals*, Wellington, 1871 Vol. II HSB p. 4; The climate of post First World War New Zealand was anti-Asian. A popular slogan of the time ran, 'We fought not for the Chinese but for a White New Zealand'. Among those who stirred anti-Chinese feelings were the RSA, watersiders and European fruiterers. And in 1926, the White New Zealand League was formed.

37. See Hyam Gold and Alan Webster, *New Zealand Values Today: The Popular Report of the November 1989 New Zealand Study of Values* (For Research Directorate of the New Zealand Study of Values, Massey Univeristy by Alpha Publications, 1990) pp. 29–30, 71. New Zealanders also ranked race relations as the fourth most serious social problem facing this country. However, the problem was viewed as predominantly a Maori one and not a problem of discrimination against other minorities such as Asians, pp. 41–42.

38. There have been few accounts of the experiences of Chinese minorities in New Zealand. See J. Ng, 'Who are the New Zealand Chinese?', *Otago Daily Times*, 22 and 29 July 1972, both on p. 17; J. Ng, *Windows on a Chinese Past* (Otago Heritage Books, 1993 forthcoming); W. Ngan, 'South East Asian Communities in New Zealand — The Chinese', *New Zealand Ethnic Relations Study Group Newsletter*, 2:3 (1981) pp. 5–6, ; H. T. Nguyen, 'The Experience of a Vietnamese Teacher in a New Zealand School', *South East Asian E. S. L. Migrant Education News*, 7 (1983), pp. 49–51; P. S. O'Connor, p. 41; F. A. Ponton , 'Immigration Restriction in New Zealand', MA thesis, Victoria University of Wellington, 1946; C. P. Sedgewick, 'The Politics of Survival: A Social History of the Chinese in New Zealand', Ph.D thesis, Department of Sociology, University of Canterbury, 1982; T. S. Trinh, 'Vietnamese Migrants in New Zealand', *New Zealand Counselling and Guidance Association Journal*, 3:2 (1987) pp. 51–67. A review of the literature shows that most of the writing on the experiences of minorities in New Zealand has been done by white minorities like the Irish, the Scots, the Dalmatians, the Scandanavians and the Dutch. There is also significant writing on

and by Polynesians. See A. D. Trlin and P. Spoonley, *New Zealand and International Migration* (Department of Sociology, Massey University, Palmerston North, 1986) Chapter 8, Bibliography.

39. In Hyam Gold and Alan Webster, *New Zealand Values Today*, pp. 23–24, the authors asked a national sample of 1000 people to rank the relative advantage or disadvantage of six groups to determine who are actually seen to be the most disadvantaged and deserving of assistance in New Zealand. The six groups included only two ethnic minorities, Maori and 'Islanders'.
40. In 1989, the percentage distribution of grades awarded by ethnic group in the New Zealand School Certificate exam showed that Asians achieved a far higher percentage of higher grades, than any other racial group. The European/Pakeha group was next, followed by Maori and then Pacific Island students. Asians also scored the second lowest percentage of fails after the European/Pakeha group. (*Education Statistics of New Zealand 1990*, Research and Statistics Division, Ministry of Education, Wellington, December 1990, Table 27, p. 43). The same trends exist concerning high grades in Sixth Form Certificate, 1, 2 or 3 (Table 30, p. 45) and concerning the achievement of degrees such as Doctorates, Masters and Bachelors Honours at university (Table 65, p. 104).
41. See *New Zealand Official 1992 Yearbook*, p. 182: There were 6182 prisoners in 1990. 2980 were Maori, 2857 were Europeans, 315 were Pacific Island Polynesians and 30 were other.
42. See D. Quan, 'Asian Americans and Law: Fighting the Myth of Success', *Journal of Legal Education*, 38 (1988) p. 619.
43. See, for example, J. Ng, 'Who are the New Zealand Chinese?' and *Windows on a Chinese Past*; P. S. O'Connor; F. A. Ponton, 'Immigration Restriction in New Zealand'; C. P. Sedgewick, 'The Politics of Survival: A Social History of the Chinese in New Zealand'; and Manying Ip, *Home Away From Home.*
44. See Denise C. Morgan, 'Role Models: Who Needs Them Anyway?', *Berkeley Women's Law Journal*, 1(1991) p. 122.
45. For example, the unquestioning attitude of Chinese children towards parental authority usually creates a black and white view of the world and makes it difficult for Chinese law students to consider the argument for both sides of the case. Chinese students also lack a critical mindset. They too readily accept what is put in front of them. The traditionally patriarchal family environment where communication travels downward also contributes to a lack of communicative skills. Studies of University of California-Berkeley freshmen in the 1960s found that Chinese and Japanese Americans

scored substantially lower on the verbal section of scholastic achievement tests than their control counterparts. Russell Endo, 'Asian Americans and Higher Education', *Phylon: The Atlanta University Review of Race and Culture*, 41(1980) p. 372. Another Berkeley study found that 53 percent of Asian American freshmen failed to pass the college entrance English-proficiency examination, twice the rate of non-Asians. Derald Wing Sue and David Sue, 'Understanding Asian American: The Neglected Minority', *Personnel and Guidance Journal*, 51 (1973) p. 386. See also Carolyn Jin-Myung Oh, 'Questioning the Cultural and Gender-Based Assumptions of the Adversary System: Voices of Asian American Law Students', *Berkeley Women's Law Journal*, 7 (1992) p. 125, who argues that as the Asian culture's predominant values are of community, relational harmony and consensus, Asian American law students experience greater dissonance with the adversarial legal system, which perpetuates American cultural values, than American law students.

46. The total population resident in New Zealand, 5 March 1991 was 3,375,903. Department of Statistics, (1992) *1991 New Zealand Census of Population and Dwellings: Provisional National Summary*, p. 11. New Zealand Europeans who make up 73.8% (Table 3, p. 14), defined in the 1991 census by the Department of Statistics as 'persons who specified themselves as belonging solely to the New Zealand European Ethnic group plus those persons who stated "New Zealander", "Pakeha", "Kiwi", "New Zealander/Pakeha", or "New Zealander/European/Pakeha" as their sole ethnic group'. The rest of the population is dominated by four ethnic minority groups: Maori 9.6%; Pacific Island Polynesians 3.6% (includes people from such countries as Samoa, Cook Islands, Tonga, Niue, Tokelau, Tahiti and Hawaii); Chinese 1.1% and Indian 0.8%. A further 4.5% of the population identify themselves as belonging to more than one ethnic group.
47. See M. Chen, 'Anti-Discrimination Law on the Grounds of Race: New Zealand Case Study and Appendices', in *Report on Anti-Discrimination Law on the Grounds of Race, A Comparative Literature Survey of Provisions in Australia, New Zealand, Canada and the USA*, (Scottish Ethnic Minorities Research Unit, Edinburgh, September 1992) pp. 8–9.
48. Manying Ip, p. 13.
49. See R. Gordon, 'The Asian Invasion', *Metro* 150, Auckland, New Zealand, July 1988, p. 154; T. Reid 'Chinatown', *Listener* 126, Auckland, New Zealand, 22 January 1990, p. 9; T. Reid, 'A Clash of Values: Chinese Migrants in Auckland', *Listener* 127, Auckland, New

Zealand, 29 January 1990; M. McLauchlan, 'Far Eastern Suburbs', *Metro* 116, Auckland, New Zealand, November 1991, pp. 117 and 121.

50. 'Economics of Envy', *The New Paper*, Singapore, June 12, 1993, p. 33.
51. *Auckland City Harbour News*, Auckland, 16 April 1993, pp. 8–9.
52. The remit stated: 'That immigrant children who do not possess proficiency in spoken English be required to undertake an intensive English language course before enrolling at the schools of their choice'.
53. See *The New Zealand Herald*, 3 May 1993, p. 1.
54. *The New Zealand Herald*, 29 April 1993, p. 24, and the *Otago Daily Times*, 1 May 1993, p. 3.
55. *Eastern Courier*, Auckland, 5 May 1993, p. 6 'Stories "pandering to prejudice" '.
56. *Dominion Sunday Times*, 6 June 1993, p. 4.
57. M. McLauchlan, 'Far Eastern Suburbs', p. 117 quoting 'John' a Pakeha: 'I'd rather have Asians than our cuzzy-bros down the road. At least the Asians are hardworking'.
58. ibid., p. 121.
59. 'Why Asians Expand our Economic Horizons', *Management*, Auckland, May 1993, p. 38.
60. See Donna Awatere, *Maori Sovereignty* (Broadsheet Publishers, Auckland, 1984); Ngahuia Te Awekutuku, *Mana Wahine Maori: Selected Writings on Maori Women's Art, Culture and Politics* (New Women's Press, Auckland, 1991); and Rosemary du Plessis et al. (eds.) *Feminist Voices: Women's Studies Texts for Aotearoa/New Zealand* (Oxford University Press, Auckland, 1992).
61. A. P. Harris, 'Race and Essentialism in Feminist Legal Theory', p. 585.
62. ibid., pp. 604–605; and Martha Minnow, *Making All the Difference: Inclusion, Exclusion and American Law* (Cornell University, Ithaca, N.Y., 1990) p. 228: 'Yet some feminist analyses have recreated the problems they sought to address, elaborating the idea of "women's experience" while leaving unstated the race, ethnicity, religion, and bodily condition presumed in identifying "women's" point of view'.
63. A. P. Harris, p. 606.
64. ibid., pp. 604–605.
65. S. Gunew and A. Yeatman (eds.), *Feminism and the Politics of Difference* (Allen and Unwin, Sydney, forthcoming) p. 1.
66. Martha Minnow, p. 237.

67. A. P. Harris, p. 592. See Barbara Omolade, 'Black women and feminism', in H. Eisenstein and A. Jardine (eds.), *The Future of Difference* (G. K. Hall, Boston, 1980) p. 247, p. 248: 'Black women are not white women with colour'. See also, Kemberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Anti-Racist Politics', *University of Chicago Legal Forum* (1989) p. 149.
68. See A Wing, 'Brief Reflections Toward A Multiplicative Theory and Praxis of Being', p. 200. '[T]he experience of black women must be seen as a multiplicative, multilayered, indivisible whole, symbolized by the equation one times one, *not* one plus one .... All of us with multiple consciousness must help society address the needs of those multiply-burdened first. Restructuring and remaking the world, where necessary, will affect those who are singularly disadvantaged as well. By designing programs that operate on multiple levels of consciousness and address multiple levels of need, we will all be able to reach our true potential'. See also, Sheila Radford-Hill, 'Considering Feminism as a Model for Social Change', in T. de Laurentis (ed.), *Feminist Studies/Critical Studies* (Indiana University Press, Bloomington, 1986), p. 157 ff.

'Making Bricks Without Straw': Feminism and Prison Reform in New Zealand, 1896–1925

Bronwyn Dalley

Sisterhood has been an important concept in the development of both first—and second-wave feminism. The idea that women as a group had common concerns brought a cohesiveness to the franchise movement which resulted in nearly a quarter of the adult female population signing the suffrage petition in 1893. Yet just as the limitations of second-wave visions of sisterhood have been made clear in critiques of the movement by Maori women, sisterhood had its limits in the 1890s and beyond into the twentieth century.

In her long essay on women and crime in New Zealand Charlotte Macdonald noted the conservative approach the National Council of Women (NCW) took towards prison reform. At a time when it advocated greater freedom for women on many fronts, the Council also supported restricting the liberty of some women by endorsing the confinement of women charged with vagrancy, drunkenness and other non-criminal offences.[1] The NCW, like the Women's Christian Temperance Union (WCTU), placed its faith in institutional care, largely eschewing other forms of discipline. Imprisonment of some form was hailed as the panacea for a range of social ills. As Dorothy Page argues, the feminist groups of the 1920s in general adopted a less radical stance than the 1890s' movement. Writing of the NCW, she argues that it had a conservative tone, and preoccupations that matched its middle-class membership.[2] By exploring the approach of both the NCW and the WCTU towards prison reform, particularly women's prison reform, in the post-suffrage period from 1896 to about 1925, I want to illustrate these aspects of the women's

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movement. Using women's groups as an example, I will also discuss changes in the process of prison reform itself, investigating the three stages which Patricia O'Brien, an historian of French imprisonment, has suggested: the shift from prison reform as philanthropy, to a programme of moral reform and then the specialist professionalisation of reform.[3]

For women's groups in New Zealand, prison reform was of minor concern in comparison with other issues. There were brief flurries of interest: in the years immediately after the formation of the NCW in 1896; following the tour of the world WCTU head of prison visiting in 1897; surrounding the passage of the Crimes Amendment Act in 1910. Women in both groups who were committed to prison reform sometimes found the minor level of interest galling. Sister Moody Bell, for instance, the WCTU's prison superintendent between 1913 and 1920, despaired of the meagre interest which local unions displayed, claiming that trying to gather together material to make her annual report was like 'making bricks without straw'.[4]

The secondary importance of prison reform for feminists belies the significant changes wrought to the penal system in this period. Arthur Hume, appointed as the country's first inspector of prisons in 1880, had introduced changes to prisons, but by the turn of the century, the pace of development had slowed and prison reform was becoming a public issue. Hume's retirement in 1909 was the opportunity for an extensive restructuring of the penal system. John Findlay, minister of justice between 1909 and 1911, extended the provisions of reformative detention in the Crimes Amendment Act of 1910, enabling prisoners to be detained for up to ten years following the completion of a definite sentence. He was responsible for a major reorganisation of the prison system, attempting to steer New Zealand institutions towards a more reformatory rather than strictly punitive approach to punishment. Part of his plan was the establishment of the first separate prison for women; Addington women's prison opened in 1913 and a second followed at Point Halswell, Wellington in 1920.

Why, then, given the momentous changes in the penal system, was prison reform not a more important aspect of the NCW's and WCTU's platform for social change? I believe that this can be explained by placing prison reform in the context of the groups'

approach to the broader issue of the moral state of New Zealand society. By itself, prison reform was a minor issue, as I will argue with reference to prison visiting; in conjunction with other interests, the need for prison reform was more pressing. Calls for women police, harsher penalties for those who committed offences against women and children, the incarceration of moral degenerates, the confinement of sexually precocious young women — these and demands for prison reform were all responses to fears that society was in decline. Feminists increasingly couched their solutions to these fears in eugenic terms of preserving the calibre of the race and halting the propagation of the unfit. In the process, they exposed their own class interests and displayed elements of an ideology predicated on notions of power and control. Prison reform, connected with an anxiety over the moral welfare of individuals and society, illustrates less altruistic aspects of first-wave feminism as women's groups sought to restrict the freedom of women whose lifestyles were viewed as problematic. As we mark the centenary of women's suffrage in New Zealand this year, it is important that we acknowledge all aspects of feminist debate, including those which we now interpret as undesirable political positions. In common with other areas of welfare work which historians such as Margaret Tennant have described,[5] feminists' advocacy of prison reform emphasised distinctions between women, reinforcing divisions based on class, moral character or lifestyle, and reducing commonalities based on gender. Prison reform itself was a concern of the middle-class, 'studded with the bourgeois myths of social mobility and social improvement',[6] and in this respect, had the potential for dissension between helpers and helped. Women's programmes of prison reform, ambiguous in themselves, illustrate tensions within first-wave feminism. They also exemplify a conservatism which increasingly characterised the movement in the early twentieth century.

This begs the question of how we define feminism and whom we can label as feminist in the first decades of the twentieth century. With the achievement of the franchise in 1893, the attention of groups such as the WCTU and later the NCW turned to a range of other issues directly affecting women or the wider society. Social reforms on behalf of women and children, greater opportunities

for women in education and the paid workforce, the removal of women's political disabilities, and social purity formed part of feminist agendas for change. Certainly some of these agendas had altered by the end of the period under discussion here. The NCW still campaigned on a range of issues affecting women, although the WCTU focused more exclusively on temperance and social purity.

If we use Linda Gordon's framework and interpret feminism as 'a critique of male supremacy, formed and offered in the light of a will to change it, which in turn assumes a conviction that it is changeable',[7] then it is possible to incorporate some of the ideologies of the NCW and WCTU under the heading of 'feminist'. In the process, though, we must be aware of the ways that feminist ideologies change and interact within wider social and political contexts. Clearly, more remains to be done on the changing nature of New Zealand feminisms in this period, and it is one purpose of this paper to bring into view some of the variety of viewpoints. As American historian Nancy Cott argues 'If feminism, to use the term retrospectively and inclusively, can be called an integral tradition of protest against arbitrary male dominion, it has been nonetheless internally variegated, proposed by more than one kind of person, displaying more than one rationale and approach'.[8]

Middle-class women had visited gaols in a philanthropic capacity for a number of years, but it was only with the formation of the NCW in 1896 that prison reform became an issue with feminist groups. In addition to Mr O'Bryen Hoare's speech on 'The Criminal' read to the assembled women at the NCW's first meeting, the Council passed a number of resolutions concerning prison reform. The organisation believed that there was 'abundant evidence' to show that the treatment of criminals in New Zealand was unsatisfactory, both in terms of the offender and society in general. Aware that 'no system can be satisfactory that does not distinguish and classify different kinds of criminal', the Council advocated individual reform through the introduction of indeterminate sentences for serious offences; that is, offenders should be released only when they had clearly shown that they were reformed.[9] In the following year, the Council and women's political groups petitioned the inspector of prisons for the establishment of prisons for women completely separate

from men, that women be appointed as visiting justices to prisons, and that the position of female inspector of prisons be introduced.[10]

With minor amendments, this was the programme of prison reform which both the NCW and the WCTU enunciated for the next 20 years. These ideas, like some other aspects of first-wave feminism, derived immediately from North American sources although the principles of this branch of prison reform had earlier European and Australian origins. By the 1870s prison reform had become a major issue among religious and social reform feminists in North America as they strove to engender an ethos of moral reform in the treatment of offenders. Women campaigned vigorously to obtain all-female, reformatory-style institutions staffed by women. Their goals had been largely achieved by the 1890s. Institutions such as the Sherbourn Reformatory for women, opened in Massachusetts in 1877, the New York Hudson House of Refuge for women, opened in 1887, and the famous Elmira Reformatory, an institution for men which opened in 1876, became models for New Zealand prison reformers.[11]

Feminist groups believed that the contemporary system of imprisonment in New Zealand was fundamentally flawed:

> A prison system that degrades instead of reforming, that fosters crime, that is pleasant to the worst and most hardened criminals, and tortures the comparatively innocent, that debases and brutalises the condemned and then turns them out to prey again on the community, is so monstrous, so wickedly stupid as to make its existence a marvel.[12]

Both the NCW and the WCTU wanted instead a system which aimed to reform rather than punish for 'there could be no success so long as punishment was the object and reform the incident of the sentence'.[13]

The reformatory approach to incarceration which the women's groups advocated was believed to be the only just and effective means to benefit both the individual offender and society at large. The aim of prison reform according to Ada Wells of the NCW, was the 'reformation and restoration to society of an individual sound in mind and body'.[14] Offenders were to be placed in special institutions which would impart the social and moral skills needed to bring about change. The groups recognised

the value of 'anti-institutional institutions' such as reformatories which dispensed with the traditional architecture of custodial prisons.[15] Prison surroundings, suggested Adjutant Hutchinson at the NCW conference in 1899, should be 'bright, beautiful and healthy'.[16] The following year delegate Jessie Williamson spoke in support of the American reformatories, some of which, she believed, had neither locks nor bars, and where the women were treated humanely from the very beginning of their sentences. They had regular baths and exercise, and were engaged in useful outdoor occupations under the guidance of educated and refined women.[17] Wells seems to have had similar institutions in mind in her address on 'Our Duty to the Unfit', delivered to the 1899 conference in which she spoke of the benefit of farms — either state or municipal — for the confinement of the unemployed, the dissolute, the drunkard and the semi-criminal.[18]

Yet apart from Wells' address, which did not apply only to criminal women, neither group enlarged upon the treatment of women within the reformatory institutions. Beyond suggesting that women receive the skills necessary for them to earn a respectable livelihood on release from prison, including domestic and technical instruction as well as outdoor pursuits,[19] details of the instruction within the institutions remained vague. The WCTU, for instance, advocated that employment of prisoners 'should be carefully considered, and should be varied, intelligent and useful, designed to teach higher aims, to teach self-respect and to strengthen self-control'.[20] More precise details were unnecessary when feminist groups advocated the wholesale adoption of the entire reformatory system of institutions such as Elmira and Sherbourn. It was in the years after the First World War when the women's reformatory at Addington failed to meet expectations that feminist groups entered into specific discussions about the programmes at institutions for women.[21]

Reformatory farms were the favoured suggestion.[22] These institutions would be located in the countryside, far from the potential corruption of the city. The women would be taught trades and crafts of a rural and domestic nature, while benefiting from the pure, invigorating pastoral air. These proposals indicate the limitations and also the traditional, conservative aspects of women's prison reform. As an alternative to the custodial institutions,

reformatory farms remained within the institutional mould. Any attempt to enhance the opportunities for the prisoners was restricted by the domestic emphasis. While some feminists were arguing for an expansion of opportunities for women, opportunities for female criminals were to be more circumscribed, and traditional in nature.

The reformatory methods which women's groups sanctioned were grounded in contemporary criminological and scientific thought, expressed at a popular level. 'The road to reform', argued a delegate to the 1898 NCW conference, 'lies in making the fullest use of the scientific investigations of criminologists'.[23] Eveline Cunnington, a prominent prison and social reformer, believed the function of imprisonment was to 'cure a disease' rather than to punish a wrong, arguing that the offender 'must be treated scientifically, dealing with his four-fold nature, physical, mental, moral and spiritual'.[24] John Findlay's prison reform scheme of 1910, in theory based on the principles of scientific and rational treatment of the offender, earned the praise of women's groups. In 1910 the WCTU sent a motion of appreciation to the minister for his 'humane and scientific' methods of prison reform.[25]

Assessment, classification and observation formed the foundations of such scientific, rational treatment. Classification according to moral character and mental capacity, as well as types of offence, would separate individuals between institutions, segregating those deemed incapable of responding to change. The character of individuals could be gauged through a consideration of all aspects, including heredity, early environment, education, health, employment and 'natural tendencies'.[26] Then, through 'wise and judicial treatment applied to the individual needs of the offender, to whose self-interest and love of liberty an appeal was made', character could be altered.[27] In keeping with the elements of panopticism which characterised this mode of prison reform,[28] observation and an unceasing discipline were central to the transformation process. The WCTU's superintendent of prison reform argued that imprisonment should be a 'rigourous experience' for the offender, 'his whole conscious life being placed under unceasing direction, and held in a firm grasp of training of the physical, mental and moral man, in order to secure his proper training, and if possible his complete reformation'.[29] The ethos of prison

reform had clearly moved from being a philanthropic activity to a system of moral reform hedged around with a multiplicity of ideals.

The institution would become, in Michel Foucault's term, a laboratory, a 'machine to carry out experiments, to alter behaviour, to train or correct individuals .... To try out different punishments on prisoners, according to their crimes and character, and to seek the most effective ones'.[30] Some feminists saw the prison as a particular type of laboratory. Eveline Cunnington, for example, recommended that prisons should be renamed 'moral hospitals'.[31] The notion of crime as a disease to be treated as any other form of illness is evident here. It anticipates the professional colonisation of incarceration in the later 1920s, where the central individuals in the disciplinary/reformatory process would be doctors, psychologists and psychiatrists whose task it was to treat and prescribe. The theme of prisons as laboratories and moral hospitals also suggests a new way that historians could investigate the idea of New Zealand as a social laboratory.

The individual approach to moral reform built upon the belief that crime was a moral failing, either due to the effects of alcohol, poor environment or an imperfect heredity/biology; economic analyses of women's crime were largely absent. The WCTU in particular emphasised the importance of alcohol abuse in women's offending. Sister Moody Bell, for instance, claimed in 1918 that 90% of women at the Addington women's prison were there through the effects of drink. Charles Matthews, inspector of prisons, who appears to have vetted some prison reports published in the *White Ribbon*, took issue with this figure, claiming it to be an exaggeration.[32] At times, articles on prison reform published in the paper were placed alongside items on the evils of drink. In 1924 the *White Ribbon* reprinted an article describing an Australian women's reformatory; directly below this appeared brief comments on 'Race Purity' establishing connections between alcohol and feeble-mindedness, including an estimate that 80% of young thieves in France were born of alcoholic parents.[33] This juxtaposition suggests some of the broader connections which the WCTU drew between crime, morality and alcohol.

More frequently, crime was perceived as the consequence of a jaundiced morality, primarily due to heredity, biology or poor

environment, and couched in terms of moral degeneracy or defectiveness. The NCW outlined this approach in their early annual conferences. In 1898 Kate Evans (formerly Kate Edger) discussed contemporary theories of the causes of crime. Drawing on the work of scientists and criminal anthropologists such as Lombroso and Ellis, she traced ideas of the criminal as an 'organic anomaly' and a criminal type. Programmes incorporating the work of these men, she believed, would allow the prison to move from being 'nurseries of crime to reformatories of the criminal'.[34] Ada Wells placed criminals among a class of those who had lost their self-respect and self-control, living mainly by their instincts.[35] Moral failing did not mean that criminals could not be reformed, only that to succeed, reform programmes needed to be placed on the scientific, rational basis proposed.

The eugenic thrust of this rhetoric is clear, and is also evident in other feminist debates in the first two decades of the twentieth century. It is, however, an uncharted aspect of women's history. With the exception of some unpublished studies,[36] New Zealand historians have failed to examine systematically the importance of eugenic thought to politics, feminism, social policy or on a popular level. Fashionable, and, for its time, progressive, eugenic ideas pervaded much of New Zealand social policy. The eugenics 'movement', for want of a better term, never succeeded in implementing some of its major aims such as compulsory certificates of good health before marriage, the sterilisation of the unfit or the establishment of a lethal chamber. Less ambitious achievements are evident in the programmes of John Findlay as Minister of Justice and Charles Matthews as inspector/controller-general of prisons. Yet to interpret the importance of the ideology in terms of policy success or achievement masks its prevalence as a form of public, popular knowledge. Feminist debates provide a means of accessing the ideology at this level, but more importantly for historians of women, the eugenic influence on first-wave feminism is a rich area for study, and I believe that it is one of which we should be more aware if we are to come to a fuller appreciation of the various ideologies of the women's movement.

Locating women's offending at the level of individual character and morality essentially precluded the opportunity for feminist

groups to criticise the imprisonment of women for non-criminal offences. As a result, the WCTU and NCW rarely advocated that women whose only 'crime' was drunkenness, old age or homelessness be dealt with in ways other than institutionalisation. Although the women's groups suggested new modes of institutionalisation for such offenders, detention continued to lie at the heart of their proposals. Punishment was central to the principle of reform, despite the avowedly progressive discourse of prison reform.

The importance placed upon the introduction of the indeterminate sentence illustrates this. This method of discipline was a vital aspect of the individual reformatory approach, having the double function of clearing the streets of undesirables for an indefinite period and then confining them for a sufficient time to attempt some transformation in character. The utilitarianism of indeterminate sentencing led feminist groups to support it, in various guises, as a solution to a range of ills. It is through their broad support for indeterminate sentencing that we can see a wider concern with the moral state of New Zealand society. A conference of prison gate workers in Christchurch in 1907, which WCTU members attended, gave unanimous support to the proposal that 'incorrigibles and deficients should be retained in the reformatories after the age of twenty-one for their own protection and the protection of the public, and that the Minister of Education be urged to proceed with all expedition with the building of suitable places for their detention'.[37] In 1910 the president of the WCTU wrote in support of a bill providing for the detention of degenerate children aged between four and 21 years, advocating that courts be allowed to continue their detention for a further four years. She extended the discussion to the ill-effects caused when these individuals were left to roam the streets, asking 'were these women, half idiots many of them, to be preyed upon and allowed to produce offspring?' The main aim of the bill, she affirmed, was 'true humanitarianism—to elevate the unfortunates and at the same time give a measure of protection to the life and health of the community itself'.[38] The NCW slightly amended the character of indeterminate sentencing and proposed that courts should have the authority to commit vagrant girls to reformatories until they reached 21 years of age,[39] a proposal that they also suggested be applied to the children of the vicious and the criminal.[40]

'Saving' society inevitably meant the restriction of some individuals, and in common with others in New Zealand at the time, feminist groups identified target groups whose life-styles were seen to hinder social progress. Sanctioning the institutionalisation of these groups and individuals exposed tensions in first-wave feminism. The ideology of sisterhood and the ethos of helping women in less privileged positions were essential to forge the links which enabled feminists to engage in debates over prison reform, but these were equally dispensable when more established interests were threatened. From emphasising the bonds which united women, middle-class feminist prison reformers classified criminal women as a group separate from themselves, 'other' women who, for the good of society and the health of the nation, had to be controlled and segregated.

Some of the ambiguities in first-wave feminism are exemplified in women's approach to expanding the managerial or advisory role of women within institutions. Involving women in public office was part of a broader feminist agenda of having women in positions where they could exert their special feminine skills for the benefit of society and other women. As NCW member Jessie Williamson stated in 1899, the management of prisons would be better if only women had a little more say, for in her view, women could do much on behalf of other women and girls.[41]

New Zealand reformers, unlike their counterparts in North America, envisaged women's participation in the prison system in terms of increased numbers of prison visitors and the appointment of women to senior posts, such as prison doctor, inspector of prisons or visiting justice. While the franchise department of the North American WCTU advised its members to become directors within prisons as well as gaol visitors as a means of gaining necessary power and experience en route to suffrage,[42] New Zealand feminists never advocated the more active role that working within the prison entailed. Indeed neither the WCTU nor the NCW considered the calibre of staff in prisons in any detail, a surprising omission given the emphasis placed upon the establishment of reformatory regimes within institutions. Aside from a brief reference in 1899 to the desirability of having the 'right' women and men in charge of gaols, the NCW did not discuss prison officers at a conference until 1922.[43]

The WCTU and the NCW sought instead to enhance opportunities for working within the prison system for women much like themselves. Prison visitors were to be 'selected women',[44] 'suitable Christian women',[45] and for men's prisons, 'womanly and motherly and suitably wise women'.[46] These women, rather than prison officers, were perceived as the most desirable and effective means of inducing criminal women to reform. In the belief that WCTU members were ipso facto qualified to be prison visitors, Annie Johnson Wright, secretary of the Wellington branch of the Union, requested the Justice Department to allow the WCTU rather than the department itself to appoint visitors to gaols. Given the Union's emphasis on temperance and the large number of women imprisoned for drunkenness, it was, perhaps, a legitimate claim. 'Many prisoners are there through their intemperate habits', Johnson Wright wrote; 'We could induce their reform'.[47]

Suggestions for the appointment of a female inspector of prisons illustrate the WCTU's and the NCW's desire to increase the sphere of influence for more privileged women, reflecting the middle-class nature of the organised feminist movement and prison reform itself. The WCTU, urging the Justice Department to reconsider its refusal to make such a position, argued that the department had not advanced with the same 'humanitarian progress' which characterised other government agencies involved with the welfare of women and children. There were government departments which had female inspectors, 'and these to places where women freely go' the Union pointed out. In the organisation's view, female inmates' need for a female inspector of prisons was just as great as the need of women in asylums and mental hospitals; they, too were 'deplorable wrecks from physical and psychological aspects'.[48] The Justice Department's refusal to countenance a salaried female inspector led the WCTU to call for an unpaid female inspector instead. In the view of prison reformer Eveline Cunnington, who appears to have been the originator of the idea,[49] an honorary position of female inspector was most desirable: it would ensure that the position was sought for the 'right' reasons, rather than the sake of salary, and honorary officials would not pass over details of prison management 'to make things smooth-sailing, so as to keep the position'.[50] Clearly, the position of

an unpaid official who would inspect female divisions and female prisons would be attractive only to a particular class of women with the leisure and means, as well as the commitment, to accomplish the task.

Even though the WCTU and the NCW mapped out greater powers in the management of prisons for women such as themselves, few took up the opportunities, particularly that of prison visitor. There were members of both organisations who approached their work as 'lady visitors' very seriously. Margaret Bullock and Jessie Williamson, both members of the NCW, visited the women in their local Wanganui prison regularly;[51] Alice Ahier attended the New Plymouth gaol on a daily basis whenever women were confined.[52] Visitors did their best, in a position which had authority only to recommend rather than enforce changes, to effect tangible improvements in the living conditions of some women in the institutions. Alice Ahier, for instance, helped to obtain a lavatory for the women at New Plymouth and attempted to provide after-care for the inmates.[53]

Sister Moody Bell of the WCTU was a particularly active prison visitor and campaigned vigorously for other members of the Union to visit the women detained in the Addington prison. Aware that her department did not receive full recognition from the Union, she reminded women of their Christian duty, affirming that 'whatever can be done to help our prisoners should be taken up heartily'. Moody Bell believed that the women's prison at Addington, the only prison of its kind in the country at the time, offered WCTU women a unique opportunity to assist their less fortunate sisters, and predicted that greater responsibility in prison reform would fall to the Christchurch branch.[54] Local women, however, did not avail themselves of the opportunities which Moody Bell outlined. 'At the centralised women's prison at Addington', she wrote in 1915, '... there is an important work to be done, and we beg our progressive Christchurch W.C.T.U sisters to step into this open door of service'.[55] Moody Bell's annual reports continued to emphasise the lack of interest in prison visiting until she left New Zealand in 1920.

The relative lack of interest which WCTU and NCW members evinced for the work of prison visiting from the late nineteenth century is evident throughout the Justice Department records.

Although the WCTU complained in 1909 that one prison visitor had not had a single suggestion acted upon in 15 years of gaol visiting, John Findlay, Minister of Justice, pointed out that the lady visitors had not suggested any reforms to him.[56] Later, in 1916, the inspector of prisons complained of the difficulty in obtaining suitable married women to take up the duties of official visitors in women's prisons and divisions.[57] The most active lady visitors were those who were members of religious orders not connected with the WCTU, and individual independent women such as Blanche Baughan.

Members of women's groups may have been dissatisfied with the limited role which the position of official visitor offered, carrying the power only to make recommendations to the Justice Department rather than enforce change; Jessie Williamson, for instance, claimed that the position was 'nothing but a farce'.[58] Circumscribed authority, nevertheless, did not prohibit the WCTU from arguing that women should be allowed to act as lady visitors in prisons for men, where they believed that women's unique ministrations would be especially useful.[59]

The reality of prison visiting was clearly at odds with the image of reform work which both the WCTU and the NCW portrayed, and it may have been a disenchantment with the 'success' of their duties which caused women to turn from, or neglect, prison visiting. The WCTU's superintendent of prison reform in 1911, for instance, was a temporary official visitor to her local gaol and commented, with little enthusiasm, of the necessity to 'perform that melancholy duty fortnightly'.[60] For women who may have entered prison visiting with a vision of inmates willing and ready to adopt the middle-class ideologies enshrined in reformatory programmes, the reality could be very different. With a level of recidivism which stood at over 70% of female inmates throughout the period, the 'results' of their prison visiting were not promising.[61] Women in prison evidently had little in common with their would-be reformers.

Whatever the reasons for a lack of sustained work in prison visiting, the consequences were at odds with the original ideas of penal reform. Rather than effecting real or tangible change in the lives of individual women inmates, women's prison reform endeavours frequently ended up as exercises in window-dressing, and at worst, do-gooding. Moody Bell's replacement as prison

superintendent for the WCTU illustrates this. In 1923 Adjutant Annie Gordon of the Salvation Army, who had been appointed as the country's first female probation officer in 1921, wrote of the spiritual meetings and sing-song gatherings held for women prisoners 'to help cheer and brighten the women, and with the hope and prayer that they will feel there is a hand out to help them, and a Power to help them on the right way of life again'. Perhaps motivated as much by religious conviction as by feminist commitment, Gordon's entertainment and message may have been welcome to some of the inmates. Her ideas on the methods to effect change, however, were at times unrealistic: she took flowers to the women, 'believing they help them in themselves to think of purity. I have great faith in the influence of flowers on the minds of women'.[62]

An apparent reluctance to engage in more serious prison visiting was problematic for women's groups. The organisations continued to make statements regarding prison reform, despite the lack of experience and knowledge they had of the institutions. Moody Bell believed that the WCTU convention members had 'generally vague, and consequently ineffective' ideas on prison reform, and recommended that they visit the institutions more frequently.[63] She also petitioned the Union to discuss in more detail the conference resolutions concerning prison reform before making deputations to government ministers and departments.[64]

Others, too, recognised that the WCTU and NCW were not fully aware of the realities of imprisonment in New Zealand, and that as a result their ideas on prison reform were not always accurate. Blanche Baughan, a prominent prison reformer and founder of the New Zealand branch of the Howard League for Penal Reform in 1924,[65] largely distanced herself from the prison reform which women's groups advocated. In a letter to the *White Ribbon* in 1927, she accused the WCTU of not 'bringing the news women need to know' about imprisonment: 'women need ... telling by those whose work makes them aware of much that the home-maker often cannot find out for herself, but ought to know'. She wondered, for instance, if any of the women in the Union realised that the courts sent to prison elderly men who were guilty of not having a regular place of abode, and elderly women who were in prison because of homelessness and senility.[66] When the WCTU asked her

advice on their approach to prison reform, Baughan suggested that the Union examine alternatives to imprisonment, and, amongst other things, join the Howard League.[67] She had a similar attitude towards the NCW's views on prison reform and despite requests from friends in the Council, she was reluctant to speak to the group at any of its conferences in the 1920s and 1930s.

Indeed, feminism and its supporters had undergone many changes by the 1920s, accounting for the less enthusiastic approach towards prison reform. Most of the more dynamic leaders of first-wave feminism had retired, aged or passed on. The focus of groups such as the WCTU had narrowed, and a range of other political or social organisations had developed, tapping the energies of women. Blanche Baughan's position highlights the more restricted nature of the traditional feminist organisations in this period, and suggests that for women imbued with new methods of social change, the established organisations were failing. To women such as Baughan, the WCTU and NCW approach to prison reform was outdated. A feminist and socialist, she opposed the imprisonment of vagrants, drunkards and those she called the feeble-minded, a condition which she ascribed to arrested development rather than moral degeneracy.[68] Baughan believed that psychological and psychiatric expertise was vital in prisons, and resigned her position as official visitor at Addington in protest at the lack of such help in institutions and the continued incarceration of alcoholic and mentally deficient women.[69]

Baughan's methods for prison/penal reform exemplify the changes in the nature of prison reform itself. Both the WCTU and the NCW embodied the philanthropic and moral reform approach to prison reform. Baughan, on the other hand, was an expression of the 'newer' programme which emphasised the role of professionals and specialists with expertise in the moral, and psychological treatment of offenders. While the women's groups were demanding the adoption of the reformatory regime in New Zealand institutions, for example, Baughan was organising the mental testing of women prisoners from 1922.[70]

In the end, women's groups in New Zealand engaged with prison reform on an intellectual, rather than a practical level. For some, advocating prison reform was simply going through the motions; in 1915 the world WCTU head of prison work

noted the lack of activity in New Zealand and hoped that in the future she would hear more concerning the Addington women's prison and reform work.[71] That both groups could continue to reiterate the same principles for more than 20 years also illustrates their narrow approach towards prison reform. Unlike other organisations such as the Howard League, neither the WCTU nor the NCW looked beyond prison reform to penal reform and changes in the disciplinary system as a whole. The records of both women's groups, for instance, contain few references to probation. Institutionalisation in some form remained the answer for women's groups, whether the prisons were the 'anti-institutional institutions' of the reformatory approach or the more traditional custodial gaol. An inability to explore other forms of punishment derived from the belief in an individual moral failing at the heart of women's crime, and offending in general. When women's crime was interpreted as a moral disease or the results of repeated drunkenness, rather than as the consequences of political, social and economic ills, the solutions could only be segregation and punitive reformatory treatment. A faith in incarceration meant that feminist groups were never in a position to question the justice — and purpose — of confining the homeless, the indigent, the sexually active, and certainly never in a position to challenge the categories of normality and deviance. Together, this contributed to the conservative approach of women's groups in New Zealand towards prison reform and the welfare of their less privileged sisters.

My analysis suggests that the old guard of feminism, the NCW and the WCTU, were being superceded in the 1920s by new feminist approaches to imprisonment taken by individuals such as Blanche Baughan. As the attitude towards treatment of offenders after suffrage suggests, feminism was in Cott's words, 'internally variegated'. Some of the variations are more palatable to feminists of the 1990s than others. The second wave of feminism might be seen to share the ambivalences of the feminists of the early twentieth century on the issue of the appropriate treatment of offenders and the causes of offending. While emphasising the need for harsher sentences for men who commit crimes against women, little discussion has taken place on the treatment of women found guilty of crimes against children, for example. That sisterhood

served to paper over thin cracks in the 1890s, cracks that widened into significant fissures by the 1920s, reminds us of the historically specific nature of feminism. It also stands as a warning of the dangers of privileging sameness over the difficulties of difference.

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Notes

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4. *White Ribbon* (WR), 21:250 (April 1916) p. 19.
5. Margaret Tennant, '"Magdalens and Moral Imbeciles": Women's homes in nineteenth-century New Zealand', *Women's Studies International Forum*, 9:5 (1986) pp. 491–502.
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15. In Freedman, p. 130.
16. NCW 4th session, 1899, p. 63. MS 1376/3.
17. *Otago Daily Times*, 7 May 1900, p. 2.
18. NCW minutes, 1899, pp. 25–27. Hocken Library.
19. NCW 5th session, 1900, p. 27. MS 1376/3; WR, 13:145 (June 1907) p. 4, 19:218 (August 1913) p. 15.
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22. Minutes of the 3rd annual conference of the NCW, 1922. MS 1371/126 National Council of Women Records, Minutes of Conferences.
23. NCW minutes, 1898, p. 48. Hocken Library.
24. WR, 15:170 (August 1909) p. 3.

25. ibid., 15:177 (March 1910) p. 6.
26. NCW 5th session, 1900, p. 27. MS 1376/3.
27. WR, 16:184 (October 1910) p. 5.
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32. Charles Matthews to Moody Bell, 13 May 1918, J40 PD Box 159, 1913/114 Prison visiting.
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48. Mrs Cole to John Findlay, 31 October 1909, J40 PD Box 140, 1909/1242 Mrs F. Cole, President WCTU of NZ, Christchurch. Urging the appointment of a female inspector of prisons in each island.
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53. ibid., 13:155 (April 1908) p. 10.
54. ibid, 19:225 (March 1914) p. 39.
55. ibid, 20:238 (April 1915) p. 39.
56. Mrs Cole to John Findlay, 19 November 1909 and John Findlay to Mrs Cole, 26 November 1909, J40 PD Box 140, 1909/1242.
57. A. Miller to Under-Secretary for Justice, 21 June 1916, J40 PD Box 195, 1916/262 Official Visitors, Addington Prison.
58. NCW sixth session, 1901, p. 68. MS 1376/4.
59. The WCTU made this suggestion first in 1916 and continued to argue for the position for some time, WR, 21:250 (April 1916) p. 19. The Justice Department's refusal to allow women to act as lady visitors to men's institutions illustrates the narrow 'women's territory' in which some reformers were forced to work. For further discussion on this see Tennant '"Magdalens and Moral Imbeciles"', p. 500.
60. WR, 16:190 (April 1911) p. 21.
61. *Statistics of New Zealand*, 1896–1925.
62. WR, 28:334 (April 1923) p. 17.
63. ibid., 20:238 (April 1915) p. 39.
64. ibid., 19:225 (March 1914) pp. 39–40.
65. The date of the foundation of the League in New Zealand is unclear. Notes which Blanche Baughan dictated to an acquaintance indicate that the first meetings took place in 1924, but that it was 1928 when a formal arrangement was made and New Zealand became affiliated to the English society. Blanche Baughan's notes dictated to Berta S. Burns, Akaroa, November 1955. MS 198, Folder 3, Blanche Edith Baughan Papers, Alexander Turnbull Library.
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67. ibid., 33:387 (October 1927) p. 18.
68. *Auckland Star*, 22 February 1922, J40 PD Box 227, 1921/16/9 Re/appointment of Miss B. Baughan as Official Visitor to Addington Reformatory.
69. Blanche Baughan to Controller-General of Prisons, 29 January 1925, ibid.
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'Give Us Politics': Some Aspects of the Political Voice of New Zealand Women Parliamentary Candidates 1919–1969

Sandra Wallace

In 1893 New Zealand women won the right to vote in national parliamentary elections. Winning the suffrage was certainly a great achievement but it was somewhat incomplete since women voters remained ineligible to contest a seat in parliament. All they could do was cast their vote for one or other of the male candidates. Many politically active women did not seem concerned by this, apparently believing that their political goals would be achieved so long as they helped elect the right men to public office. Others disagreed, complaining that women could recommend policy changes but could still not make them. For these women it was important that women could actually sit in parliament themselves so that issues of importance to them were no longer neglected. After a lengthy, though less all-encompassing campaign than that which preceded the suffrage victory, women finally gained the right to contest national elections and to enter Parliament if they won their seat, in 1919.[1]

Women could then be politically active at the parliamentary level not just as voters and lobbyists but as candidates and, if they succeeded at the polls, as policy makers. Between 1919 when the Act was passed and 1969, the date of the last general election before the impact of the second-wave feminist movement became evident in New Zealand, 86 women stood for parliament, accounting for 163 candidacies and just under 4 percent of the general election candidacies in this period. This paper focuses on the political voice of this group of women, briefly examining the issues and policies

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they raised during their campaigns, and discussing two of the factors which determined how effectively their political voice could be heard — candidate selection procedures and representations of women politicians.

These women parliamentary candidates focused on different issues than those which concerned their male counterparts. It was their belief that male politicans ignored women's concerns that prompted many women candidates to stand. In 1928 Louisa Paterson (Independent) implicitly criticised male politicians for being too concerned with roads and bridges, while in 1935 Elizabeth Gilmer, another Independent candidate, accused them of paying too much attention to currency and exchange issues, which incidently she thought they handled badly.[2] More than twenty years later Social Credit's Ethel Wood also criticised the political interests of men, believing they were 'not sufficiently interested in, or tend to think of little importance, the points which are vital to women'.[3]

For most of the women candidates in this period those vital points related to the welfare of women, children and the family. While most of them were actively interested in the rights of women as individuals outside the family setting and were also concerned with those political issues they accused male politicians of being overly obssessed with, their prime concern focused on maternalist policies and on women as mothers. The desire to help women and children runs throughout their speeches.

New Zealand's first woman parliamentary candidate Rosetta Baume (Independent) told voters in 1919 that a woman was needed in Parliament to help consider future legislation relating to children and the home. In 1938 Labour's Catherine Stewart promised to always uphold the rights of women and children should she be elected to Parliament and a 1946 election advertisement for Agnes Weston (National) urged women to vote for her because she was 'vitally interested in the welfare of women and children'. Rita Fulljames (Independent) urged Otahuhu voters to think of women and children and vote for her in 1954, while 1963 Social Credit candidate Carol Flint focused on the benefits of her party's philosophy to women as wives and mothers.[4]

This focus on women and children is not surprising given the women candidates' personal and political backgrounds. Most had

married, had raised children and were actively involved in groups such as the Plunket Society, the National Council of Women (NCW) and the Women's Christian Temperance Union which were concerned either wholly or partially with the welfare of women and their children. This background gave the women candidates a special insight into the problems faced by many mothers and their children. It was a background which their male counterparts did not share. Certainly the reality of being a husband and father was very different from that of being a wife and mother during this period, while the main voluntary groups the male candidates were active in were 'sectional economic organisations' (chiefly unions, Federated Farmers or Chambers of Commerce) and sporting clubs.[5]

Those women whose involvement in voluntary groups included political lobbying were convinced that male politicians knew and cared very little about the welfare of women and children, and believed that nothing would change until women sat in Parliament. Ellen Melville spoke for many frustrated women lobbyists when she claimed that women would get none of the legislative changes they desired until a woman sat in Parliament since male MPs put NCW resolutions straight into the waste-paper basket.[6]

Effectively the women candidates said that 'politics' as practised and defined by men was at best too narrowly focused and at worst focused on the wrong issues. Whether they advocated motherhood endowment as a means of alleviating the worst conditions in which women bore and reared their children, drew attention to the fact that cost of living increases had a negative impact on housewives as well as on the businessmen and farmers, or called for more support for separated and divorced women, the women candidates challenged the male definition of politics.

They challenged the split between what was considered private and what was deemed public. They considered that the problems inherent in running a family home and raising children were national social issues rather than private, individual difficulties. Consequently they demanded public, political solutions to deal with problems that male politicians seemed to believe should be dealt with by each individual woman in her own family home. In this way the political voice of the women candidates constituted a challenge to the national political priorities of the day. It was a

challenge made from the campaign platform, and was added to the challenge that politically active women were already making from the ballot box and as members of various reform organisations.

Raewyn Dalziel has argued convincingly that the movement for women's suffrage in New Zealand was closely tied to women's role as wife, mother, homemaker and guardian of society's morals. Dalziel argues that it was because nineteenth-century New Zealand women found their role within the home so fulfilling that they wanted to extend it outside the home by way of the polling booth. The suffragists had essentially argued that the rights and interests of women and children would no longer be neglected once women obtained the vote.[7] It was because many politically active women believed that such issues were still being neglected that they began to demand women have the right to sit in Parliament also. The women candidates carried this line of reasoning through into their campaign platforms. New Zealand women, in using their strong commitment to motherhood and women's home duties as a source of political power and, in doing so, challenging the male definition of politics, were part of a movement which included women in Europe and North America.[8]

While some women took the opportunity to use their political voice as a parliamentary candidate, far fewer had the opportunity to do so as an elected Member of Parliament. National's first woman MP, Hilda Ross, once remarked that trying to get a woman into Parliament was 'like trying to get a camel through the eye of a needle' since if a woman was fortunate enough to be selected as a main party candidate 'it would be for an 'iffy' seat not a safe one'.[9] Indeed the selection processes of the major political parties in New Zealand was critical to the electoral fate of women candidates. In a first-past-the-post electoral system such as New Zealand's it was and remains virtually impossible to enter Parliament without representing one of the major parties, preferably in a seat which they already held.

Just eleven of the 86 women who stood prior to 1970 got into Parliament, and most of the unsucessful women candidates won less than 10 percent of the vote in their electorate. Since far fewer women than men stood for a major party (just over half the women compared to almost three quarters of the male candidates) their relative lack of success in actually winning votes is not surprising.

Even if we confine our attention to the 85 candidacies made by Reform, National and Labour women it is still true that they did not win their seats as often as might be expected, especially since they actually outperformed their male colleagues at the polls. Using the concept of two-party swing, one study concluded that compared to their male colleagues National women on average performed 2.3 percent better than the nationwide swing, while Labour women did even better, on average generating a swing which was 3.1 percent higher than the nationwide swing towards their party. In 1966, for instance, there was an overall swing of 0.5 percent towards the Labour party. The swing generated by Labour women was actually higher at 2.5 percent, while seats contested by National women candidates bucked the nationwide trend and generated a swing of 1.2 percent towards the National party.[10] Both Labour and National women polled better than the male candidates in their party yet not one of the non-incumbent women from either party could translate this into an election victory. Part of the explanation for this seeming inconsistency can be found in the way Labour and National women candidates fared in the selection processes operated by their respective parties.

As an example of what happened to women in these selection processes, take the case of Ellen Melville. Melville was the second woman to qualify as a lawyer in New Zealand and the first to set up an independent practice. She was one of Auckland's foremost feminists in the first half of the twentieth century and played an active role in reviving the National Council of Women. In 1913 she won a seat on the Auckland City Council—its first woman member—and in 1926 was appointed one of the country's first women JPs.[11]

In 1919 Melville became one of the first three women parliamentary candidates when she contested the Labour-held seat of Grey Lynn for the Reform Party. After polling well for Reform she believed she would be given another chance at the seat. A telegram from Prime Minister Massey congratulating her on her success and hoping she would later be successful under the Reform banner, plus remarks from him asking if she was looking after the electorate, contributed to that belief. She was therefore very disappointed when the 'party' rejected her for Grey Lynn in 1922, especially since their chosen candidate was an ex-Liberal

supporter. Although formal and supposedly impartial selection meetings were meant to be held by the Reform Party it was common for a few prominent local party identities to name one of their friends as the candidate and then have their decision backed by the party hierarchy.[12] It seems that this was what happened to Melville on this occasion. In the absence of any explanation from the Reform Party for its decision she concluded that it did not want any women in Parliament. To demonstrate her dissatisfaction she stood as an Independent candidate in the seat of Roskill, declaring that the main issue of the election was between the women's movement and the Reform Party.

In 1925 Ellen Melville returned to the Reform fold to contest Grey Lynn, allegedly on the understanding that at the first possible opportunity she would be given a safe seat. An opportunity presented itself in 1926 when the safe Reform seat of Eden became vacant. A selection meeting was held but the party overlooked Melville in favour of a businessman, a very recent recruit to the Reform Party. Along with other hopefuls she accused them of irregularities at the selection meeting. When they failed to reconsider their decision she responded to what she regarded as a broken promise by standing as an Independent. Her candidacy caused a split in the Reform vote and the party lost the seat.

In 1928 Melville again returned to Reform, although her selection was fraught with controversy with several Reform voters claiming that irregularities at the selection meeting had worked against their preferred candidate. This controversy, along with several other factors including lingering resentment over her vote-splitting candidacy in 1926, reaction to some of her decisions as an Auckland City Councillor, and the large swing to the United Party in 1928, resulted in Melville failing to hold the previously safe Reform seat of Roskill. At the following election her disappointment with the inability of women to penetrate the party political system led her to stand as a self-proclaimed Woman's candidate. Following this election Melville seems to have kept out of national politics for several years. Whether this was a personal choice or a decision forced on her is hard to determine, but in 1938 she unsuccessfully contested the Auckland East nomination of the newly created National party. In 1943 Ellen Melville contested her last parliamentary election, standing as a National Party candidate

in the safe Labour seat of Grey Lynn. She died of cancer three years later.[13]

Melville's experiences are by no means uncommon. Those women who contested main party selections were less likely to win them than men, especially if the seat was one of the party's traditionally strong ones. Before 1970 just three percent of main party candidates in general elections were women. Less than ten percent of these women were contesting seats already held by their party. In fact in 66 percent of cases they contested seats held safely by the opposing political party.[14] These figures are not mere political facts of life. Main party women non-incumbents were one-and-a-half times as likely as men non-incumbents to have won selection for a safe opposition seat, essentially a lost cause prospect which they had no chance of winning. They were less than half as likely as men to contest an opposition marginal seat which they might have been able to win. In terms of seats already held by their party, the women non-incumbents were less likely than men non-incumbents to contest a seat which their party held safely or fairly safely, but more likely to contest one of their party's marginal seats which would be the first to fall, particularly in the event of a swing against their party.[15]

Another way of looking at these figures is to examine the two-party swing which non-incumbent women candidates required to win their seats. In 1966 the three non-incumbent National women candidates required an average swing of seventeen percent to enter Parliament, while for the two Labour newcomers the figure was twelve percent. That year the swing to Labour was just over one percent, not enough to secure victory for any of the Labour women and certainly not advantageous for their National counterparts.[16]

Melville's selection experiences were typical for women candidates throughout the entire period. By the 1960s the National Party selection process had been standardised so that to be selected as a candidate a person had to be nominated by ten financial members. All party members in the electorate had the right to attend the selection meeting, listen to the candidates and then vote for their choice.[17] While the system had changed, and was theoretically more impartial than before, the results could be the same for aspiring women candidates. Rona Stevenson spoke of male dominance at her selection meeting in 1963. She vied with

four males to secure National's nomination for Taupo. Most of the selectors were men and some even attempted to influence the decision of the women selectors. According to Stevenson, one man told his wife on the way to the selection meeting that she must not vote for the woman. After hearing her speak they both ended up giving their support to Rona Stevenson. The impression of a National selection meeting which one gains from Stevenson's remarks is of a male-dominated meeting, where members cast strong doubt on the extent of women's knowledge and capabilities, and questioned whether women actually had any place in politics at all.[18]

Although operating a different method, Labour Party selection meetings were no more favourable to women candidates. During the 1950s and 1960s Labour hopefuls had to be nominated by six party members. The selection meeting was open to all party members, but the actual selection decision was made by a panel consisting of three members of the party's national executive and three local office holders.[19] During three selection attempts in 1966 Sonja Davies weathered several negative experiences including being virtually ignored by the national party hierarchy, when male hopefuls were greeted as old friends. At one selection meeting a male opponent asked her to mind his pre-school children so that his wife could listen to the selection proceedings uninterrupted. The seat she actually won the nomination for was the least favourable of the three she sought.[20] Another Labour woman believes that while party officials were keen to have her contest lost-cause electorates throughout the 1960s, they rejected her for a more promising seat in 1972 solely because she was a woman. She feels the 1972 decision was largely the result of a split between local selectors who backed her and the national selectors who did not.[21]

While such claims may not be able to be substantiated, the bulk of the evidence suggests that the selection processes of the two major political parties limited the political opportunities of women by accepting them as candidates mainly for those seats which they had least chance of winning, if they selected them at all. Since full party selection records are unavailable it is impossible to discover how many possible candidacies by women ended at party selection meetings. It is interesting to note, however, that prior to 1940 half

in the safe Labour seat of Grey Lynn. She died of cancer three years later.[13]

Melville's experiences are by no means uncommon. Those women who contested main party selections were less likely to win them than men, especially if the seat was one of the party's traditionally strong ones. Before 1970 just three percent of main party candidates in general elections were women. Less than ten percent of these women were contesting seats already held by their party. In fact in 66 percent of cases they contested seats held safely by the opposing political party.[14] These figures are not mere political facts of life. Main party women non-incumbents were one-and-a-half times as likely as men non-incumbents to have won selection for a safe opposition seat, essentially a lost cause prospect which they had no chance of winning. They were less than half as likely as men to contest an opposition marginal seat which they might have been able to win. In terms of seats already held by their party, the women non-incumbents were less likely than men non-incumbents to contest a seat which their party held safely or fairly safely, but more likely to contest one of their party's marginal seats which would be the first to fall, particularly in the event of a swing against their party.[15]

Another way of looking at these figures is to examine the two-party swing which non-incumbent women candidates required to win their seats. In 1966 the three non-incumbent National women candidates required an average swing of seventeen percent to enter Parliament, while for the two Labour newcomers the figure was twelve percent. That year the swing to Labour was just over one percent, not enough to secure victory for any of the Labour women and certainly not advantageous for their National counterparts.[16]

Melville's selection experiences were typical for women candidates throughout the entire period. By the 1960s the National Party selection process had been standardised so that to be selected as a candidate a person had to be nominated by ten financial members. All party members in the electorate had the right to attend the selection meeting, listen to the candidates and then vote for their choice.[17] While the system had changed, and was theoretically more impartial than before, the results could be the same for aspiring women candidates. Rona Stevenson spoke of male dominance at her selection meeting in 1963. She vied with

four males to secure National's nomination for Taupo. Most of the selectors were men and some even attempted to influence the decision of the women selectors. According to Stevenson, one man told his wife on the way to the selection meeting that she must not vote for the woman. After hearing her speak they both ended up giving their support to Rona Stevenson. The impression of a National selection meeting which one gains from Stevenson's remarks is of a male-dominated meeting, where members cast strong doubt on the extent of women's knowledge and capabilities, and questioned whether women actually had any place in politics at all.[18]

Although operating a different method, Labour Party selection meetings were no more favourable to women candidates. During the 1950s and 1960s Labour hopefuls had to be nominated by six party members. The selection meeting was open to all party members, but the actual selection decision was made by a panel consisting of three members of the party's national executive and three local office holders.[19] During three selection attempts in 1966 Sonja Davies weathered several negative experiences including being virtually ignored by the national party hierarchy, when male hopefuls were greeted as old friends. At one selection meeting a male opponent asked her to mind his pre-school children so that his wife could listen to the selection proceedings uninterrupted. The seat she actually won the nomination for was the least favourable of the three she sought.[20] Another Labour woman believes that while party officials were keen to have her contest lost-cause electorates throughout the 1960s, they rejected her for a more promising seat in 1972 solely because she was a woman. She feels the 1972 decision was largely the result of a split between local selectors who backed her and the national selectors who did not.[21]

While such claims may not be able to be substantiated, the bulk of the evidence suggests that the selection processes of the two major political parties limited the political opportunities of women by accepting them as candidates mainly for those seats which they had least chance of winning, if they selected them at all. Since full party selection records are unavailable it is impossible to discover how many possible candidacies by women ended at party selection meetings. It is interesting to note, however, that prior to 1940 half

of the women who stood as Independents did so after their efforts to win a party nomination failed. This suggests that for this group of women at least, failure to win selection did not mean an inability to contest an election. In fact, like Ellen Melville, the selection failure appears to have strengthened both their determination to stand and their determination to draw attention to issues of importance to women. There is evidence that a few of the Labour and National women candidates had made unsuccessful selection bids prior to that which resulted in their candidacy. Others, however, may well have given up after one failed attempt, and never actually stood for Parliament.

When a correlation is made between the type of seat a woman candidate was selected to contest and her success or failure at winning that seat, it becomes very clear that the selection processes of the major political parties made it very difficult for politically ambitious women to become Members of Parliament. Eleven women entered Parliament before 1970 and all but one (National's Esme Tombleson who won the marginal seat of Gisborne from Labour in 1960) stood for a seat which their party already held. In fact only one woman (Reform's Ellen Melville whose 1928 candidacy is discussed above) who won selection for a seat already held by her party did *not* enter Parliament as a result.

While most women candidates had very little chance of winning a seat they were selected to contest, women were virtually denied the opportunity to participate directly in national policy making. However, it is important to realise that the odds against winning were not always seen as a problem. Many women stood for parliament with an objective other than actually winning the seat they contested and several publicly proclaimed that they were not at all interested in how many or how few votes they finally won.

Social Credit and Communist women typically used an election campaign to spread their party's message to people who normally would not be exposed to it. They knew their respective parties had little chance of winning a seat but wanted to take advantage of an opportunity to inform others of a political philosophy they themselves strongly believed in. In a similar fashion, National and Labour women were sometimes happy to contest a safe opposition seat simply in order to ensure that the party put up a candidate. They tended to be especially pleased if they managed to increase

their party's share of the vote from the previous election. Others took on such a seat in the hope — what we now know to have been a false hope — that a strong performance would give them a better chance of gaining selection for a more desirable seat in a subsequent election. A smaller group used a parliamentary candidacy to further their own political goals outside parliament. More than one woman built on the experience and publicity gained during her parliamentary campaign to successfully contest a seat on a hospital board or city council. Independent women tended to be inspired to run because of their very strong beliefs on a single issue. Most noticeably, in 1969, five women formed themselves into the Women's Independent Party and used the campaign to press for matrimonial law reform. Many women used a parliamentary candidacy simply to voice their political views rather than to try and win a seat in Parliament and that they had virtually no chance of entering Parliament was not even an issue for them.[22]

The representation of women political candidates in the media during this period is another factor which mediated women's political voice and its reception by the public. Media reporting mostly focused on women candidates as women, rather than as parliamentary candidates. Factors such as appearance and physical attractiveness were considered noteworthy and reportable about them as women but could be of questionable valuable to their parliamentary candidacy.

Christina Dalglish, Social Credit's candidate for the Hutt electorate in 1966 was not only the youngest candidate in the election, but a former model and beauty-contest winner. On 1 November 1966, when the election campaign was just beginning to get under way, Wellington's *Evening Post* featured an article on Christina Dalglish headed 'Beauty Contest Winner For Parliament'. The article began by outlining her qualifications as a natural brunette, a model and former 'Cricket Queen' beauty-contest winner, before turning to her political campaign. A photo of Dalglish preparing her first public speech accompanied the article. This seems innocuous enough, except that the photograph seemed designed to draw attention to her legs and carried the caption 'YOU CAN'T ALL VOTE FOR HER'.[23] Just two days later the *Evening Post* again ran an article on Christina Dalglish. Again a reasonably large photograph accompanied the article. This time Dalglish had been

photographed in her judo outfit in a pose which seemed designed to highlight her slim figure. The article reported that Dalglish did judo and weight lifting in order 'to keep a very trim figure'. The closest it came to mentioning her political ideas was to suggest, somewhat facetiously, that as an attractive judo expert Dalglish might 'throw the voters' and would be well equipped to deal with any hecklers.[24] Within a week the election campaign was in full swing, 'serious' issues were raised, and virtually overnight Christina Dalglish's high press profile vanished. These articles trivialised Dalglish's candidacy and can hardly have convinced readers that she had the skills to represent them in Parliament. Her views on the need for women's representation in Parliament and the problems faced by housewives as a result of inflation were virtually confined to brief snippets in 'what the candidates said' columns.

To read some reports one could be excused for thinking that the clothes worn by women politicians were essential to the way they represented their constituents. In 1955 the *Weekly News* ran an article focusing on Hilda Ross — National's first woman cabinet minister. The reporter seemed more concerned with Ross's clothes than with what Ross hoped to achieve in Cabinet and how she viewed the newly-created position of Minister for the Welfare of Women and Children. The article informs readers that Ross's

> wardrobe must be suitable for a woman in her position. It would hardly bother a member of the opposite sex if he wore the same grey suit to Christchurch last time.

Hilda Ross reportedly always liked to dress well and tried not to wear the same outfit to the same city several times running. She kept two large wardrobes filled with clothes in her office so that she could change outfits as often as necessary. Among other trivia divulged in the story is that her ministerial duties kept Ross so busy that she had difficulty fitting in the necessary appointments with hairdressers, dressmakers and tailors, and that she bought a dozen pairs of nylons at a time.[25]

It is impossible to imagine a similar article being written about any male political figure, let alone a Cabinet Minister, at this time. This article, and others like it, concerned themselves with women's traditional responsibility to appear pleasing rather than with their new role as political representative. It illustrates that

media attention to women political figures did not necessarily amplify their political voice. All too frequently what the women candidates actually said was neglected by reporters who appeared more interested in how the women looked and what they wore while saying it.

In *The Beauty Myth*, Naomi Wolf discusses how women's appearance, including their clothes, could be used to control and restrain them in the workplace.[26] Press concern with the appearance of women parliamentary candidates could be seen to have worked in this way. Women candidates were aware that their appearance would be reported on and judged as much as their political views. Concern about appearance, which their male counterparts were less constrained by, placed additional demands on women candidates, undoubtedly diverting at least some of their attention from direct political issues.

Occasionally the women candidates took this interest in their physical appearance and used it for their own partisan political purposes. Brenda Bell, National's candidate for North Dunedin in 1960, always wore a campaign uniform of blue and green outfits 'for easy recognition'.[27] Blue, of course, was the National Party colour. Bell obviously decided that since people would be taking notice of what she wore, she would use her wardrobe to constantly remind them of her political affiliation.

The performance of the women candidates in the traditional roles of wife and mother also received an inordinate amount of scrutiny and, in the minds of some press reporters and party political leaders, was as important as, if not more important than, previous political experience. In 1933 the *Auckland Star* announced the election of Elizabeth McCombs as New Zealand's first woman MP and described her in glowing terms:

> In her home life she is a capable housewife, a sympathetic friend to her two children, a delightful hostess, and a fine wife and mother.[28]

Seemingly these were the attributes a woman parliamentarian required. More than twenty years later, after outlining the political experience of Connie Birchfield in a press statement, the Communist Party felt obliged to add that:

> During her active life she has yet found time to rear two children and win the respect of those who know her, not only as a political figure, but also as a mother.[29]

In a similar fashion Labour Party leader Norman Kirk announced Sonja Davies as the Labour candidate for Hastings in 1966 with the remark that 'Sonja is not only an excellent candidate, but she is also a good wife and mother'.[30] Davies wrote that she felt tempted to ask if similar remarks would have been made about a male candidate. She decided not to, since she already knew what the answer would be. The press and party leaders did not feel the need to bolster or distract from the political voice of male candidates by referring to their record as husbands and fathers. Since being politically active was deemed outside women's traditional roles some women candidates, party officials and press reporters felt the need to show that women candidates conformed in other areas of their lives.

On first consideration it seems surprising that the women candidates appeared to accept rather than challenge representations which concentrated on their physical appearance and their abilities as wives and mothers. Certainly such portrayals could and were used by the press and by male politicians to try to undermine the political achievements and ambitions of the women concerned and confine them to more traditional roles. The focus on a woman's personal life rather than her political views and aspirations had the potential to weaken her candidacy. Yet such portrayals could also work to assist women candidates by helping to reassure potential voters and critics that they did not reject women's role and were not threatening ingrained ideas of gender.[31] Despite their public political lives the majority of the women candidates still complied with what was socially acceptable for women. They were not the 'men-women' some earlier male MPs had feared, and representations of women candidates conforming with rather than confronting accepted notions of gender could possibly help to reassure potential critics.[32]

Certainly the actions of Labour's Mabel Howard, New Zealand's first woman Cabinet Minister, suggest that she recognised the importance of fitting in with society's expectations and cultivating a socially acceptable image. Howard was the only single woman

elected to Parliament before 1970 and, as such, could not capitalise on her performance as wife and mother. Undeterred, Howard attempted to associate herself with such roles anyway. In Parliament she referred to herself as the mother of the men in the General Labourer's Union and made much of the fact that she had been a housekeeper since the age of nine. She proudly told male MPs that she knew all about shopping for a household. Mabel Howard also made sure that readers of *New Zealand Magazine* learnt that, apart from her political abilities, she was 'a needlewoman of exceptional skill' who had prizes from New Zealand and overseas to prove it.[33]

Nonetheless, it is important to remember that the need to conform to a prescribed image based on gender was a burden only the women candidates faced. Male candidates do not appear to have been under any pressure to conform to a prescribed model of masculinity, possibly because running for Parliament did not contravene the traditional male stereotype. Nor were they publicly judged on their performance as husbands and fathers. They just needed to convince voters that they would make good parliamentarians. Women candidates needed to do this too, but at the same time had to be seen to remain true to what was acceptable for a woman. Skills and achievements which suited one purpose were not always fitting for the other.

In fact, gender-based representations were essential to what political authority was available to a woman and could strengthen her candidacy. For many women candidates, their political authority was built on the fact that they were women and the unique skills and experiences thay could claim from being a woman. Anything which reinforced their gender identity could reinforce their expert status in matters of particular relevance to women, children and the family. Most of these women were motivated by a desire to represent the concerns of women, children and the family in Parliament, and consistently claimed that they were better able to do this than the men. It was undoubtedly in their interest, therefore, that the voting public realise how well qualified they were to do this, which included such criteria as how successfully they had raised their own family. In much the same way as a businessman could use his achievements in the business world

to demonstrate what he could achieve in Parliament, so women candidates could exploit their achievements in what was deemed to be women's domain.

There was always a large overlap between the political issues which men and women candidates focused on in these years but what set the women apart was their consistent advocacy of maternalist policies designed to benefit women and children. A male audience member demanded that Emily Maguire (Reform, 1928) 'Give us politics' instead of talking about the welfare of women and children.[34] Through their candidacies Maguire and the other women candidates were, of course, insisting that the welfare of women and children was 'politics'. They believed that Parliament needed to be more concerned with the welfare of women and children and criticised male MPs for concentrating too exclusively on currency, infrastructure development and other issues which Maguire's heckler obviously expected to hear about.

Most of these women candidates never got into Parliament, a fact which suggests that their political voice was restricted. Yet many of them used a candidacy itself as an opportunity to gain a voice and did not necessarily want to enter Parliament. For those who did wish to, the selection processes of the major political parties proved to be a crucial stumbling block, a constant curb on the political participation of women. While public representations of women candidates in terms of appearance and traditional gender roles could work to trivialise and diminish their political expression, it could also strengthen their position. Such representations reassured voters that women candidates were not challenging accepted ideas of gender, even though they were stepping outside traditional roles. They also worked to highlight women candidates' gender identity, by which they could lay claim to their own political authority.

* * *

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Notes

1. For more on the right to enter Parliament see Sandra Wallace, *Out of the Home and Into the House — New Zealand Women's Fight to Enter Parliament* (Department of Justice, forthcoming).
2. *New Zealand Herald*, 2 November 1928, p. 13; *Evening Post*, 1 November 1935, p. 14.
3. *Auckland Star*, 16 November 1957, p. 8.
4. *Auckland Star*, 2 December 1919, p. 7; *Standard*, 30 June 1938, p. 15; *Dominion*, 26 November 1946, p. 11; *South Auckland Courier*, 27 October 1954, p. 11; *Christchurch Star*, 13 November 1963, p. 5, 28 November 1963, p. 13.
5. Austin Mitchell, 'The Candidates' in R. M. Chapman, W. K. Jackson and A. V. Mitchell (eds.), *New Zealand Politics in Action. The 1960 General Election* (Oxford University Press, London, 1962) p. 143 and 'The 1966 General Election: The Candidates and Their Campaigns', *Political Science*, 21:1 (1969) p. 10.
6. *Auckland Star*, 19 September 1923, p. 7.
7. Raewyn Dalziel, 'The Colonial Helpmeet. Women's Role and the Vote in Nineteenth Century New Zealand', in Barbara Brookes, Charlotte Macdonald and Margaret Tennant (eds.), *Women in History. Essays on European Women in New Zealand* (Allen and Unwin, Wellington, 1986) pp. 55–68.
8. See for instance Seth Koven and Sonya Mitchell, 'Womanly Duties: Maternalist Politics and the Origins of Welfare States in France, Germany, Great Britain and the United States, 1880–1920', *American Historical Review*, 95:4 (1990) pp. 1076–1180.
9. Quoted in Barry Gufstafson, *The First 50 years. A History of the New Zealand National Party* (Reed Methuen, Auckland, 1986) p. 284.
10. Robert Mark Unsworth, 'Women as Parliamentary Candidates; Asset or Liability?' (unpublished MA thesis, University of Canterbury, 1980) p. 39. For more on two-party swing see Alan McRobie and Nigel Roberts, 'Appendix A' in *Election '78 — The 1977 Electoral Redistribution and the 1978 General Election in New Zealand* (McIndoe, Dunedin, 1978) pp. 156–161.
11. For more on Ellen Melville see Sandra Coney, 'Ellen Melville' in Charlotte Macdonald, Merimeri Penfold and Bridget Williams (eds.), *The Book of New Zealand Women. Ko Kui Ma Te Kaupapa* (Bridget Williams Books, Wellington, 1991) pp. 435–442.
12. For details on the selection process of the Reform Party see R. S. Milne, *Political Parties in New Zealand* (Clarendon, Oxford, 1966) p. 251.

13. For more on Melville's selection and election experiences see Veronica Kuitert, 'Ellen Melville 1882–1946' (unpublished MA research essay, University of Auckland, 1986) pp. 90–105; *New Zealand Herald*, 18 October 1922, p. 6; 25 November 1922, p. 11; 20 March 1926, p. 12; 12 April 1926, p. 12; 3 September 1928, p. 12.
14. These figures were calculated on the basis of electoral returns contained in the *Appendices to the Journals of the House of Representatives.*
15. A safe seat is defined as one requiring a swing of more than ten percent to change from one party to another. Fairly safe seats require a swing of five to ten percent while a marginal seat requires a swing of less than five percent to change hands.
16. Unsworth, pp. 24, 31.
17. Milne, pp. 252–260.
18. Ann Margaret Burgin, 'Women in Public Life and Politics in New Zealand' (unpublished MA thesis, Victoria University, Wellington, 1967) p. 14.
19. Milne, pp. 260–262.
20. Sonja Davies, *Bread and Roses* (Australia and New Zealand Book Co/Fraser Books, Masterton, New Zealand, 1984) p. 153.
21. Interview, 19 March 1990. Transcript in possession of the author.
22. Sandra Wallace, 'Powder-Power Politicians. New Zealand Women Parliamentary Candidates' (unpublished PhD thesis, University of Otago, 1992) pp. 242–248.
23. *Evening Post*, 1 November 1966, p. 19.
24. *Evening Post*, 3 November 1966, p. 27.
25. *Weekly News*, 25 May 1955, p. 10.
26. Naomi Wolf, *The Beauty Myth* (Vintage, Toronto, 1991) pp. 20–57.
27. *Otago Daily Times*, 25 November 1960, p. 5.
28. *Auckland Star*, 14 September 1933, p. 14.
29. *Petone Chronicle*, 27 October 1954, p. 5.
30. Davies, pp. 155–156.
31. For more on this point in the Australian context see Marian Sawer, 'From Motherhood to Sisterhood: Attitudes of Australian Women MPs to Their Roles', *Women's Studies International Forum*, 9:5 (1986) p. 540.
32. The quotation comes from *New Zealand Parliamentary Debates*, 93 (8 July 1896) p. 57.
33. *New Zealand Parliamentary Debates*, 265 (31 August 1944) pp. 767–768, 281 (4 August 1948) p. 1188; *New Zealand Magazine*, 7 August 1945, p. 10.
34. *New Zealand Herald*, 11 October 1928, p. 13.

The Making and Repeal of the Employment Equity Act: What Next?

Margaret A. Wilson

Introduction

The Employment Equity Act 1990 was the outcome of a strategy to improve the economic position of women in paid employment through the use of the law to provide women with access to all forms of paid employment, equal treatment once within employment, and a fairer method for the assessment of remuneration for the work performed predominantly by women. The importance of the economic position of women has been a concern of feminists in New Zealand since the 1890s.[1] The writings of Christina Henderson[2] and Jessie Mackay[3] are good examples of the arguments used at that time to support women's claim to economic equality. Women continued to assert this claim for the next one hundred years.[4] The election of the Fourth Labour government in 1984 provided another opportunity for women within the trade union movement and the Labour Party to make progress on the political and legal recognition of equal pay and equal employment opportunities.

The enactment of the Employment Equity Act in July 1990 was the product of years of work by many women within the political and industrial institutions to better the conditions of women in paid employment. The events immediately surrounding the Act provide a useful case study of those women's involvement in the political and policy-making processes surrounding a major piece of law reform. This article will briefly describe the strategies and tactics used by the proponents and opponents of the employment equity policy during the 1984–1990 period, the repeal of the

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Employment Equity Act, and will speculate on the future policy development of this issue.

My primary purpose is to provide an account of the experience gained from the process of policy development and legal enactment of the concept of employment equity. The importance of the experience is twofold. On a practical level, the Act was an attempt both to provide the institutional framework through which the work of women could be revalued in order to provide them with a fairer remuneration for their work, and to require employers to address the structural barriers preventing women from access to equal employment opportunities. The process of securing acceptance of the policy by the government enabled many women to gain a greater understanding of policy formation and the institutions of political power. Equally, the process of attempting to draft in legislation the framework through which employment equity was to be achieved, identified the complexity of such an endeavour, particularly the difficulty of the reconciling competing interests of various groups, including groups of women.

Secondly, on a theoretical level, the Act marked the continuation of the strategy to use the law to establish a level playing field in the workplace on which men and women could compete equally. This strategy was first laid out comprehensively in the *The Role of Women in New Zealand Society, Report of the Select Committee on Women's Rights, 1975*.[5] This Report, commissioned by the Third Labour government after lobbying by women, acknowledged the gendered nature of New Zealand society as the major cause of inequality between the sexes. The Report recommended that both legal change and education were required to change social attitudes and practices. The law however was seen as a necessary step in the process of equality for women '... for the overriding reason that members of society in general look to the law as a guide in the formulation of their personal values'.[6] It may be debatable that the law can change values, but it can influence behaviour.

The form of the legal intervention recommended in the Select Committee Report was not the assertion of a positive right to be treated equally, but a negative right not to be discriminated against on grounds of one's sex or marital status. The Report further acknowledged women's scepticism that the legal system could deliver equality through the courts, which at that time had only one

woman judge sitting in the Magistrates Court. It recommended that the enforcement and administration of anti-discrimination rights should be done through a separate statutory body, with the emphasis on mediation rather than the adversary method of resolving instances of discrimination. A change of government at the end of 1975 resulted in a change of policy, and the Human Rights Commission Act 1977 was eventually enacted instead of a Sex Discrimination Act.

While the Employment Equity Act was a continuation of the strategy to use the law to assist women in their struggle for equal employment rights, its focus was not on the creation of individual rights, but on effecting structural change in employment practices. Whether the Act would have been successful in effecting such a change will never be known. What can be examined however is the experience gained from the process of developing a policy idea through to enactment of legislation. This experience can provide insights into the operation of the law-making process, and allows a more informed assessment of law reform as a fruitful site for feminist activity.

1984–1990

The catalyst for the employment equity campaign was the decision of the Arbitration Court in *New Zealand Clerical Administrative etc IAOW v. Farmers Trading Co Ltd & ors* (1986) ACJ 203. This case decided that the Arbitration Court had no jurisdiction under the Equal Pay Act 1972 to hear a claim for equal pay for work of equal value. This clarified the need for new legislation if women's work was to be revalued during the process of negotiation of women's wages. While women had demonstrated there was a problem, they needed to convince the Government that it was also *their* problem. It was therefore important to find a way in which the Government could be persuaded to 'own' the issue. This meant credible evidence of this had to be provided to the government, and in these circumstances the best evidence would be that commissioned by the Government itself.

Since the Department of Labour was primarily responsible for employment-related policy, the next step was to persuade the

government to direct the Department to undertake research into the question of equal pay for work of equal value. It was obvious, however, that since the Department was at the same time proposing the deregulation of the labour market,[7] there was a problem not only in persuading them that the research to develop the policy was necessary, but also in finding people within the department who had expertise in this area. The lack of knowledge and expertise within the bureaucracy on gender issues was to remain a problem throughout the campaign. The senior officials in the bureaucracy did not possess the knowledge necessary to implement an employment equity policy, nor were they always prepared to provide the resources to enable the expertise to be gained. The importance of agencies such as the Ministry of Women's Affairs and Equal Employment Opportunities Unit in the State Services Commission was demonstrated throughout this period by their provision of the main sources of knowledge in this area of policy.

The equal pay for work of equal value research was eventually contracted out to Prue Hyman and Alison Clark, who joined with Urban Research Associates to produce in 1987 the *Equal Pay Study: Phase One Report*,[8] which was envisaged as phase one of a three-part study. It was intended to establish what statistical and other data was available; to identify the extent to which the difference between male and female remuneration was due to discriminatory or non-discriminatory factors; and to look at the means for removing the barriers to the implementation of equal pay for work of equal value. The phase one study concluded that a differential between male and female rates of remuneration existed and that an element in the differentiation was discrimination. The proportion of the differential that was due to discrimination was impossible to quantify without further surveys of pay rates. The Report concluded by recommending that phase two of the study undertake case studies of wage rates, as well as an examination of job evaluation schemes that could assist with the drafting of equal value legislation.

Phase two of the study was undertaken by the Equal Pay Steering Committee comprising officials of the Department of Labour, the Ministry of Women's Affairs, and the Chair of the National Advisory Council on the Employment of Women.[9] The formation of an inter-departmental committee to supervise this report indicated

that the policy was gaining greater official recognition and therefore had to be treated more seriously. The *Phase Two Report* focused on three areas: legislative and administrative provisions relating to equal pay for work of equal value; job evaluation schemes; and equal opportunities policies. The Report then recommended that the Phase Three Report should decide on the following matters: whether changes needed to be made to the Equal Pay Act 1972; what job evaluation schemes should be used; and the nature of the policies or legislation necessary to implement equal employment opportunity.

By the time the second report was produced it was obvious that little further progress could be made before the 1987 election. It had taken three years to achieve some sort of official recognition of the policy, which indicates the amount of time required when pursuing a policy that is not a government priority. To ensure this work was not wasted, equal pay had to be made an election issue, with a commitment to it receiving high priority on the list of new legislation to be introduced by the new government. Since the women working on this issue had influence in the Labour Party only, the first step in this process was to ensure that employment equity was once again included in the election manifesto. This meant it had to be debated at regional and annual conferences, as well as the Women's Policy Conference and the Policy Council of the Labour Party.

The issues raised during these debates highlighted again the fundamental differences in approach to this policy. The Ministers of Finance and Labour and their supporters wanted employment equity left to the operation of the market, while the women and trade unions and their supporters wanted to enact legislation. It was becoming apparent that there was little room for compromise on this basic question. The policy's inclusion in the manifesto was going to depend on who had the most votes in the forums through which it would have to pass before it became legislation. The first battle was won when the policy was included in the 1987 election manifesto.[10] The next step was to ensure the policy was accorded a high enough priority to be implemented during the government's next term.

The re-election strategy of the Labour government assisted with this second objective. The emphasis on economic policy during the

1984–87 period had led to pressure to place more emphasis on policies that would produce social equity. If employment equity was to fit within this policy objective it had to be reconstructed as a social equity issue, not just a women's policy objective. The successful transformation of the issue was witnessed in its inclusion as one of the eighteen working groups on social equity matters that were to be formed after the 1987 election. The next objective was to ensure employment equity was accorded a priority in the establishment of the eighteen working groups.

Effective lobbying within the government ensured that the Working Group on Equal Pay and Equal Employment Opportunity was one of the first groups to be established in February 1988. It consisted of an interdepartmental group of officials from the Department of Labour, the State Services Commission, the Ministry of Women's Affairs, the Ministry of Maori Affairs, the Ministry of Pacific Island Affairs and the Treasury, together with three consultants—Judith Reid, an industrial relations consultant, Jenny Morel, an economic consultant, with myself, as chair of the Group, responsible for writing the report. This method of policy formation sought to incorporate the expertise of the public service while drawing from private sector experience. It was also intended to ensure that the policy was not lost in a morass of interdepartmental conflict, which was the reason for the chair of the group being responsible for writing the report. The chair could report directly to the Minister in charge, Geoffrey Palmer, and not be thwarted by the normal bureaucratic reporting procedures. This process was essential because it enabled women to maintain some degree of control over the formation and timing of the policy.

The task of the Working Group was to consider and make recommendations on the need and justification for equal pay and equal employment opportunities legislation in the economic, social, and industrial contexts at that time. If legislative change was seen as necessary then the nature of this change was to be considered.[11] In effect the Working Group was Phase Three of the Equal Pay Study commenced in the Department of Labour in 1987. The Working Group undertook a series of meetings with various interest groups, with the primary purpose of establishing whether some form of legislation was required. It also sought to find a comprehensive and integrated response to the variety of

ways in which different women experienced discrimination simply because they were women.[12] The Working Group followed the general recommendations in the Report of the Royal Commission on Social Policy that legislation was required on equal employment opportunity.[13]

The Working Group rejected the approach of legislating for an individual legal right to equal treatment, both because it failed to address the basis of the discriminatory actions, and because equal treatment assumes all women are the same, which they are not. Equal legal rights also fail to acknowledge that according women the same treatment as men privileges the male experience by assuming maleness as the norm. On the surface it makes sense because it would give women more money and greater choice and opportunities in paid employment. The price for this however is validation of male reality, neither a possible nor a desirable state for many women.

The report was produced on 30 June 1988, and recommended the enactment of an Employment Equity Act, a draft of which was included in the report.[14] Cabinet considered the recommendations and decided to publish the report and seek public submissions. The chairperson asked that the submissions be considered by all members of the Group. Eventually it was decided that an interdepartmental response coordinated by the Department of Labour, and a separate report from the independent consultants, be submitted to the Social Equity Committee of Cabinet. The struggle for control of the policy began in earnest at this point because it began to look as though the legislation might be enacted. The reason for the insistence that the Working Group also reported on the submissions was that it was vital women did not lose influence within the process of bureaucratic consideration of the policy. Once matters disappear inside a government department, delays occur and there is no guarantee of a balanced analysis of the submissions.

There were over 230 submissions, in the light of which the consultants made amendments to their original recommendations in a report delivered to the Cabinet Social Equity Committee on the due date of 30 November.[15] The Department of Labour was unable to report before the end of February 1989. This was the sort of delay that women who supported the legislation

feared, because it placed the enactment of legislation before the next election seriously at risk. It required considerable lobbying to ensure that once the Department of Labour reported in February, the government moved quickly to a decision on whether to enact legislation. The Government gave this commitment at the end of February, but instead of moving directly to drafting the legislation, it established an Implementation Committee to prepare drafting instructions. The purpose of the committee was to ensure the employment equity legislation did not contradict the industrial relations policy. This move was an attempt by Cabinet supporters of a deregulated labour market to stop the drafting of the employment equity legislation, which was seen to directly contradict the policy direction of the recently-enacted Labour Relations Act 1987. It was a major setback in the process of getting the legislation drafted for introduction into Parliament before the end of the year so that it could be enacted before the next election.

The Implementation Committee was chaired by David Imrie, who was an official in the Deputy Prime Minister's Office. At this stage the Deputy Prime Minister, Geoffrey Palmer, chaired the Social Equity Committee of Cabinet and controlled the whole process. Without his support the Employment Equity Policy would not have survived to or beyond this point. His support, and that of other government members in Cabinet and Caucus, was essential in ensuring the policy maintained its priority and did not simply disappear from the government's agenda. The Implementation Committee also consisted of representatives from the Department of Labour, and the State Services Commission, (different officials from those who had been members of the Working Group) the Ministry of Women's Affairs, the Treasury, and the chairperson of the Working Group. The inclusion of the chairperson of the Working Group was essential for continuity in the translation of the Working Group's recommendations into legislation. It also provided another important input from women outside the bureauracy who supported employment equity, and enabled them to maintain some influence over the tactics that would be necessary if the obstacles placed in the path of the legislation were to be successfully overcome.

The Implementation Committee made very slow progress, and it soon became apparent that while discussions could take

place on the equal employment opportunity recommendations, there was to be no discussion on pay equity recommendations. The refusal of officials to meet or discuss anything to do with pay equity again reflected the impasse in Cabinet. Throughout the entire time the issues were under consideration it was impossible to arrange a discussion on the substance of the proposals. The rigid refusal to examine the detail of the pay equity proposals appears to have resulted from a deep feeling of insecurity about the survival of the recent industrial relations reforms. In particular, there was an overriding fear that compulsory arbitration would return under the cover of employment equity.[16]

While this fear may have been understandable because some unions had stated that they preferred compulsory arbitration, it was harder to understand the refusal to address the real equity concerns of women. No attempt was made to address the inequitable outcomes from the restructuring of the industrial relations system. The supporters of the deregulatory policy considered this consequence was of no concern to government, and that it was now solely a problem for the market place. This was not the policy position of the majority of the government members however. For women at that time, it was only the government, using the power of the state, that could change the rules sufficiently to enable them to bargain from a position of relative equality in the market place.

The impasse on the Implementation Committee continued until it was fortuitously broken by a change of leadership in the government in August 1989 which resulted in a reshuffling of the Cabinet. The new Minister of Finance, David Caygill, and the new Minister of Labour, Helen Clark, were not opposed to employment equity. During the impasse two factors enabled the employment equity supporters to act quickly once the political conditions became more favourable. The first was that the media maintained an interest in the issue, so it was not allowed to die. The second factor was that during the period of the impasse, Ministry of Women's Affairs officials had continued to work on the complex problems surrounding pay equity, so that a proposal was available to go to Cabinet shortly after the Cabinet reshuffle.[17] Through this work the Ministry could take the initiative when the new Cabinet

decided to proceed with Employment Equity legislation. Their work prevented further delay and enabled women to retain some control over the process.

The final detailed work on the drafting instructions was taken over by officials in the office of the Minister of Labour, who worked in consultation with officials from the Department of Labour, the State Services Commission, and the Ministry of Women's Affairs. Compromises were made in the legislation to try to accommodate the various interests of different unions and employer groups. Although employer resistance was centred on the risk to the economy, there was also the unarticulated assumption that women's primary role was that of the unpaid caregiver, and that women's role in paid employment was secondary. This argument reflected the dominant gendered view of society and was expressed by Karacaoglu in the National Bank's *Business Outlook* in April 1989.[18] A more sophisticated argument advocated by the Business Roundtable was that equity could best be delivered through a deregulated labour market.[19] The difficulty with this argument was that it was driven by ideology with little evidence to support it.[20]

The Bill was eventually introduced into Parliament before the end of 1989, which enabled submissions to be sought over the Christmas break and the select committee to hear them and report back to Parliament before the election in September. The management of the select committee was very important because delays can occur unless the chairperson is efficient and supportive. In this instance Anne Collins, a member of the government who was supportive of the Bill, guided the process through to the enactment of the Bill on 26 July 1990. The Act came into force on 1 October 1990.

The Provisions of the Employment Equity Act 1990

In its final form the Act was in three parts. The first part established the office of the Employment Equity Commissioner. Her basic function was to administer the legislation. Her major responsibilities centred on assisting employers, unions, and workers to develop and implement equal employment opportunities programmes,

and on conducting pay equity assessments. Although the Commissioner, Elizabeth Rowe held office for only six months, in that short time the office produced a report of equal employment opportunities that was indicative of the type of work the Commissioner could have produced if the legislation had remained.[21] The report examined levels of awareness of the need for equal employment opportunities programmes in various sectors of the economy.

The second part of the Act required all employers in the public sector, and employers employing fifty or more employees in the private sector, to develop and implement equal employment opportunities programmes covering the designated groups defined as women, Maori, Pacific Island people and workers with disabilities over a three-year period. The issues to be addressed in the programmes are stated in the Act, but the way in which the issues were addressed was left substantially to the discretion of the individual employer.[22] Hence an attempt was made to strike a balance between ensuring that discriminatory behaviour was redressed by employers and giving the employer some freedom as to how to achieve the objective of the legislation. The method of compliance with this part of the Act was through an application for a compliance order in the Labour Court (now known as the Employment Court).

The third part of the Act dealt with pay equity. It provided that an employer, union, or twenty women workers in a female occupation (that is, an occupation in which 60 percent or more of the workers are female) could apply to the Employment Equity Commissioner to make a pay equity assessment of their particular occupation. When making the application, the claimant had to specify two male occupations (that is, occupations in which 60 percent or more of the workers are male) with which the female occupation would be compared for the purposes of the assessment. The Commissioner had considerable discretion in determining the occupational classes for assessment. The final assessment would be the result of comparing the same skills, effort, and responsibility, as against the wages paid, allowing for the minimum rates of remuneration in any award or agreement, the differences of remuneration between regions, any extraordinary working conditions, and recruitment and retention differences. The assessment should express any

evidence of gender bias as a percentage or dollar amount. This assessment did not automatically apply to the claimant female occupation. It required the union or employer in a negotiation for an award or agreement to make a claim for pay equity based on the previously-obtained assessment. If the employer and the union could not agree on the inclusion of the assessment in the award or agreement, then the matter was to be referred to the Arbitration Commission (which no longer exists). The Commission would determine the matter on the basis of final offer arbitration. It would also determine the period during which the assessment should be implemented.

The procedure to achieve a pay equity payment was a long and cumbersome one with many checks and balances. The legislation reflected the compromises that had to be made by the women involved in the drafting process to gain statutory recognition of their right to have their work valued equally with that of men. It was an unsatisfactory piece of legislation from the perspective of women because it would have been difficult to implement. In many ways it provided no immediate real threat to those who opposed it. In the longer term it would have contributed to that slow process of attitudinal change. With the change of government in 1990 however, threat or not, it had to be repealed. The Employment Equity Act was in direct contradiction to the National government policy of a market-driven labour market, eventually enacted in the Employment Contracts Act 1991.

The Repeal

As soon as the National government was elected in September 1990 it announced that it would repeal the Employment Equity Act, which it duly did on 21 December 1990. This action was consistent with intentions the National Party had expressed during the election campaign. Before the Act was repealed in November 1990 the government established a Working Group on Equity in Employment, chaired by Anne Knowles. The National government's policy was that equity in employment would come through the operation of the free market. In effect this meant that after the enactment of the Employment Contracts Act the

position of women in the labour market was to be determined through the operation of the market, and not through statutory requirements.[23] In a recent speech the Minister of Women's Affairs, Jenny Shipley, reaffirmed this policy of voluntarism when she stated, 'It is up to employers to retain a commitment to these gains if they want the advantages of a modern workplace'.[24] (The gains she was referring to were those made by women in the past through collective bargaining.)

The Report of the Working Party on Equity in Employment received many submissions identifying systematic barriers to discrimination. Matters such as legislation, inadequate and inappropriate child care, the need for better education programmes, and discriminatory attitudes towards Maori, Pacific Island peoples, and people with disabilities were all identified as barriers and recommendations were made to research or investigate the issues further. Although the Working Group resisted statutory or state intervention as a means of systematically redressing this systematic discrimination, they did recommend an Equal Employment Opportunities Act modelled on the Australian Affirmative Action Act. No government action has yet been taken on this recommendation. The Working Group appeared to rely on the then-foreshadowed Employment Contracts Act to rectify inherent discriminatory employment practices. This Act was seen as introducing flexibility and competition into the labour market and workplace and thereby resolving the problem of discriminatory practices.

The Working Group also rejected that there is a necessary link between pay and opportunities. This had been a fundamental conclusion of the Working Group on Equal Employment Opportunities and Equal Pay, which had linked pay and employment practices into the one concept of employment equity. The two 1987 Equal Pay studies had also found that while equal employment opportunities may redress some of the discrepancy in remuneration rates between men and women, it could not account for the entire gap. Recognition had to be given to the act of discrimination as a factor in the economic inequality of women. The Working Group on Equity in Employment however could find no justification for pay equity, though they did recommend the retention of the Equal Pay Act 1972, which seems inconsistent with

the market-led approach to equity. This Act is now unenforceable anyway, because it was dependent on the centralised industrial relations system to deliver equal pay for equal work, or work that is substantially similar.[25] The understanding and approach of the group is summed up in their conclusion:

> ... the Working Group sees the imposition of a pay equity exercise where the intrinsic worth of one job is compared with the worth of another, and a monetary adjustment made, as perpetuating the artificiality that imposed arbitrary settlements effect. Having recommended that 'all vestiges of arbitrary systems' be removed we cannot, in good conscience, recommend reinstatement of such a procedure in this area.[26]

This statement does not acknowledge that the existing gendered system already imposes arbitrary effects on women. There is also no understanding that the existing labour market is constructed and dominated by the experience and reality of men, existing for their benefit, depending also on their class and ethnicity. Women are assumed to be able to compete on the same terms as men in a 'free' labour market. The Working Group appears to consider that there is nothing fundamentally wrong with the existing social and economic system, and that inequities that do emerge can be addressed through research, education, specifically-targeted legislation, and a flexible labour market.

The Report's recommendations have not been implemented by the government, and a follow-up survey by the National Advisory Council on the Employment of Women[27] makes it clear that not only is employment equity off the policy agenda for the term of the National government, but that it is unlikely the Working Group's recommendations will be implemented quickly. The National government has provided seed money for an Equal Employment Opportunities Trust, which is now largely dependent on employer contributions. Its function is to educate and persuade employers to provide equal employment opportunities programmes. It is too early to assess the outcome from this experiment with voluntary programmes, which will provide an important case study of the effects of this policy approach on the position of women in paid employment.

The most important challenge to employment equity was not directly addressed in the Working Group Report however. It is

to be found in the Employment Contracts Act 1991. This Act places constraints on collective bargaining as the primary method of determining wages and conditions and tries to impose the individual employment contract as the norm. It also attempts to remove trade unions as the primary representatives of employed labour in contract negotiations. The effects of the Act, and in particular its effects on women, have yet to be assessed in detail, though some preliminary research is now becoming available.[28] It is difficult to see how a market-driven employment policy could be beneficial to women, or to any waged worker who has little or no bargaining power when negotiating a contract, or trying to enforce one.

The principal 'benefit' of the Act was probably intended to lie in the part-time, casual employment opportunities that a more flexible, low-waged economy would offer women. The Employment Contracts Act could never have been seen as a serious means to introduce equity — in the sense of fairer remuneration or better working conditions — into the labour market. However what is more serious than its failure to deliver equity for women is the real barriers it will erect to women being able to fully participate within the existing labour market, let alone challenge its gendered nature. Principal among these barriers is the casualisation of women's work itself. A consideration of the Employment Contracts Act is beyond the scope of this article, but it is sufficient in this context to note that it reasserts the dominance of capital and the consequential subordination of labour, and within that context reinforces the dominance of male experience over that of women. While the Act remains in force, employment equity policies will be impossible to implement.

What Next?

The Employment Equity Act project would have been a radical one at any time in New Zealand. It was especially ambitious at the time of major restructuring of the New Zealand economy. The timing of the project was beyond the control of those women who initiated it, but this illustrates that women do not create the policy environment in which they must operate. They have to work

within the constraints of a society whose institutions of power are controlled by men who reflect and reproduce a gendered society in which their values and experiences are dominant. Women who work for change through political and legal institutions must therefore be skilled opportunists and have an intimate knowledge of these institutions of power. This knowledge can come from observation and analysis, but it must also come from engagement with those institutions.

The first of the many lessons that may be learnt from the Employment Equity Act project is that for such engagement with political and bureaucratic power, women must not only be well positioned within these decision-making institutions, but they must have the support of the general electorate. Employment equity was not widely understood or supported at the time and therefore was not a priority when voting. The National Party had clearly signalled its intention to both repeal the Employment Equity Act and enact the Employment Contracts Act. That both these measures would detrimentally affect some women did not rate as an election issue. If another campaign is to be organised then it is important to analyse why this happened. Was it because the concept was not relevant to most women? Was it because they had little opportunity through the media to understand the issues? (Issues surrounding women and violence have received much more attention from the media, for example.) Was it because employment equity threatened the basis for the construction of one important part of our economy, the determination of remuneration? Or was it the fear of women achieving greater economic independence? All these and other questions need to be addressed as part of any new strategy. The repeal of the Act does not mean the concept behind it is not valid. What it does mean is that legislation such as the Employment Equity Act may not be the best method of delivery of employment equity. The Employment Contracts Act has removed the central bargaining infrastructure on which pay equity delivery was built, necessitating a total rethink of the concept and its mode of implementation. The provisions in the Employment Equity Act relating to equal employment opportunities programmes could still be enacted without any difficulty. Such a measure however would be contrary to the currently dominant market-driven policy.

Asking whether legislation is the most appropriate method of delivering employment equity raises the second lesson to be learned here. We need to understand more clearly the limited usefulness of the concept of equality — in particular legal equality — when devising strategies to redress the gendered nature of our society. This is not a new question in New Zealand, as is evidenced by the 1975 Report of the Select Committee on Women's Rights, but it is one that goes to the heart of our legal system. This article does not question that our legal system is a gendered one, but is concerned with strategies to change it. The Employment Equity Act was one response to the need for change; it is now necessary to develop others.

It is beyond the scope of this article to develop that new response. However, I would like to identify some elements essential to any new strategy. One is the recognition of the diversity of the experiences and realities of women that need to be accommodated in any response. This will add to the complexity of the response, but it may ensure its greater acceptance. It will also test the ingenuity of women to find the unity of action, within the diversity of women's lives, required to effect political and legal change. A second necessary element will be the development of an indigenous feminist theory of the state that will assist in creating feminist policy. A lack of practical experience and a theoretical ambivalence have combined to stunt the growth of a feminist theory of the state that reflects the conditions, contemporary and historical, of New Zealand women. The increasing number of women in decision-making positions, combined with the development of feminist theory could provide the conditions for a fruitful synthesis of thought and action over the next decade.

A third important element is a greater understanding of the mechanisms that effect change within the legal system. It is trite, as well as being unhelpful for future action, to state that the legal system is an instrument of patriarchal power, and therefore beyond usefulness to those of us who challenge the gendered nature of our society. It may well be, but it is also the institution that reflects the exercise of 'legitimate' authority within our community. The role the law plays within any society is a complex one that needs to be much better understood by feminists. On an issue like employment equity, an understanding of the way in which the law supports the

economic power within the society will provide a basis for a legal strategy for change. There are other elements that will be required as we make our next moves. I offer these as a starting point.

Notes

1. Margaret Lovell-Smith, *The Woman Question* (New Women's Press, Auckland, 1992).
2. Christina Henderson, 'The Ethics of Wage Earning', ibid., p. 132.
3. Jessie Mackay, 'Equal Pay for Equal Work', ibid., p. 139.
4. See Margaret Corner, *No Easy Victory: Towards Equal Pay for Women in the Government Service 1890–1960* (New Zealand Public Service Association, Wellington, 1988) for an account of women's stuggle for equal pay in the government service 1890–1960.
5. Select Committee on Women's Rights, *The Role of Women in New Zealand Society* (Government Print, Wellington, 1975).
6. ibid., p. 97.
7. Department of Labour, *Industrial Relations: A Framework for Review* (Government Print, Wellington, 1985).
8. Urban Research Associates, P. J. Hyman and A. Clark, *Equal Pay Study: Phase One Report* (Department of Labour, Wellington, 1987).
9. Equal Pay Steering Committee, *Phase Two Report: Equal Pay* (Department of Labour, Wellington, 1987).
10. New Zealand Labour Party, 1987 Policy Document.
11. Margaret Wilson, *Towards Employment Equity: Report of the Working Group on Equal Employment Opportunities and Equal Pay* (Government Print, Wellington, 1988) p. 7.
12. The term *employment equity* was used deliberately to encompass both pay and opportunity issues. The term was used in Canada for a similar purpose in a similar exercise by Judge Rosalie Silberman Abella who wrote the Royal Commission Report, *Equality in Employment*, October 1984.
13. *Report of the Royal Commission on Social Policy* (Government Print, Wellington, 1988) Vol II, pp. 384–5.
14. Margaret Wilson, *Towards Employment Equity*, pp. 25–37.
15. Margaret Wilson, *Report on the Submissions on the Towards Employment Equity Report* (Unpublished report to the Cabinet Social Equity Committee, 1988).
16. *National Business Review*, 6 March 1989.
17. As chair of the Working Group, I met with the Ministry frequently during this period.
18. See Karren Harker, *Evening Post*, 3 May, 1989.

19. New Zealand Business Roundtable, *Employment Equity: Issues of Competition and Regulation* (Submissions to the Working Group on Equal Employment Opportunities and Equal Pay, 1988). Also Penelope J. Brook, *The Inequity of Pay Equity* (Centre for Independent Studies, Auckland, 1990).
20. See Ellen Frankel Paul, *Equity and Gender: The Comparable Worth Debate* (Transaction, New Brunswick, N.J., 1989) for a discussion of the issues.
21. Commission for Employment Equity, *Into the 90's: Equal Employment Opportunities* (Department of Labour, Wellington, 1990).
22. See the Schedule to the Employment Equity Act which sets out the requirements to be complied with by employers.
23. The National government's policy position is set out in *Report of the Working Group on Equity in Employment* (Government Print, Wellington, 1991).
24. Jenny Shipley, 'Changes and Challenges' (Address to New Zealand Federation of University Women, Dunedin, 23 July, 1992).
25. Prue Hyman, 'Equal pay for Women After the Employment Contracts Act: Legislation and Practice — The Emperor Has No Clothes?', *New Zealand Journal of Industrial Relations*, 18:1 (1993) pp. 44–57.
26. *Report of the Working Group on Equity in Employment*, p. 12.
27. During 1991, the National Advisory Committee on the Employment of Women sought information from the appropriate Ministers on progress on the Working Group's recommendations. These responses were not published.
28. For a discussion of the Employment Contracts Act see Raymond Harbridge (ed.) *Employment Contracts: New Zealand Experiences* (Victoria University Press, Wellington, 1992); and also articles in *New Zealand Journal of Industrial Relations*, 18:1 (1993) which has published in this issue the most recent research on women and the Employment Contracts Act.

100 Years of the Vote: 80 Percent of the Pay: The Politics of Pay Equity

Linda Hill

The struggle of New Zealand women for pay equity has been a long one. It is an issue in which women and men, employers and governments all have a stake and divergent interests. Progress or setbacks can be seen as the result of these different groups pushing or resisting within particular arenas in changing economic and political times. Outcomes are the result of conflicts or coincidences of interest between groups and the greatly differing power and resources that each is able to command. Outcomes are not always progress for women, and progress is not always what it seems.

Campaigns for employment equity, both in New Zealand and internationally, are the practical politics of a feminist analysis. In the 1980s feminist theorists focused on the workplace and the labour market as important sites of struggle where women's economic and social subordination has been constructed and maintained.[1] The gendered division of labour is a crucial intersection of patriarchal and capitalist practices. Historical and sociological research is uncovering how the practices of men and of employers confine women to a limited range of occupations, how jobs become 'gendered' male or female and how such gender segregation at work both uses and constructs discourses of masculinity and femininity.[2] Analysis of patriarchy, capitalism and the state identify state institutions as the outcome of struggles between men and women, capital and labour, as well as a series of arenas in which those struggles are played out.[3]

This article reviews the 100-year history of employment equity as political struggle by women in New Zealand and examines the way particular institutional forms provided us with opportunities for organisation and political power, and how we learned to harness

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the power of the state, and our own voting power, for use in different arenas of struggle. Recently we appear to have come up against the limits to this political strategy; what the state provides, the state can take away. However, a closer look at changes in that strategy over the history of pay equity — at what worked, what didn't and why — can provide us with helpful analysis and a way forward.

Feminist Judo

The strategy that has brought most benefit to women over the 1970s and 1980s Hester Eisenstein has called 'feminist judo — throwing with the weight of the state'.[4] The liberal democratic state's own need to legitimate its power over citizens gives it a responsibility to support the social equity goals of its voters.[5] Historically, the strategy of New Zealand unionism has been to use voting power, then state power, to provide a legislative framework favourable to organising and negotiating by unions. Women's strategy to achieve employment equity has been an essentially similar one of bringing the weight of the state to bear on employers. Blocked in negotiations, women went outside the frame of the existing arbitration system to change its legislative framework, to stretch its definitions and widen its scope, often by obtaining additional legislation. They used their political power as a lever to change the framework within which negotiations on employment equity took place. This strategy is problematic, since it depends ultimately on the interests of women and the state coinciding. It is becoming increasingly clear in the 1990s that the state is no more neutral with regard to gender relations than the market.

Recent theory postulates the state not as automatically capitalist or patriarchal and, even in a liberal democracy, not necessarily on the side of the little man (let alone the little woman).[6] The state is not monolithic, but an historically-specific, loosely-bounded set of arenas of political struggle. Its forms, institutions and legislative products are all both object and outcome of discursive struggle between groups with different interests and very different power. Political struggle goes on simultaneously within its arenas and about the forms these arenas assume.[7] Outcomes not only reflect the gender inequalities and patriarchal practices of wider society,

but construct and congeal them into institutional forms which marginalise women's interests.

In Pringle and Watson's view, what we face are not patriarchal institutions 'representing "men's interests" as against women's, but government conducted as if men's interests were the only ones that existed'.[8] While women are active in all arenas of the state, political differences tend to be constituted as differences between men, with women constituted not as citizens but as a 'disadvantaged group'.[9] Claims to represent such a group may then be 'tossed around among groups of men and used as a strategy for achieving their own goals'.[10] This analysis is pertinent to the progress of employment equity in New Zealand politics. The state, then, is 'a social process', but as that social process is institutionalised over time, it also becomes 'a social force in its own right, not just the vehicle of outside interests',[11] with its own stake in the outcomes of struggle. This point is relevant to the present setback on pay equity.

Several analyses of policy under the 1984–1990 Labour Government trace change in just such terms of struggle and contested outcome, largely within the institutions of the state.[12] Margaret Wilson gives a fascinating account of women's political influence on employment equity policy within the Party, the political system and state departments. This account is less detailed, but wider, both historically and in considering other groups with varying interests in employment equity policy and outcomes—women themselves, unions, business organisations, employers' organisations, political parties, and the state itself.

100 Years of Unequal Earnings

The first call for equal pay came in 1897 from the National Council of Women, formed by suffragists after women's official entry into the public world of politics.[13] The depression of the 1880s and 'sweated' female labour led women to organise unions for seamstresses, domestic servants, waitresses and female cooks, and women boot makers.[14] In 1894 Labour and Liberal politicians pushed through the Industrial Conciliation and Arbitration Act, which established the principles of labour relations used until

1991. The Act was initially restricted to industrial trades so few women gained access to arbitration as an alternative to strike action. Without such protection, few of the women's unions survived and women's average wage fell,[15] prompting the National Council of Women's 1897 demand for equal pay. In 1900 the Act was amended to cover distribution trades and was extended to all occupations in 1936. Thus, the legislative framework supporting unionism and wage negotiations in New Zealand was constituted on the basis of men's occupations and it took forty years for it to be widened sufficiently to cover women's participation in the labour market.

Changes in labour legislation have reflected the historic and economic contexts of depressions and world wars. Following the 1930s depression the first Labour Government brought back compulsory arbitration after a three-year lapse, and introduced compulsory unionism to support the unionisation of scattered, industrially-weak occupations which found it difficult to organise or to gain employer acceptance. The goal, originating in earlier 'Red Fed' visions of socialism,[16] was union registration and pay awards for the whole working class, including women. Employers also had an interest in stabilising the downward spiral of competition on labour costs and market prices under which many small businesses collapsed. These reforms, together with active organising by unionists,[17] enabled the unionisation in New Zealand of low-paid, typically-female occupations which are still not organised in most OECD countries.

Unionisation provided women with the structures to pursue equal pay within award negotiations. However, until the 1970s most union officials were men, and the motivation behind some early union policies on equal pay was dubious. As increasing numbers of women sought paid employment, low female wage rates for women offered cost savings to employers through the feminisation of some occupations. The assumption by some male unionists was that equal pay could control this, since men would naturally be preferred if the cost incentive to hiring women was removed.

One of the unions most interested in equal pay was the Clerical Workers, only successfully established after the 1936 legislative changes. They claimed equal pay for clerks in their first award negotiations in 1937, then in 1943, 1946 and 1949, but always

without success. In 1936, 50 percent of clerical workers were men and this early stance by the union's male leaders appears to reflect a concern for the jobs of male clerks. They tried to control the ratio of female to male clerks but quickly allowed rates for exclusively female typists and stenographers to drop to 60 percent of the male clerical rate.[18] Nevertheless, the lower levels of the clerical workforce to which the clerical award was restricted became increasingly feminised, and officials' position on equal pay became genuinely aimed at improving rates for the majority of the membership which was over 85 percent female by the 1970s. By the 1980s the union was led by women, who championed the pay equity cause.

The threat that women's cheaper labour presented to men's jobs needs to be understood in terms of men's own fluctuating participation in the local labour market during the First and Second World Wars. The timing of policy changes is significant. The 1914 Public Service Association conference called for 'equal treatment as to pay and privileges for female employees'; in 1921 the government stopped appointing female cadets and until 1947 hired women clerks only as 'temporary' workers. The Public Service Women's Committee first campaigned for equal pay in 1944. In 1942 women were hired as tram drivers on equal pay, but in 1945 the Tramways Union refused further membership to women and asked employers to dismiss women drivers; no more were hired until 1956.[19]

Centralised wage fixing through the Arbitration Court benefited low-paid women. Minimum rates and conditions set by awards contributed to a smaller gender pay gap in New Zealand than in most comparable countries.[20] However, state arbitration also institutionalised inequality. From 1947 the Court formally espoused the policy of a 'family wage' sufficient to 'support a man, his wife and three children to a reasonable standard'. The corollary of this was low female pay rates, thought sufficient for women since they supported no dependents and would be supported by men when they married — an assumption which was at odds with reality.

Women and their unions soon began to protest this arbitrated inequality. Initially mounted within the established frameworks for wage arbitration, this protest was soon taken into the political arena by demands for specific legislation to change the arbitration

framework. The timing of enactment is to be noted for its bearing on electoral politics.

In 1954, 70 public service women lodged appeals against discriminatory promotion practices. The Public Service Commission responded to a 1956 test case by transferring a woman high on the female scale to the bottom of the male career path — at two-thirds the salary.[21] This outcome ensured widespread support from women for a campaign to change the legislative framework within which such decisions were possible. In 1957 the Council for Equal Pay and Opportunity, which consisted of public service women, a wide range of women's organisations, and private sector unions with large female memberships, was formed. This political pressure resulted in the 1960 Government Service Equal Pay Act giving the same 'rate for the job' to women and men.

Through the 1950s both National and Labour governments had abstained on the International Labour Organisation's Convention on Discrimination in Employment, despite a commitment to equal pay in Labour's 1957 manifesto. Under Labour, the Public Service Commission lobbied against equal pay, arguing publicly against loss of the 'social' element in men's wages, as an injustice to men which would affect family living standards. To the Prime Minister in private they warned of economic and fiscal costs. The Act was passed just weeks before the 1960 election. At this point, despite previous opposition, National MPs expressed support for the Act, criticising Labour only for delays.[22] National won the election and implemented the Act.

It was twelve years before this success in the public sector was extended to women in the private sector. In 1964 and 1969, the Clerical Workers Association took equal pay claims to the Arbitration Court, meeting 'a wall of silence' from employers, arbitrators and many male unionists.[23] The 1969 Federation of Labour conference, at which only 3 percent of delegates were women, rejected a policy remit on equal pay.[24] In 1963, an unexpected champion of women's rights, the Freezing Workers Union, had adopted an equal pay policy — and used it to block the women's entry to freezing-works' jobs as cheaper labour. Local labour shortages meant women were eventually employed in meat-processing, but employers were obliged under their award to consult the union on which occupations would be feminised.[25]

Through the 1960s, the Council for Equal Pay and Opportunity and unions representing women's occupations lobbied and organised public meetings, developing more effective and enjoyable ways of rallying women, such as lunchtime concerts and fashion parades in downtown Auckland.[26] The Equal Pay Act 1972 abolishing unequal male and female pay rates was eventually passed under a National government just one month before the election of a new Labour government, which moved to compress the implementation period to five years.

Despite employer predictions, the economy did not crumble. Between 1972 and 1977 the gender pay gap narrowed by between seven and ten percent, but this contributed only three percent to the 64 percent inflation over the period.[27] By the end of the 1970s, it was clear that the Act could not close the earnings gap since women and men were mostly employed in quite different occupations. A more sophisticated instrument was needed.

In the late 1970s women began another campaign, to bring the weight of the union movement behind women's issues. They sought adoption of a Working Women's Charter, developed from similar charters in Australia and Britain.[28] Items 3 and 4 of the Charter called for equal pay for work of equal value, and equal employment opportunity. What made the Charter controversial was Item 15 supporting radical feminist demands for safe, legal contraception, sterilisation and abortion. Against vociferous opposition from male unionists and anti-abortion women's groups, union women took the Charter out to workplaces, where it received strong support from members. The vote at the 1980 Federation of Labour Conference was carried by the membership cards of the large female-dominated unions. Once it became Federation of Labour policy, the Charter was adopted by affiliated unions — in 1981 by the Public Service Association and Post Primary Teachers Association, where women were well organised, and in 1986 by the female-dominated but male-led Hotel and Hospital Workers Unions.

The Clerical Workers Association tried unsuccessfully to bring equal pay for work of equal value in to direct negotiations with employers. In 1986 they took a case to the Arbitration Court to test the limits of the 1972 Act,[29] arguing that the standard clerical rate had now fallen to a 'depressed female rate of pay',

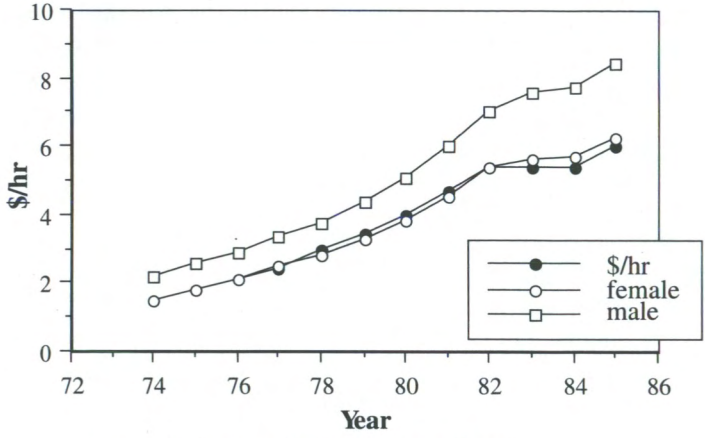

Figure 1: Average Ordinary Time Hourly Earnings in the Private Sector, 1974-1985

making appropriate a further review under the Equal Pay Act (see Figure 1). They argued further that equal pay comparisons between typically-female occupations and a 'notional male rate' could be made under clause 3(1)(b) of the Act:

> For work which is exclusively or predominantly performed by female employees, the rate of remuneration that would be paid to male employees with the same, or substantially similar, skills responsibility and service performing the work under the same, or substantially similar, conditions and with the same or substantially similar effort.

The Court declined jurisdiction under the Act to address these issues. This result was not unexpected, and cleared the way for a fresh political campaign for more appropriate legislation.

In February 1987 women were earning just 79 percent of the average hourly ordinary-time earnings of men[30] and 73 percent of their average weekly earnings,[31] that is around $100 less per week. Although average hourly ordinary-time earnings are by far the most favourable comparison between women's and men's earnings, they

reflect both women's concentration in low-paid occupations and the low value placed on the work they do.[32]

The campaign to get equal pay for women for work of equal value with men's was an international campaign. Union women had brought the concept back from Australia in the mid-1980s. Similar campaigns in other countries were resulting in various forms of legislation.[33] Publications and expert visitors helped share information and tactics — even cartoons — between countries.

The new campaign was coordinated through the Coalition for Equal Value Equal Pay (CEVEP). It drew on 1970s Women's Liberation Movement tactics to draw public attention to the issue and to rally support in ways which suited women — marches, demonstrations and street theatre, seminars, concerts and dances, car-stickers, badges, t-shirts and teatowels.[34] The Clerical Workers unions and the Distribution Workers unions led the way on pay equity, while the Bank Officers Union developed expertise on equal employment opportunity. Other unions and union women's committees were also involved, and a wide range of women's organisations, both urban and provincial, joined the campaign.[35] Women working in key state departments and the Labour Party were also pushing the issue,[36] but it was the demonstrated support of large numbers of women that gave the campaign its political force.

As a result, in 1986 the Labour government commissioned a study of the gender pay gap and its contributing factors.[37] This identified that fourteen of the nineteen lowest-paid industrial groupings were female-dominated. A government Working Party was established which reviewed overseas legislation. Recommendations from its 1988 report were incorporated into the first draft of the Employment Equity Bill.[38]

By the late 1980s feminist analysis had developed beyond equal pay to an understanding of the labour market as structured by gender and race, as well as class. The devaluation of women's traditional occupations and gender segregation at work were recognised as dialectically related and the most important cause of the gender pay gap.[39] When Minnesota introduced pay equity for state employees, within two years there was a nineteen percent increase in women entering non-traditional areas, suggesting that monetary recognition of women's skills encourages diversity

Equal Pay	Women and men get the same pay for same job.
Pay Equity	Women and men get same pay for different jobs with comparable skill, effort, responsibility and conditions of work.
Comparable Worth Assessment	Job evaluations and comparisons based on skill, effort, responsibility, conditions of work (Issues of gender bias in methodology).
Equal Employment Opportunity	Aims to improve distribution of women, Maori and Pacific Islanders and disabled workers in better-paying jobs and positions of responsibility. Anti-disciminatory, encouraging training. Not affirmative action, targets or quotas.
Employment Equity	All of the above.

Figure 2: Definitions

of employment.[40] There is a strong association between the occupations in which women are concentrated in paid work and women's unpaid labour in the family, which allows their skills to be devalued as merely 'natural' to women. The solution for the longer term might include access to the same range of occupations as men, but the campaign for comparable worth assessments between female-dominated and male-dominated jobs was an immediate demand for a revaluation of women's labour and

social worth to be reflected in their pay.[41] The central demand implied not sameness, but parity, with men.[42] The Coalition for Equal Value Equal Pay sought legislation that would address the gender pay gap using both pay equity and equal employment opportunity. Equal employment opportunity programmes would address labour-market segregation. Pay equity would address the undervaluing of the jobs women do.

Equal Employment Opportunity

Legislation on equal employment opportunity has been broader in New Zealand than, for example, in Britain or the United States, in addressing the labour market position of Maori, Pacific Island people and people with disabilities as well as all women.[43] Addressed in combination with pay equity, however, it was women's labour-market concentration — including that of Maori and Pacific Island women — that was the central issue of the campaign.

The 1986 Census showed that three quarters of New Zealand women were employed in eight occupational areas: general clerical, typing, bookkeeping, sales, service work, medical/dental/veterinary, teaching and clothes sewing.[44] Maori and Pacific Island women were yet more concentrated in manufacturing and service work.[45] Although clothing work has decreased, the 1991 Census confirms this concentration. When broad occupational categories are disaggregated to specific jobs, segregation by gender becomes even more marked. This labour-market concentration carries through to part-time work and unemployment. Women are three quarters of the part-time workforce, mainly in the service sector, while Maori and Pacific Island people, both women and men, disproportionately bear the brunt of unemployment.[46]

Labour-market analysis by the Ministry of Women's Affairs shows that gender segregation at work has not decreased in twenty years. Any effect of new mixed-gender occupations is being 'swamped' as most labour-force growth is absorbed into traditional gendered occupations.[47] Despite a Labour Department 'Girls Can Do Anything' promotion, only about 300 women a year enter traditionally-male apprenticeships. The proportion of women in administration and management rose from ten percent in the

1970s to 22 percent in 1990, but this does not indicate the vertical segregation within management hierarchies.[48] Women are now half the medical and law students, but tend to enter gender-specific, lower-paid specialties in both professions.[49]

A small legislative step towards change was made in the State Sector Act 1988 which required government departments as 'good employers' to introduce equal employment opportunity programmes. The Act defined these as the:

> Identification and elimination of all aspects of policies, procedures and other institutional barriers that cause or perpetuate or tend to cause or perpetuate inequality in respect of the employment of any person or groups of persons.

A further clause stipulated that appointments be made on merit. Equal Employment Opportunity was thus defined as removing barriers and discrimination; there was no suggestion of affirmative action, targets or quotas. Each department was to develop a programme and report on progress, but there were no sanctions for non-compliance. As this legislation was being enacted, Public Service Association officials reported that women were losing ground as state trading departments were restructured as State Owned Enterprises. The Employment Equity Act 1990 extended the equal employment opportunity provisions of the State Sector Act to State Owned Enterprises, Area Health Boards, and local authorities with more than 50 employees, and to private sector employers with more than 100 employees. Requirements were spelled out in more detail and backed by a fine of up to $5,000.

The 1990 Act specified that programmes were to target women, Maori and Pacific Island people, both women and men, and people with disabilities. Organisations for people with disabilities showed great interest in the campaign for legislation, but Maori and Pacific Island people did not pick up on the issue strongly. This was partly because of other priorities, particularly for Maori in 1990, and partly because of the perceived limited relevance of the policy itself. In the Act, discrimination against those groups was conceptualised in terms of prejudice against particular groups in hiring and promotion practices. Since the occupations in which Maori and Pacific Island women are concentrated have little or no career path, and employers in these sectors often show preference

for hiring Maori and Pacific Island workers, this conception of discrimination was not seen as relevant to these workers. Service Workers Union officials reported that many members did not see equal employment opportunity programmes as a useful strategy for themselves, but when comparable worth assessments were explained, pay equity was recognised as a way to increase wages.

The Coalition for Equal Value Equal Pay considered equal employment opportunity crucial to changing the way the labour market works against women in the long term. However, many women choose their field of work and consider it to have real social value, even if this is not reflected in pay rates. Higher rates of pay are not necessarily a reason for a woman to prefer being a skilled printer or mechanic to being a skilled accounts clerk or nurse. Pay equity is a strategy that values the work women do.

Equal Pay for Work of Equal Value

The Working Party on employment equity identified human capital factors, such as differences in qualifications and years of experience, as accounting for some of the difference in earnings between women and men. However, this could not account for about one third of the gender pay gap, which the report attributed to discrimination.[50] This was to be targeted through assessments comparing the skill, effort, responsibility and conditions of work in female-dominated jobs with male-dominated jobs.

Despite alarmed and ill-informed responses to the Wilson report in employers' journals,[51] comparable worth evaluations are not a feminist fantasy, but a standard management tool employed to set or review reward levels in large hierarchical organisations by comparing, not tasks, but qualities required by the job. The scoring and ranking of qualities is, however, ultimately subjective and may be gender-biased.[52] For example, although human relations skills are often the reason women are hired for particular jobs, the commonly-used Hayes Job Evaluation System rates these skills low in relation to technical knowledge; responsibility for money is rated higher than responsibility for patients or children. The Wilson report recommended that the gender bias in existing assessment methodologies be addressed.

Women working through the Coalition for Equal Pay Equal Value and the new New Zealand Council of Trade Unions identified several principles which they considered fundamental to effective legislation.[53] It should cover both pay equity and equal employment opportunity and be separate from other industrial relations legislation so that it could not be traded against other negotiable items. An independent bureau should carry out and monitor the assessments so as not to create a market niche for lawyers beyond the budget of working women. Both individual and class actions should be provided for so as not to limit the application of assessments to individual firms as in Britain. Assessments should be binding on employers. The importance of this had been demonstrated when, with arbitration made voluntary, employers simply walked away from award negotiations in 1989. Three major awards for clerical work, licensed hotels and tearooms and restaurants — all female-dominated occupations with scattered, industrially-weak workforces — remained unsettled for over a year. The Working Party believed that such legislation would be the most effective introduced in any country so far. New Zealand's centralised system of wage negotiation through occupational awards which reflected women's labour-market concentration[54] meant that pay equity adjustments could be delivered to very large numbers of women.

Submissions on the Wilson report and intense lobbying around the Bill introduced in 1989 came not only from unions and women's groups but also from employers, whose opposition to pay equity had been mounting for some time. The lobby of the New Zealand Business Roundtable was framed in terms of costs to an economy in recession and consequent loss of employment to women themselves, and was part of a more general lobby for a deregulated more competitive labour market and enterprise-based bargaining.[55]

What was at stake in the pay equity debate was wage rates and labour costs; what was being contested was the agreed basis of payment for labour. Since the Standard Wage Case of 1938 wage rate arguments rested on living costs, once deemed higher for men for 'social' reasons. Proponents of pay equity argued that wage rates should be non-discriminatory and reflect comparable qualities required by the job, not differences between people.

Employers' organisations not only opposed a state regulated increase in women's wages but were seeking a shift to wage rates determined by competition, market forces and an employer's ability to pay. Their arguments showed slippage between the way auctions or commodity markets work and the very different functioning of the market for labour, which cannot be separated from the needs and lives of the people who provide it.[56]

A comparison of the Bill at second and third readings shows the compromises built into the Act under pressure from employers. The Act passed in September 1990 established an Employment Equity Commission to make independent equity assessments on the basis of claims by any union (or group of twenty women) for a female-dominated occupation to be compared with two comparable male-dominated occupations. However, once assessed, wage rates would not be automatically adjusted as a matter of justice; both the amount and the implementation period were to be subject to negotiation in the next award round. No matter what the outcome, no further review would be permissible for five years.

However, women unionists were determined to make pay equity work. When the Commission opened in October 1990, ten claims were lodged by large female-dominated unions (see Figure 3). It was already clear, however, that Labour would lose the November 1990 election. National repealed the Employment Equity Act only three months after it was enacted. Before the Commission was disbanded, however, it produced a gender-neutral methodology for pay equity assessments.[57] National then introduced a Social Security Amendment Act cutting benefits and the Employment Contracts Act 1991, which fragmented national awards into enterprise negotiations. In addition to other adverse effects on women's negotiating power, this removed the mechanism by which pay equity adjustments would have been delivered. Together, these three legislative changes 'liberalised' the labour market to ensure a low-wage, competitive economy. The adverse impact on women, Maori, Pacific Island people and young people is now beginning to be felt. In February 1993, for the first time labour force statistics showed a slight widening of the gender pay gap.[58]

National was prepared to consider equal employment opportunity. In January 1991 a Working Party was established with terms

NZ Nurses Union:		
practice nurses	cf	uniformed police environmental health officers
hospital aides	cf	ambulance drivers
Clerical Workers Union:		
medical receptionists	cf	university caretakers hospital electrical workers
Distribution Workers Union:		
Farmers dept store cosmetic saleswomen	cf	auto-parts salesmen
supermarket checkout supervisors	cf	hospital head orderlies
Service Workers Union:		
residential caregivers	cf	prison officers hospital fitters
resthome assistants	cf	hospital fitters university caretakers
resthome cooks	cf	hospital fitters sous-chefs
hospital domestic supervisors	cf	hospital fitters special duty orderlies
Public Service Assn:		
children's vision and hearing testers	cf	animal health inspectors

Figure 3: Union Pay Equity Claims, October 1990

of reference restricted to equal employment opportunity. Nevertheless its report referred to the important link between equal employment opportunity and the devaluing of skills developed by women's traditional caring, nurturing role.[59] In June 1991 Labour MP Helen Clark introduced a private member's Bill to re-enact the EEO aspects of the Employment Equity Act; this languished in a select committee. National saw EEO as an issue best pursued voluntarily; private sector employers should be encouraged to

consider it part of modern human resource management.[60] To this end, they established an Equal Employment Opportunity Trust, with a funding budget one tenth that earmarked for employment equity under Labour. Unions and women's groups have established some interesting projects, funded by the Trust, while waiting for a change of climate.

The situation is that women have lost an important piece of legislation to address pay equity through comparable worth assessments. The 1972 Equal Pay Act remains in force, and may have some limited application under the Employment Contracts Act.[61] The equal employment opportunity requirements of the State Sector Act still stand, but progress there is being undercut by constant state-sector restructuring. With or without pay equity legislation, the shift from awards to enterprise-based bargaining has severely undermined the collective negotiating power of scattered workforces of women.

The State as Employer

This historical account of employment equity shows how women have worked through a series of arenas — the arbitration system, the lobby for legislation, the union movement, electoral politics — to get women's interests onto the agenda of male-dominated institutions. When blocked in one arena, we have tried in another to secure wider support and authorisation at a higher level to change the rules of the primary struggle. This 'feminist judo' has used the voting power of women's numbers to secure the power of the state (or the union movement) in one arena for use in another. What we have drawn on is political power, and we have found it in those institutional forms or political arenas where women — so often fragmented — are able to demonstrate collective strength.

Over the century, women have demonstrated a great deal of political power, from the petitions that helped achieved suffrage to the campaign to push pay equity up the political agenda. Why has it not been effective with this National government? The Government Service Equal Pay Act 1960 and the Equal Pay Act 1972 were both enacted by governments immediately before an election in which power was predicted to change hands. Then, too,

the issue had to be pushed politically by women. Once it became an election issue it was accepted by both parties. The 1984 election demonstrated to Labour that they could secure a 'women's vote', if women were offered something specific that could override their general concerns about unemployment, health and education. In 1990 those wider concerns won out among Labour voters. Yet women had demonstrated a support for employment equity legislation that crossed party boundaries. Why wasn't women's strong support for the Act, demonstrated over five years, sufficient to secure employment equity legislation this time?

Part of the answer lies in the differences in free market orientation and in legitimation needs between the political parties. In the Labour Government's last years there was a growing contradiction between progress made on equity issues for women and Maori, and economic policies and social service retrenchments which adversely affected both groups.[62] One hand gave women pay equity, while the other limited award rounds to two percent and had already removed compulsory arbitration. Despite National's history of government intervention, the individualism and competition of free-market philosophy fitted its traditional electoral constituency better than Labour's. Crucial, however, to the position of both governments were the changing interests of the state itself.

As a set of departments and services affected by economic recession, the state has its own position in the economy and in the corporatist arrangements between capital and labour. What Claus Offe calls the contradictions of the welfare state have been amply illustrated by policy shifts through the current recession. The supposed neutrality of the state as liberal arbitrator has been undermined by its ultimate dependence on the success of capitalism for tax revenue to fund its social services and equity promises.[63] As 'managers' of the economy, governments have a stake in the 'historic compromise' between capital and labour, whose interests diverge in times of recession. Recent governments have been swayed on economic and industrial relations issues by the interests of large employers, both through their dependence on capitalist success for state revenue and also by their own position as 'managers' of a complex state 'enterprise' employing a large female-dominated workforce.

As tax revenue shrank under global and domestic recession through the 1980s, governments of both parties tackled the deficit by reducing state expenditure. As politicians, they have distanced themselves from the social and political consequences of funding cuts and redundancies by 'devolving' management decisions to other state arenas — State-Owned Enterprises, Area Health Boards, school boards of trustees — while controlling costs and policy directions through tight budgets and tighter employment relations.[64] The state remains the ultimate employer, however, and like any major employer has an interest in labour-market deregulation to lower wage costs. As a major employer of women who staff social services, health and education, the position of either government on pay equity is far from neutral.

The compromises in the Employment Equity Act under Labour and its repeal by National should be considered, then, in terms of the interests of a large employer. In line with the individualism underlying free-market economics and the present Employment Contracts Act, there was acceptance by large employers and by National of equal employment opportunity, which can offer low-cost human resource and public relations benefits. Interpreted largely in terms of managerial career paths, it makes little difference to profitability if an existing position, costed at a particular salary, is filled by a suitable woman, man, Maori or disabled person. However, pay equity written into awards would raise labour costs at lower but much wider levels of organisational hierarchies. Pay equity was rejected by employers' associations despite an estimation in the Wilson report that an improvement of between three and six percent in women's wages could be achieved for a mere 2.5 percent increase in the total wage bill.[65] The Business Roundtable's position was that pay equity was state interference in the market; both the equal employment opportunity cause and women themselves would be better served by a properly-functioning, deregulated labour market in which they would be free to negotiate contracts to suit their needs.[66] These arguments have been refuted in detail.[67]

A link of ideology — even of language — between Business Roundtable and Employers Federation publications and eventual

government policy on both employment equity and the Employment Contracts Act can be traced through Treasury briefings to incoming governments. This advice related not just to the private sector but to the state's own female-dominated labour force. In 1987, the advice of Treasury — as state accountant — to the Labour Government — as state employer — on pay equity was:

> We see equity objectives as being best met not through detailed labour market regulation but mostly through other means especially the tax/benefit and education systems. Regulatory intervention can have high costs in terms of economic performance and therefore employment opportunity for disadvantaged groups. Conversely the consequences of a better functioning labour market are felt in widespread income growth and lower unemployment.[68]

This quotation merits a close reading. Since the regulatory intervention and disadvantage under discussion relate to the underpayment of women and discriminatory employment practices against women, Maori, Pacific Island people and the disabled, this appears to reflect a belief that the 'disadvantage' lies in the groups themselves, not in their treatment by employers. The paragraph carries ideas which appear repeatedly in employers' publications already mentioned, expressed more overtly than by Treasury. By demanding a fairer wage these people are pricing themselves out of a job; conversely, if they price themselves at their true market worth, unemployment would decrease. Two jobs paid less than a living wage might grow where one was sufficient to do the work before.

Despite the effects of low wages and unemployment on the domestic market and the government deficit by the late 1980s, employers' associations continued to demand a deregulated and competitive labour market as the key to economic recovery. If this solution is given credence, the repeal of the Employment Equity Act, the continued undervaluing of women's work and the greater impact on women of the Employment Contracts Act are a necessary part of achieving the 'efficient' (low-wage) and 'flexible' (casualised) labour market which will stimulate the economy; that is, women will help pay for the recovery. The same logic could suggest that pre-1972 female rates of pay underwrote the prosperity of the 1950s and 1960s. Even to a non-economist and a strong

feminist, it seems there must be more to recession and prosperity than this.

Yet two years after the Employment Contracts Act implemented most of the Business Roundtable's agenda, there is little evidence of Treasury's 'widespread income growth and lower unemployment'. As the 1993 election approaches, there are rumours of economic recovery. Just whose economic recovery is never mentioned, but clearly not women's.

A century after the first call for equal pay, we have still not achieved equality in the labour market, though in the 1970s and 1980s we did make remarkable advances. We are now slipping back to the situation before 1936, with low-paid typically-female occupations becoming rapidly deunionised and the gender pay gap widening. Pay equity has slid to the bottom of even our own priority list as we are forced to take industrial action, at the risk of our jobs, to save our penal rates, our basic pay and our right to negotiate collectively. For many, just keeping a job seems more important.

This situation has been brought about by rapid legislative change by the National government since 1990, but slower changes detrimental to women workers were already under way under the previous Labour government. A political strategy of using state power has been successful for women, particularly at times of high unemployment when our direct negotiating power with employers is at its weakest. How and where can we use that political power and the 'feminist judo' strategy more consciously and effectively? The sharp lesson of the 1990s is that what the state gives, the state can take away. But the power that we give the state can also be removed. The underlying strategy of our past successes — the collective, political power of women — is something to be reconsidered, reworked and used again.

This year's election and referendum will go outside the established political arena to 'change the government, change the system'.[69] We need to ensure that the new electoral arena which results is one in which women's interests can at last be proportionately represented.

Pay equity may be on the back burner for the moment, but it will not be forgotten by women as long as inequality continues.

* * *

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30. This had risen to 80 percent by 1990 and 81.3 percent at the time of writing. However, first assessments of the impact of the Employment Contracts Act indicate that women's pay is already slipping relative to men's. See Suzanne Hammond and Raymond Harbridge, 'The Impact of the Employment Contracts Act on Women at Work', *New Zealand Journal of Industrial Relations*, 18:1 (1993) pp. 15–30.
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32. However, comparisons of hourly rates and weekly rates based on Fulltime Equivalents obscure women's lower access to earnings because of such factors as slightly shorter 'office hours', less overtime, and high concentration in part-time and casualised employment. The average earnings of all women in paid work in February 1987 were 63 percent of average male earnings. The wider range of men's earnings affects this average; when total earnings are compared, women earned 51 percent of the income men earned. This situation is a crucial factor in constructing women's 'choices' and their continuing subordination at home and at work See Sylvia Walby, *Patriarchy at Work* (Polity Press, Cambridge, 1986).
33. Wilson, *Towards Employment Equity*, pp. 15–18; Prue Hyman, 'The Fight for Equal Pay for Work of Equal Value (Comparable Worth) in New Zealand: Lessons from Past Campaigns in New Zealand and Elsewhere', (unpublished paper presented to 7th Berkshire Conference on the History of Women, 1987).
34. Alex Woodley, 'One Step Forwards, Two Steps Backwards: The Pay Equity Campaign, a Case Study in Political Strategy' (unpublished research essay, Department of Sociology, University of Auckland, 1993).
35. In particular, the Nurses Union, Post Primary Teachers Association, Public Service Association women, Working Women's Resource Centre, as well as the New Zealand Council of Trade Union's regional women's committees. Non-union women's organisations

included the Women's Electoral Lobby, the Federation of University Women, Zonta, the Business and Professional Women's Association, YWCA, Women's Refuge, Womanline. Still active on the issue were the Council for Equal Pay and Opportunity, and the National Council of Women.

36. Wilson, 'Employment Equity Act 1990'.
37. Hyman and Clark, p. 20.
38. Wilson, *Towards Employment Equity*, pp. 25 – 37.
39. Walby, *Gender Segregation at Work*, p. 2; Ronnie Steinberg, 'Social Construction of Skill: Gender, Power and Comparable Worth', *Journal of Work and Occupations*, 17:4 (1990) pp. 449 – 482.
40. New Zealand Clerical Workers Association, 'Submission on *Towards Employment Equity*' (1988).
41. Female or male dominance was defined in the Act as 60 percent or more.
42. Cynthia Cockburn, *In the Way of Women: Men's Resistance to Sex Equality in Organisations* (ILO Press, London, 1991) p. 11.
43. Trudie McNaughton, Equal Employment Opportunities Trust, 'Where to with EEO?' (paper presented to 'Women at Work' Seminar, Industrial Relations Centre, Victoria University, Wellington, 1993).
44. Department of Labour, 'Facts on Women in the Paid Workforce' (Department of Labour, Wellington, 1988). The 1991 Census shows 31.2 percent of women work in the specific jobs of sales assistant, general clerk, secretary, accounts clerk, registered nurse, primary school teacher and cleaner (in order of concentration).
45. National Advisory Council on the Employment of Women, *Crossing the Boundaries: The State, The Economy and Women's Employment, 1984 – 1990* (Department of Labour, Wellington, 1990) pp. 61 – 94; Ministry of Women's Affairs, 'Occupational Segregation: A Discussion Paper' (unpublished, 1991). The downturn in domestic manufacturing has affected clothing work for Maori women; the 1991 Census figures show Maori and Pacific Island women concentrated in clerical and service/sales, with Pacific Island women also in factory work.
46. *Crossing the Boundaries*, pp. 66 – 74.
47. 'Occupational Segregation', p. 15. This refers to 1986 Census figures but is about to be published including 1991 figures.
48. ibid., pp. 31 – 37.
49. Georgina Murray, 'Sharing in the Shingles: Women Class and Ethnicity: The Generation and Distribution of Rewards in the New Zealand Legal Profession' (unpublished MA Thesis, University of

Auckland, 1984); Gillian Durham, Clare Salmond and Julie Eberly, *Women and Men in Medicine: The Career Experiences* (Department of Health, Wellington, 1989).

50. Wilson, *Towards Employment Equity*, p. 12.
51. For example, The New Zealand Employers Federation, 'Pay Equity—The Effects on Relativities' (September 1989); Barbara Burton, 'Pay Equity—The Present Position', *The Employer* (April 1989) p. 1; Andy Gregory 'Earnings Differences Unavoidable' and 'The Pay Equity Debate', *The Employer* (August 1989) p. 2.
52. Clare Burton with Raven Hag, *Women's Worth: Pay Equity and Job Evaluation in Australia* (Australian Government Publishing Service, Canberra, 1987).
53. New Zealand Council of Trade Unions Pay Equity Working Party, *Fundamental Principles for Guiding the Pay Equity Process* (New Zealand Council of Trade Unions, Wellington, 1989).
54. Linda Hill, 'Labour Market Segregation and the Case for Occupational Unions' (unpublished paper, 1991).
55. Penelope Brook, 'Reform of the Labour Market', in Simon Walker (ed.), *Rogernomics: Reshaping New Zealand's Economy* (New Zealand Centre for Independent Studies, Auckland, 1989) pp. 183–207; Suzanne Smith, 'Fish-hooks in Comparable Worth Debate', *Auckland Star*, 9 October 1989, p. 7; 'Bill Birch Encourages Employers', *The Employer*, October 1989, p. 3; Penelope Brook, *The Inequity of Pay Equity: Comparable Worth Policy in New Zealand* (New Zealand Centre for Independent Studies, Auckland, 1990). For labour market deregulation, see New Zealand Business Roundtable, *Review of the Operation of the Labour Relations Act* (New Zealand Business Roundtable, Wellington, 1987); *Freedom in Employment: Why New Zealand Needs a Flexible, Decentralised Labour Market* (New Zealand Business Roundtable, Wellington, 1987); *Labour Markets and Employment: Statements of Labour Relations* (New Zealand Business Roundtable, Wellington, 1988) ; Penelope Brook, *Freedom at Work*, (Oxford University Press, Auckland, 1990).
56. Brian Easton, 'The Labour Market and Economic Liberalisation', in A. Bollard and R. A. Buckle (eds.), *Economic Liberalisation in New Zealand* (Allen and Unwin, Wellington, 1987) pp. 181–91; Public Service Association, *Deregulation of the Labour Market: A PSA Response* (Public Service Association, Wellington, 1991).
57. Department of Labour/State Services Commission, *Equity At Work* (Government Print, Wellington, 1991).
58. Department of Statistics, *Household Labour Force Survey*, February, 1993. See also Peter Conway, 'National's Blitz: Labour Market

Reform', *Race Gender Class*, 11/12 (1991) pp. 2–9; Linda Hill, 'Women and the Employment Contracts Act' (paper presented to New Zealand Women's Studies Association Conference, Auckland Region, 1992); Hammond and Harbridge; Linda Hill and Rosemary Du Plessis, 'Tracing the Similarities, Identifying the Differences: Women and the Employment Contracts Act', *New Zealand Journal of Industrial Relations*, 18:1 (1993) pp. 31–43.

59. *Report of the Working Party on Equity in Employment*, (Government Print, Wellington, 1991), p. 11.
60. McNaughton.
61. Prue Hyman, 'Equal Pay for Women after the Employment Contracts Act: Legislation and Practice — the Emperor with No Clothes?' *New Zealand Journal of Industrial Relations*, 18:1 (1993) pp. 44–57.
62. Rosemary Du Plessis Novitz, 'Snakes and Ladders: Feminism and the State', *Race Gender Class*, 11/12 (1991). Pringle and Watson point out, however, that if policy outcomes result from discursive struggle in the different arenas constituting the state, we should expect contradiction rather than coherence (p. 63).
63. Offe, *Contradictions of the Welfare State*, p. 120.
64. Linda Hill, 'Labour Market Deregulation and the State as Employer' (paper presented to Social Policy Conference, Wellington, 1992).
65. Wilson, *Towards Employment Equity*, p. 14.
66. Brook, 'Reform of the Labour Market', p. 185; *The Inequity of Pay Equity*.
67. Rosemary Du Plessis Novitz and Nabila Jaber, 'Pay Equity, the "Free" Market and State Intervention', *New Zealand Journal of Industrial Relations*, 15 (1990), pp. 251–262.
68. New Zealand Treasury, 'Government Management: Brief to the Incoming Government' (1987) p. 279, pp. 286–7.
69. New Zealand Council of Trade Unions slogan supporting Mixed Member Proportional representation.

Re/presenting Suffrage: Review Essay

Bridget Waldron

Kate Sheppard: The Fight For Women's Votes in New Zealand
Judith Devaliant
Penguin Books, Auckland, 1992. $39.95

The Woman Question: Writings by the Women who Won the Vote
Selected by Margaret Lovell-Smith
New Women's Press, Auckland, 1992. $34.95

The Suffragists: Women Who Worked for the Vote: Essays from The Dictionary of New Zealand Biography
Edited and introduced by Dorothy Page
Bridget Williams Books and the Dictionary of New Zealand Biography/Department of Internal Affairs, Wellington, 1993. $27.95

'Poor hagridden New Zealand', lamented British anti-suffragist Mrs Linn Lynton, presumably with reference to the suffragists.[1] 'If the country is to be saved from destruction at the hands of the wild women', railed the editor of the Tablet, 'it is the women who are sober and respectable who must save it'.[2] Such images seem at odds with the received picture of the suffragists as gentle, sober, motherly types, but indicate that vicious stereotyping of feminists, as seen recently in Murray Ball's *The Sisterhood*, is not a new phenomenon.[3] The nineteenth century feminists were well aware of what Amey Daldy called 'the odium of publicity over our unpopular movement'.[4] Caricatured and ridiculed, they worked hard to counter such images, and as Suffrage Year proceeds it is important to acknowledge the courage shown by these women working at a time when, as Kate Sheppard put it, 'Conventionality rule[d] us with a rod of iron',[5] and to go beyond simplistic, stereotypical versions of what they were about.

Women's Studies Journal, 9:2 (September, 1993).

The centenary of women's Suffrage has provided the impetus for the publication of several books concerning what is generally referred to as 'first wave feminism' in New Zealand. These three titles are welcome additions to the existing historiography, each making a significant contribution to our understanding of the feminists, their aims, and the campaigns they fought to achieve these.

The biography of Kate Sheppard is a painstakingly researched and well-documented book (mistakes in the bibliography not withstanding),[6] which will be most useful as a reference guide and starting point for further research and interpretation of the life of a woman who remains a somewhat enigmatic figure. The limited amount of personal material available to Devaliant has led to an uneven biography weighted very heavily towards a detailed account of the suffrage campaign and the public life of Sheppard. Devaliant's strictly narrative style, while it can be relied upon for its accuracy, does not lend itself well to the biographer's art and the complexities of Sheppard's character are not adequately assessed. Part of the problem, I think, stems from Devaliant's reaction to what she sees as 'the inaccurate and confusing' speculation indulged in by Rachel McAlpine in her fictionalised account of the lives of Sheppard, Ada Wells and her daughter Bim in *Farewell Speech*.[7] Where there is a shortage of material, biography must to some extent be a speculative and imaginative exercise. Indeed Devaliant, in spite of her criticisms of McAlpine, cannot resist a few forays into speculation of her own. Most of these are on rather trivial matters, although she does hazard some guesses as to the nature of the relationship between Kate and her first husband Walter. On the controversial subject of Sheppard's relationship with William Lovell-Smith and his wife Jennie, she is more hesitant and perhaps allows her obvious liking and respect for her subject to prevent her from looking more closely at those aspects of Sheppard's personality which allowed her to form the relationship with Lovell-Smith despite what is clearly, at times, Jennie's distress. Devaliant's assumption that a 'platonic' relationship rather than a sexual one would have been less threatening to Jennie is a view which questionably privileges sexual aspects of relationships. Devaliant seems to overreact both to McAlpine's efforts to claim a more substantial role for Wells in

the suffrage struggle, and to her suggestion of a close relationship between the two women, by going too far in the opposite direction and all but writing Wells out of the story. Perhaps it would have been wiser to avoid such reaction and let *Farewell Speech* stand as the work of imagination it is. This may have freed Devaliant to be bolder about interpreting Sheppard's life in her own way, with the understanding that it is impossible to 'objectively' recreate another's life in words, no matter how accurate the 'facts'.

I can't help but feel that perhaps the book was, in the end, rushed into production for Suffrage Year. If so, it is a pity since the biography represents 15 years of work and might well have benefited from some careful editing and rewriting. Despite its limitations, however, it brings together a tremendous amount of interesting and new material, and is testimony to the dedication, energy, political astuteness and superb organising skills of Kate Sheppard. This is not to say that other suffragists lacked these abilities, but in Sheppard a range of qualities were concentrated in one person which, coupled with her advantages of relative wealth and leisure, made her a formidable force.

The role of the charismatic leader needs to be considered when thinking about Sheppard who was said to have been a woman 'fascinating' to men and women alike. One wonders if a less fascinating woman could have commanded and maintained the commitment and dedication of the chief parliamentary supporters of suffrage, Sir John Hall and Alfred Saunders, to the extent that Sheppard did. Her strength of belief in 'the cause' and her catholicity of outlook saw her undeflected by side issues, and able to keep the suffragists united in spite of resentments over doctrinal differences. Sheppard, who was approvingly described by a contemporary journalist as a woman who 'has not an atom of the woman's rights style about her', managed to defy easy classification by stereotype, thereby allaying some of the fears associated with the women's cause. She was highly articulate, expressing her ideas with a clarity and precision that in itself undermined the argument that women lacked the intellectual skills deemed necessary for participation in political life. Devaliant has not included very much of Sheppard's writing in her biography, and many of the other participants in the suffrage campaign are little more than names.

Thus it is most useful to read the biography in conjunction with *The Woman Question* and *The Suffragists* to enable cross-referencing.

The Suffragists, a collection of entries from the forthcoming second volume of *The Dictionary of New Zealand Biography*, brings together brief life-histories of 28 women who were involved to varying degrees with the Suffrage struggle. It includes several women hitherto largely unknown. Meri Te Tai Mangakahia, for example, who addressed the Kotahitanga parliament calling for women to be allowed to vote for and stand as members, takes her place alongside more familiar names, and Elizabeth Yates, who in 1893 became the first woman mayor in the British Empire, is also rescued from historical oblivion. Yates, it seems, was regarded in some quarters as the archetypal wild woman whose 'rash conduct' is reported to have been cited in the Victorian parliament as epitomising some of the reasons why women should not be given the vote.[8] Several women activists of this period who could not be included in *The Book of New Zealand Women : Ko Kui Ma Te Kaupapa* are to be found here. Gradually a fuller picture of the number and variety of women involved in the nineteenth century women's movement is being built up—a necessary corrective perhaps, to the version of the suffrage story with Kate Sheppard as a one-woman band. In this context it is interesting to note Helen Nicol's description of herself as 'one who worked harder than any other woman in the South Island for the extension of the franchise to every woman'.[9]

Dorothy Page's introduction to *The Suffragists* ably backgrounds the first wave feminist movement in New Zealand and sets it in the international context. It is invaluable as a succinct summary and analysis of the lead up to the suffrage campaign, the passage of the various Bills through parliament and the aftermath of the passing of women's suffrage. Almost all of the entries in this beautifully produced book are illustrated with a photograph, and a tantalisingly short sample of the words of each woman.

While biography can serve to illuminate some aspects of the lives of those involved in a social movement, it also highlights the difficulty of understanding the motivations and aims of those who remain historically and ideologically distant. At times, when seeking to find the threads that linked these women, recurring themes are suggestive of wider questions, for example, the role

of experience in forming and shaping the radical consciousness. But more often than not the women whose life stories are related here remain elusive. To try to comprehend the vision of the future which propelled them, at times against remarkable odds, into a life of dedication to the women's rights movement it is necessary to read their words.

The collection of writing and speeches from an assortment of women activists which makes up *The Woman Question* is enlightening, despite the somewhat limited range of writers and sources represented. It forms an essential companion to the biography of Kate Sheppard, whose writings make up over half the contents. The most valuable thing about the collection is the way in which it reproduces entire articles and speeches rather than extracts which all too often are selected to conform to some preconceived theory and can be quite misleading. It could be said that reading texts removed from their historical context is also a problem, and that the editor's own interests and historical preoccupations are evident in her selection, but nevertheless to have so many key documents from this period made accessible in their entirety in one volume is most useful. I would like to have seen a greater sample from *Daybreak*, partly because the lack of information about its editor Louisa Adams means that she does not feature in biographical collections, but also because its editorial stress on an economic analysis of the woman question foregrounds an aspect of first wave feminist thought which was crucial to much of their theorising.

> If you wish to improve the children, help the parents to earn a decent living and put a good house over their heads. Prosperity is a great purifier.[10]

It is unfortunate that *The Woman Question* is so badly presented. Its layout is particularly poor, making it cramped and unattractive. But as a primary source it fills a gap and allows the sometimes misrepresented suffragists to speak in their own voices. It is wonderful to hear the brilliant clarity and wit of Kate Sheppard, the rousing platform style of Marion Hatton, and the radical voices of Margaret Sievwright and Ada Wells echoing through time. 'Knowledge is power', wrote Wells, 'Therefore let the people seek it'.[11] It makes for engrossing reading and demonstrates, among other things, the extent to which the vote was one of several

campaigns or, more accurately, seen as the means of achieving other ends. Margaret Lovell-Smith includes useful explanatory endnotes and makes some good points in her introduction, including the notable absence of articles addressing Maori issues or written by Maori women.

For Maori women, who would be restricted to voting for four Maori members in a pakeha-dominated parliament, the women's suffrage cause was probably not particularly relevant. As far as the Suffragists go, although there was no question of Maori women being excluded from the suffrage, there appears to have been little, if any, awareness that Maori women might have had other far more pressing concerns at this time. Margaret Sievwright's description of the women of the National Council as 'we who have taken up the white woman's burden of responsibility in this corner of our great empire'[12] suggests that some of these women at least were imbued with notions of racial superiority. The lack of acknowledgement of Maori as the tangata whenua in the Sarah Saunders Page article on land tenure, (pointed out by Lovell-Smith), is also indicative of a singularly myopic vision of justice.[13] The xenophobia shown by some of the feminists, particularly in *Daybreak* where some virulent anti-Chinese sentiment was expressed, has not been included in this collection either, although it should be said that not all shared this view. Anna Stout, for example, dared to publicly oppose her husband on the issue.

I wish that *The Woman Question* and *The Suffragists* had been somehow co-ordinated, as it is a frustrating exercise in some cases to try to follow up on some of *The Suffragists* extracts. For example, I would like to have read Edith Searle Grossman's assertion that 'Womanhood is something so distinct from manhood it leaves its own impress on all its acts and circumstances'[14] in context, and I was disappointed not to find the full text of Meri Te Tai Mangakahia's motion, (although I later located this in *The Book of New Zealand Women/Ko Kui Ma Te Kaupapa*). It also seems odd that some of Anna Stout's writing was not included, but space is always a problem and what has been included provides a wealth of thought-provoking reading.

Dorothy Page has identified two predominant themes in the women's movement: equal rights for women and moral reform of society.[15] Often the two sit uneasily together, as when the feminists

endeavour to argue simultaneously for the vote from the point of view of equal rights as citizens and from the standpoint of bringing what they saw as peculiarly womanly values to bear on the state. For example, in '10 Reasons Why the Women of New Zealand Should Vote', Sheppard argued that in a democracy women had 'an inherent right to a voice in the construction of laws which all must obey' and that women 'suffer[ed] equally with men from all national errors and mistakes'. At the same time she stressed that women voters would have 'a refining and purifying effect' at elections, and that they were 'endowed with a more constant solicitude for the welfare of rising generations'.[16] The problem for feminism of arguing from within the category of women at the same time as attempting to question whether at all times women should be defined solely by their sex or to dismantle the category of women altogether, has been discussed by many theorists, among them Denise Riley in her eloquent series of essays, *'Am I that Name?': Feminism and the Category of 'Women' in History*. In her discussion of British women's suffrage Riley points out the way this problem manifested itself:

> The winding course of later nineteenth and twentieth-century feminisms is strewn with its skirmishes with what we could call over-feminisation, as well as under-feminisation. For often, feminists have had to speak in the same breath in and out of the category of 'women', with exhausting results.[17]

The feminists of the nineteenth century, as would be expected, spoke from within their historical social positioning. They firmly believed that by virtue of their sex they had specific values, interests and skills which had the potential to transform what they saw as the world of masculinity. But by calling for the vote and political representation, equal access to higher education and the professions, and equal pay for equal work, they were clearly challenging the rigid gendered boundaries between male and female spheres of activity and calling into question the notion that at all times women should be defined first and foremost by their sex. On the other hand, they believed that women as a group were significantly different and that the world would be improved by bringing these differences to bear on it. Their received positioning, primarily as mothers and wives, also led them to insist that women had specific interests which needed protection

and to call for recognition and real valuing of women's work in the home. For many of these women, accepting a male normative view of the world whereby insistence on equality (with men) was seen as somehow more desirable than the idea that the differences of women should be given free expression, was not on the agenda. Margaret Sievwright's address to the NCW in 1896 spoke of the new woman as the child of the

> ... great bloodless, sometimes even wordless, revolt of the century ... The new woman is she who has discovered herself—not relatively as mother, wife, sister, but absolutely ... True, she recognises her restrictions, and she further recognises that these restrictions must be struggled against, not in the direction of denying her nature, but rather of shaking off every artificial restraint and repression which will in any way hinder or retard her own full and free development.[18]

Sievwright shared with many of the feminists her view of there being an essential nature of woman which would remain unknown until 'artificial' restrictions were cast off. She was unusual in her perception of the women's movement as revolutionary. Most of the other feminists tended to try to legitimise the women's cause by placing it within the new 'science' of evolutionary theory and attempting to link the notions of progress, feminism, evangelism and the millennium.

Two related themes recur throughout these books. The importance of religious beliefs, and temperance as a motivating force. In our increasingly secular age the importance of religion as the underpinning of much of the nineteenth-century women's movement can be difficult to grasp, but to overlook its importance is to seriously misrepresent the nature of first-wave feminism. Religion was one area from which women could draw on their attributed moral superiority to claim some authority. It gave them a common language in which to express their ideas, and the contradiction between the Christian message and lived experience provided a legitimate point from which they could argue. As with other areas where women's authority derived from sex-specific categorisation, this was not without problems. Malmgreen speaks of 'the complex tension between religion as "opiate" and as embodiment of ideological and institutional sexism, and religion as transcendent and liberating force'.[19] In the case of first wave feminism in

New Zealand, as elsewhere, when speaking of religion, one needs to be more specific and note the predominance of particular Christian denominations amongst the feminists. As Page points out, the 'religious affiliations [of the suffragists], where known, were predominantly nonconformist and evangelical — many were Baptists, Congregationalists, Wesleyans or Unitarians — and Presbyterians were strongly represented'.[20] Three factors seem to be important here; the protestant emphasis on the responsibility of the individual for their own salvation, the relative status accorded to women in the non-conformist denominations and perhaps most importantly, the emphasis on the social gospel and the bringing about of heaven on earth rather than a focus on the afterlife for the realisation of paradise. For the evangelicals, millennial thinking was an important source of motivation. They believed that the world should be purified and prepared for the second coming of Christ and worked with missionary-like zeal to accomplish this. As the century drew to its close, religious millennial thought combined with temporal, which, when coupled with the notions of inevitable progress derived from evolutionary thinking, gave an urgency to movements concerned with purifying and uplifting society. Phillida Bunkle has looked at the extent to which the feminist movement in New Zealand owed its founding philosophy to this millennial impulse and to the way in which the temperance movement was a manifestation of this.[21] Certainly temperance as a motivating force cannot be overstated, although it should be noted that contrary to some assertions, not all the suffragists were temperance supporters — indeed the Franchise Leagues explicitly disassociated themselves from the temperance movement — but the leaders of the movement certainly were. The purification of society, as Bunkle following Mary Douglas, has argued, was closely tied to pollution beliefs. The other element in the temperance campaign however, which is not so often emphasised, is the extent to which temperance was seen as a feminist issue.

Fashions come and go in the women's movement and for many feminists today the issue of prohibition probably seems outdated, quaint and an infringement on the liberty of the individual. (Women subjected to drunken male violence, Aboriginal women marching to demand 'dry' settlements and organisations such as Mothers Against Drunk Driving might not be so sure). But to the

women of the Women's Christian Temperance Union it clearly was a feminist cause. Kate Sheppard argued that drunks infringed on the liberty of women and children to walk at night, that drunken drivers endangered life and limb and that the spending of the family income on alcohol had a direct effect on the welfare of wives and children.[22] Stella Henderson wrote a considered article on a practical ways of creating an alternative alcohol-free social environment.[23] The members of the WCTU were all too aware of the vested financial interests involved in the alcohol industry and clearly identified the drink lobby as being their most vociferous opponents. While it is an over-simplification to portray the attack on alcohol as being an attack on male culture, it was perceived as such at the time in some quarters, and continues to be represented in that way by some writers today.[24] But to these women the damaging effects of alcohol on the well-being and liberty of the whole community were as self-evident as the danger of tobacco smoking is to the anti-smoking lobby today. The aim of temperance, together with the emphasis on good diet, natural methods of healing and dress reform, points to an attempt to focus on the body and to develop a holistic approach to 'the woman question'.

> The adoption of a rational dress which shall take the shape of a two-legged garment is as inevitable as the admission of women to the Franchise.[25]

1993 is not only the centenary of the winning of the vote for women but it is also the centenary of the first time women actually voted in a general election. The suffragists mobilised in an extraordinary fashion to ensure that women enrolled to vote. Although few shared the belief of many opponents of suffrage that women would vote as a group (whether women would be a conservative or socialist force was a matter of dispute), they hoped that women would use their vote thoughtfully and with a realisation of its potential power. There are times (and an election year is perhaps one of them), when, to protect the hard-won achievements of feminists in the past, and to ensure further change, women should not be afraid to act as a group, should not be too quick to dismantle gender as a category of analysis in the name of difference, and should perhaps consider whether

laughing to scorn the concept of 'womanly values' has left a world largely governed in the interests of men firmly in place.

These three books should serve as a reminder that the vote was one of several campaigns fought for by the feminists of the nineteenth century and that in spite of that victory, many of the problems identified by them remain unresolved. While there is much to celebrate in Suffrage Year, we should remember in honouring those women, who worked so hard and at great personal expense, that many of their aims are far from being realised. Whether we accept all of these as desirable is another matter, but we do them a disservice if we allow the myth to be perpetuated that in winning the vote first-wave feminists achieved their one and only goal.

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Notes

1. Cited by Margaret Sievwright in 'The New Woman', *The Woman Question*, p. 116.
2. *The New Zealand Tablet*, September 22, 1893, p. 17.
3. Murray Ball, *The Sisterhood* (Diogenes Designs Ltd, Gisborne, 1993).
4. Cited in Devaliant, p. 179.
5. *The Woman Question*, p. 106.
6. These include an incorrect date of publication for Patricia Grimshaw's book, and some spelling mistakes. A review by Dorothy Page brought these to my attention.
7. Rachel McAlpine, *Farewell Speech* (Penguin Books, Auckland, 1990).
8. Brian Harrison, *Separate Spheres: The Opposition to Women's Suffrage in Britain* (Holmes & Meier, New York, 1978) p. 80.
9. *The Suffragists*, p. 107.
10. *Daybreak*, May 25 1895, p. 2.
11. *The Woman Question*, p. 112.
12. ibid., p. 202.
13. ibid., pp. 217–219.
14. *The Suffragists*, p. 72.
15. ibid., p. 1.
16. *The Woman Question*, p. 66.

17. Denise Riley, *'Am I That Name?': Feminism and the Category of 'Women' in History* (Macmillan Press, Basingstoke, 1988) p. 68.
18. *The Woman Question*, p. 119.
19. Gail Malmgreen (ed.), *Religion in the Lives of English Women, 1790–1930* (Croom Helm, Beckenham, 1986) p. 7.
20. *The Suffragists*, p. 7.
21. Phillida Bunkle, 'The Origins of the Women's Movement in New Zealand: The Women's Christian Temperance Union 1885–1895', in P. Bunkle and B. Hughes (eds.), *Women in New Zealand Society*, (Allen and Unwin, Sydney, 1980) pp. 52–76.
22. *The Woman Question*, p. 42.
23. ibid., pp. 50–57.
24. Tony Simpson, for example, cited in the *Listener*, 15 May 1993, p. 16, suggests that 'what we're celebrating this year could be seen as the centenary of a failed attempt to stop working men from drinking'.
25. *The Woman Question*, p. 172.

Provocation, Sexuality and the Actions of 'Thoroughly Decent Men'

Elisabeth McDonald

The Tale of One Decent Man

In Whakatane on 13 February 1987, Joseph Rerekura was told to leave home by his de facto wife, Carol Ahipene. She told him that she did not love him any more and that she could get another man any time. Thinking that she meant she could get another man to have sex with, Rerekura went out to his car, took out his hunting rifle and returned to the flat. He shot Carol in the head and killed her.

Despite the fact that Rerekura had left the flat to get the gun and then returned to kill Carol, he was acquitted of murder on the basis that Carol provoked him.[1] In appealing his sentence of six years for manslaughter, Mr M. A. Bungay QC stated in the New Zealand Court of Appeal that:

> Rerekura was a man of good character who had until then lived an exemplary life ... Rerekura had already inflicted his own punishment on himself by depriving himself of the company of the woman he loved ... [and he] displayed his high regard for the deceased at his trial by saying nothing in evidence which was derogatory of her.[2]

The Court of Appeal, although dismissing leave to appeal the sentence, had this to say: 'The sentencing Judge described Rerekura as a "thoroughly decent man". That description seems to be entirely apt'.[3]

Provocation as Commentary on Male Sexuality

Murder is a gendered crime. Men kill far more often than women do.[4] When men kill women they live with they do it as an attempt to

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exert power and control over them, to prevent them from leaving or as an expression of jealousy.[5] Nobody claims that the definition of murder should take this social bias into account and yet it does so. It is a definition by exclusion. What fails to be murder may become manslaughter by operation of the partial defence of provocation.[6] The law says that men who deliberately kill because they are under sexual threat are not murderers. Provocation is a defence that is more useful to and more used by men.

In 41 recent New Zealand cases where provocation was relied on, not always successfully (fifteen unreported judgments from 1987 – 1992, 26 reported judgments from 1962 – 1993), only eight were cases of men killing other men in non-domestic situations. In two other cases men killed their relatives (father; sister and brother in law) in non-sex related domestic disputes. Twenty-nine cases concern killing of intimates. In six of these cases, women killed their male intimates.[7] In another three cases, men killed the lovers of their ex-wives or of their sisters. In the remaining 20 cases, the overwhelming majority, men killed their wives or girlfriends, or ex-partners, because they challenged their sexuality. Provocation is demonstrably a defence used primarily to defend male sexuality. Provocation in practice provides conspicuous commentary on the sexual domination and possession of women. Provocation, like rape, is about sexuality.[8]

The classic masculinist apology for the operation of the defence of provocation is found in the words of Mike Bungay:

> [T]he commonest form of provocation is sexual. Men and women taunt one another with their unfaithfulness, add insult to odious comparison. In argument, the other woman is always a better lay, the other man a better screw. If one goes by results, then men are considerably less able to deal with such assaults on their sexuality. I cannot recall a case where a woman accused of murder pleaded sexual provocation. Men do so constantly.[9]

Provocation is a defence to murder in situations where the accused 'understandably' loses self-control due to the actions of the deceased. A psychological explanation for such loss of self-control is defensive behaviour brought on by a threat to a person's self-esteem.[10] The discovery of adultery, the earliest established grounds for provocation,[11] is such a threat to men.[12] At common

law the 'adultery rule' was strictly limited to the killing of a wife actually seen by her husband having sex with another man. The lack of application of the rule to active mistresses and the partner of the potential victim was much lamented.[13] The property right in the body of a wife was the justification for the limitation, as it is for the marital rape exception. Adultery was viewed as 'the highest invasion of property ... a man cannot receive a higher provocation'.[14]

In New Zealand, statutory recognition of property in a woman's body, in the form of the marital rape immunity, no longer exists.[15] Sexual possession of women, however, is still validated through the operation of the law. Provocation, like rape, does not have the same meaning for women because it operates to defend male world visions. In current law, words alone may constitute provocation. Adultery, suspected or real,[16] witnessed or heard of,[17] can successfully found the defence. So too can disparaging remarks about a man's sexual competence,[18] threats to leave him for another,[19] the fact of leaving him for another.[20] In our liberal lifestyle, provocation also operates against de facto wives and girlfriends. The defence of male virility through violence is condoned by the use of this defence. Male sexuality as historical gender domination is protected and confirmed by the partial excuse of provoked killing.

If no man is reasonable when sex is involved,[21] that act of unreasonableness need not be completed at the expense of women's lives. Provoked killing as a partial defence for the killing of women who sexually threaten men operates to entrench a set of norms which can no longer be tolerated as partially excusable. It is not almost acceptable to nearly decapitate a woman because she prefers another man,[22] or another woman. It is not nearly understandable to stab a woman fifteen times with a butcher's knife because she ends a relationship.[23] It is not virtually forgivable to sever a woman's breast and hand with a machete because she leaves home.[24] As far as the law and the courts teach us that these things are partially defensible, the law and the courts must be wrong.

> If the radical feminists had their way, sexual provocation of men by women would be struck from the law as a defence for murder. Juries, however, tend to be more realistic and more understanding. They appreciate that for many men

> personal identity and self worth are inextricably bound up with concepts of masculinity and sexual prowess. They realise that to be branded a failure as a lover, to be unfavourably compared with another man, either in terms of quality or quantity, is the ultimate insult to the male ego, the ultimate provocation.[25]

Provocation in the Courts

The defence of provocation in New Zealand was amended following the House of Lords decision in *Bedder v DPP*.[26] The plea of provocation did not protect an impotent Bedder from a conviction for the murder of a prostitute who made fun of his sexual inabilities. The House accepted the trial judge's direction that these inabilities, giving rise to a heightened sensibility, were not relevant to the consideration of whether a reasonable man would have acted similarly. Despite having an understandable reaction to the sight of his wife with another man, the reasonable man under this analysis was never impotent and was expected to tolerate any attacks on his sexual prowess.

Bedder is in stark contrast to the case in New Zealand of Dr David Minnitt in 1980. Minnitt was tried after the statutory change to the definition of what amounts in law to sufficient provocation.[27] The provoking words relied on by the defence were those of his wife, not a prostitute. According to Minnitt she called him a 'sterile bastard' and told him he was 'a terrible lover' with too small a penis.[28] He responded verbally, and then with the contents of a shotgun. In justifying his decision not to appeal the sentence of four years for manslaughter following public petitions, the then Solicitor-General, Mr D. P. Neazor stated that this 'was one of the disturbingly numerous cases in which a domestic argument had been brought to an end by one party using an available weapon to kill the other'.[29] In making this statement Neazor overlooked the gender-specific nature of the type of domestic killing in which men can successfully plead loss of self control. The normally laudable use of gender-neutral language is also misleading, failing as it does to identify the man as the person who is most likely to end an argument with a weapon.[30]

If a verbal attack aimed at a man's sexuality can reduce a deliberate killing to manslaughter two questions must be asked. What is it about male sexuality that can reasonably invoke such a response, and, more specifically, what is it about a man's sexual relationship with a woman that can make *her* an almost legitimate target for homicidal violence?

New Zealand case law provides no exception to the generally accepted view that the most extreme forms of provocation consist of partnered women having sex with another man or of a woman criticising her lover's sexual performance.[31] Within an ongoing relationship where the ordinary man claims some proprietary interest or expectation of an ongoing unchallenged sexual relationship, violent reaction to sexual challenges to male esteem are still condoned. His sexuality, his ego, requires of his wife availability for him, restriction for her. Under threat, he may attempt to extract fidelity from her by physical force.

In *R v Anderson*,[32] the most-cited provocation case apart from the Court of Appeal decision in *R v McGregor*,[33] counsel for both the accused and the Crown submitted that an admission of unfaithfulness by a de facto wife could constitute provocation.[34] The Court of Appeal questioned whether 'unfaithful' was the right term 'to apply to an irregular association such as [theirs]'.[35] Although there was no evidence that the victim claimed she had been unfaithful, the Court found there to be a reasonable inference[36] of such a statement because after stripping and then beating the 19-year-old until she stopped breathing, the accused performed a vaginal examination. 'I [then] knew she was innocent because of the fact that the spermatozoa of another man is still wet on the inside. There was none in her.'[37]

Anderson was convicted of murder because of the prolonged and brutal nature of the attack even after 'the appellant had discovered for himself that she was indeed innocent'.[38] The Court held that even if the killing had been sudden, the provocation was slight but should still have been left to the jury.[39]

Since *Anderson* the unfaithfulness of wives, which has long been held as the grounds of provocation, has been extended to other intimates.[40] The reference to slight provocation in *Anderson* may well reflect the then 'irregular' cohabitation by an unmarried couple as well as the inference that the only potentially provoking

words the victim spoke to the accused were in passing and immediately claimed by her to be a joke. The case is of further interest for the comment by both Anderson and the Court of Appeal that 'she was innocent'. These words can not elevate a sexual act with another man to the status of a crime, but do provide an indication of the serious nature of such an act, or an allusion to such an act, in the eyes of both an accused and the courts. The Court also implied that after establishing her sexual obedience, the accused should have stopped.[41] It was only his *continued* beating of her that led to a murder conviction.

In any context the implication that provocation renders a non-consensual vaginal examination understandable is distressing. Of further concern is that it was only because Anderson did not stop beating her that the Court could make this kind of statement. Provocation does not provide a defence to any other charge but murder. This limitation introduces inconsistencies in penalty between the Anderson who killed Janet Coulson and the Anderson who merely beat her into unconsciousness, even though the 'provocative' acts by the victim are the same.[42]

With the defence of provocation there may well be only one witness to the fatal attack. This is virtually always the case with spousal killings. In contrast to self-defence, for example, the way that the defence operates to defend assertions of male sexuality places undue emphasis on the silence and non-representation of the victim. The focus of the trial is allowed to shift from the accused to the culpability of the victim.[43] Even if the shift is less dramatic, the acceptance of one version of the attack seems common. The more traditionally 'grave' the provocation, the easier the acceptance. With acceptance comes an almost naive view of self-preservation. 'This [statement] ... cannot be corroborated, but we have no reason to suspect that what he ultimately told the police was other than an accurate account of what transpired.'[44] Leaving aside the obvious problem of accepting as uncorroborated evidence the recollection of a man who at the time had lost his self-control and killed someone, what *could* amount to raising the suspicion of a lie in the absence of a third party? This point is emphasised in *Morgan*.[45]

In that case, the Court of Appeal upheld the trial judge's direction on the issue of provocation. The defence did not succeed,

primarily because it appears the jury did not believe the accused's story. The assault of this woman, by her sometimes de facto husband, occurred in a block of flats. Hers was a loud and public death witnessed, but not ultimately prevented, by her neighbours. It was their evidence which discounted that of the accused. The trial judge did however direct the jury, that if they accepted Morgan's version of the facts '[he] wouldn't have much difficulty in saying that [it was] a classic provocation situation'.[46]

According to the accused, the victim claimed that the boy the accused believed to be his son was the child of another man. She said he was 'a better man and a better lover than [the accused] could ever be'.[47] She also claimed to have slept with her brother-in-law and a 16-year-old neighbour. In the words of the trial judge, '[i]t would be hard to say that that would not deprive a person of self-control and he certainly seems to have been out of control at that time'.[48] Both the historically-accepted acts of provocation by wives were claimed by Morgan: sexual infidelity and criticism of his sexual ability. The defence was rejected because the jury thought he was lying. No-one else heard Mary Howson say anything except 'help'.[49]

The fact remains, if this violence had occurred in the emptiness of a detached house, if the same story had been 'ultimately' told to the police, Morgan would have undoubtedly escaped a murder conviction. This is not to say that similar evidentiary problems do not arise in the pleading of self-defence. The difficulty here is the apparent ease with which claims of infidelity can found a partial defence to murder. In one case at least infidelity has been suggested to the accused by the police as the reason for the crime.[50]

In *Whellan*[51] an 86 year old man killed his 61-year-old wife because he thought she was being unfaithful. The jury in this case found the husband guilty of manslaughter, not murder, on the grounds of provocation. He was sentenced to three years' imprisonment despite his lack of remorse and the lack of any evidence, except his own suspicions, that his wife was having an affair. The comments of Fisher J in sentencing that 'the defence of provocation is based on an accused's perception of the facts, not upon the facts themselves'[52] is problematic, especially in light of the decision in *R v White*.[53] *Whellan* is a recent acceptance of provocation as a defence to the killing of a wife who poses a

threat through uncontrolled sexuality. The case is worrying as an example of extending the defence to instances of mere suspicion of infidelity. Should mere suspicion of unfaithfulness really be sufficient provocation as a matter of law?

In the case of *Tai*[54] the Court of Appeal considered the killing of a woman who was not the legal wife of the accused. Tai killed his girlfriend, who was in the process of breaking off their relationship and had become friendly with another man. In this case the Court held that 'the mere fact that the girl was showing an intention to break her liaison, something which is by no means uncommon and which every girl must be free to do if she wishes'[55] is not sufficient to cause 'an ordinary New Zealand person to lose self-control . . . '.[56]

The laudable freedom of association argument made in *Tai* has not been extended to wives while married or even after separation. In these cases provocation is available to men whose wives have made similar threats. The sexual expectations arising from a legal or prolonged coupling make the threat of departure provocative. It is at that level of possession and oppression that the law finds a woman's sexual departure untenable to the ordinary man. Similarly, a wife, a long term partner, cannot be raped in some jurisdictions, and yet she often is.[57] No more can she leave nor deny her husband's sexuality. The law tells her she must not. These acts are those of a provocative woman. By contrast, provocation is not found as a result of casual sex. The participant in that level of activity can also found a rape claim. Her association is not constructive consent. Like the prostitute, she is a temporary possession with no promises. Unlike the wife, neither transitory nor paid partners are capable of making their infidelity or criticism into sexual threats. They are incapable, as far as the case law tells us, of driving a man out of control.

Like a rape victim who is virginal or old, a faithful, uncomplaining wife, is protected — as far as a murder conviction can protect. Her actions do not ask for or justify a violent or sexual response. The man who kills the woman who poses no reasonable sexual threat; the man who rapes a non-provocative 80 year old stranger: they are the truly criminal.

In *R v Nepia*[58] the victim was stabbed fourteen times by her husband from whom she had been separated for one year. His evidence was that she had arrived to collect the children of their

marriage in a car she said belonged to 'the guy she was living with'.[59] She also told him that he would never see their children again.[60] In the ensuing argument over the children and her new lover, the woman was killed. The Court of Appeal ordered a new trial on the grounds that the issue of provocation should have been left to the jury. The jury, the Court held, 'might think it reasonably possible, even in this day and age, that the sudden intimation or threat of the loss of a loved wife and children could cause an ordinary [man] to go berserk as this accused may have done'.[61]

After a separation of one year the threat of his wife leaving him was surely not 'sudden'. Even if the finality of such a departure had finally found meaning, why is leaving provocation? Also of interest is the comment of the Court regarding 'this day and age'. Does this indicate the recognition of an attitudinal change concerning the expected longevity of married life? If so, and people readily accept the possibility of deferred sexual attraction, why is this not accepted in the realms of what constitutes provocation?

Samuel Edward Erutoe also killed his wife who threatened to leave him by running her down with his car, an action witnessed by motorists who stopped to respond to her waving them down, and later by beating her while she was unconscious with a jack handle.[62] Provocation was not put to the jury, a decision the Court of Appeal upheld, because of the time lapse between the first attack (running her down) and the later one with the jack. The Court did however approve the trial judge's ruling that 'Mrs Erutoe's alleged assertion that she was going to have an affair with [an]other man did "potentially amount to provocation" '.[63] Erutoe told the police his wife had jumped out of the car because she wanted to go back to the party they had just left to spend time with this man. He then admitted hitting her with the car saying that 'I do love her, I didn't want that other fella to have her'.[64]

Erutoe clearly claimed a possessory title over his wife. His language is full of the rhetoric of having or not having. He felt strongly enough about his right to prevent her choice of sexual partners that he drove over her. If this act had killed her, the trial judge would have left the issue of provocation with the jury.[65] There is again something supposedly understandable about the homicidal anger of a man whose committed partner wishes to

leave. Her sexual denial is that understandable attack on his self-esteem. He has lost the definitive masculinity with his loss of having and holding.

Self-preservation is at much at stake as property here.[66] Erutoe's perceived ability to solely and forever sexually satisfy that which is his, is validated in order to preserve and enhance a definitive masculinity. Such an emphasis removes women's sexuality from any definition outside its construction by male demand. In this sense, women's sexuality does not exist in itself.[67] Women who act outside this construction risk more than condemnation. The law of provocation tells them they may expect violent retaliation.

As commentary on male sexuality it is also relevant to consider statements made in the context of cases where provocation has been pleaded for the killing of a woman's new lover or potential lover. In *R v Matoka*[68] the accused's wife had left home and was wanting a divorce. During the course of the marriage, while the accused was overseas, his wife had had sex with another man in the matrimonial bed. At the time of the killing, they were still seeing each other. All three, at the accused's request, went to the matrimonial home to sort the matter out. The deceased, Opeta, was sent upstairs to the bedroom by the accused. His wife then told him:

> [T]hat she didn't want anyone else. Not me, not Opeta. She just wanted to be alone. It made me very mad, because I was her husband and she didn't want me ... I was angry because Tala wanted a free time with anyone she wanted, and she didn't want to know me ... I was angry with Opeta for betraying me. He was destroying my family, and what I wanted ... I just wanted to beat Opeta.[69]

The accused then went upstairs and hit Opeta over the head with a piece of wood while he was on the bed. A short time later, afraid that the deceased would wake up and kill him, he went back upstairs and stabbed him in the neck as he was trying to get up. The Court of Appeal found that it was reasonably possible, as counsel for the accused argued, that the deceased's 'lying on ... the matrimonial bed in a careless or even proprietorial attitude, could have caused a person having ordinary self-control ... to lose control'.[70]

In this case the accused became violently angry at his wife's rejection of him, as her husband, and her freedom of selection

of anyone else, especially the deceased. He blamed Opeta for her unacceptable attitude and the Court confirmed that the deceased's seemingly proprietorial interest in his bed could amount to a provocative act. This killing, linked to the sexual limitations placed on women over whom men claim a right, affirms the existence of a legally 'reasonable' need to control women's sexual behaviour.

In another case, Taaka shot his cousin and friend after he had attempted to have sex with his wife, against her will and while all three were in the same bed.[71] The Court of Appeal ordered a retrial on the issue of provocation.[72] The accused had made a statement to the police which included his discovery of his cousin's attempt:

> I stuck my hand across my missus and I felt his shoulders. I got up and I was still a bit dozy and by the time I turned the light on he shot out of the door, and I didn't see him [the deceased] until yesterday. I got wild and beat my missus up and she went to her parents' house and on the next Wednesday she came back and we had a talk and I found out that she didn't let him, that's when I knew that Hongi was trying because she was too drunk.[73]

Taaka's wife was beaten because he suspected her of attempting to, or having, sex with another man. He finally believed that she refused because he understood that another man would try to have sex with a woman who had been drinking heavily. The idea of a partner having sex with someone else can be distressing, but why is male reaction violent? More troubling, but connected, is the notion of men understanding other men's desire to have sex, even without consent, where they think they may get away with it. Both of Taaka's statements are consistent with the limited sexual choice of women, and at the same time their perceived constant availability, and with the possessory and aggressive nature of male sexuality.

> Though enlightened thinkers may seek to distinguish between a man's inherent worth and his sexual potency, identifying gentleness, compassion, sensitivity, warmth and understanding as desirable masculine traits, the view that the man who fails sexually is no man at all, is a psychological and cultural imperative which has its roots in history, law and nature. It is indelibly inscribed in the collective male

> unconscious. Tell any man that he is no good in bed or that someone else is better, and you risk retaliation beyond sense or reason. Juries, in my view rightly, recognise the power of such primal concepts and feelings, making homicides involving sexual provocation the easiest to defend.[74]

Provocation as Inequality

Provocation operates unequally because it entrenches male sexuality. Provocation is about sexuality, as are laws governing rape, pornography and abortion.[75] As dominant sexuality is male sexuality, the law's concern with sexuality is a concern for men. The protection of (male) sexuality in rape and provocation operates to blame the victim of violence who is almost invariably a victim of oppression. Both violence and oppression are about sexuality.

The law of provocation continues to reinforce the notion that sexuality for women is oppression. Under this law women's sexuality is presented mostly as a response to male need. In this way (male) sexuality is 'the linchpin of gender inequality'.[76] Through the law of provocation it remains so. The law sees and treats women the way men see and treat women.[77] The law accepts and reveres (male) sexuality. In allowing provocation where sex, where getting laid,[78] is at stake, the law allows inequality. In casting the defence in terms of the reflexes of an ordinary man, the law massages (male) ego and (male) sexuality. In allowing a defence which is victim focused, the law ratifies a sexual inquisition and finds just cause.

Where a husband's right to sexual access is entrenched by law, as in those jurisdictions where marital rape is no offence, the wife is legitimately sexless. She is that from which sex is taken.[79] Criminalising rape in marriage makes no difference in the context of this lack. Where a man can rape his wife there may still be no giving by women. Where there is sexual oppression, consent has meaning only to men.[80]

As it is with rape, so it is with provocation. The property right cannot be separated from the sexual assertion.[81] The woman, the wife, is available, and solely available. Wives, by their status alone, consent to sexual access by their husbands.[82] They cannot consent *as women* outside marriage any more than they arguably

consent within. A challenge to the sexual authority of the husband is autonomy only in the potentially fatal sense.

As with rape, where provocation operates to support sexual domination, women are again people without. Here she is a victim who again contributes without choice. Even the rhetoric of the courts sounds the same. 'She asked for it'[83]; '[her] conduct was [his] downfall'[84]; '[she] had a heavy part to play.'[85] '[T]he victim sought once more, using all the wiles and means that she had in the past... [a]nd so there was a sudden burst of passion on his part which would have been explicable in a sane and average man.'[86]

What is made of the victim as woman at trial also includes the notion of desert. 'Jane did not conform to the male expectations of 'innocent victim' — chastity and loyal wifeliness — and because of this her actions were portrayed as contributing to her death.'[87] 'She was condemned for being young while he was old; she was condemned for having a lover... she was condemned for speaking her mind; she was condemned for wanting to break away; she was condemned for not being a "proper wife".'[88] As with the fear of rape it is with provocation. Women are presumed to have (their) sexuality in control. Women who do not, step outside at their peril.

Just as rape is indistinguishable from intercourse in conditions of male dominance,[89] so the effect of provocation is indistinguishable from rape. In assuming that intercourse that is not rape is consensual, the law overlooks women's definition of consent and validates only the masculine interpretation. The sexual oppression of women, which the law of provocation perpetuates, makes consent to intercourse, especially within a prolonged coupling, present only in the constructive sense. Women are taken to have agreed to sex as sex is taken from them. Their agreement is owned by one man, who may be partially entitled to prevent severance through violence. Provocation is the defence used by men when the ability to rape is taken away. In this sense both legal concepts dictate the limits of women's behaviour as regards the threat of men's.

It is not the threats by women which causes their victimization. It is the sexual domination by men. The disempowered cannot threaten with any more meaning than they can consent. (Male) sexuality however, attributes the blame to invoke the law. The law, as male, responds. The law, in sexualising gender crimes, defines

women as rapable — 'a position which is social not biological'.[90] The law, in allowing provocation to protect thoroughly decent (male) sexuality, keeps women in that position.

* * *

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Notes

1. *R v Rerekura* Unreported, 21 June 1988, Court of Appeal, decision no. CA 361/87, pp. 2–3.
2. ibid., p. 3.
3. ibid.
4. For English statistics on homicide see Deborah Cameron and Elizabeth Frazer, *The Lust to Kill* (New York University Press, New York, 1987) pp. 8–16 and more recently Sue Bandalli, 'Provocation from the Home Office', *Criminal Law Review*, (1992) pp. 716–720. For some recent Australian statistics see Heather Strang, *Homicides in Australia 1989–1990* (Australian Institute of Criminology, Canberra, 1991), also Kenneth Polk and David Ranson, 'Homicide in Victoria', in Duncan Chappell, Peter Grabosky and Heather Strang (eds.), *Australian Violence: Contemporary Perspectives* (Australian Institute of Criminology, Canberra, 1991) pp. 67–82. For North American statistics see Laurie Taylor, 'Provoked Reason in Men and Women: Heat of Passion, Manslaughter and Imperfect Self-Defense', *University of California Los Angeles Law Review*, (1986) pp. 1679–1735. Generally, see Susan Edwards, 'Provoking Her Own Demise: From Common Assault to Homicide', in J Hanmer and M Maynard (eds.), *Women, Violence and Social Control* (MacMillan, London, 1978) pp. 152–168.
5. Polk and Ranson, pp. 80–81.
6. The relevant sections in the New Zealand Crimes Act 1961 are sections 167 (murder), section 171 (manslaughter) and section 169 (provocation) which defines provocation in the following way:

(1) Culpable homicide that would otherwise be murder may be reduced to manslaughter if the person who caused the death did so under provocation.

(2) Anything done or said may be provocation if:

(a) in the circumstances of the case it was sufficient to deprive a person having the power of self-control of an ordinary person, but otherwise having the characteristics of the offender, of the power of self-control; and

(b) It did in fact deprive the offender of the power of self-control and thereby induced him to commit the act of homicide.

Self defence (section 48) as a charge to murder also operates to disadvantage women who kill as the result of domestic violence and abuse. See for example *R v Wang* [1990] 2 New Zealand Law Reports, p. 529.

7. In five of these cases the victims had been violent towards their partners over a number of years. As stated by Martin Daly and Margo Wilson: 'Women who kill their husbands do not typically act out of the same proprietary inclinations as men who kill their wives. More commonly, they act in self-defense against husbands who are abusive to themselves, their children or both'. *Homicide* (Aldine de Gruyter, New York, 1988) p. 199. In one of these cases, where the woman was convicted of murder, she told police she had done it because he was seeing other women. *R v Mareikura*, Unreported, 12 December 1991, Court of Appeal, decision no. CA 373/90. The remaining report is of a successful appeal, and the ordering of a re-trial, on the grounds that provocation was not put to the jury. The basis for the defence is unclear, only that the victim taunted the defendant. *R v Barton* [1977] 1 New Zealand Law Reports, p. 295. There are clearly well-documented issues concerning the use of provocation and self defence by women who are victims/survivors of domestic violence. In this article I am offering a feminist critique of how it has worked for men rather than suggesting how it may work for women.

8. '[F]eminism fundamentally identifies sexuality as the primary social sphere of male power. The centrality of sexuality emerges ... from feminist practice on ... abortion, birth control, sterilization abuse, domestic battery, rape, incest, lesbianism, sexual harassment, prostitution, female sex slavery, and pornography.' Catharine MacKinnon, 'Feminism, Marxism, Method and the State: An Agenda for Theory', *Signs*, 7 (1982) pp. 515–544. 'The new

knowledge on the sexual violation of women by men thus frames an inquiry into the place of sexuality in gender and of gender in sexuality.' Catharine MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press, Cambridge, Mass., 1989) p. 127. For another recent critique of provocation as entrenching dominant heterosexual ideology, see Robert Milson, 'Homophobia in Manslaughter: The Homosexual Advance as Insufficient Provocation', *California Law Review, 80* (1992) pp. 133–178. (For an example of this in New Zealand see *R v Smith* [1989] 3 New Zealand Law Reports, p. 405).

9. Mike Bungay and Brian Edwards, *Bungay on Murder* (Whitcoulls, Christchurch, 1983) p. 29. Mike Bungay QC was considered by some to be the leading homicide defence lawyer in New Zealand. He was certainly the most well known. He successfully defended, among others, David Minnitt and Joseph Rerekura. I have found one New Zealand case in which a woman claimed she killed her partner because she could not stand him seeing other women. This is the possessory aspect of the sexual threat rather than what Mike Bungay is referring to, which is an attack on a person's sexual performance. Juanita Mareikura was convicted of murder and sentenced to mandatory life imprisonment.
10. A. J. Ashworth, 'The Doctrine of Provocation', *Cambridge Law Journal* (1976) pp. 292–320.
11. See Richard Singer, 'The Resurgence of Mens Rea: Provocation, Emotional Disturbance and the Model Penal Code', *Boston College of Law Review*, 27 (1986) pp. 243–283; Taylor, pp. 1692–1694; Joshua Dressler, 'Provocation: Partial Justification or Partial Excuse?', *Modern Law Review*, 51 (1988) pp. 467–480 and 'Rethinking Heat of Passion: A Defense in Search of a Rationale', *Journal of Criminal Law and Criminology*, 73 (1982) pp. 421–470; Peter Allridge, 'The Coherence of Defences', *Criminal Law Review* (1983) pp. 665–672.
12. Taylor, p. 1692 and Ashworth, p. 304.
13. Taylor, p. 1693; Finbar McAuley, 'Anticipating the Past: The Defence of Provocation in Irish Law', *Modern Law Review*, 50 (1987) pp. 133–157.
14. *R v Mawbridge* (1707) Kel J 119, 137; 84 ER 1107, 1115.
15. There is no marital rape exception in New Zealand (section 128(4) of the Crimes Act 1961, as amended by the Crimes Amendment Act (No 3) 1985) but the failure of current reform proposals to address all the feminist concerns over pornography ratifies the continued portrayal of women's bodies as objects available as of right to men (see the Films, Video and Publications Classification Act 1992).

16. See *R v Whellan* Unreported, 12 September 1990, High Court Hamilton Registry, decision no. T 25/90.
17. *Taylor* (1987) 9 Criminal Appeal Reports (Sentencing), p. 175.
18. *Morgan* (1990) 6 Criminal Reports of New Zealand, p. 305; *Mellentin* (1985) 7 Criminal Appeal Reports (Sentencing), p. 9.
19. *Erutoe* [1990] 2 New Zealand Law Reports, p. 28.
20. *Hussey* (1989) 11 Criminal Appeal Reports (Sentencing), p. 460; *Gilby* (1990) 12 Criminal Appeal Reports (Sentencing), p. 49.
21. 'Who is a reasonable man where sex is involved? The phrase is almost without meaning.' See Hollis, *The Homicide Act* (Victor Gollancz Ltd, London, 1964) p. 89 as cited in J. K. Weber, 'Some Provoking Aspects of Voluntary Manslaughter', *Anglo-American Law Review*, 10 (1981) p. 159, 175 fn 15.
22. *The Evening Post*, Wellington, 7 October 1980, p. 1. Grenville Boyles killed his wife and her lover by stabbing them and cutting their throats when he discovered them in bed together in an old railway carriage. He was found guilty of manslaughter and sentenced to 9 years' imprisonment.
23. *The Dominion*, Wellington, 14 December 1991, p. 8. Owen Stevens was found guilty of manslaughter and sentenced to 7 years' imprisonment. The jury were satisfied that he had been provoked by the victim's rejection of him.
24. *The Dominion*, Wellington, 7 June 1991, p. 6. In his statement to the police Alauni Misimoa stated: 'I was angry that she wouldn't come back ... I love my wife. I admire everything she did but I don't want anyone else to touch her, only myself whom she married'. His wife had left him after he had beaten her. *R v Misimoa* Unreported, 18 November 1991, Court of Appeal, decision no. CA 182/91, 3.
25. Bungay and Edwards, p. 29. This response is not limited to New Zealand. For a comparison of the laws which treat male murdering of women intimates as less serious see Melissa Spatz, 'A "Lesser" Crime: A Comparative Study of Legal Defences for Men Who Kill Their Wives', *Columbia Journal of Law and Social Problems*, 24 (1991) pp. 597 – 638. See also *The Dominion*, Wellington, 2 September 1991, p. 5, which reports that a state court in Brazil defied a ruling of the Supreme Court which had struck down the 'legitimate defence of honour' which had resulted in scores of acquittals. The state court acquitted Joao Lopes who had killed his unfaithful wife on the grounds that he was defending his honour. The majority in the Supreme Court had ruled: 'Homicide cannot be seen as a normal and legitimate way of reacting to adultery ... in this kind of crime what is defended is not honour, but vanity, exaggerated

self-importance and the pride of the lord who sees a woman as his personal property'. See 'Brazil', *Bulletin of Legal Developments*, 6 (1991) p. 65.

26. [1954] 1 Weekly Law Reports, p. 1119.
27. The change is incorporated in section 169(2) (a) of the Crimes Act 1961. The first word on the operation of this provision is found in *MacGregor* [1962] New Zealand Law Reports, p. 1069. The question of the relevance of 'characteristics' to the sufficiency inquiry has been re-examined recently in the case of *McCarthy* [1992] 2 New Zealand Law Reports, p. 550. The Court of Appeal's judgment in that case is, however, internally inconsistent.
28. *The Evening Post*, Wellington, 5 August 1980, p. 34. The evidence also suggests that she was beaten by Minnitt during their marriage. He admitted to four occasions during his trial. Despite this evidence the sentencing judge justified the four year penalty on the basis that Minnitt did not have a history of violence. *The Evening Post*, Wellington, 15 August 1980, p. 1.
29. Quoted by Sandra Coney, 'Man's Laughter', in *Out of the Frying Pan: Inflammatory Writings 1972–1989* (Penguin, Auckland, 1990) p. 98.
30. For a critique of gender-neutral language in inappropriate situations, or 'sexist overgeneralisation', see Margrit Eichler, 'Foundations of Bias: Sexist Language and Sexist Thought', in K Mahoney and S Martin (eds), *Equality and Judicial Neutrality* (Carswell, Toronto, 1987) pp. 22–29.
31. See Susan Edwards, *Women, the Law and the State* (Sage Publications, London, 1989) p. 182. In *Mellentin* (1985) 7 Criminal Appeal Reports (Sentencing) p. 9, the taunting of a husband by his wife about 'his lack of sexual inclination or prowess' was seen as 'grossly provocative conduct ... striking at [a man's] character and personality at its most vulnerable' (at p. 10).
32. [1965] New Zealand Law Reports, p. 29.
33. [1962] New Zealand Law Reports, p. 1069.
34. *Anderson*, pp. 32–33.
35. ibid., p. 35.
36. ibid., p. 35.
37. ibid., p. 31.
38. ibid., p. 39.
39. ibid., p. 38.
40. See for example *Morgan and Taylor.*
41. *Anderson*, p. 39.
42. Misimoa was sentenced to eight years for attempted murder. This is compared to (for example): four years (Minnitt); four years (Ross);

six years (Rerekura), which is the highest I am aware of for killing in these circumstances. The notable exception is the sentence of Boyles in which much weight was placed on the extremely violent naure of the attack, described by the trial judge as 'a brutal slaughter'. *R v Boyles* Unreported, 5 March 1981, Court of Appeal, decision no. CA 229/80. In some other cases of provocation it is considerably less: see *R v Panoa-Masina* Unreported, 7 October 1991, Court of Appeal, decision no. CA 309/91. Masina beat his wife because she had failed to give $50 to his cousin for his son's twenty first birthday present. The Court accepted that Masina had been 'substantially embarrassed' by that and there was therefore a 'strong element of provocation' (at p. 4). The trial judge had sentenced Masina to nine months' periodic detention which was appealed by the Solicitor-General. The Court of Appeal substituted a sentence of 18 months' imprisonment. Clearly, significant weight was given to the fact that the wife died due to a subdural haematoma which had not been diagnosed but was nevertheless caused by the accused's violence. See also Elisabeth McDonald, 'Ross and Panoa-Masina', *Criminal Law Journal*, 17 (1993) pp. 208–211.

43. See endnote 83 and accompanying text.
44. *Mellentin.*
45. (1990) 6 Criminal Appeal Reports of New Zealand, p. 305.
46. *Morgan*, p. 313.
47. ibid., p. 651.
48. ibid., p. 306.
49. ibid., p. 313.
50. ibid., p. 308.
51. *R v Foreman* Unreported, 18 February 1992, Court of Appeal, decision no. CA 254/91, p. 4.
52. Unreported, 12 September 1990, High Court Hamilton Registry, decision no. T 25/90.
53. ibid., p. 2.
54. [1988] 1 New Zealand Law Reports, p. 123. In this case the Court of Appeal held that section 169(2)(a) of the Crimes Act 1961 poses an objective test and is concerned with the reaction of an ordinary person placed in the same circumstances. 'The reference is to the *actual circumstances*, as far of course as they are known to the accused, not to the particular accused's impressions regarding them ... the question is not whether the accused believed what he was told about the deceased's conduct with his sister, but whether the 'ordinary person' predicated in that subsection might have believed it' [emphasis added]. In *White* the accused was allegedly provoked

into killing the victim by the news, from a third party, that the victim had organised the drugging and raping of White's sister. He was convicted of murder.

55. [1976] 1 New Zealand Law Reports, p. 102.
56. ibid., p. 106.
57. ibid., p. 106.
58. In 1991 an Auckland woman was awarded civil exemplary damages for rape by her husband. He was never charged by the police. *Av M* [1991] 3 New Zealand Law Reports, p. 228. For a compelling discussion of this case, in the context of a critique of accident compensation for sexual abuse, see Marian Evans and Robin Mackenzie, 'From Siren to Siren: Some Counterpoint for Gender-Specific Injury and the Law', *Women's Studies Journal*, 8:2 (1992) pp. 42–82.
59. [1983] New Zealand Law Reports, p. 754.
60. ibid., p. 755.
61. At common law, a proprietary right over a son by his father also allowed for an exception to the requirement of actual violence of the deceased. 'The two exceptions were the discovery by a husband of his wife in an act of adultery and the discovery by a father of someone committing sodomy upon his son.' Lord Diplock in *DPP v Camplin* [1978] Appeal Cases, p. 705. The threat or commission of a homosexual act has recently been considered provocative enough (*Peddie* (1990) 12 Criminal Appeal Reports (Sentencing) p. 176) for the recipient to be convicted of manslaughter. There are two separate issues here concerning the heterosexuality of the ordinary man and his possessory claim over his children, the second of which may or may not raise issues of sexuality. For present purposes, my focus is on male heterosexual activity and its impact on women.
62. *Nepia*, p. 757. At the second re-trial in Wellington (the first, in Napier, resulted in a hung jury) Nepia was convicted of manslaughter.
63. *Erutoe* [1990] 2 New Zealand Law Reports, p. 28.
64. ibid., p. 32.
65. ibid., p. 30.
66. The input of a less than fair representation of society into jury deliberations may impact dramatically in cases where juries are asked to discuss the actions of an ordinary person. Even where women are represented on juries, studies have shown they do not contribute equally to the deliberation process. Nancy Marder, 'Gender Dynamics and Jury Deliberations', *Yale Law Journal*, 96 (1987) pp. 593–612. In the New Zealand context see *R v Wheeler*

Unreported, 31 July 1990, Court of Appeal, decision no. CA 50/90, p. 3, and Elisabeth McDonald, 'A Jury of Her Silent Peers', *Women's Studies Journal*, 9:2 (1993) pp. 88–117.

67. See the notes to page 137 of *Mawbridge* by Kelyng, the reporter. 'Although this is the highest possible invasion of property a man is not justifiable (sic) in killing another, whom he hath taken in adultery with his wife; for it savours more of sudden revenge than of self-preservation.'
68. MacKinnon, 'Feminism, Marxism, Method and the State', p. 534.
69. [1987] 1 New Zealand Law Reports, p. 340.
70. ibid., p. 342.
71. ibid., p. 344.
72. *R v Taaka* [1982] 2 New Zealand Law Reports, p. 198.
73. On re-trial Taaka was convicted of manslaughter. The case has assumed some significance in New Zealand as evidence supporting the cultural significance of Hongi's conduct was deemed admissible in the High Court.
74. *Taaka*, p. 200.
75. Bungay and Edwards, pp. 29–30.
76. Catharine MacKinnon, 'Privacy v Equality: Beyond Roe v Wade', in *Feminism Unmodified* (Harvard University Press, Cambridge, Mass., 1987) pp. 93–102.
77. MacKinnon, 'Feminism, Marxism, Method and the State', p. 533.
78. Catharine MacKinnon, 'Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence', *Signs*, 8 (1983) pp. 635–658.
79. Andrea Dworkin, *Right-Wing Women* (Perigee Books, New York, 1983) p. 95.
80. See generally, Catharine MacKinnon, 'Desire and Power', in *Feminism Unmodified*, pp. 46–62.
81. MacKinnon, 'Toward Feminist Jurisprudence', p. 650.
82. Losing Rachel 'was like having someone else jump in my car and drive it away'. Stated in evidence by John Tanner, a 22-year-old New Zealander who strangled his English girlfriend and concealed her body under the floor boards in her Oxford flat. Tanner claimed he did it in a rage after she told him she had been unfaithful. In a 10–2 verdict, the jury found him guilty of murder. *The Evening Post*, Wellington, 6 December 1991, p. 1; Pamela Stirling, 'Stop the Bashings', *The Listener*, June 22–28, 1992, p. 14.
83. MacKinnon, 'Toward Feminist Jurisprudence', p. 648.
84. Ashworth, p. 307.
85. Hussey, p. 460.
86. ibid., p. 462.

87. *R v Ross* Unreported, 8 June 1992, Court of Appeal, decision no. CA 76/92, p. 5.
88. Jill Radford, 'Womanslaughter: A Licence to Kill? The Killing of Jane Asher', in P Scraton and P Gordon (eds.), *Causes for Concern* (Penguin, Harmondsworth, 1984) p. 218.
89. Coney, pp. 99–100.
90. MacKinnon, 'Toward Feminist Jurisprudence', p. 647.

Asset Rich and Income Poor: Home Equity Conversion as an Option for Older Women

Judith A. Davey

The Current Policy Context

Recent government policy changes raise major concerns about how women, given their relative disadvantage in economic terms, will fare in an aging New Zealand society. The message that New Zealanders should be taking greater responsibility for providing their own retirement income was strongly stated by Jenny Shipley in the 1991 Budget papers.[1] It was reinforced in the report of the Task Force on Private Provision for Retirement, in August 1992.[2] Their options all suggest greater individual responsibility, with National Superannuation being reduced to 'safety net' level.

The feasibility of saving to provide anything like an adequate retirement income has been questioned, given that a sizeable proportion of the population face economic hardship arising from unemployment, benefit cuts, 'user pays' and part-charges for social services, and an overall decrease in welfare state provision. The position of women is especially difficult, being characterised by lower participation in the paid workforce, lower workforce status in general and interrupted careers. Furthermore, women are expected to undertake the bulk of unpaid caring work, leading to economic dependency.[3]

At present only a minority of New Zealanders are in fact saving for their old age. According to Prue Hyman, 23 percent of those in employment contribute to occupational schemes, this figure rising to 36 percent if private and personal scheme membership is included.[4] Not only do fewer women make contributions to occupational or private schemes, but their contribution rates are

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lower than those of men, leading to lower entitlements after retirement.

Recent research carried out for the Department of Social Welfare found that 37 percent of a national sample belonged to a superannuation scheme.[5] However, this includes life insurance endowment policies, not always seen primarily as part of retirement planning. A much higher proportion of males than females (44 percent as against 29 percent) belonged to such schemes. The proportion of the population belonging to schemes rose to 47 percent when partners' schemes were included (i.e., women are able to gain some benefit through their husbands' membership of superannuation schemes).[6]

These findings further reinforce the disadvantaged position of women, faced with the prospect of reduced state provision of retirement income, but longer life in an aging society. The intention of this paper is to explore the potential of housing wealth to make a contribution to raising the living standards of women in old age.

Home Ownership and Housing Wealth in New Zealand

Levels of home ownership in New Zealand are high, and have been throughout the twentieth century, encouraged by government subsidised mortgages and building programmes. As early as 1916, 53 percent of New Zealand households owned their homes. The benefits which politicians claimed would flow from the sheer fact of home ownership have included family stability, good citizenship and even moral rectitude! Sociologists, in their analysis of class, have linked home ownership with cooption to capitalism.[7] More prosaically, for most people, purchase of a house is the largest investment they will make, and probably their only substantial asset. Real property accounts for a higher proportion of women's wealth than men's wealth, according to Payne's Estate Duty analysis.[8]

By the time of the 1991 Census, 74 percent of householders owned their homes, either with a mortgage or outright. Freehold ownership increases with the age of the household head, from 2 percent of those under 25, to 34 percent of those in their 40s, 76

percent of those 60–64 and 81 percent where the head was 65 or more.[9] Of households with a head classified as retired, 82 percent were freehold owners, compared with 23 percent where the head was a wage or salary earner. The level for one person households not in the labour force — largely older women — was 71 percent. Freehold home-ownership is thus concentrated among the older population in which women are the majority — 56 percent of those 60 and over, 66 percent of those 80 and over.

This comes about because women, especially non-Maori women, live longer than men on average, and because they are usually younger than their spouses, so that nearly half of women aged 60 and over are widowed, as opposed to only 12 percent of men.[10] Thus a significant proportion of wealth owned by women is held by older widows. In 1987–88 over 40 percent of women's wealth was owned by women over 60, compared with less than a quarter for men.[11]

'Asset rich and income poor'

At the same time, many older women have low fixed incomes. As Hyman has pointed out, about two-thirds of those receiving National Superannuation have no other income, and women form a large majority of this group.[12] At the same time, daily living costs and the costs of home maintenance, including insurance and rates, are rising. Older people have fewer opportunities to increase their income than those still of working age. Those who have some savings and investments are now finding that this income is falling with lower interest rates.

Although they may be poor in income terms many older people have a major asset in the form of a freehold home. What can be done to mobilise the capital tied up in this way? One option is sale, which would have the effect of forcing a shift of residence. Many older people do 'trade down' once the need for a large family home is past. This may occur at retirement or at the death of one spouse. A second option is to borrow against the equity in the house, i.e., re-mortgage. This would entail debt repayments, but would provide capital for housing improvements or maintenance, or for travel, and would allow people to remain in their home.

This may well be attractive, as most older people prefer to remain in familiar surroundings. Only a minority, even over the age of 85, require residential care.

Home equity conversion (HEC) or reverse mortgaging can provide the opportunity for people to remain in their homes without the burden of repayment. A loan or mortgage is secured against the equity in the house, but the debt accumulates until the loan matures, often on the death of the borrower (or surviving spouse) or when the house is sold. HEC schemes may provide regular income, in the form of an annuity, to supplement pensions or superannuation, or may be geared to lump sum payments. A great variety of such schemes are in operation in Europe, North America and Australia.[13] Take-up levels have not been high as yet, and there is little information on how the long-term success of HEC schemes can be assessed.

Potential for home equity conversion in New Zealand

At the time of the 1986 Census of Population, there were 150,442 households headed by people aged 65 and over in New Zealand who owned their homes without mortgages.[14] Of these, 48,470 households (32 percent) were composed of a woman living alone. The majority of older freehold occupiers have low incomes (see table 1). This is especially true for those living alone, and for women in both cases (see table 2).

These results substantiate the assertion that there is a sizable group of 'income poor, asset rich' older people, predominantly women. They occupy freehold homes, a large proportion live alone, and many have low incomes. This is where the potential for home equity conversion schemes lies.

Home Equity Conversion Schemes in New Zealand

The Housing Corporation of New Zealand (HCNZ) initiated a one-year pilot home equity conversion scheme — 'Helping Hand Loans' — in November 1990. This was intended to test out the concept in New Zealand, to help develop appropriate procedures, and to facilitate the participation of the private sector in such

schemes. The protection of the interests of older people, for example through independent financial counselling, has been an important objective. Hence close consultation with Age Concern was a feature of the scheme.[15]

Income p.a.	Under $12,500	$12,500 –20,000	Over $20,000	Not stated
Female	68%	14%	12%	6%
Male	40%	21%	32%	7%
Total	52%	18%	23%	7%

Table 1: Income of occupiers of freehold homes, aged over 65 (total population) 1986.

Income p.a.	Under $12,500	$12,500 –20,000	Over $20,000	Not stated
Female	77%	13%	7%	3%
Male	67%	18%	13%	2%
Total	76%	14%	8%	2%

Table 2: Income of occupiers of freehold homes, aged over 65 (living alone) 1986.

[Source: Special compilation from 1986 Census, for Newell and Ayers.]

The Housing Corporation scheme provided loans either as lump sums or regular advances to people aged 65 and over, against the

equity in their freehold homes. They were however, payable only for housing-related costs — repairs, maintenance, alterations, rates and insurance. Repayments are not required until the property is sold or the borrower ceases to live there permanently. All interest and charges are added to the loan balance. The scheme guarantees that customers will never be liable for a loan balance above 90 percent of the property's value.

Applicants and loan recipients in Levin were interviewed by the author and provided examples of the uses of the 'Helping Hand' loans. A widow aged 85, who had suffered a stroke and was not very mobile, was extremely concerned about how she would pay for the painting of her home and the replacement of spouting — work which would cost around $7,000. The loan allowed her to have the work done and prevented further deterioration of her only asset — her freehold home, with a Government Valuation of $80,000.

A retired nurse with no children had moved to a small unit, but found it increasingly difficult to cope as she has severe arthritis in her hands and has had two hip replacements. She intended to use a loan of $10,000 to remodel her kitchen completely and install a security system. This would allow her to retain her independence and greatly enhance her quality of life.

'Helping Hand Loans' were piloted in Auckland, Nelson and Levin, but were promoted somewhat unevenly and only about 60 were approved before the project was overtaken by the incoming National Government's radical revision of housing policy. This has removed all direct provision of housing and housing subsidies; placed the Housing Corporation (renamed Housing New Zealand) on a commercial footing; and has made the Accommodation Supplement (administered through the Department of Social Welfare) the sole source of housing assistance from central government.[16]

It now seems extremely unlikely that the state will be involved in any further home equity conversion schemes. However, there is some private sector interest. A reverse mortgage product which provides annuities is being marketed through a life assurance company in Wellington.[17]

The size of monthly annuity payments available through this scheme depends on the age of the annuitant (or the younger of a

couple) on entry. A person in their late 60s with a home valued at $100,000 could receive up to $3000 per annum, the same person aged 85 could receive $9000 and the maximum available on any property is $12,000 per annum. Lump sums are available on an annual basis equal to a year's annuity. These are significant sums to supplement the current National Superannuation levels of nearly $10,000 per annum net for a single person living alone, and just over $15,000 net for a married couple.

Under existing conditions, and if the recipient has no income other than National Superannuation, annual annuity payments of $8,000 for a single person and $12,000 for a married couple can be received before any surcharge is applicable. For single people eligibility for a Community Services Card would not be affected by an annuity at this level, but for couples joint payments could not exceed $10,750 per annum without affecting entitlement.

Ongoing research by the author will monitor this scheme and interview applicants to find out more about how it is being used to supplement income, and attitudes surrounding the acceptability of HEC schemes in this country.

There are risks inherent in HEC schemes. Risks to the home owner include depletion of their wealth, reduced ability to benefit from capital appreciation, and possible lender default. Risks to the commercial lender are inherent in uncertainties about property price and interest rate movements over a long period of time, and in predicting how long borrowers will live. From both the lender and the borrower point of view HEC is more appropriate for people aged 75 or older. Lower life expectancy at this age means that the lender is committing their money for a shorter period, and the borrower runs less risk of the complete erosion of their equity.

Low take-up is understandable given that HEC schemes can be very complex and hedged about with legal and financial difficulties. These must be set against the innate caution of many older people and the lack of financial background of many women in the older age groups. Unhappy experiences with private sector organisations and distrust of government, after numerous policy changes and broken promises, justify this stance. The activities of organisations such as Age Concern, which promote the need for

adequate and reliable financial advice and protection for older people, especially women, therefore deserve support.

Importance of Inheritance

Information on how inheritance is viewed and practised at present in New Zealand is relevant to analysing policies on retirement income provision, and the wider consideration of well-being in old age. It is central to the exploration of alternatives to dependence on the state, for example through mobilising assets in HEC schemes. Such options would not be attractive if people place a high value on bequeathing and keeping wealth intact for transmission to their heirs.

We know little about patterns of bequeathing in New Zealand, the characteristics of inheritors and the uses to which they put their bequests.[18] Personal interviews with older people, carried out by the author, explored attitudes towards inheritance.[19] There was an almost universal opinion that it was better for assets to be used to assist people in their old age than to be left to heirs. No-one felt that older people should think more about their children or grandchildren's future than their own comfort. However, there was a greater willingness on the part of the childless to contemplate realising some of their home equity. Further work is needed to throw more light on patterns of bequest and inheritance in New Zealand, and how these relate to housing options. It would be of value to investigate the attitudes of inheritors — usually people in their 50s and 60s when their parents die.

Younger people might be willing to accept a trade-off between inheriting and having to support elderly parents or relatives, either financially or by providing physical and social care. This has implications for women — daughters and daughters-in-law — who are frequently expected to provide care to the detriment of their own careers, aspirations and lifestyles.[20] If state support for the elderly continues to be eroded in New Zealand, responsibility may be thrust back on elderly people themselves, and their families. In such circumstances home equity conversion may become an attractive option.

The provision of services and income maintenance for older people has been seen as a function of the welfare state in New Zealand. More recently, fiscal stringency and concerns about an aging population have led to reconsideration of this policy stance. Hence we have seen cutting back on state provision and the encouragement of private arrangements for income support in old age.

I am not suggesting here that government should opt out of any obligation towards older people, nor that people should give up freedom of choice in how they dispose of their assets. Rather, the aim is to explore options in the use of income and wealth in old age, especially in relation to housing.

Many factors influence the housing situation of older women. They include housing tenure, the value and saleability of property. Eligibility for state income support, means-testing and taxation are also important. Access to residential care, more likely to be needed by women than by men, already relates to asset-holding and to support, both financial and physical, provided by family members. Home equity conversion schemes are only one element in the mix of options, but they have potential value, if carefully and appropriately used. Many of the factors involved are undergoing change in the New Zealand policy environment, producing uncertainties about the future both for older women and for their families.

* * *

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Notes

1. Jenny Shipley, *Social Assistance: Welfare that Works, A Statement of Government Policy on Social Assistance* (Government Print, Wellington, 1991).
2. Task Force on Private Provision for Retirement, *Private Provision for Retirement: The Options* (Government Print, Wellington, 1992).
3. There is anecdotal evidence that female earned income is used more frequently for day-to-day costs, the costs of childcare and

children's needs, while male income is more likely to be devoted to savings and investment, given its perceived greater permanence. This, plus the expectation that the male will be the provider and female earnings are 'pin money', reduces many women's ability to build up assets and wealth. Further information on the division of income within families will be forthcoming from research in progress by Robin McKinlay and Susi Easting.

4. Prue Hyman, 'Income Adequacy For Older Women — Survival in the Face of Government U-Turns', *New Zealand Women's Studies Journal*, 8:1 (1992) pp. 78–94.
5. Research Unit, Social Policy Agency, *A Survey of Retirement Provision* (Department of Social Welfare, Wellington, 1992).
6. The treatment of superannuation entitlement under Matrimonial Property law is another thorny issue, raised by the Task Force on Private Provision for Retirement, *Private Provision for Retirement: The Options*, p. 289.
7. R. Forrest, 'The Meaning of Homeownership', *Environment and Planning D: Society and Space*, vol. 1 (1983) pp. 205–216.
8. Stuart Payne, *Estate Duty Data and its Use for Constructing Estimates of Wealth* (New Zealand Planning Council, Wellington, 1990) pp. 21–22.
9. Department of Statistics, Household Expenditure and Income Survey data, 1988/89.
10. The situation of the growing number of women whose marriage partnerships have broken down must not, however, be overlooked. The Matrimonial Property Act, 1976, gave legal wives entitlement to half of all matrimonial assets. In theory, this should increase the wealth-holding of separated and divorced women. However, the Working Group on Matrimonial Property and Family Protection, reporting in 1988, concluded that women usually suffered a drop in their standards of living post-separation. This arose from their lower earning capacity and child-care responsibilities. The need to re-establish a home and support children is likely to erode any cash settlement from matrimonial property, as shown in case studies, referred to below and by Sophie Watson. However, it is still likely that women who marry, stay married and outlive their husbands — still a very common situation — will have wealth in the form of a freehold house. Judith Davey and W. R. Atkin, *Housing and the Matrimonial Property Act 1976* (National Housing Commission Research Paper 81/1, Wellington, 1980); Judith Davey and Alison Gray, *Marriage Breakdown and its Effect on Housing* (National Housing Commission Research Paper 85/2, Wellington,

1985); Sophie Watson, *Accommodating Inequality: Gender and Housing* (Allen and Unwin, Sydney, 1988).

11. Income Distribution Group, *Who gets What? The Distribution of Income and Wealth in New Zealand* (New Zealand Planning Council,Wellington, 1990) p. 104.
12. Prue Hyman.
13. Robert Carter, *Towards More Flexible and Responsive Housing Policies for the Elderly* (Symposium on Aging: Myths and Realities, University of Western Australia, May 1985); Bruce Jacobs, *The National Potential of Home Equity Conversion* (US Senate Special Committee on Aging, Discussion Paper 8502, January 1985); Philip Leather, 'The Potential and Implications of Home Equity Release in Old Age', *Housing Studies*, 5:1 (1990) pp. 3–13; P. B. Springer, 'Home Equity Conversion Plans as a Source of Retirement Income', *Social Security Bulletin*, 48:9 (1985); Pamela Wilson, *Converting Home Equity to Retirement Income* (Australian Council on the Aging. Occasional Paper, 2nd Ed., 1988).
14. James Newell and James Ayers, *Report on the Evaluation of the Helping Hand Loans Pilot Schemes* (Monitoring and Evaluation Research Associates Ltd. for the Housing Corporation of New Zealand, Wellington, 1991).
15. Age Concern New Zealand, *Home Equity Conversion: Report on the Research Undertaken to Find Out the Needs, Views and Concerns of Older People* (Age Concern, Wellington, 1990).
16. John Luxton, *Housing and Accommodation: Accommodation Assistance* (Wellington, Government Print, 1991).
17. The following information and examples are taken, with permission, from material produced by Invincible Life Assurance Ltd., Wellington.
18. There is, however, a considerable literature from Britain and the USA. Janet Finch, *Family Obligations and Social Change* (Polity Press, Cambridge, 1989); C. Hamnett et al., *Safe as Houses: Housing Inheritance in Britain* (Paul Chapman Publishing, London 1990); E. G. Horsman, 'Inheritance in England and Wales: The evidence provided by wills', *Oxford Economic Papers*, 30:3 (1978) pp. 409–22; Moira Munro, 'Housing Wealth and Inheritance', *Journal of Social Policy*, 17:4 (1988) pp. 417–436.
19. A series of fourteen exploratory interviews were carried out in Levin in mid-1991, eight with couples and six with single people (five of them widows). Some of these were applicants for 'Helping Hand' loans, and some were from a control group of people aged 60 and over.

20. P. K. Koopman-Boyden, 'The Elderly in the Family', In P. K. Koopman-Boyden (ed.), *Families in New Zealand Society* (Methuen, Wellington, 1978) pp. 57–70.

Book Reviews

Suffrage to Sufferance: 100 Years of Women in Politics
Janine Haines
Allen & Unwin, St Leonards, New South Wales, Australia, 1992.
$ 24.95

Whether we are political activists, political scientists, political cynics, or whether we combine these perspectives, the political representation of women presents us with a familiar dilemma: whether to play boys' games or invent our own. This is both a moral issue and a tactical one. It is difficult to avoid the conclusion that women's interests and needs are more effectively, if imperfectly, pursued when women are fairly represented in legislative institutions. Yet many of us would prefer other women to fight these battles for us. Thus we retain our ideological purity, leaving ourselves free to criticise women MPs from a safe and only slightly sympathetic distance. We have our excuses, most of them valid: winning the battle, to employ a very male metaphor, does not seem to be worth the cost. What Janine Haines does in this book is to remind us that invading men's spheres of political action is indeed difficult and painful, but that there are rewards: women in power can make policy changes as Haines' own achievements demonstrate. The dual subtext of this work is that women do indeed have interests in common, although they might be circumstantially divided by party loyalty and ideology, and that these interests can and must be pursued by women in politics.

The literature on women and politics, particularly as it has developed in New Zealand, has divided quite sharply into different genres: the biographical or autobiographical works; the historical; and, more rarely, contemporary analytical discussions. Janine Haines pulls together all three, not without some difficulty given the range of her themes and illustrations, and the

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limitations of space. She combines her own Australian political experience with the stories of other women in the English-speaking Commonwealth countries and, less frequently, the USA, and draws lessons from the histories she relates. Her material ranges from struggles for and debates about suffrage and the lives of early candidates and representatives, through to analyses of contemporary women parliamentarians, women and the law, and media attitudes and the status of women. There are fascinating glimpses into political cultures which, despite their cultural and structural similarities, have distinctive characteristics of their own; and there are nicely sketched outlines of political women. These individually contribute to a patchwork of profiles which together produce persistent patterns within the overall picture of political representation.

An example of both the way in which Haines stitches together her material, and the wry sense of humour with which she does this, is illustrated by her chapter 'The Candidates 1896–1918'. From a discussion of Helen Catherine Spence's attempts as the first Australian woman to run for political office at the federal level (for the Constitutional Convention) and the constitutional implications of this, with men raising doubts about the legality of Spence's candidature, Haines shifts to outline briefly Vida Goldstein's similar difficulties and, thence, to Haines's own problems 75 years later. In 1978, at the age of 32, Janine Haines accepted nomination by the South Australian government to the federal Senate to fill a casual vacancy. She writes that, 'the legality of my appointment was not challenged, but the appropriateness of a married woman with two small children accepting the appointment certainly was'. Her questioners 'had serious doubts about how long it would be before my husband left me, and the children were made wards of the state' (p. 63). Haines went on to become deputy leader and then leader of the Australian Democrats.

The most persistent theme throughout this work is the all-pervading problem of the world of politics as sex and gender specific, as a public space marked as both male and masculine. This ownership and definition of the political world work together

to exclude women from it (using 'politics' here in the conventional sense of that term to mean parties, parliament and government). Definition and ownership combine to rebound doubly against women: women aspirants have to compete against a job-definition that excludes women (men define the norm); and by competing in male space women challenge men's ownership of political territory. The very visibility of women in politics, a consequence, of course, of their 'abnormality', provides another thread through this work, evidenced by a wealth of examples of comments on women by men, in parliament, public meetings and the media.

The existence of the two barriers — norms and competition for power — are shown most acutely in Haines' several sections on the topic of women's efforts to gain nomination as parliamentary candidates. The distance of parliaments from women's homes (especially the federal legislatures of Australia, USA and Canada) meant that it was difficult for women to seek office into those legislatures, given the socially prescribed roles and duties of women. It was not surprising, Haines observes, that in most of the countries studied here the first women MPs did not have family responsibilities (p. 74). But whether or not women were 'free' to take on political office, once party systems were entrenched women had to gain party nomination in order to be elected. Haines shows the enormous difficulties faced by women in being selected for winnable seats. Again and again, no matter how often women proved themselves, in disproportionate numbers they were chosen to be failures at the polls:

> Thus even those women who were able to overcome the fact that party meetings, both formal and informal, were held at hours and in places which were convenient for men but not women, and who were able to convince the party hierarchies to preselect them, found themselves sidelined into unwinnable seats — a fact which conveniently played into the hands of those who claimed that women were not election winners. (p. 76)

Hence prejudice reinforces itself. Women cannot gain sufficient career continuity and are therefore ineligible for higher political office. Haines does us a service, here, in telling us about some of

the women who did not attain legislative office, setting their lives in their proper context.

Prejudice and jealousy are in turn reinforced by political structure and culture. To highlight this Haines considers the effects on women's political representation of electoral systems and political parties. From the point of view of the former, it is interesting in itself that Haines gained her initial entry into political office by being plucked from a party list. (The Australian Senate is elected by a form of single transferable vote.) Haines points out that with party list systems, a feature of most proportional systems of representation, 'male candidates "share" the spoils with women rather than competing with them' (p. 121). In Australia's case, however, the Senate is less powerful than the House of Representatives. Hence there is less competition for the places (pp. 121–2). All Haines' other national examples are of polities with single-member constituency, simple-plurality electoral systems, where it is much more difficult for women to be nominated for winnable seats.

Haines also keeps coming back to the problem of political parties, particularly the long-established ones. She shows that many early women activists preferred to stand as independents, argues that newer parties such as the Australian Democrats have been more favourable to women (because men do not see those parties as providing secure pathways to power, perhaps?), and hints that adversarial, cohesive political parties are uncomfortable environments for women.

Suffrage to Sufferance is often a frustrating book to read because of the way in which the chapters and the material within them are organised, and there are errors: Whetu Tirikatene-Sullivan's name is spelt wrongly; Fran Wilde's important role in the decriminalisation of homosexuality is omitted; and there are other problems. The evidence is also rather selective at times. Janine Haines tells what is now a familiar story, but she relates it in a lively and interesting manner through her mixture of observations and biographical sketches. Students of women's studies and women and politics will learn a great deal from the insights contained in this book; it will be a good supplement to other sources. It is especially encouraging to

see the experiences of New Zealand women considered alongside those of women in Australia and elsewhere, providing ideas for more detailed comparative research.

In the introduction, Haines quoted from one of her own speeches:

> It has been my unfortunate lot over the last 25 years of my life to belong to three of the most reviled, underrated and overworked professions in the world. In that time I have been, simultaneously, a mother, a teacher, and a politician. If one of me wasn't being blamed for the problems of the world one of the others was. (p. 5)

It would be an irony and a shame if, as women in New Zealand and elsewhere claim their places in parliament in greater numbers than ever before, politicians are increasingly despised and political systems continue to lose their legitimacy. If this happens it will be harder than ever for women, either in or out of political power, to democratise the liberal, capitalist state.

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Women in History 2
Barbara Brookes, Charlotte Macdonald, Margaret Tennant (eds.)
Bridget Williams Books, Wellington, 1992. $34.95

Women in History 2 is a sequel volume to *Women in History: Essays on European Women in New Zealand*, edited by the same energetic trio of historians and published in 1986. It brings together eleven essays, three previously published, covering aspects of women's history up to the 1950s.

The introduction to the book, the author(s) of which remains anonymous, asserts that since 1986 women's history 'has consolidated its standing as a valid and intellectually respectable area of academic inquiry'. This is perhaps the insider's view. It is certainly true that at the New Zealand Historical Association Conference in 1993 one overseas historian noted approvingly that she had never heard of a national association devoting a conference to the theme of women's history. But the absence of a number of senior

historians, in a small historical community, was obvious. What I think is more to the point is that women's history has attracted very able younger scholars; it provides a rich field of largely unexplored material; and, as with Maori history, it has a reading public.

This volume of essays is nicely balanced chronologically, with the essays on the twentieth century being particularly welcome. It contains two essays on Maori women. Judith Binney's essay from the *New Zealand Journal of History* presents some observations about how listening to Maori women speak reveals perceptions of the impact of gender on their lives and points out that rank and gender interact, with rank over-riding gender in some situations. There is clearly a major revision occurring in the interpretation of the role of Maori women in the past and this essay, along with Binney's book, *Nga Morehu*, has been significant in raising issues that direct this revision. I do, however, think that we have to be wary of the self-denying implications of the concept of 'colonisation of the mind'. Barbara Brookes and Margaret Tennant contribute an overview comparison of the history of Maori and Pakeha women, embedded in a discussion of the growing awareness of difference in women's history. Drawing on both secondary and primary sources, they suggest that Joan Kelly's 'doubled vision' is essential to women's history in this country.

A group of essays focuses on non-conforming women and society's treatment of them. The way society marked off certain women as deviant and punished them seems cruel to a generation which experienced the anything-goes 1970s and 1980s. However, more recent events should be a warning that this mode of thinking and policy making will probably always be with us. The idea that much of what happened to women (and to a lot of other people for that matter) was the outcome of attempts at 'social control' is now out-dated, and these essays, in the main, present a more complex analysis. Margaret Tennant writes on women's refuges in the nineteenth century; Barbara Brookes has studied the records of the Seacliff Asylum between 1890 and 1920; Bronwyn Dalley the Te Oranga Reformatory for delinquent young women 1900–1918; and Anne Else the Motherhood of Man agency, providing for single mothers and adoptions from the 1940s to the 1960s.

Together these essays chart changes in attitudes from the 1860s' view of the 'fallen woman' to the 1950s' view of the 'foolish girl' and tell us more about the 'differences' among women. Although men usually occupied positions in policy making and top management, women played many roles in the processes of establishing institutional care for women, in committing women to such institutions, and in looking after them once there. It is not enough to say that socialization led women into either these roles, or others. The concept of agency opens up many avenues for historical exploration, and involves women in the actions of the past.

The remaining essays are more diverse. Jane Malthus presents a view of the ubiquitous nineteenth-century dressmaker and her role in the clothing industry. Dorothy Page analyses the origins, education and careers of the fifty-eight women who graduated from Otago University between 1885 and 1900. Jean-Marie O'Donnell writes on the impact of electricity on domestic work between 1935 and 1956, and Deborah Montgomerie on the 'man-powering' of women during World War II. Sally Parker, on the basis of interviews with Waikato rural women (and a few of their husbands), queries the notion of the 1950s being a golden age for farming families.

The more recent period lends itself to oral history, and interviewing has been an effective research method for historians of women. But we do need to keep interviewing in its place. I really wonder about the kind of oral history that largely confines itself to telling us about the lives of x number of women, spreading the coverage over a number of topics. A more valuable use of interviewing seems to me to start with a question, other than what was it like in those days, and to focus on information that can explicate a more specific historical enquiry.

The *Women's Studies Journal* asks its reviewers to provide critical insights into the books reviewed. All of the essays in this book could be argued over, the ideas could be examined and re-examined. Readers will want to ask why did you say that? What did you mean by this? Do you really think that? The authors, who only too often get little feedback on their work other than reviews, might

think I am dodging these questions. I can only plead that 'critical insights' would take a day, or a week, to develop. This collection informs, moves women's history further and sets a high standard of scholarship.

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Women and Work Conference: Directions and Strategies For the 1990s
Nicola Armstrong, Celia Briar and Keren Brooking (eds.)
Dept of Sociology, Massey University, Palmerston North, 1992.
$31.90

On my first trip to New Zealand I had great difficulty understanding everyday politics in the local newspapers. I could not interpret the references or allusions to many of the people, places or events; I could not read between the lines. I was surprised, since the Australian media has had a kind of self-interest in paying attention to New Zealand in the last few years, particularly in the lead-up to our Federal election in March. Clearly, this was not enough. Nor is it the same thing as attending to feminist issues, which I attempt to do in spite of the barriers erected between us by northern hemisphere publishers. We do have a great deal in common, but it is only through the exchange of ideas and experiences that we will be able to work out what is mutually useful to us. It is, therefore, with some ambivalence that I welcome the chance to review these conference proceedings which address questions of wide relevance while drawing on overtly local, or regional, experiences.

The conference organisers/editors were motivated by the urgent strategic concern we face in both countries; what is to be done in the face of the renewed assault on women and on the few gains that were made in the last two decades? In order to develop strategies we need to know what is happening and what has already been tried. This collection makes a useful contribution towards meeting these needs.

The editors were right to heed the demands of the participants to make the proceedings available for greater distribution and

reflection as no-one could take all this in at one short conference. The variety of styles, methods and issues canvassed, range from the polemical, through workshop notes, to research reports. It is not intended as a showcase for scholarly work, but it is illustrative of the considerable diversity of theory, methodologies, projects and research which fall under the rubric of 'women and work'. The layout is pleasing and shows that the trouble involved in re-typing and editing is worthwhile. I am less certain, however, about the wider usefulness of the workshop reports. They provide some indication of the directions of the discussions, but are generally too cryptic to serve other than as guidelines for those who did not attend. Nor did the reprints of the conference media coverage help me locate it within the debates of 1991; rather they indicated a remarkably sympathetic press.

Feminists have advanced well beyond traditional work studies by widening their focus, as they do here, to include part-time work, emotional labour, unpaid work, caring work, and home work (also known as outwork). But it is the first time I have seen 'work' include laying out the dead at home! When mainstream traditions are challenged, conceptual and methodological issues are produced by: dilemmas around the identification of appropriate definitions; dichotomies like the private/public; engagements with meanings of power, identity, subjectivity; deliberations over the researcher's role. The process of finding ways through these dilemmas can allow a greater comprehension and more insightful analyses of the complexities of work although, as in any collection, not all the possibilities suggested here are equally profitable.

I was interested by Nicola Armstrong's discussion of home work which dealt with important dimensions of the new 'workplace' and technology which has contributed to the blurring of the public/private split. Ruth Habgood contributed to the concept of emotional labour through her observations of its workings in relation to men in ways which could help explain male resistance to emotional work. Robyn Munford has developed an analysis of caregiving based on a useful methodology which also touched on the complexities of the relationship between the public and private

spheres, as well as the problem of ambivalence towards men. Delle Small addressed a different ambivalence to do with culture in her sharp discussion of the effects of foreign aid on women's work.

It is essential that we have accounts, such as these, of new work practices, and their consequences, if we are to develop viable political strategies. We cannot continue to rely on old assumptions about women's work. Underlying most of the discussions presented here is a strong awareness that the rules are changing fast. What we are now seeing is a rapid transformation of the experience of work, its practices and conditions, by the reconstruction of capital through the formation of global markets and informational technologies. At the same time economic rationalism seeks to justify the deleterious impact of these changes on women and our communities. In both New Zealand and Australia a critical issue for our antipodean versions of feminist politics has been the shift by the state away from welfarism to a much more blatant support for the market, for domination and accumulation, or the 'relations of ruling'. The paper by Susan Kell Easting proposed a 'mainstream' feminist theory which she developed to probe 'new right' assumptions, while Anna Yeatman laid out an analysis of the relations between globalisation and the labour market. I suspect that the 1991 data, which suggested that the wages gender gap was closing, will now be out of date as a result of the increase of individual employment contracts in New Zealand and enterprise bargaining in Australia. Feminism, too, has been affected by the current dominance of economic discourses, so that where once marxist feminism did the duty, through its provision of critiques of the workings of capital, this has long been deemed entirely inadequate. This places feminist economists, such as Prue Hyman, in increasing demand as we ask them to tackle the assumptions and methods of economic rationalist policies, in order that we can better know the enemy.

This collection, diverse as it is, seems to have adult women, with or without children, as its main focus. There was scarce mention of young women, not yet employed, their education and training issues, or of the expanding second stage of women's caring work—aged care, whether as a daughter or as a partner.

The common problem in analyses of women's oppression of the slippage between subject and victim, between choice by women contrasted with structural discrimination, emerged as another point of contention. If women are oppressed, where is the room for choice and action? But if we have choice, on what basis does oppression occur? As we slowly, sometimes reluctantly, recognise the differences amongst us, speaking from a shared sense of oppression becomes difficult. The differential effects of the gains won in the area of work has also undermined our sense of commonality. Some women have gained more choices, others had greater opportunities for more visible actions. This is not to say that achievements won for, and by, women were not well founded in the realities of women's lives.

In this collection there is a very strong unease and dismay at the speed with which so many gains were lost. Phillida Bunkle makes no bones about what has been lost in her opening speech. Although the force of the local references were largely lost on me her angry denunciation canvassed the damaging effects of the market on women, but more importantly provided some clues about how the market operates. Some of these are picked up in the later papers as I have suggested here. The most striking theme focuses on the widespread despair in the political process.

And so to the issue of strategy. Many of the papers call for a start to be made, and the work presented here is clearly part of that beginning. I think there is also a particular value in the inclusion of another aspect, that is the publication of material about actions already underway. The report by Kath Boswell and Denise Brown on the action research project on unemployment is a good example giving thoughtful and detailed substance to the issues. Case studies of the successes are presented alongside discussion of problems; for example, the dangers of going public on in-house troubles. The principles they outline have utility beyond the local as does the fact of the possibilities to which this attests.

In this vein, I am disappointed that women's work in trade unions received a relatively small space apart from the speech by Roslyn Noonan who took up a global perspective on work.

I note that political despair includes the failings of the labour movement, which has been called a men's movement with good cause. However, I am aware that New Zealand union activists have undertaken some significant political campaigns whose complexities are well worth examining.[1] Rosemary Du Plessis makes reference to this point in her paper which directly confronts the question of strategy. This is rare. Making suggestions about ways to act politically can often appear idealistic, and in these times may be read as naive and simplistic, especially when the ideas are put forward by researchers. However, if we have some of the ingredients we still need at least a tentative recipe. The business of working out what is to be done demands much, including some hard, perhaps even idealistic thinking, which is what Du Plessis displays in her paper.

This is an unusually cohesive collection given its origins and if *Women and Work* is treated by students, activists and policy makers as a work book, as materials to work with, it will well repay the cost.

Notes

1. Linda Hill, 'Back to the Future', *Broadsheet*, 193 (1992) pp. 21 – 4.

Suzanne Franzway, Sociology and The Centre for Gender Studies, Magill Campus, University of South Australia

Mothers & Daughters
Alison Gray
Bridget Williams Books, Wellington, 1992. $29.95

Mothers & Daughters is a tidy collation of 26 stories which focuses on the question of how mothers/daughters relate to each other. With the exception of one or two introductory paragraphs to each of the sets of stories and the conclusion, there is very little author narrative. I looked forward to reading the book in the context of women's literature and feminist theory, yet on reading it I wondered who the author was writing for because it doesn't fit clearly into either an academic or popular mould.

The method by which the stories were collected has been carefully described (pp. 10–11), especially the steps Alison went through to ensure that each woman remained in control of her own story. This produced, in each case:

> ... a negotiated document .... Some ... edited more than I would have liked ... not wanting to discuss anything painful or say anything that might be considered remotely boastful or self-promoting. I encouraged them to reinstate cuts; sometimes I was fully successful, at other times only moderately so. (pp. 10–11)

At the end of this process there is a story 'which the women feel fairly represents what happened in their lives and in their relationships with each other' (pp. 10–11), and which reads well. As a result of this intensive editing, the information produced is highly analysed data, not raw data, and its value to other researchers — as a data source — might be somewhat problematic. Furthermore, there is often not quite enough information given for the researcher who might wish to use the stories as 'case studies'.

A contrasting contract between researcher and contributor has recently been described by Elisabeth Moen:

> I felt it more than fair to give Libby the opportunity to see what I made of it [her life history], and also a chance to correct me if I had got something wrong. I told Libby about my thoughts, and she liked the idea and wanted to read my essay. We talked quite a lot about that I did not want to change anything in her story, and that she could not change anything in my interpretation or in what way I was doing this essay, which she agreed upon. But she had the right to have her opinions intact, which I have included in the essay. I also wanted to give her the chance to give me her comments. *It is her life, but it is my essay.* [emphasis mine] [1]

Alison described how she found some contributors through her personal networks and others as a result of publicity about the book. She wanted to include women from a 'cross-section of backgrounds and experiences ...' (p. 9), but had to limit her sample:

> I limited myself to interviews with Pakeha women. To include one or two women from other cultures runs the risk of tokenism. My parents are thoroughly Pakeha and so am I, so it is not surprising that I feel most comfortable in Pakeha culture and want to understand it more. (p. 9)

There is no clearly stated theoretical framework for the questions posed although there are a number of undefined assumptions suggestive of implicitly held theories. For example, what does the author mean by: 'Pakeha culture' (p. 9); ' "ordinary" women' (p. 20); 'natural' (p. 228)?[2] There is so much variation within Pakeha society in New Zealand that I find it difficult to accept the idea of 'Pakeha' culture. I'm not sure I've ever known an 'ordinary' woman. In one way or another most of the women I have ever met have seemed pretty exceptional to me, and I wouldn't be surprised to learn that—when it came to being a woman or mother—many 'famous' women would think of themselves as 'ordinary' women.

I was disappointed about her decision not to include non-Pakeha women and wondered how it would be that 'to include one or two women from other cultures ... [runs] the risk of tokenism' but the inclusion of two lesbian women does not (p. 9), especially when non-Pakeha women comprise at least that percentage of our population. The lack of inclusion of non-Pakeha woman is at one level also a statement of separation and isolation. It reflects the unfortunate state of affairs in New Zealand today that so many New Zealand women are divided as much by ethnicity as by affluence.

I think a review of this book in terms of academic criteria is inappropriate and that it might be more appropriate to view this book as a personal quest. Alison is quite clear about her personal interest, for example she tells us that, for her, the mother-daughter

> ... relationship has been one of the most important and painful in my life. As I gradually made sense of it I became curious about my friends' and colleagues' relationships with their mothers .... (p. 8)

It is in the context of a personal journey then that Alison asks 'how mothers and daughters keep their relationships going ...' (p. 9) and how they 'manage their relationships' (p. 10). She also

explains that she is 'interested in exploring the social changes that have made mothers' and daughters' life experience very different' (p. 8).

Although the question of how social change has affected women's lives and how these changes are reflected between the generations has already been well documented in New Zealand,[3] I found some of the comments pertaining to social change interesting and well stated. One of these (probably because I can also personally relate to it) has to do with the difficulties women experience trying to juggle childcare with career. Greater choice for women (of both generations) to travel and develop careers means that mothers are not always available to act as grandmothers, providing childcare while their daughters develop their careers. Clearly, the right to work for mothers goes hand-in-hand with the problem of who will mind the home and children. Those who live within easy distance of extended family have, at least potentially, better support systems than those who do not. And we can surmise that women of greater affluence will have more options available for childcare than those of lesser means, even in the absence of family support networks available to help with childcare.

This book will be read and understood differently, depending very much on the individual reader's background. Alison's conclusions, the benefits she gained from the exercise seem very different from mine, simply because we were looking for different things:

> Writing this book was a healing and rewarding task. I met 26 good women and listened to their journeys through life. I recognised many of the landmarks they described, and this increasing familiarity made my own journey easier. I learned that my experiences were neither unusual nor inevitable. (p. 11)
>
> I have learned in the course of compiling this book that while tolerance, acceptance and forgiveness are great qualities for mothers of any age, they are also useful attributes for daughters. I have come to appreciate my mother's strengths and the difficulties she had to cope with. I realise that she was not alone in her struggles. I value even more the time we have together .... I have also come to value my own daughters who are fine examples of the younger generation,

> being more tolerant, forgiving and accepting in their twenties than I was in my thirties and beyond .... (p. 230–1)

My solutions to any mother/daughter problems have been quite different, and were made at a different point in time. So, when I picked up this book, I was looking for something else. I wanted to read a discussion by the researcher which went into new levels of explanation about the ins and outs of mother-daughter relationships. In the end, while I didn't feel I gained much understanding about mother-daughter relationships from reading the stories of 26 very different women, I was pleased to think that Alison had.

Finally, although the 26 lives involved belong to each of the 26 women, the book is Alison's. In this context, it is debatable whether 'the women speak for themselves' (p. 11). I would have preferred it if Alison had addressed/recognised this and given us more benefit of her ideas. My feeling is that the women who should read this book are women who are perhaps not (yet) interested in analysis or theorising, who just want to have a look into the lives of some other New Zealand women; especially those women, who, like Alison, are beginning their own journey and can benefit from the comfort and encouragement of learning that there are others like them who have had similar experiences, have survived similar bad experiences, have learned new alternatives to age-old problems.

If the book has the same effect on these readers as it has had on Alison it will have proven its worth. Perhaps I should send a copy to my mother.

Notes

1. Elisabeth Moen, 'Libby, A Survivor: an in-depth interview with an inmate', (Unpublished manuscript, Department of Social Work, University of Umea, 1992) p. 11.
2. As in 'relationships between individual mothers and daughters tend to follow a natural pattern' (p. 228).
3. I refer to Julie Park, *Ladies A Plate: Change and Continuity in the Lives of New Zealand Women* (Auckland University Press, Auckland, 1991) in which the question of social change and New Zealand women

was focal. Like Gray, the researchers for *Ladies a Plate* spoke with 'rural women, city women, lesbians, single-parent mothers and/or daughters, women with good relationships with their mothers and women who ... struggled to come to terms with difficulties ....' (Gray, p. 10).

Marivee McMath, Christchurch

Other Books Received

Jillian Cassidy and Pamela Gerrish Nunn et al., *White Camellias: 100 Years of Artmaking by Canterbury Women* (Robert McDougall Art Gallery, Christchurch, 1993)

Marilyn Duckworth, *Simply Red* (Vintage New Zealand, Auckland, 1993) $19.95

Janet Frame, *The Adaptable Man* (Vintage New Zealand, Auckland, 1993) $24.95

Ruth Fry, *It's Different For Daughters: A History of the Curriculum for Girls in New Zealand Schools* (NZCER, Wellington, 1993) $25.20

Shonagh Koea, *Fifteen Rubies by Candlelight* (Vintage New Zealand, Auckland, 1993) $24.95

Sue Middleton, *Educating Feminists: Life Histories and Pedagogy* (Teachers College Press, Columbia University, New York, 1993) US$17.95

Rhoda Nathan, *Critical Essays on Katherine Mansfield* (Macmillan, New York, 1993) $40.00

Jane Ritchie and James Ritchie, 2nd ed., *Violence in New Zealand* (Daphne Brasell and Huia Publishers, Wellington, 1993) $29.95

Susan St John and Toni Ashton, *Private Pensions in New Zealand: Can They Avert The 'Crisis'?* (Institute of Policy Studies, Victoria University, Wellington, 1993)

Miriam Saphira, *Stopping Child Abuse: How Do We Bring Up New Zealand Children To Be Non-Offenders?* (Penguin, Auckland, 1992) $24.95

The Dictionary of New Zealand Biography, Volume Two: 1870 –1900 (Bridget Williams Books and the Department of Internal Affairs, Wellington, 1993) $130.00

Susan Alice Watkins, Marisa Rueda and Marta Rodriguez, *Feminism for Beginners* (Allen and Unwin, St Leonards, NSW, Australia, 1992) A$16.95

Women's Studies Association (NZ) (Inc.)

The Association is a feminist organisation formed to promote radical social change through the medium of women's studies. We believe that a feminist perspective necessarily acknowledges oppression on the grounds of race, sexuality and class as well as sex. We acknowledge the Maori people as the tangata whenua of Aotearoa. This means we have a particular responsibility to address their oppression among our work and activities.

Full membership of the Association is open to all women. Other individuals may become associate members. Annual subscription (includes GST):
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Annual Conference: The Association holds an annual conference where members present the latest feminist research and discussion papers, and workshops explore issues important to women. The *Conference Papers* are published annually. Members receive a discount for the conference and the *Conference Papers.*

Newsletter: A quarterly newsletter containing local and overseas news, book reviews, conference reports etc. is sent to all members.

Information for Authors

The *Women's Studies Journal* welcomes contributions from a wide range of feminist positions and disciplinary backgrounds. It has a primary, but not exclusive, focus on women's studies in New Zealand. We encourage papers which address women's experience, explore gender as a category of analysis and further feminist theory and debate.

All manuscripts will be sent out for anonymous reviewing with the aim of providing the author with feedback and constructive suggestions.

Enquiries about the *Journal* and contributions only should be sent to:

Women's Studies Journal
Women's Studies
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P.O. Box 56
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Please send two double-spaced copies, with generous margins. A separate title page should include the title and the author's name and address. Since contributions will not be returned authors should retain a copy of their work. A style sheet is available on request.

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Women's Studies Journal

Research Listing

As we wish to update our research listings we would like to hear from women who wish to be included in the Journal's list of current research in women's studies.

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