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Book Reviews

Woloch, Nancy. *A Class by Herself: Protective Laws for Women Workers, 1890s–1990s*. Princeton, NJ: Princeton University Press, 2015. 337 pp. $39.50 (cloth), ISBN 978-0-691-00258-0.

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In *Whole Women's Health vs. Hellerstedt* (decided June 27, 2016), the Supreme Court overturned a Texas regulation of abortion providers passed in the name of protecting women's health. In doing so, the court continued to uphold liberty and equality claims over what Justice William Brennan some thirty years before had labeled "romantic paternalism": laws ostensibly made to benefit women that in fact discriminate, placing "women, not on a pedestal, but in a cage." [*Frontiero v. Richardson*, 411 U.S. 677, 684 (1973)]. Nancy Woloch was part of an amicus brief that argued against the Texas law by tracing the ways that single-sex legislation restricted women's citizenship. (Full disclosure: so was I.) Her research, extensively relied upon to develop that argument, underscores how historians can shape the present even as we interpret the past.

A Class by Herself is a magisterial achievement. Building upon Woloch's own extensive research, it most importantly synthesizes a generation of scholarship on the rise and fall of women-only labor standards, divisions among activist women, conflicting business and union interests, and shifting judicial interpretation. Moving between the states and federal government, Woloch parses legal doctrine, gendered constructs, and political economy from the Gilded Age forward. She has read everything—original briefs and opinions, law review articles, social science studies, public commentary, and recent monographs. She humanizes legal history through deft portraits of plaintiffs and litigators, reformers and judges. Her political and social contextualization illuminates standard cases, like *Muller v. Oregon* (1908) and *West Coast Hotel v. Parrish* (1937); her discussion of pregnant workers underscores the complexity of gender-neutral provisions. Nothing was inevitable: the players mattered, as did the timing of cases.

Woloch provides the best analytical trajectory to the litany of contests central to women's legal history. Supporters of women-only laws held somewhat contradictory goals: they hoped such measures would serve as an "entering wedge" for universal labor standards but also compensate for women's disadvantaged position in industry, bringing benefits through legislation unobtainable through strikes or collective bargaining. In her narrative, the 1938 Fair Labor Standards Act (FLSA) demonstrates the success of the entering wedge, with *Johnson Controls* (1991), which vacated job restrictions for fertile women, providing a new beachhead for regulating occupational health and safety. Title VII challenges in the states during the late 1960s dismantled single-sex hours and weight laws. A changing economic, social, and political landscape—including the rising labor force participation of white mothers of schoolchildren, the decline of the family wage, women's liberation, the impact of the black civil rights movement, and subsequent equal protection doctrine—undermined protection and promoted women's equality.

In the 1890s, women, it was thought, were like men but also different, a construction appealing to middle-class clubwomen ready to uplift factory girls (but not regulate working conditions of domestic workers in their own homes). Woloch reveals how the need to maneuver around "freedom of contract" determined the strategy of Florence Kelley; the National Consumers' League; and its lawyers, notably Louis Brandeis and Felix Frankfurter. These Progressive reformers, however, did not fully

set the terms of the contest. Manufacturers first contended that women, like men, had "the right 'to work as they choose" (40), the counsel fighting Illinois's eight-hour law in 1895 explained.

Countering this use of the Fourteenth Amendment and due process against state interference with property, supporters of labor standards evoked the police power of the state. They relied on "common facts" assembled into "the Brandeis brief" to walk through a loophole opened in *Lochner* (1905), which struck down a New York law regulating hours of bakers as class legislation, but suggested that protection of women's health and community welfare might prevail. While Kelley had developed the "mothers-of-the-race" argument (43) in the 1890s, after *Muller*'s powerful seizure of women's maternal justification for women-only laws, reformers ran with such rationales. Their embrace of sexual difference, Woloch concludes, deprived women of self-determination, stereotyped their judgment as lacking, and "reinforced gender disparities in the labor market and in law" (24). Hours ceilings and night work bans lowered income and blocked employment options, with particularly powerful consequences when it came to overtime. Woloch shows the unintended consequences of the time and one-half provision of FLSA, which widened the gender earnings gap as employers embraced mandatory overtime but reformers failed to extend hours laws to men.

The collaboration of the National Women's Party and other equalitarian feminists with employers against the minimum wage generated animosity between organized women that lasted decades. Woloch skillfully explicates the various sides in the equality vs. difference debate, their class allegiances, and shifting positions, especially among labor feminists. Some, notably Eleanor Roosevelt and Clara Beyer, accepted the Equal Rights Amendment after passage of FLSA, though political allegiances kept them from vocal support. The triumph of Title VII led others, like laborite and former Women's Bureau head Ester Peterson, to declare for rights; as Peterson confirmed in 1970, "History is moving in this direction" (226). Into the 1980s, feminist divisions persisted, as seen in acrimony over whether pregnancy was sui generis or should be treated like disability in employer health plans.

Particularly astute is Woloch's recognition of an affinity between feminism and capitalism, a "companionate relationship between employers' rights and women's rights—and consequently between conservative lawyers and egalitarian feminists" (73) rooted in classic liberalism. Trade union women as late as the 1970s, according to Mary Callahan of the International Union of Electrical Workers, felt "to accede to feminism was to accept the tenets of free-market individualism" (229). By the post-WWII era, however, most labor feminists sought to balance protection against exploitation with support of equal pay, nondiscrimination, and equal opportunities. With today's fraying of the employer-employee relationship and the demise of labor standards, equality at work seems closer to Kelley's dismissal of *Adkins v. Children's Hospital* (1923) as a constitutional right to starve rather than the fulfillment of feminist aspirations. But, as with *Whole Women's Health*, equality discourse still offers a powerful weapon for social justice. We can thank Nancy Woloch for making this history available.

PROGRESSIVE RELIGIOUS PLURALISM

KITTELSTROM, AMY. *The Religion of Democracy: Seven Liberals and the American Moral Tradition*. New York: Penguin Press, 2015. 432 pp. $32.95 (cloth), ISBN 978-1-59420-485-2.

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In this fascinating and brilliantly conceptualized book, Amy Kittelstrom provides the genealogy of an idea: the "religion of democracy." The term comes from William James, perhaps the United States' most influential and profound thinker, who, in his late nineteenth-century writings