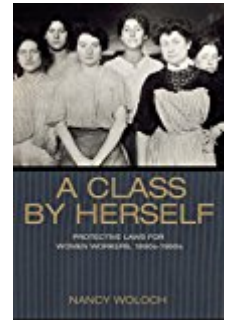


Nancy Woloch. *A Class by Herself: Protective Laws for Women Workers, 1890s-1990s.* Politics and Society in Modern America Series. Princeton: Princeton University Press, 2015. vii + 337 pp. \$26.95, paper, ISBN 978-0-691-17616-1.



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One of feminism's greatest challenges has been the problem of navigating arguments of equality and equivalence. Are women exactly equal to men, and therefore deserve no special protections? Or does women's status in society merit particular legislation designed to compensate? As Nancy Woloch phrases it in her introduction to *A Class by Herself: Protective Laws for Women Workers, 1890s-1990s*: "Does classification by sex invariably stigmatize those so classified and increase disadvantage? Alternatively, does gender-neutral law run the risk of denying difference, increasing inequality, and requiring conformity to standards set by men?" (p. 3).

While the battle over reproductive rights has brought these issues to the fore for much of the general public in recent decades, the dichotomy, as Woloch argues, has also rested at the heart of protective labor legislation for over a century. She tracks how the advent of protective labor laws beginning in the Progressive Era served as both the "entering wedge" for developing modern labor standards for all employees and the bellwether

for the larger legal status of women (p. 1). The book's eight chapters explain a century of the narrative history of protective labor laws, beginning with the origin of the Progressive rationales for protective laws, and ending with cogent analysis of the modern clashes over pregnancy and maternity leave law, overtime, and Title VII. By focusing on key cases to illustrate her broader points, Woloch deftly guides the reader through the morass of twentieth-century labor legislation.

In the first chapter, we are introduced to the key champion of protective labor legislation, reformer Florence Kelley. Founded in 1889 under Kelley's direction as general secretary, the National Consumers' League (NCL) became the organization that most definitively shaped protective laws for the first half of the twentieth century. Through a network of local chapters, the NCL's singular focus on challenging "unregulated capitalism" (their motto was "Investigate, agitate, legislate") proved incredibly successful in convincing state legislatures to pass laws governing maximum hours for both children and women workers,

their wages, and the safety conditions of their workplaces (p. 11). Here, Woloch deftly exposes the arguments for feminine difference that rested at the heart of these state campaigns. Women's physical weakness and potential for pregnancy and motherhood necessitated special legislation; their bodily vulnerability exceeded that of men.

This advocacy served a dual purpose. By playing on sympathies for women and children, the NCL and other labor organizations hoped to set legal precedents that would ultimately come to protect all workers—the “entering wedge” strategy. Yet as Woloch observes, “The ‘entering wedge’ strategy and the ‘sexual difference’ rationale clashed.... ‘Entering wedge’ drew on women workers’ commonality with male workers; ‘difference’ in contrast, referred to special needs. If protective laws compensated for gender-linked disabilities or disadvantages, circumstantial or innate, as reformers argued, their extension to men (logically) was unnecessary if not counterproductive” (p. 21). Woloch argues that the sexual difference argument seemed “an opportunity not a liability” at first (p. 22). It was only later in the twentieth century that a majority of feminists would point out that protective laws had a detrimental effect on sex equality.

Courts became an uncertain battleground for testing the limits of the new protective laws, and Woloch presents valuable analyses of key cases, including *Ritchie v. People* (1895), *Lochner v. New York* (1905), and *Muller v. Oregon* (1908), in her succeeding chapters. She notes the mutability of the decisions, explaining that “contests were close; many courts were divided; and as the pendulum swung back and forth, each case reshaped the ground rules for future cases.” As freedom of contract was pitted against questions of sex discrimination, above all, “the legal system imposed a discussion of gender” (p. 53).

Chapter 3, whose title “A Class by Herself” echoes the language of the opinion, centers the *Muller* decision as one that represented the

apogee of contemporary thinking on working women. The case dealt with Curt Muller, the owner of a Portland laundry who challenged state laws barring women and children from working more than ten hours a day. Both the brief presented by the state defense lawyer Louis Brandeis and the Supreme Court opinion emphasized women's “special physical organization,” her “child-bearing and maternal functions,” and the “need to prevent laxity of moral fibre which follows physical debility” as justification for upholding the state law (p. 75). The court held that women's sexual differences and the role of motherhood mandated state intervention and protective legislation.

Woloch notes that for many Americans, the *Muller* decision seemed “benevolent, humanitarian, and public spirited” (p. 76), even as some feminists castigated the outcome for its forced paternalism. Chapter 5 examines just how fractious these debates became, as feminist organizations like the National Woman's Party clashed with Kelley and the NCL over the social cost of protective labor legislation for women. As Woloch describes, “Each faction had justifiable suspicion—that classification by sex could impose injury or that blanket equality could have unequal ramifications” (p. 133).

The ramifications of the Great Depression and the Second World War would further transform the struggle between labor and gender. Woloch shows how the New Deal represented one of the most concrete achievements of the “entering wedge” strategy. With the passage of the Fair Labor Standards Act (FLSA) and many states' approval of minimum wage laws for both men and women, the original goal of improving workers' rights in general seemed well on its way. By the beginning of the 1960s, the case for single-sex protective laws disappeared as the passage of broader federal legislation established the 1964 Civil Rights Act's Title VII section that barred discrimination in employment on the basis of sex as well

as race and created the Equal Employment Opportunities Commission (EEOC).

Given these circumstances, Woloch argues, “Single-sex protective laws were thus the first casualties of the new feminism. Once central to the women’s movement, they became obstacles on the path to equal rights” (p. 192). She notes that it was not the EEOC that struck down protective legislation, but women who sued in court under Title VII. By the 1970s, most states had repealed or curtailed their maximum hours laws, and other state courts had ruled that protective legislation was superseded by Title VII. With these changes, “the fabric of single-sex protective laws that had recently blanketed the states had been shredded” (p. 219). Moreover, feminist agitation for the Equal Rights Amendment continued the process of nullifying decades of single-sex protective labor legislation, even as the “entering wedge” strategy continued to have important ramifications. The rights of workers—both male and female—expanded as the FLSA began to cover nearly 90 percent of employees nationally (p. 230). Additionally, the establishment of a new federal agency—the Occupational Safety and Health Administration (OSHA)—finally added federal oversight to general workplace regulations.

She concludes her study with a review of the legal status of pregnant workers, the emergence of family leave legislation, and the ramification of proposed fetal protection policies. Using the Supreme Court’s ruling in *UAW v. Johnson Controls* (1991), Woloch asserts that single-sex protective legislation was dealt a definitive blow. The automobile battery manufacturer in 1982 had established an exclusionary policy for “fertile” women on its assembly line, since its product used lead, a toxic substance. The company required that women wishing to work in the assembly line provide a certificate of sterilization from their physician. The United Auto Workers union sued on behalf of six women and one man in 1984, charging sex discrimination and violation of

the Pregnancy Discrimination Act of 1978. Citing *Muller v. Oregon*, the court ultimately held Johnson Controls’ policy violated Title VII, with Justice Harry A. Blackmun writing, “Fertile men, but not fertile women, are given a choice as to whether they wish to risk their reproductive health for a particular job.... Concern for a women’s existing or potential offspring historically has been the excuse for denying women equal employment opportunities.... It is no more appropriate for the court than it is for individual employers to decide whether a woman’s reproductive role is more important to herself and her family than her economic role” (pp. 255-256). Woloch smartly notes that the *Johnson Controls* decision was “more a last step in the history of protective laws than a first step toward health rights in the workplace” for all workers (p. 258).

A Class by Herself is a valuable synthesis for understanding the complexities wrought by the intersections of gender, law, labor, and medicine. Today’s labor legislation continues to bear the “double imprint” of both rights for all workers and “a tradition of gendered law that abridge[s] citizenship [and] impede[s] equality” (p. 262). We need look no further than the recent decision of the court on *Whole Women’s Health vs. Hellerstedt* (2016), overturning a Texas law that attempted to regulate abortion clinics’ policies and dramatically reduce procedures in the name of protecting women’s health. The respondents’ brief argued that “abortion complications present ... a real concern. Abortion can entail hemorrhage, infection, uterine perforation, anesthesia complications, incomplete abortion, and embolism, some of which can lead to hysterectomy or death” in its defense of maintaining the ambulatory surgery and admitting physician requirements for abortion providers’ offices. The court maintained, however, that these kinds of laws “vastly increase the obstacles confronting women seeking abortions in Texas, without providing any benefit to women’s health capable of withstanding any meaningful scrutiny.”[1] Inherent in this language

of the opinion is the long history of protective labor legislation described in the book.

As we face the next generation of challenges to women's rights—both within labor and reproduction (and in their intersections)—Woloch's work is essential reading. Moreover, the book's concise summaries invite further scholarship from legal historians, as well as historians of medicine, science, and gender, to unpack the still-unknown details behind so many of the court decisions, legislative efforts, workers' experiences, and reform advocacy. We, as historians, can ask for no better gift than the brilliant departure point that Woloch has given us.

Note

[1]. *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), https://www.supremecourt.gov/opinions/15pdf/15-274_p8k0.pdf.

If there is additional discussion of this review, you may access it through the network, at <https://networks.h-net.org/h-shgape>

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