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“BOYS KEEP OUT!”: HISTORICAL AND LEGAL PERSPECTIVES ON THE CONTRIBUTIONS OF ALL- FEMALE ORGANIZATIONS TO SEX EQUALITY

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I. INTRODUCTION

The original purpose of anti-discrimination laws was to promote equality and remedy the historical and contemporary effects of discrimination. The laws have been used successfully to dismantle stigmatizing barriers that have excluded people of color, women and other subordinated groups from jobs, clubs, housing and schools. For example, white, all-male clubs, an intrinsic element of the “old boys network,” have often functioned to maintain existing disparities in political, economic and educational power. Women have used various anti-discrimination doctrines, including equal protection principles and public accommodations statutes, to gain entry into powerful, all-male clubs. Anti-discrimination doctrines are now being applied in like fashion to all-*female* organizations, despite the significant contributions these groups have made to gender equality since the mid-nineteenth century.

The inverted use of these tools is made possible by a senseless disregard of the original purpose and context of anti-discrimination laws. The concept of equality has been mutated into an ahistorical, symmetrical “discrimination is discrimination” litany which relies on the erroneous belief that every exclusion constitutes an injury, and an equivalent injury at that. The result is increasing pressure against all-female organizations to admit males, including lawsuits and administrative complaints that allege reverse sex discrimination, and denial of funds or threats of de-funding by funding sources that require compliance with anti-discrimination standards. This paper argues that all-female groups function as positive forces

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in the movement for gender equality, and that their single-sex status should be protected.

Both historically and today, all-female organizations have provided their members with role models, leadership training, support, refuge from sexual harassment and assault, and a forum for women's voices. In this way, all-female groups have improved the quality of the lives of their disenfranchised members, promoted, both directly and indirectly, the advancement of women in our society, and challenged traditional gender roles. While women and their organizations do not necessarily agree upon political goals or even the meaning of women's equality, female-only spaces play a meaningful role in the struggle for equality by providing women the opportunity to pursue criticisms and analyses of patriarchal structures, and to develop strategies for ending women's subordination. To take the most striking example, the nineteenth century women's club movement was *the* source of transformation and empowerment which made the women's suffrage movement possible, and created the context and the momentum for the passage of the Nineteenth Amendment. Through the experience of the nineteenth century women's club movement, women collectively challenged the separate spheres tenet that excluded their voices from the public realm. While the history of this century reflects the diversity of women's voices, particularly during the early days of the Equal Rights Amendment debate, women's groups continue to play a vital role in the movement toward gender equality. The mechanical imposition of anti-discrimination policies upon all single-sex organizations threatens the continued role of all-female groups in promoting gender equality and the well-being of women.¹

My support for women's continued access to the tools of single-sex organizing is not meant to preclude a critique of the way in which some women have chosen to use these tools, nor is it meant to foster naiveté about any inherent bonds of sisterhood. I am aware that many white and/or middle-class women's groups have paid little attention to the other bases of oppression, such as racism, classism and homophobia. For example, nineteenth century white women's suffrage and temperance organizations often excluded poor women and women of color, and were willing to seek gains for their members at the expense of other women left behind.² Racism and other forms of oppression exist in "second wave" predominantly white feminist groups as well.³ I am also aware that some women's groups explicitly espouse anti-choice, anti-gay and anti-feminist views. Moreover, my position in support of women's groups is not meant to downplay the importance of gender-integrated organizations, particularly

1. Further, it may be that some contemporary all-male groups do not function as powerful clubs, but play a progressive and remedial role for their members and/or for women. They too are threatened by the mechanical application of sex discrimination doctrines.

2. See *infra* notes 13 and 27.

3. See *infra* notes 214, 218, 233.

those formed by people of color, nor is it meant to assume that all women view single-sex organizing in the same way.

Despite the failings of many present-day women's groups and their limited appeal for some women, all-female organizations have had, and continue to have, transformative effects upon the lives of their female members. When anti-discrimination doctrines are used to force remedial women's organizations to admit males, the ability of these organizations to contribute to the movement for equality is restrained, sometimes severely. This paradoxical outcome is the result of sex discrimination doctrines that do not distinguish between the historical experiences of men and women, do not distinguish between different single-sex groups on the basis of function, and assume legally cognizable injury from the fact of exclusion alone. The problem then for those seeking gender equality is how to reclaim and redesign existing legal doctrines so that the continued challenge of the "old boy network" does not deny women, and perhaps men, the option of separatism. In applying anti-discrimination doctrines to single-sex groups, models sensitive to function and/or the injury suffered must be developed to protect the single-sex groups that promote sex equality. For example, we must develop doctrines that recognize that the effect of a sex-based exclusion from a powerful all-male group is not equivalent as a general rule to the effect of a sex-based exclusion from an all-female group.

This article reviews the role of women's organizations in the nineteenth and twentieth centuries, describes the implications of anti-discrimination doctrines when applied in a mechanical fashion, and suggests modifications to these doctrines to protect remedial all-female organizations. Part II reviews the impact of the nineteenth century women's club movement on the lives of its female members, and the role of the women's club experience in the passage of the Nineteenth Amendment. Part III examines the role of post-suffrage women's organizations — both the continued women's club movement and the "second wave" of women's organizing that began in the 1960s — and the implications of "reverse discrimination" challenges grounded in anti-discrimination doctrines originally designed to advance equality. Part IV suggests modifications to the existing anti-discrimination doctrines in order to protect remedial all-female organizations (and possibly some all-male organizations).

II. THE NINETEENTH CENTURY WOMEN'S CLUB MOVEMENT

The nineteenth century marked a time of isolation and exclusion for middle-class white American women, and continued hostility and sexual denigration for Black and working-class women. By the mid-1900s, the growing force of industrialization and urbanization led to an increasingly sex-based division of labor, and a heightened distinction between the public sphere of middle-class men and the private or domestic sphere of middle-class women. These economic changes were buttressed by religion's

endorsement of separate spheres, divinely or naturally assigned to men and women.⁴

Pursuant to this new bourgeois gender system, men properly performed a public role in such male-only institutions as fraternal and reform organizations, the universities, the market economy and the political system. Women were excluded from all of these public, male institutions, and instead occupied a "special role" as the moral guardian of the home. As wives and mothers, women were deemed responsible for moral education and spiritual influence. Middle-class, predominantly white women were limited and stunted by their isolation in a private realm of domesticity and household morality that was mandated by the ideology of "true womanhood."⁵

The divine role allotted to some women was necessarily accompanied by its antithesis, the image of the immoral and degraded "othered" woman.⁶ Black and working-class women, also excluded from public male institutions, were barred from white women's institutions and endured sexual hostility and violence via the "anti-sphere" of natural corruption imposed upon those who did not precisely mirror the image of the white, middle-class woman.⁷ This hostility and violence worsened during the post-Reformation period, as economic upheaval spurred new and more fierce expressions of racism and classism, including the continued sexual exploitation of Black and working-class women and the lynchings of Black males for alleged sexual depravity and assaults against white women.⁸ This escalating violence, grounded on the sexual deviance ascribed to those outside the separate spheres ideology, combined with worsening economic conditions for Black and working-class people. For Black and working-class women living in the era of "true womanhood," achieving personal dignity, bodily integrity and economic survival became more and more difficult.

A. *The Price of True Womanhood: Exclusion, Isolation, Degradation*

Under the tenets of nineteenth century "true womanhood" (also called the "cult of domesticity" and "the ideology of the lady") women were to be pious, pure, domestic, maternal, spiritual, and submissive.⁹

4. KAREN J. BLAIR, CLUBWOMAN AS FEMINIST: TRUE WOMANHOOD REDEFINED, 1858-1914, 1-2 (1980).

5. *Id.* at 3.

6. PAULA GIDDINGS, WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA 85-89 (1988).

7. *Id.*; GERDA LERNER ED., BLACK WOMEN IN WHITE AMERICA 447-450 (1973); sources cited in notes 13-17. This is not to say that "privileged" white women occupying the domestic sphere did not also experience sexual violence, though violence may have been more hidden, and less explicitly sanctioned.

8. GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 78-79, 86-87, 101.

9. Nancy A. Hewitt, *Feminist Friends: Agrarian Quakers and the Emergence of Woman's Rights in America*, 12 FEMINIST STUD. 27, 29 (1986); Estelle Freedman, *Separatism as Strategy: Female Institution Building and American Feminism, 1870-1930*, 5

Women experienced "virtual banishment from the public sphere" and "incarceration in the home."¹⁰ The isolation and exclusion of women was a catalyst for the formation of women's clubs, particularly organizations of white, middle-class women. Jennie June Croly, one of the founders of the nineteenth century women's club movement, described the thirst of the isolated woman as follows:

The cry of the woman emerging from a darkened past was "light, more light," and light was breaking. Gradually came the demand and the opportunity for education; for intellectual freedom, for women as well as for men; for cultivation of gifts and faculties. . . .

Simultaneously with this creation of educational opportunity has arisen an eager seeking after knowledge on the part of women who have been debarred from its enjoyment or lacked opportunity for its acquisition. The knowledge sought was not that of a limited, sectional geography, or a mathematical quantity as taught in schools, but the knowledge of the history and development of races and peoples, of the laws and principles that underlie this development, and the place of the woman in this grand march of the ages.

The woman has been the one isolated fact in the universe. The outlook upon the world, the means of education, the opportunities for advancement, had all been denied her. . . .¹¹

Another clubwoman, Mary Wood, purporting to describe a scene of antiquity, revealed similar frustration with the limitations of domestic life:

Notwithstanding the fact that chastity among men remained a matter of personal choice, women now lived with their husbands, were guarded on every side, shut up in their own homes and punished most severely for even the slightest infringement of loyalty to the husband who became also the lord and master.¹²

In addition to experiencing similar forms of exclusion from the public male sphere, Black women were barred from white women's institutions and were viciously disparaged for their alleged immorality and for not fitting the image of white Victorian ladies.¹³ "There would be no room on the pedestal for the southern Black lady. Nor could she join her white sisters in the prison of 'true womanhood.'"¹⁴ The alleged immoral-

FEMINIST STUD. 512, 515 (1979); BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 3.

10. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 3.

11. J.C. CROLY, THE HISTORY OF THE WOMAN'S CLUB MOVEMENT IN AMERICA 11-12 (1898).

12. MARY I. WOOD, THE HISTORY OF THE GENERAL FEDERATION OF WOMEN'S CLUBS 9-10 (1912).

13. Marilyn Dell Brady, *Organizing Afro-American Girls' Clubs in Kansas in the 1920's*, 9:2 FRONTIERS 69 (1987); Marilyn Dell Brady, *Kansas Federation of Colored Women's Clubs*, 9 KANSAS HISTORY 19, 27 (Spring 1986); Karen Sacks, *Class Roots of Feminism*, 27:9 MONTHLY REVIEW 28, 35-36, 42 (February 1976); GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 82-83.

14. Darlene Clark Hine, *Rape and the Inner Lives of Black Women in the Middle*

ity and the resulting hostility was rooted in the sexual exploitation of Black women in slavery and Black women employed as domestic workers.¹⁵ Josephine St. Pierre Ruffin, a Black clubwoman, described the flip side of "true womanhood":

I have left the strongest reason for our conferring together until the last. All over America there is to be found a large and growing class of earnest, intelligent, progressive colored women . . . and yet, if an estimate of the colored women of America is called for, the inevitable reply, glibly given, is, "For the most part ignorant and immoral, some exceptions, of course, but these don't count." . . . Now with an army of organized women standing for purity and mental worth, we in ourselves deny the charge and open the eyes of the world to a state of affairs to which they have been blind, often willfully so, and the very fact that the charges, audaciously and flippantly made, as they often are, are of so humiliating and delicate a nature, serves to protect the accuser by driving the helpless accused into mortified silence. . . .¹⁶

The sexual degradation of Black women was accompanied by an analogous characterization of Black males as rapists and animals, and the increasing tide of lynching by the 1890s.¹⁷ For both Black men and Black women, the ideology of true womanhood was imprinted on the threats to their very existence.

This context of exclusion, isolation and, for some women, degradation, created an intense need for new communities in which women's voices could be heard, and dictated the form that these new social spaces would take. Out of the experience of "true womanhood" came the historically unprecedented women's club movement.

B. *Beginnings of the Women's Club Movement*

The first signs of women's organization may be found in informal female networks¹⁸ and in early charitable or benevolent groups existing within the church.¹⁹ The formation and expansion of *independent*

West, 14 SIGNS 912, 915 (1989).

15. *Id.* at 912-913; Deborah K. King, *Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology*, 14 SIGNS 42, 47 (1988); GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 86, 101 (noting sexual exploitation of Black domestic workers).

16. LERNER, *supra* note 7, at 442-443 (address of Josephine St. Pierre Ruffin to the First National Conference of Colored Women (1895)).

17. *Id.* at 436. "It was against this background [of vilification of Black women] that Ida B. Wells's antilynching campaign exploded on the scene." GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 83.

18. Carroll Smith-Rosenberg, *The Female World of Love and Ritual: Relations between Women in 19th-Century America*, 1 SIGNS 1 (Autumn 1975); NANCY F. COTT, THE BONDS OF WOMANHOOD: "WOMAN'S SPHERE" IN NEW ENGLAND, 1780-1835 (1977); William R. Taylor and Christopher Lasch, *Two "Kindred Spirits": Sorority and Family in New England, 1839-1846*, 36 NEW ENG. Q. 23 (1963).

19. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 7-8; WOOD, *supra* note 12,

women's organizations in the nineteenth century, however, was unprecedented.²⁰ These groups were highly varied, and included: charitable, cultural, fraternal, peace, abolition, patriotic, religious, suffrage, temperance, work, youth and political groups.²¹

Exclusion by males in a particular arena was often the precipitating factor in the formation of an independent women's group, particularly for the white women's groups: the women's suffrage movement was spurred by the exclusion of women from the London World's Anti-Slavery Convention; Sorosis, a women's culture club, was inspired by the exclusion of women from the New York Press Club; women's colleges arose in response to the exclusion of women from men's colleges.²² The Buffalo chapter of the reformist Women's Educational and Industrial Union developed in response to the all-male Charity Organization Society.²³

Similarly, women's literary, art and culture clubs developed in response to the educational exclusion of women, and attempted to remedy resulting deficiencies in speaking, researching, writing, and other forms of culture and self-expression.²⁴ Like the earlier female networks, the new

at 30; CROLY, *supra* note 11, at 1-14; LERNER, *supra* note 7, at 435.

20. WOOD, *supra* note 12, at 30-31. "Previous to the nineteenth century there had been worthy examples of religious organizations among women who . . . had become ministering angels to the poor, guardians of the orphaned rich, teachers, nurses and devotees. . . . Early in the century there had appeared many organizations for charitable and missionary work, but these early organizations seem to have been auxiliaries to larger groups of men who were working toward the same end. Not until the formation of the Woman's Suffrage Association and the Woman's Christian Temperance Union can there be said to have been any distinct group of women with a national or world-wide affiliation, working for a definite purpose along perfectly independent lines." *Id.* "The organization of the NACW was a watershed in the history of Black women. They were not participating in a women's auxiliary of a like-minded men's group, as had happened with the social-uplift and abolitionist associations of the past." GIDDINGS, *WHEN AND WHERE I ENTER*, *supra* note 6, at 95.

21. Karen J. Blair, *Introduction* to *THE HISTORY OF AMERICAN WOMEN'S VOLUNTARY ORGANIZATIONS, 1810-1960: A GUIDE TO SOURCES* at x (1989); CROLY, *supra* note 11.

22. Annette K. Baxter, in BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at xiii; GIDDINGS, *WHEN AND WHERE I ENTER*, *supra* note 6, at 97.

23. BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 87.

24. *Id.* at 58-60, 68; Brady, *Afro-American Girls' Clubs*, *supra* note 13, at 70, Brady, *Kansas Federation*, *supra* note 13, at 21; Lynda F. Dickson, *Toward a Broader Angle of Vision in Uncovering Women's History: Black Women's Clubs Revisited*, 9:2 *FRONTIERS* 62, 66 (1987). In the words of clubwomen:

[Literary lectures] gave to women, unaccustomed to the sound of their own voices, courage to speak before an audience; they gave them an ability to express their thoughts in logical sequence; . . . to 'think on their feet'. . .

WOOD, *supra* note 12, at 28-29.

We are as children feeling our way in the dark, for it must be remembered that it is not yet half a century since the free schools, even in the most enlightened portions of our country, were first opened to girls. How, then, should you expect of us the fullness of wisdom which you for whole centuries have been gathering from schools, colleges, and exclusive knowledge and management of affairs?

women's clubs also provided sisterhood, support and mentors for their members. "Club women learn more than to improve the mind; they learn to love each other," said Charlotte Perkins Gilman.²⁵ For white clubwomen in particular, all female organizations provided a remedy for isolation by creating a community of women. A clubwoman at the 1889 Sorosis convention spoke of the power and joy of club sisterhood:

I have rejoiced to-day in the *manyness* of us more than in anything else. To-day I felt the joy of the vast intellectual wealth in us, and it has been like a shock of electricity. I am glad that so many could come; I am glad we clasp hands so widely, and now begin to understand each other. It seems to me that as I feel the great love that comes from so many, it is almost too great a joy, and somehow we want to learn to bear it. We must learn sympathy, learn unity, learn the great lesson of organization. I am sure we never have begun to dream of what will yet appear.²⁶

Like white women's clubs, Black women's clubs often formed in response to exclusion — not only by male institutions but by white *females* as well.²⁷ While Black clubwomen experienced frustration from their exclusion from opportunity, this frustration arose out of race as well as gender.²⁸ Thus, a particular Black sisterhood was a primary motivation for Black clubwomen:

In the first place we need to feel the cheer and inspiration of meeting each other, we need to gain the courage and fresh life that comes from the mingling of congenial souls, of those working for the same ends.

CROLY, *supra* note 11, at 21 (quoting clubwoman Alice Cary).

The eagerness with which the women's clubs all over the country have taken up history, literature, and art studies, striving to make up for the absence of opportunity and absorption in household cares of their young womanhood, has in it something almost pathetic.

Id. at 112.

We hail with delight every intimation that our Afric American sisters are becoming more sensible of the value of mental cultivation, and are exerting themselves to procure it.

LERNER, *supra* note 7, at 438 (quoting statement of the Afric-American Female Intelligence Society of Boston).

25. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 69.

26. WOOD, *supra* note 12, at 33, CROLY, *supra* note 11, at 90 (quoting Mary Eastman of the New England Woman's Club)(emphasis in original). Of the convention, Croly wrote: "What brought them? Not a creed, a dogma, or a hobby; only the spirit of unity in the bonds of newly-discovered love. And this spirit shone out of every woman's eyes." *Id.* at 101.

27. Wilma Peebles-Wilkins, *Black Women and American Social Welfare: The Life of Fredericka Douglass Sprague*, 4:1 AFFILIA 33, 35 (1989); LERNER, *supra* note 7, at 447-450 (documenting the "Ruffin Incident," in which the Black Women's Era Club and its representative, Josephine St. Pierre Ruffin, were denied admission to the 1900 conference of the General Federation of Women's Clubs); Suzanne Lebssock, *Women and American Politics, 1880-1920*, in WOMEN, POLITICS AND CHANGE 35, 45 (Louise A. Tilly and Patricia Gurin eds., 1990).

28. GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 97.

Next we need to talk over not only those things which are of vital importance to us as women, but also the things that are of especial interest to us as colored women . . . how to make the most of our own, to some extent, limited opportunities.²⁹

The establishment of Black women's clubs was also inspired by particularly vicious attacks on their morality and dignity. The formation of the National Association of Colored Women (NACW) in 1896, for example, was inspired by the public statement of the president of the Missouri Press Association that "the Negroes in this country were wholly devoid of morality, the women were prostitutes, and all were natural thieves and liars."³⁰ A primary concern of Black women's clubs, then, was "upgrading (the) sexual images" which oppressed them, and speaking out against the sexual harassment they endured.³¹ For Black women, facing negative estimations of their sexuality, the separate culture created by clubs such as the NACW permitted the collective creation of alternative, empowering self-images, facilitating their mental and physical survival in a hostile world.³²

C. *Women's Organizations and Separatism*

As a remedial space for support and self-development, most women's organizations barred male membership and tried to limit male participation to occasional lectures and open houses.³³ Sorosis, for example, the first of the influential white women's clubs, deliberately prohibited males. Founder Jennie June Croly said women should work alone "because men would overpower them if they tried to work together."³⁴ Male presence intimidated women and hampered them from acquiring the speaking skills they desired:

In Buffalo, a group which congregated in a church parlor could not refuse to admit the church pastor. But the women chafed under his scrutiny; he challenged the views expressed and effectively silenced most of the membership.³⁵

In the all-female environment, women who would not speak publicly before males learned skills and acquired assertiveness by presenting lectures to groups of women. Leadership roles which would otherwise go to men were filled by women.³⁶ Founders believed that self-confidence and

29. Address of Josephine St. Pierre Ruffin to the First National Conference of Colored Women (1895), quoted in LERNER, *supra* note 7, at 441.

30. LERNER, *supra* note 7, at 436. The NACW united the National League of Colored Women and the National Federation of Afro-American Women. *Id.*

31. Peebles-Wilkins, *supra* note 27, at 35; Hine, *supra* note 14, at 918; GIDDINGS, *WHEN AND WHERE I ENTER*, *supra* note 6, at 86-88.

32. Hine, *supra* note 14, at 916, 920; Dickson, *supra* note 24, at 66-67.

33. BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 69.

34. BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 21.

35. *Id.* at 69.

36. Kathryn Kish Sklar, *Hull House in the 1890s: A Community of Women Reform-*

valuable organizational skills were learned more easily apart from males.³⁷ Further, men could be obstructive if they were threatened by the implicit challenge to the separate sphere doctrine raised by women in leadership or speaking positions. Mentor relationships were also fostered in the single-sex environment: "junior clubs," for example, provided girls with adult female role models of strength and achievement.³⁸

Having shared the experience of racism and the unique historical legacy of slavery, including the violence and degradation of racist sexual stereotypes, Black women and Black men were allied on many race issues. Black clubwomen often worked with Black men in gender integrated organizations.³⁹ But like white clubwomen, Black women struggled with Black men over leadership positions in these organizations.⁴⁰ For example, the appointment of Ida B. Wells to the mixed-sex Afro-American Council drew a sharp response from the Black press, which stated that the council position should be filled by a man and suggested that Wells be made head of a women's auxiliary.⁴¹ Some Black clubwomen criticized Black men for failing to defend Black women against charges of immorality and threats of sexual violence, and for Black men themselves holding stereotypical, contemptuous views of Black women as immoral or emasculating.⁴² And while the historical experience of sexual abuse implicated white men specifically, the efforts of Black women to "resist the misappropriation (rape) and to maintain the integrity of their own sexuality"⁴³ may have constituted an additional reason for excluding males generally. Thus, while in some contexts Black women were less separatist on the basis of gender than white clubwomen, Black women also sought the opportunities provided by single-sex organizations.

ers, 10 SIGNS 658, 677 (1985). In the New England Woman's Club, men could become members, but only women could fill offices and exercise control. CROLY, *supra* note 11, at 37. In the Buffalo Women's Educational and Industrial Union, men held associate memberships, without full voting privileges. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 88.

37. Deborah L. Rhode, *Association and Assimilation*, 81 Nw. U. L. REV. 106, 111 (Fall 1986).

38. Brady, *Afro-American Girls' Clubs*, *supra* note 13, at 72.

39. See King, *supra* note 15, at 57-58 (noting conflict between white feminist separatism and the values and goals of many Black feminists); GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 112 (noting Black clubwomen's support of Black men).

40. GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 116-117. See also King, *supra* note 15, at 55 (noting sexist experiences of Black women in the larger society and in Black society. This experience included sexual inequities, images of Black women as emasculating matriarchs, sexual abuse and physical violence, and domination of Black males in the leadership positions of many Black social institutions, such as the church. Black male domination of SNCC in the 1960s triggered the formation of an independent feminists-of-color organization, the Third World Women's Alliance).

41. GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 110-111.

42. *Id.* at 113-117. Said Black clubwoman Fannie Barrier Williams: "We have all too many colored men who hold the degrading opinions of ignorant white men, that all colored girls are alike." *Id.* at 114.

43. Hine, *supra* note 14, at 913.

D. *Clubwoman as Feminist*

Most women's organizations constituting the nineteenth century women's club movement were explicitly traditional, and did not directly reject the doctrine of separate spheres.⁴⁴ But "[w]oman's responsibility to set and maintain moral standards for her loved ones provided a loophole whereby she not only could but had to leave the home and exert influence on the public sphere."⁴⁵ Through an expansion and redefinition of women's domestic and spiritual role, women justified their activities in all female organizations as an extension, rather than a rejection, of their role as wife, mother and guardian of morality.⁴⁶ This ideology—later termed "domestic feminism"—was first articulated by Sorosis and the New England Woman's Club, two prototypical "traditional" women's clubs established in 1868.⁴⁷

Such ideology may have been more salient for white women's clubs than for Black women's clubs: Black women's clubs existed in context of a long-standing "black helping tradition,"⁴⁸ and even middle-class Black women were not fully absorbed into the cult of true womanhood. In order to face their daily struggles as Black people and survive, Black women necessarily rejected the appearance of docility and weakness demanded by "true womanhood."⁴⁹ Black women were not left without a path to activism, however. They could draw on the pragmatic model of racial struggle, rather than domestic feminism, to justify their activities.⁵⁰ However, like white clubwomen, Black clubwomen expressed their reform work in terms of their role as the keepers of morality in the home, and attempted to defend their moral integrity through a nonracist conception of "true womanhood."⁵¹ Black clubwoman Mary Church Terrell, the first president of the NACW, stated as follows:

If I were called upon to state in a word where I thought the Association should do its most effective work, I should say unhesitatingly, "in the

44. Mary Ann Clawson, *Nineteenth-Century Women's Auxiliaries and Fraternal Orders*, 12 *SIGNS* 40 (1986); BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4.

Clubwoman Mary Wood wrote as follows: "Man is the warrior, then, from the beginning until now. . . . He is the inventor, the explorer, the discoverer. To deny to man the almost exclusive possession of these functions would be to discard . . . the foundation stones upon which has been reared . . . a civilization. . . . [W]hat are the persistent attributes of woman? . . . [W]herever man has gone, woman has followed closely at his side. Is he a warrior? Then she is the nurse, binding up and comforting and solacing the injured. . . ." WOOD, *supra* note 12, at 5.

45. BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 7.

46. MARY ANN CLAWSON, *CONSTRUCTING BROTHERHOOD: CLASS, GENDER AND FRATERNALISM* (1989); BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4.

47. BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 15.

48. Peebles-Wilkins, *supra* note 27, at 36; Brady, *Kansas Federation*, *supra* note 13, at 29.

49. Brady, *Kansas Federation*, *supra* note 13, at 29.

50. GIDDINGS, *WHEN AND WHERE I ENTER*, *supra* note 6, at 89.

51. *Id.* at 81, 85, 95, 99; Brady, *Kansas Federation*, *supra* note 13, at 29.

home." The purification of the home must be our first consideration and care. It is in the home where woman is really queen, that she wields her influence with the most telling effect. It is through the home, therefore, that the principles which we wish to promulgate can be most widely circulated and most deeply impressed. In the mind and heart of every good and conscientious woman, the first place is occupied by home.⁵²

Domestic feminists claimed that, in light of the civic crises provoked by industrialization, their moral vision should be applied not only to the home, but to the entire community.⁵³ By the late 1870s, women's groups like Boston's Women's Educational and Industrial Union began to invoke the concept of "municipal housekeeping" to justify women's public participation in reforms such as temperance, child labor laws, sanitation, city planning, sweatshop reform, settlement houses, prison reform and anti-lynching campaigns.⁵⁴ For middle-class, predominantly white women, the concept was bolstered by the argument that men, presumably busy with the demands of industrialization, could not be bothered with community problems, while women, presumably benefitted by labor-saving devices, had time to be of service.⁵⁵ Similarly, women's participation in literary and cultural clubs was justified with reference to the alleged spiritual bond between the lady and the arts, making women the keepers of culture.⁵⁶ Attendance at women's colleges and other educational programs was explained as a means to becoming better ladies, mothers and homemakers.⁵⁷

Whether explicitly designed to foster the traditional humanities, or to champion broad-based social reform, women's groups in effect provided a

52. Mary Church Terrell (1899), quoted in Peebles-Wilkins, *supra* note 27, at 41. This domestic focus may have been more necessity than political shield. Black women's clubs lacked the power and money available to white women's clubs, and tended to be more devoted to immediate issues of local need than to "grandiose plans" to reform society. See Brady, *Kansas Federation*, *supra* note 13, at 29.

53. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 48; WOOD, *supra* note 12, at 308-9; CROLY, *supra* note 11, at 26, 141.

54. See Sklar, *supra* note 36; Marilyn Gittell and Teresa Shtob, *Changing Women's Roles in Political Volunteerism and Reform of the City*, 5 SIGNS S67 (Supp. 1980); Jack Blocker, *Separate Paths: Suffragists and the Women's Temperance Crusade*, 10 SIGNS 460 (1985); BLAIR, CLUBWOMAN AS FEMINIST, *supra*, note 4, at 73-74; CROLY, *supra* note 11, at 26, 77-78; GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 89-91. For reform work specifically in Black women's groups, see Brady, *Afro-American Girls' Clubs*, *supra* note 13, at 70; Brady, *Kansas Federation*, *supra* note 13, at 21, 24-26; LERNER, *supra* note 7, at 437, 442, 447, 454-456, 459, 462-465, 470-477, 500-509; Peebles-Wilkins, *supra* note 27, at 33-36. Anti-lynching campaigns were primarily directed by Black women's organizations, though they attempted, with various degrees of success, to enlist the aid of white clubwomen.

55. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 74, 103; WOOD, *supra* note 12, at 24-26, 305.

56. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 25-27. For Black clubwomen's participation in the arts, see GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 136-137.

57. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 8-9.

forum for addressing "women's issues" where no such outlet previously existed. For example, cultural and literary clubs produced programs on women authors, women's place in the arts, and women in history.⁵⁸ Conservative reform societies such as the Women's Christian Temperance Union defended prostitutes, attacked the sexual double standard, and protested violence against women.⁵⁹ Other programs sponsored by traditional women's groups addressed women's health care, safety, and well-being: dress reform, training in female physiology, advocacy of greater availability of women physicians (particularly in potentially abusive environments such as prisons), reform of women's prisons, and safer working conditions for women.⁶⁰ Still other reforms advocated by women's groups facilitated women's economic and educational development: greater freedom of professional choice,⁶¹ employment, job training, workplace safety, economic independence for all women,⁶² women's colleges, scholarships for girls, and better schools for girls.⁶³ As society's mothers and caregivers, clubwomen supported educational reform, greater protections for all children, homes for "troubled" or homeless girls, homes for aged women, kindergartens and day care, improved sanitation and public health, and a

58. Caroline French Benton, "Ten American Women Writers," "The Employments of Women," in *WORK AND PROGRAMS FOR WOMEN'S CLUBS* 131, 273 (1913). See also BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 11-12, 29 (on themes of nineteenth-century women authors, and on the arts as a source of employment for women), 69-70 (on club consideration of women's role in the arts); CROLY, *supra* note 11, at 66 (noting discussion of theme "the tedium of being placed on a pedestal" in Chicago Woman's Club program on Thackeray).

59. Blocker, *supra* note 54, at 462; Freedman, *supra* note 9, at 517; Gittell and Shtob, *supra* note 54, at S68; CROLY, *supra* note 11, at 142 (resolution of General Federation: "Our moral standard is equally binding upon men and women. ").

60. BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 19, 30, 35-36, 42, 50, 67, 81, 90; CROLY, *supra* note 11, at 41, 43, 66, 69; Caroline French Benton, "Woman's Problems of Work," in *THE COMPLETE CLUB BOOK FOR WOMEN* 139 (1915); Benton, "The Employments of Women," in *WORK AND PROGRAMS*, *supra* note 58.

61. Benton, "The Employments of Women," in *WORK AND PROGRAMS*, *supra* note 58; BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 29, 51, 67

62. BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 79-85. The Women's Educational and Industrial Union noted that the income of a husband had nothing to do with the wife, and that unemployed middle-class women were as dependent as working-class women. CROLY, *supra* note 11, at 67-68 (noting Chicago Woman's Club protest against termination of female civil servants by officer believing that such jobs properly reward enfranchised citizens); King, *supra* note 15, at 56 (noting formation of the National Association of Wage Earners to assist Black female domestic and factory workers); GIDDINGS, *WHEN AND WHERE I ENTER*, *supra* note 6, at 139-140 (noting formation of Colored Women Workers and the organization of Black women by the Women Wage-Earners Association).

63. BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 29, 35, 51; CROLY, *supra* note 11, at 32, 38, 41; Brady, *Afro-American Girls' Clubs*, *supra* note 13, at 70-71; Brady, *Kansas Federation*, *supra* note 13, at 22, 28; GIDDINGS, *WHEN AND WHERE I ENTER*, *supra* note 6, at 135.

"scientific" (and thus more professional or prestigious) approach to housekeeping.⁶⁴

Not all nineteenth century women's groups followed the traditional ideology of domestic feminism and municipal housekeeping. Some women's groups, particularly the suffrage and women's rights groups, were engaged in an explicit and radical challenge to male dominance, and spoke in the rhetoric of symmetrical equality.⁶⁵ Examples are the New York-based National Woman Suffrage Association, led by Elizabeth Cady Stanton and Susan B. Anthony, the Boston-based American Woman Suffrage Association, and women's groups supporting and following the 1848 Seneca Falls Convention.⁶⁶ These radical women's groups were dominated by members of progressive and often agrarian religions, such as the Quakers, Unitarians, and Universalists.⁶⁷ These women, less integrated into urban society with its sex-segregated division of labor, and less subject to traditional Protestantism's endorsement of separate spheres, seemed able to bypass the cult of domesticity.⁶⁸

The option offered by suffrage and women's rights organizations was too radical for most women who lived in traditional evangelical Protestant communities, and were reconciled to their role in a gender-based economy.⁶⁹ This ideological split between "traditional" and "radical" nineteenth century groups mirrors a debate over women's roles and the meaning of equality which continues to the present day.⁷⁰ More generally, the split reflects the great diversity of women's voices, and indicates the limitations of collective political action by women. These limitations do not diminish the transformative effects all-female organizations have had upon the lives of their members. In fact, the existence of diverse organizations is essential to meeting the needs of an inclusive movement. Moreover, parti-

64. Benton, "The Home," "The Homelike House," "The Study of Childhood," "Town Improvement," in *WORK AND PROGRAMS*, *supra* note 58, at 56, 175, 297; Benton, "The Business of Being a Housekeeper," "Our Educational System," in *COMPLETE CLUB BOOK*, *supra* note 60, at 54, 195; BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 19, 42, 49-51, 67, 81, 83-84, 103-104; WOOD, *supra* note 12, at 308-309; CROLY, *supra* note 11, at 69; Brady, *Afro-American Girls' Clubs*, *supra* note 13, at 70-71; Brady, *Kansas Federation*, *supra* note 13, at 25; Peebles-Wilkins, *supra* note 27, at 37, 40; Dickson, *supra* note 24, at 66; LERNER, *supra* note 7, at 445, 451-452, 460, 509-512; GIDDINGS, *WHEN AND WHERE I ENTER*, *supra* note 6, at 98-102, 135-136.

65. Ellen DuBois, *The Radicalism of the Woman Suffrage Movement: Notes Toward the Reconstruction of Nineteenth-Century Feminism*, 3 *FEMINIST STUD.* 63 (1975); LES GARNER, *STEPPING STONES TO WOMEN'S LIBERTY: FEMINIST IDEAS IN WOMEN'S SUFFRAGE MOVEMENT, 1900-1918* (1984); Hewitt, *Feminist Friends*, *supra* note 9, at 42-44.

66. BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 19. *See also* Hewitt, *Feminist Friends*, *supra* note 9, at 40-42 (Rochester Woman's Rights Convention, also in 1848).

67. Hewitt, *Feminist Friends*, *supra* note 9.

68. *Id.* at 29.

69. BLAIR, *CLUBWOMAN AS FEMINIST*, *supra* note 4, at 44; Hewitt, *Feminist Friends*, *supra* note 9, at 28.

70. Louise A. Tilly and Patricia Gurin, *Introduction to WOMEN, POLITICS AND CHANGE*, *supra* note 27, at 19-23; *see part III, section B, subsection 5, infra.*

cular groups of women have worked together to achieve common goals — "the most spectacular example" is the women's suffrage movement.⁷¹

E. *Working-Class Women and the Women's Club Movement*

The relationship of working-class women to the women's club movement is ambiguous. Like the clubwomen, working-class women—and particularly Black working-class women—were effectively excluded from the organizations which aided their white, male counterparts — the unions.⁷² Also like the clubwomen, working-class women attempted to create their own organizations, including protective societies and women's unions.⁷³ For example, from 1869 to 1876, a national organization of women shoestitchers, Daughters of St. Crispin, fought for equal pay for equal work.⁷⁴ In 1901, an organization of female tobacco strippers participated in organizing a strike and mobilized other women in the community to provide support to the strike.⁷⁵ However, these organizations tended to be short lived. Many working-class women lacked the resources to commit significant time or money to create lasting, independent women's organizations or unions.⁷⁶ As a result, working-class women tended to organize themselves through informal networks or on a local and ad hoc basis. For example, informal networks of Black women working as domestics collaborated to resist employer demands that interfered with family life.⁷⁷ Working women periodically struck for higher wages and better working conditions or protested other issues of economic justice.⁷⁸

When they were permitted, working-class women forged alliances with males. For example, working women organized female locals within male dominated unions. Between 1878 and 1886, before the race- and sex-segregated American Federation of Labor (AFL) took over from the more integrated Knights of Labor, 194 all-female locals were started within the Knights union.⁷⁹ Some working women were also integrated

71. TILLY AND GURIN, *supra* note 27, at 23.

72. Lebsack, *supra* note 27, at 51; Ruth Milkman, *Gender and Trade Unionism in Historical Perspective*, in *WOMEN, POLITICS AND CHANGE*, *supra* note 27, at 87, 95; King, *supra* note 15, at 63, 65 (noting that female unions that existed excluded Black females); Sacks, *supra* note 13, at 34-35 (noting exclusion of Black men and women from industrial unions and exclusion of white females from skilled craft unions).

73. Sacks, *supra* note 13, at 30, 36-37.

74. *Id.* at 37.

75. Nancy A. Hewitt, *Varieties of Voluntarism: Class, Ethnicity and Women's Activism in Tampa*, in *WOMEN, POLITICS AND CHANGE*, *supra* note 27, at 63, 77.

76. Lebsack, *supra* note 27, at 50.

77. Jacqueline Jones, *The Political Implications of Black and White Women's Work in the South, 1890—1965*, in *WOMEN, POLITICS AND CHANGE*, *supra* note 27, at 108, 125.

78. Beginning in 1902, working women participated in food protests and rent strikes. In 1917, working-class women in New York City rioted over inflation of consumer goods and obtained a 30% drop in prices. Lebsack, *supra* note 27, at 49-50.

79. Sacks, *supra* note 13, at 37-39; King, *supra* note 15, at 63-64 (describing racism and sexism of AFL).

into the National Labor Union. Thus, in 1863 and again in 1891, women collar workers in Troy, New York who were members of the NLU struck for higher wages.⁸⁰ Working women also attempted to forge coalitions with wealthier clubwomen.⁸¹

In theory, these coalitions furthered the interests of working women. Many of the projects and reforms championed by clubwomen, particularly by the 1910s, included job training, safer working conditions, the end of race and sex barriers to various fields of employment, childcare, the right to collective bargaining, and other economic justice issues designed to improve the conditions of working women.⁸² Black clubwomen in particular were devoted to programs designed to provide opportunities and education to all Black women.⁸³ These activities were pursued in the context of middle-class domestic feminism: "cultural uplift" for low-income women would enable them to follow the lofty example set by middle-class women and to exert their moral and spiritual influence.⁸⁴

Several organizations, including the National Women's Trade Union League, the Working Women's Association, the Women's Educational and Industrial Unions, and the Women Wage-Earners Association, were established to organize and protect working women, and to bridge the gulf between middle-class and working-class women by forging cross-class alliances.⁸⁵ The Women's Trade Union League called for equal treatment of working women, organized working women in union locals, and supported strikes. The League played a major role in the 1909 strike of 30,000 women's shirtwaist workers.⁸⁶ The Women Wage-Earners Association taught working women, including Black women domestics, waitresses, nurses, and tobacco stemmers to organize for better wages and working conditions.⁸⁷ The Women's Educational and Industrial Unions provided job training, offered legal aid for women with employment disputes, established job registers through which women were matched with employers, and attempted to create jobs for women by starting several lunchrooms that employed working-class women (and served, of course, wealthy clubwomen).⁸⁸

Many of these efforts, however, were characterized by classism and condescension which undermined cross-class organizing.⁸⁹ Middle-class

80. Sacks, *supra* note 13, at 37-38.

81. Lebsack, *supra* note 27, at 50.

82. See notes 54-55, 61-62, *supra*; GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 98, 108, 139, 155.

83. GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 98.

84. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 73-74, 76-77, 79, 84.

85. *Id.* at 73-91; King, *supra* note 15, at 64; Lebsack, *supra* note 27, at 51-52; Sacks, *supra* note 13, at 43-44.

86. Lebsack, *supra* note 27, at 51-52; GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 139; Sacks, *supra* note 13, at 43-44.

87. GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 139.

88. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 80-82, 85.

89. Lebsack, *supra* note 27, at 51-52; GIDDINGS, WHEN AND WHERE I ENTER,

Black women's clubs were more receptive to the participation of working-class women, but also struggled with classism.⁹⁰ As a result, working-class women were effectively excluded from full participation in middle-class women's clubs, and particularly from white women's clubs.

F. *Clubwoman as Suffragist*

Despite the explicit allegiance to separate spheres, nineteenth century white women's organizations exhibited a rather ambiguous attitude toward the issue of political participation by women and, specifically, the vote. Many white clubwomen continued to assure outsiders and members alike that their groups were nonpartisan and apolitical, and to distinguish their groups' aims from those of suffrage groups.⁹¹ Discussing the request of the Anti-Spoils League for club assistance in lobbying voters for civil service reform, the president of the Civic Club of Philadelphia stated the following:

[W]e are pledged to advocate and support any measure the tendency of which is to make Philadelphia morally purer and intellectually broader, that will add to its charitable and educational facilities, and that will make it more important as a civilized centre.

Although our sympathy is wholly with those who are seeking civil service reform, the Civic Club disclaims any political activity. We are not organized against persons or parties, but against wrong-doing, and for the sake of bringing to the front certain broad principles.⁹²

But other statements by clubwomen seem to contradict whole-hearted acquiescence to the political exclusion of women. In the same speech, the Civic Club president stated:

[W]e feel that we cannot, as a body of citizens *having no political status*, take part with dignity in any political movement entailing upon us the canvassing for votes. . . . [A]s disfranchised citizens, we regard it as incompatible with our dignity to take an active part in politics. . . .⁹³

The affront to dignity presented by the request for lobbying assistance arose *not* from unseemly conflict with woman's special role, as one might expect, but from her subjugated political position as dramatically evidenced by her disenfranchisement.

Although their early statements were ambiguous, in their actions clubwomen clearly demanded a right of access to the public sphere. By the

supra note 6, at 156-157, 178; BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 88, 90; Sacks, *supra* note 13, at 35, 40-42, 44-45.

90. GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 98, 156-157, 178; Sacks, *supra* note 13, at 42.

91. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 40-41 (noting Croly's comments distinguishing clubwomen from suffragists).

92. CROLY, *supra* note 11, at 76 (quoting 1894 address by President Sarah Yorke Stevenson).

93. *Id.* at 77 (emphasis in original).

late 1870s, nationally organized women⁹⁴ publicly advocated specific positions on social and women's issues and protested for social change.⁹⁵ Ultimately, this public action required access to the political sphere, including the vote. Suffrage provided another way for women to extend their vision to the world outside their sphere.⁹⁶ Many clubwomen, particularly members of the New England Woman's Club (NEWC), were active supporters of women's rights and suffrage, and were members of both women's clubs and suffrage organizations.⁹⁷ By 1914, the General Federation of Women's Clubs, representing one million seven hundred thousand American clubwomen, endorsed the women's suffrage amendment.⁹⁸

Other women's groups supported suffrage much earlier. The Women's Christian Temperance Union and the Association for the Advancement of Women supported suffrage by 1881.⁹⁹ Most women of the NEWC favored suffrage by 1872.¹⁰⁰ Black women's clubs consistently supported universal suffrage and, compelled by the blatant racism of white women's suffrage groups,¹⁰¹ Black women organized separate suffrage organizations.¹⁰² For example, the Colored Women's Progressive Association asserted equal rights for women, including suffrage, in 1880.¹⁰³ The National Association of Colored Women, which represented over 50,000 Black clubwomen by 1914,¹⁰⁴ supported female suffrage from its inception in 1896.¹⁰⁵ Black clubwomen hoped that with the ballot

94. Traditional white women's clubs were nationally federated, first by the Association for the Advancement of Women in the 1870s, and then by the General Federation in the 1890s. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 45, 95-97. Black women's clubs were nationally federated in 1896 by the National Association of Colored Women. LERNER, *supra* note 7, at 436.

95. Blocker, *supra* note 54, at 471-472; Sklar, *supra* note 36, at 676; Gittell and Shtob, *supra* note 54, at S68-S70.

96. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 53.

97. *Id.* at 22-23, 31-34, noting suffrage activities of more than a dozen well-known clubwomen. The New England Woman's Club in particular had overlapping membership with the Massachusetts Woman Suffrage Association, and introduced the concept that suffragism and domestic feminism were compatible. The NEWC successfully campaigned to make women eligible for the Boston School Committee. *Id.* at 36, 46; CROLY, *supra* note 11, at 40-42.

98. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 112-114. A less honorable act was the Federation's refusal in 1900 to admit the Black women's club New Era, or to seat the Black clubwoman Josephine St. Pierre Ruffin. Brady, *Kansas Federation*, *supra* note 13, at 22-23.

99. Blocker, *supra* note 54, at 475; BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 52-53.

100. BLAIR, CLUBWOMAN AS FEMINIST, *supra* note 4, at 34.

101. King, *supra* note 15, at 59; GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 123-128.

102. LERNER, *supra* note 7, at 446, 456, 465; GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 119-121, 129-131.

103. GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 75.

104. Hine, *supra* note 14, at 917; LERNER, *supra* note 7, at 437.

105. LERNER, *supra* note 7, at 446; Hine, *supra* note 14, at 917.

Black women could ensure the passage of legislation to win legal protection against sexual exploitation and poor working conditions.¹⁰⁶

G. Conclusion

Whether radical or traditional, women's groups of the nineteenth century shared significant characteristics. First, the groups provided the opportunity for solidarity among women at a time when women were experiencing isolation. Second, the groups were committed to the advancement of "women's issues," issues seen by female members as important in their lives. Third, the groups provided education and encouraged self-development, at a time when education and self-regarding behavior were thought inconsistent with the position of women. Fourth, and most important, the groups provided a public forum for women, together with the attendant opportunities for leadership development and public speaking, and thus implicitly challenged the doctrine of separate spheres. Each of these characteristics was related in part to the all-female nature of the groups. The first and second because of mutual affection and common experience; the third and fourth because of the absence of the constraining influence of the male presence.

By providing education and a community forum within the supportive environment of an all-female space, the women's clubs and organizations of the nineteenth century were a remedial and ultimately progressive response to the emotional and intellectual needs of women excluded from education, employment and public life, and isolated in the stultifying home environment. Participation in club life replaced isolation and boredom with connection and intellectual challenge, and provided a respectable entry into public life. By creating new, public roles for women, these organizations challenged the doctrine assigning men and women to their respective public and private spheres.

In these ways, nineteenth century all-female groups, both radical and traditional, played a remedial function, and made a contribution to gender equality in a way that all-male groups of the same era did not. Indeed, given the historical context, all-female groups may make a more positive contribution to gender equality than does integration of all-male groups. The stall experienced by the women's movement following the passage of the Nineteenth Amendment in 1920 may have been the result, in part, of diminished commitment to separate female institutions and devaluation of women's culture accompanying an increased focus on the integration of male institutions and an exaggerated faith in the power of the ballot.¹⁰⁷ The rhetoric of equality may have subverted the women's movement by denying the need for continued all-female organizations.¹⁰⁸

106. Hine, *supra* note 14, at 918; GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 121.

107. Freedman, *supra* note 9, at 521-526; Blocker, *supra* note 54, at 472.

108. Freedman, *supra* note 9, at 521.

When women tried to assimilate into male-dominated institutions, without securing feminist social, economic, or political bases, they lost the momentum and the networks which had made the suffrage movement possible. Women gave up many of the strengths of the female sphere without gaining equally from the man's world they entered.¹⁰⁹

The links between these nineteenth century groups and modern women's groups are not always direct, but significant connections exist.¹¹⁰ After 1920, many women looked to integrated organizations, including political parties. But women's groups remained, in both their radical and traditional forms.¹¹¹ Upon subsequent crises affecting women's lives, including times of political backlash, women have again and again turned to female-only organizations for support, understanding and collective strength.¹¹²

III. POST-SUFFRAGE WOMEN'S ORGANIZATIONS AND IMPLICATIONS OF THE EQUAL TREATMENT, ANTI-DISCRIMINATION MODEL

A. *Anti-Discrimination Statutes and the Old Boys' Network*

The social, political, and economic role played by all-male groups is familiar ground, and has been discussed elsewhere.¹¹³ All-male trade unions and fraternal social organizations were significant institutions in the cultural and social experience of nineteenth century America. These organizations were ritualistic, Masonic-type groups founded on themes of brotherhood and masculinity.¹¹⁴ All-male clubs continue to constitute a substantial presence on the social landscape. Associations of Elks, Moose, Lions, and Eagles have well over five million members, and membership in these large fraternal organizations is important to professional advancement in communities throughout the United States.¹¹⁵ Other large, male

109. *Id.* at 524.

110. JILL LIDDINGTON, "ONE HAND TIED BEHIND US": THE RISE OF THE WOMEN'S SUFFRAGE MOVEMENT (1978); ELLEN CAROL DUBOIS, FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA (1978); Gittell and Shtob, *supra* note 54; Freedman, *supra* note 9.

Certainly the 19th century leaders hoped for such connection. The dedication of Croly's *The History of the Women's Club Movement* reads as follows: "This book has been a labor of love; and it is lovingly dedicated to the *Twentieth Century Woman* by one who has seen, and shared in the struggles, hopes, and aspirations of the woman of the nineteenth century." CROLY, *supra* note 11.

111. Freedman, *supra* note 9, at 522; Leila J. Rupp, *The Women's Community in the National Woman's Party, 1945 to the 1960s*, 10 SIGNS 715 (1985); Gittell and Shtob, *supra* note 54, at S72-S78 (tracing modern urban reform organizations).

112. Freedman, *supra* note 9, at 525-526.

113. See, e.g., Michael M. Burns, *The Exclusion of Women From Influential Men's Clubs: The Inner Sanctum and the Myth of Full Equality*, 18 HARV. C.R.-C.L. L. REV. 321 (1983); Lynette Holloway, *What? No Husband? Single Women Join the Fight to Breach Barriers at Exclusive Country Clubs*, N.Y. TIMES, Aug. 16, 1993, at B1.

114. Clawson, *Nineteenth-Century Women's Auxiliaries*, *supra* note 44, at 41.

115. Burns, *supra* note 113, at 330 n. 29.

clubs such as the Rotary Club (now open to women) are frequently considered representative of "the business community."

In addition to these fraternal organizations, smaller, more elite all-male social clubs have been an important element of the "old-boys' network," and the exclusion of women from these clubs has denied women professional advancement. The correlation between club membership and professional achievement has been well documented. All-male "social" clubs provide an environment within which friendships and associations are formed, resulting in business opportunities, positive evaluations, and predispositions toward promotion for members. Membership in the "right" club is a key to developing the connections to attain leadership positions in the community.¹¹⁶

The anti-discrimination model, as embodied in anti-discrimination statutes, has been employed to combat the exclusive power of these all-male organizations.¹¹⁷ State and city public accommodations statutes have been passed which prohibit discrimination in access to places of public accommodation on the basis of factors such as race, religion, sexual orientation or sex.¹¹⁸ These statutes, which define "public accommodation"

116. *Id.* at 327-328. Members of San Francisco's all-male Bohemian Club, for example, include Presidents, Vice Presidents, congressmen, senators, Supreme Court Justices, lower court justices, cabinet members, corporate leaders, high-powered lawyers, academic leaders, and the most successful artists and entertainers. National-level political strategies and Fortune 500 deals have been formed within the confines of the Club's facilities. *Id.* at 337-41.

117. All-male groups do not intrinsically function to reinforce the existing power structure, although this is their primary historical and contemporary role. A very few all-male groups function to challenge traditional sex roles in support of the feminist movement and/or out of frustration with the impact of sex roles on the ability of males to choose personal identities (e.g., the pressure to be macho). This is not to say that all of the "new" male groups loosely referenced as the men's movement are remedial or even benign; many engage in "backlash" activities and dialogue. *See WOMEN RESPOND TO THE MEN'S MOVEMENT* (Kay Leigh Hagan, ed., 1992).

118. At least thirty-eight states and the District of Columbia have public accommodations statutes that prohibit discrimination on the basis of sex: Alaska Stat. § 18.80.230 (1992); Ark. Code Ann. §16-123-105 (Michie Supp. 1993); Cal. Civ. Code § 51 (West 1993); Colo. Rev. Stat. § 24-34-601(2) (1993); Conn. Gen. Stat. Ann. § 46a-64 (West 1992); Del. Code Ann. tit. 6, § 4504 (1992); D.C. Code Ann. § 1-2519(a) (1993); Fla. Stat. Ann. §760.60 (West Supp. 1993); Haw. Rev. Stat. § 489.3 (West 1992 & Supp. 1993); Idaho Code § 18-7301 (1993); Ill. Comp. Stat. ch. 775, 5-102 (1993); Ind. Code § 22-9-1-2(a) (1992); Iowa Code Ann. § 216.7(1)(a) (West 1992); Ky. Rev. Stat. § 344.145 (1993); La. Rev. Stat. Ann. § 49:146 (West 1987 & Supp. 1993); Me. Rev. Stat. Ann. tit. 5, § 4592 (1992); Md. Ann. Code art. 49B, § 5 (1993); Mass. Gen. Laws Ann. ch. 272, §§ 92A, 98 (West 1993); Mich. Comp. Laws Ann. §§ 3.548(102) (Supp. 1993); Minn. Stat. Ann. § 363.03 (Subdiv. 3) (West 1992 & Supp. 1994); Mo. Ann. Stat. § 213.065 (Vernon 1992 & Supp. 1993); Mont. Code Ann. § 49-2-304 (1993); Neb. Rev. Stat. § 20-134 (1992); N.H. Rev. Stat. Ann. § 354-A:8 (1992); N.J. Stat. Ann. § 10:5-12(f) (West 1992 & Supp. 1993); N.M. Stat. Ann. § 28-1-7(F) (1993); N.D. Cent. Code § 12.1-14-04 (1993); Ohio Rev. Code Ann. § 4112.02(g) (Baldwin 1993); Okla. Stat. Ann. tit. 25, § 1402 (West 1992); Or. Rev. Stat. § 30.670 (1991); Pa. Stat. Ann. tit. 43, § 955(i) (Durdon 1993); R.I. Gen. Laws § 11-24-2 (1992 & Supp. 1993); S.D. Comp.

very broadly, were enacted to check the power of the old boys' network. Now the anti-discrimination model threatens the remedial power of post-suffrage women's organizing.

B. *Post-Suffrage Women's Organizing*

After the suffrage victory in 1920, the relationship between women and their organizations became more complicated. In the post-suffrage era, women had opportunities for new identities in public life, and were increasingly integrated into political and economic institutions.¹¹⁹ Women were more frequently employed outside the home.¹²⁰ With at least formal access to the political process, women became involved in electoral politics, including political parties, office-holding, voting and campaigns.¹²¹ For the first time, women began to participate in governmental policy-making.¹²²

Laws Ann. § 20-13-23 (1993); Tenn. Code Ann. § 4-21-101 (1993); Utah Code Ann. § 13-7-3 (1993); Wash. Rev. Code Ann. § 49.60.030 (1991); W. Va. Code § 5-11-9(6) (1993); Wis. Stat. Ann. § 101.22 (West 1992); Wyo. Stat. § 6-9-101 (1993).

Several major cities have also enacted their own anti-bias laws. These statutes typically ban discrimination in private clubs that have more than 400 members, provide regular meal service, and accept payment from nonmembers for meals or other services. The first such statute was enacted in New York in 1984; similar versions have since been adopted in San Francisco, Los Angeles, Chicago and Washington, D.C.

See also Chai Feldblum, *et al.*, *Legal Challenges to All-Female Organizations*, 21 HARV. C.R.-C.L. L. REV. 171, 193-99 (1986), discussing possible vulnerability of single-sex clubs to equal protection challenges as state actors.

Compare Title II of the Civil Rights Act of 1964, which prohibits discrimination in "public accommodations," but not "private clubs," on the basis of race, color, religion, or national origin, but not sex or sexual orientation.

119. Jodi Vandenberg-Daves, *The Manly Pursuit of a Partnership between the Sexes: The Debate over YMCA Programs for Women and Girls, 1914-1933*, J. AM. HIST. 1326 (March 1992).

120. LEILA J. RUPP AND VERTA TAYLOR, *SURVIVAL IN THE DOLDRUMS: THE AMERICAN WOMEN'S RIGHTS MOVEMENT, 1945 TO THE 1960s* 15 (1987).

121. TILLY AND GURIN, *supra* note 27, at 17-18, 27, 29; Nancy F. Coit, *Across the Great Divide: Women in Politics Before and After 1920*, in *WOMEN, POLITICS AND CHANGE*, *supra* note 27, at 153, 162; Evelyn Brooks Higginbotham, *In Politics to Stay: Black Women Leaders and Party Politics in the 1920s*, in *WOMEN, POLITICS AND CHANGE*, *supra* note 27, at 199, 205-212. Participation in women's groups has been found to be a positive indicator of voting and partisan participation. Group experience provides an apprenticeship for a political career or serves as an adjunct to involvement with parties. Kristi Andersen, *Women and Citizenship in the 1920s*, in *WOMEN, POLITICS AND CHANGE*, *supra* note 27, at 177, 192. See also Susan Ware, *American Women in the 1950s: Nonpartisan Politics and Women's Politicization*, in *WOMEN, POLITICS AND CHANGE*, *supra* note 27, at 281-82, 291 (experience in League of Women Voters as preparation for political activity); Kay Lehman Schlozman, *Representing Women in Washington: Sisterhood and Pressure Politics*, in *WOMEN, POLITICS AND CHANGE*, *supra* note 27, at 339-342 (increased participation of women in professionally staffed "pressure group" organizations).

122. RUPP AND TAYLOR, *supra* note 120, at 146-47, 166-73, 189; SUSAN LYNN, *PROGRESSIVE WOMEN IN CONSERVATIVE TIMES: RACIAL JUSTICE, PEACE, AND FEMINISM, 1945 TO THE 1960s* 174 (1992).

As women's participation in public life grew, they also found that their access to the political system was in fact largely blocked. Thus, women continued to participate in voluntary organizations outside of the formal political arena in which they defined and pursued their interests through education, networking, publicity and direct collective appeals to authorities.¹²³ Many of these all-female organizations represented a direct continuation of the women's club movement of the nineteenth century. However, as women-only organizations opened new paths for women and the ideology of separate spheres began to dissipate, women became increasingly involved in sex-integrated organizations.¹²⁴ This development did not supplant all-female organizations — many women participated in both all-female and mixed-sex organizations, particularly when they found that mixed-sex organizations relegated women to positions of little power.¹²⁵ While many post-suffrage women's organizations have eliminated their single-sex policies in the past twenty-five years, some continue to defend their all-female character. Moreover, with the "second wave" of women's organizing and other recent developments, a renewed demand for all-female organizing has come from radical feminists, lesbians, women in self-help and anti-violence networks, and others.

1. Continuation of the Women's Club Movement

Many post-suffrage women's organizations represent a direct continuation of the nineteenth century women's club tradition of providing services for women and children and promoting progressive reforms in the community. In fact, several women's organizations active in the post-suffrage era either came into existence during the nineteenth century club movement or had direct links to the nineteenth century tradition. For example, the Young Women's Christian Association (YWCA) began in the United States in the mid-nineteenth century and today continues to provide services in the women's club tradition.¹²⁶ Similarly, although by 1930 the National Association of Colored Women was no longer functioning as a national federation for Black women, the National Council of Negro Women was started in 1935 to take its place, and continues to be active today.¹²⁷ The American Association of University Women (AAUW) be-

123. LYNN, *supra* note 122, at 3, 121-122, 179; TILLY AND GURIN, *supra* note 27, at 4-7, 11, 14, 17, 27-29, 151; Cott, *Across the Great Divide*, *supra* note 121, at 151, 161-168. Tilly and Gurin make a useful distinction between two overlapping categories of collective action — "politics" and "protopolitics." The latter category refers to the participation of voluntary organizations in public life.

124. Vandenberg-Davies, *supra* note 119, at 1327, 1330-31, 1345; TILLY AND GURIN, *supra* note 27, at 18, 24; LYNN, *supra* note 122, at 122.

125. LYNN, *supra* note 122, at 121; TILLY AND GURIN, *supra* note 27, at 18.

126. LYNN, *supra* note 122.

127. GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 202-204; Cott, *Across the Great Divide*, *supra* note 127, at 165; *National Council of Negro Women Convention*, PR Newswire, Oct. 28, 1983, available in LEXIS, Nexis Library, PRNEWS File. The National Council of Negro Women is known for its "Black Family

gan in 1881, and is now known for its work to provide girls with equal educational opportunities.¹²⁸ The National Association of College Women, created by Black women in 1924 in response to the racism of the AAUW, also emerged out of the nineteenth century tradition.¹²⁹ The National Women's Trade Union League continued to be active through the 1940s.¹³⁰ Other post-suffrage "club movement"-type organizations include the National Council of Jewish Women, created in 1893, and the National Council of Catholic Women, formed in 1920.¹³¹ Another direct continuation of the women's club movement into the post-suffrage era can be found in the establishment of Black sororities, including Delta Sigma Theta and Alpha Kappa Alpha.¹³²

In addition to the service-oriented groups, professional women's organizations evolved out of the earlier women's club movement. These organizations were, and continue to be, attempts to replicate the economic role of the all-male club by providing professional and social networks, education, same-sex mentors and organized efforts to promote work-related women's issues. These professional groups are well-suited to challenge sex-based inequities in the workplace. Examples are the National Federation of Business and Professional Women's Clubs, the National Association of Women Lawyers, the National Association of Black Women Attorneys, and the American Medical Woman's Association.¹³³ Today, elite women's clubs are also becoming sites for networks of professional women. These clubs include the Metropolitan Club of San Francisco, the

Reunions," annual celebrations of the traditional strengths and historic values of the Black family. Douglas Stevenson, *Reunion Reaffirms Historic Black Family Values*, WASH. POST, Sept. 13, 1987, at B1; Marcia Slacum Greene, *Black Family Reunion: Tradition in the Making*, WASH. POST, Sept. 11, 1992, at D3. The NCNW also provides job training to unemployed and underemployed women. Katti Gray, *No Place for Words "I Can't": Class builds women's job skills, self-confidence*, NEWSDAY, Dec. 2, 1990, News, at 1.

128. Phyllis Coons, *The AAUW still fights for women*, Boston Globe, Feb. 25, 1990, Learning, at 33; AAUW Report, *How Schools Shortchange Girls* (1992).

129. PAULA GIDDINGS, *IN SEARCH OF SISTERHOOD: DELTA SIGMA THETA AND THE CHALLENGE OF THE BLACK SORORITY MOVEMENT* 81 (1988); Cott, *Across the Great Divide*, *supra* note 121, at 164. *See also* RUPP AND TAYLOR, *supra* note 120, at 156-158 (battles within AAUW over racial integration, including secession of District branch to avoid racial integration mandated by the national office).

The creation of separate Black professional organizations in response to white-dominated or segregated organizations that do not make Black concerns a priority has been an effective strategy. For example, the National Colored Parent-Teacher Association was founded in 1926 in response to the color bar of the Parents and Teachers Associations. Cott, *Across the Great Divide*, *supra* note 121, at 162.

130. LYNN, *supra* note 122, at 62 n.42, 64-65.

131. Lebsack, *supra* note 27, at 42; Cott, *Across the Great Divide*, *supra* note 121, at 164 n. 27.

132. GIDDINGS, *IN SEARCH OF SISTERHOOD*, *supra* note 129.

133. RUPP AND TAYLOR, *supra* note 120, at 46; Feldblum, *supra* note 118, at 180 n. 34; Cott, *Across the Great Divide*, *supra* note 121, at 163; Jacqueline Trescott, *Community of Conventioneers: Around the Country, Black Professionals Meet*, WASH. POST, Dec. 2, 1989, at C1.

Cosmopolitan Club of New York, the Colony Club of New York, and the Sulgrave and Washington Clubs of the District of Columbia.¹³⁴ Less visible are locally organized professional groups, such as women's faculty organizations or women law student associations. For example, the Faculty Women's Association at Arizona State University has played an effective role in addressing issues such as salaries (and their secretiveness), funding for women's research, professional isolation, and the recruitment, retention, and promotion of female faculty.¹³⁵

Some groups were directly spawned by the suffrage struggle. Two important post-suffrage organizations, the League of Women Voters and the National Woman's Party, reflect the two ideologies of the suffrage movement. The League of Women Voters evolved out of the National American Woman Suffrage Organization, the more "traditional" branch of the suffrage movement.¹³⁶ The National Woman's Party (NWP), which evolved out of the more militant Congressional Union, was a suffrage organization that utilized civil disobedience, demonstrations, and lobbying to promote suffrage and challenge gender roles.¹³⁷ The League was, and continues to be, a nonpartisan organization that promotes citizen participation through study groups, public education and grassroots political action.¹³⁸ After suffrage, the League lobbied for equal pay laws and protective legislation for women and children.¹³⁹ The NWP, on the other hand, was a smaller, more elite organization of self-proclaimed and devoted feminists that utilized a (narrow, white, upper-class) feminist world view and demanded formal equality through the Equal Rights Amendment. The NWP first proposed the amendment in 1921 and continued to actively lobby for it until the early 1970s, through times extremely hostile to explicit feminism.¹⁴⁰ The League of Women Voters consistently op-

134. Herma Hill Kay, *Private Clubs and Public Interests: A View From San Francisco*, 67 WASH. U. L. Q. 855, 859 (1989); Elizabeth Peer, *Starting Up an Old Girls' Network*, NEWSWEEK, Apr. 18, 1983, at 88; Michael Wines, *Ruling is Greeted With Praise From Women and Silence From Clubs*, N.Y. TIMES, June 21, 1988, at A19; Greg Henderson, *Two women's clubs threatened with discrimination suit*, UPI, July 5, 1988, available in LEXIS, Nexis Library, UPI File.

135. Mary R. Anderson and Gloria N. Wilson, *Faculty Women's Association: An Instrument for Change*, 41:4 J. SOC. ISSUES 73 (Winter 1985).

136. Jo Freeman, *From Protection to Equal Opportunity: The Revolution in Women's Legal Status*, in WOMEN, POLITICS AND CHANGE, *supra* note 27, at 457-58; RUPP AND TAYLOR, *supra* note 120, at 5. See also Higginbotham, *supra* note 121, at 212-216 (League continued racism and segregation of NAWSA).

137. TILLY AND GURIN, *supra* note 27, at 21; Lebssock, *supra* note 27, at 54; Freeman, *supra* note 27, at 458-459.

138. Ware, *supra* note 27, at 281-282.

139. Gittell and Shtob, *supra* note 54, at S72.

140. Freeman, *supra* note 136, at 458-460; RUPP AND TAYLOR, *supra* note 120, at 5, 18-26, 39, 50-51, 57, 154-156; LYNN, *supra* note 122, at 130-131. As in the battle for women's suffrage, NWP leaders did not refrain from employing racist strategies to promote the Equal Rights Amendment. RUPP AND TAYLOR, *supra*, at 153-163. NWP leader Alice Paul was known for being racist and anti-Semitic. LYNN, *supra*, at 131; RUPP AND TAYLOR, *supra*, at 154.

posed the Equal Rights Amendment until the 1950s, and did not actively support the amendment until the early 1970s.¹⁴¹

As in the nineteenth century club movement, the remedial aspects of some post-suffrage clubs are indirect. While traditional community or church-based organizations may be a source of support for women, they do not necessarily encourage women to challenge male dominance, and may reinforce gender roles in some cases.¹⁴² On the other hand, while not always explicitly connected with the women's movement, these groups are attuned to the needs of their female members,¹⁴³ and indirectly promote women's equality by providing women with leadership training, intellectual stimulation, female role models, a supportive network and a forum for public expression. In this way, the post-suffrage groups have had transformative effects upon the lives of their members. In the words of a National Woman's Party leader: "All of us have watched the timid, retiring woman come into her own after a few stimulating years of experience in a woman's club."¹⁴⁴ Said one AAUW member, "I'm not sure that it did anything for the community but it kept my mind from going to mush."¹⁴⁵ The training provided by women's clubs prepared women for entry into electoral politics, civil rights and feminism.¹⁴⁶ For example, while the League of Women Voters explicitly disavowed feminism in the 1950s, it legitimated women's political aspirations, provided channels for women's political expression, and served as a vehicle for political training and socialization for women.¹⁴⁷ Similarly, the networks created and the expertise acquired by the National Woman's Party, the AAUW, and the Business and Professional Women's Clubs were later utilized to further the "second-wave" feminist movement which began in the late 1960s.¹⁴⁸

a. *The Young Women's Christian Association (YWCA)*

The YWCA began in the United States in 1858. Its first mission was to protect young women migrating to the growing urban centers, and to offer them religious instruction, housing, social opportunities and employment.¹⁴⁹ Thus, many YWCA programs were directed at working women. In 1920, the YW endorsed collective bargaining, workers' rights and eco-

141. RUPP AND TAYLOR, *supra* note 120, at 49, 59, 185-186; Freeman, *supra* note 120, at 463-470.

142. Patricia T. Clough, *The Failure of Woman's Consciousness: A Brief History of a Women's Group*, 7 *STUDIES IN SYMBOLIC INTERACTION* 291 (1986); Gittell and Shtob, *supra* note 139, at S77 (NOW's position on volunteerism).

143. Trudy H. Bers and Susan G. Mezey, *Support for Feminist Goals Among Leaders of Women's Community Groups*, 6 *SIGNS* 737 (1981).

144. RUPP AND TAYLOR, *supra* note 120, at 96-98, 189.

145. *Id.* at 96.

146. *Id.* at 48-49; Ware, *supra* note 121, at 281-282, 291.

147. *Id.*

148. RUPP AND TAYLOR, *supra* note 120, at 191-192; TILLY AND GURIN, *supra* note 27, at 6 (noting importance of previously existing organizations and resources).

149. Vandenberg-Daves, *supra* note 119, at 1324; LYNN, *supra* note 120, at 23.

conomic justice.¹⁵⁰ In the first half of the twentieth century, the YWCA organized "shop girls" and other working women for trade union activism around issues of wages, safety standards and protective legislation, and provided job training for women in the expanding service sector.¹⁵¹ By the time the YWCA abolished its Industrial Department program in 1949 (the Congress of Industrial Organizations took over much of the work), class-defined issues declined in prominence within the organization, and race issues took the forefront.¹⁵²

Despite its rhetoric of cross-racial solidarity, the YWCA's record on race was spotty.¹⁵³ Black women and girls were often excluded from white YWCA centers, and relegated to inferior Black branches under the control of white centers.¹⁵⁴ The YWCA moved slowly toward desegregation of its programs and facilities. Interracial student conferences were sponsored in the 1930s, and some community YWCAs began integrating their pools and camps in the late 1930s and early 1940s.¹⁵⁵ On the national level, the YWCA finally endorsed integration at its 1946 convention.¹⁵⁶ In 1970, the YWCA announced a "single imperative" for the organization — the elimination of racism. The mission statement was amended to include: "The Association will thrust its collective power towards the elimination of racism wherever it exists and by any means necessary."¹⁵⁷ This mission was reaffirmed in 1990.¹⁵⁸

Despite this history of imposed segregation, many prominent Black clubwomen participated in the YWCA, albeit primarily in the Black branches until desegregation.¹⁵⁹ For example, Dorothy Height, president of the National Council of Negro Women, was a YWCA leader from 1937 until 1970.¹⁶⁰ In fact, the process of integration was difficult for existing Black YWCA members, for many of the same reasons that are explored in this article in the context of mixed-sex organizations. White members insulted them with displays of racial prejudice. Moreover, to in-

150. Vandenberg-Daves, *supra* note 119, at 1334; GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 155.

151. *Id.*; LYNN, *supra* note 122, at 6; Cott, *Across the Great Divide*, *supra* note 121, at 163. The YWCA advocated protective legislation for working women, and was thus on the "anti" side of the great Equal Rights Amendment debate. Cott, *Across the Great Divide*, *supra* note 121, at 163 n. 22.

152. LYNN, *supra* note 122, at 6.

153. GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 155.

154. LYNN, *supra* note 122, at 40-41; GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 157-58.

155. LYNN, *supra* note 122, at 22, 42-44.

156. *Id.* at 46-49; GIDDINGS, WHEN AND WHERE I ENTER, *supra* note 6, at 158.

157. YWCA Fact Sheet (on file with author); LYNN, *supra* note 122, at 146-47; N.Y. TIMES, April 19, 1970, at 30 (abstract available in LEXIS, Nexis Library, NYT file).

158. Leonard Inskip, *A stronger YWCA faces future*, STAR TRIB., June 14, 1992, NEWS, at 25A.

159. LYNN, *supra* note 122, at 15, 41.

160. *Id.* at 15-16.

tegrate the Black branches with the white centers, the Black branches were closed, disrupting social networks and programs serving the Black community. In the integrated divisions, white women began to dominate, and Black women lost leadership opportunities and control.¹⁶¹ Some Black branches resisted merging with the white centers, in order to provide a Black-focused institution.¹⁶² Over the years, Dorothy Height and other Black women have worked to ensure equal opportunity for women of color in leadership positions.¹⁶³

As with the nineteenth-century groups, the participation of the YWCA in the public debates of the day was a declaration of the feminist principle that women's voices belong in the public sphere.¹⁶⁴ The YWCA lobbied for civil rights issues, including anti-lynching legislation, an end to poll taxes, the establishment and implementation of equal employment opportunity legislation, and desegregation.¹⁶⁵ The YWCA cosponsored the 1963 March on Washington for Civil Rights.¹⁶⁶ The YWCA in fact took a "feminist" stance on a number of issues throughout its history, including equal pay for equal work and equal access to employment and educational opportunities.¹⁶⁷ The YWCA lobbied for the Equal Pay Act of 1963.¹⁶⁸ YWCA "family life" publications of the 1950s criticized marriages in which the woman was subordinated, and stressed the need for women to remain independent and involved in community life (though the YWCA did not, until the 1970s, critique the assumption that the woman was the primary caretaker of home and children).¹⁶⁹ In the late 1960s, several YWCA leaders became active in the "second wave" women's movement, and by the early 1970s the national YWCA endorsed an explicitly feminist platform, including the establishment of child care services, access to contraceptives, support for the Equal Rights Amendment and repeal of abortion restrictions.¹⁷⁰

Like many clubwomen, the YWCA women would not have called themselves feminists prior to the 1960s, but they were "strong, independent personalities who, because of their concerted efforts to rise above the limitations of race and sex and to help younger women do the same, shared a sisterhood that foreshadowed the revival of the feminist move-

161. *Id.* at 50, 54-55, 148.

162. Anne Simpson, *Wheatley Y Aims at Rejuvenation: Once-Segregated Women's Facility Maintains Presence*, WASH. POST, Jan. 12, 1989, District Weekly, at J1.

163. LYNN, *supra* note 122, at 145, 147-48.

164. *Id.* at 139, 150.

165. *Id.* at 62, 64-65, 144-146.

166. *Id.* at 134.

167. *Id.* at 111-113, 176.

168. *Id.* at 131.

169. *Id.* at 117-119, 173-176.

170. *Id.* at 173-176; YWCA of the USA *Comments on the Supreme Court Decision*, PR Newswire, June 30, 1992, available in LEXIS, Nexis Library, PR file. YWCA representatives demonstrated in favor of New York's liberalized abortion law in 1972. N.Y. TIMES, Apr. 18, 1972, at 43 (abstract available in LEXIS, Nexis Library, NYT file).

ment in the 1960s.¹⁷¹ The YWCA provided women and girls with job training and leadership development, and endorsed female solidarity across race and class lines.¹⁷² In the words of Jewel Graham, a Black woman active in the YWCA, the organization was "a place where women made the decisions about what was important."¹⁷³ Community YWCAs located in cities across the country maintained women's shelters and networks of age and interest groups, including clubs for adolescent girls, for business and professional workers, for industrial workers, and for women outside the paid labor force.¹⁷⁴

Today's YWCA serves 12 million women and girls¹⁷⁵ with programs including leadership development, child care, parenting education, child abuse and domestic violence prevention, battered women's shelters, fitness, homeless women's shelters, contraceptive services and human sexuality education, breast cancer recovery, job training, and education on racism, homophobia and anti-Semitism.¹⁷⁶ In addition to its programs, the YWCA offers an extensive associational network, including female mentors who provide role models of assertive women.¹⁷⁷ The development of leadership abilities in women continues to be a central mission of the YWCA.¹⁷⁸ This mission is feminist, because it brings women leaders into economic, educational, political, and religious arenas.¹⁷⁹

b. *Delta Sigma Theta*

The Black sorority Delta Sigma Theta, founded in 1912 and today one of the largest organizations of Black women in the world, also emerged out of the women's club movement. Many of Delta's founders and original mentors were active in the women's club movement, including NACW leader Mary Church Terrell.¹⁸⁰ Like the Black women's clubs founded in the nineteenth century, Delta Sigma Theta has continued

171. GIDDINGS, IN SEARCH OF SISTERHOOD, *supra* note 129, at 217 (quoting Black lawyer and NOW co-founder Pauli Murray).

172. LYNN, *supra* note 122, at 135, 149; Vandenberg-Daves, *supra* note 119, at 1334.

173. LYNN, *supra* note 122, at 114.

174. LYNN, *supra* note 122, at 24-25, 175.

175. YWCA Factsheet (on file with author).

176. YWCA Factsheet (on file with author); Joyce Valdez, *Putting the "W" in the "Y"*, ARIZONA REPUBLIC, May 25, 1993, at D1; Bess Liebenson, *New Stamford Y: More Than Fitness*, N.Y. TIMES, June 26, 1988, at 20; Efrain Hernandez, Jr., *After 125 years, YWCA still busy*, BOSTON GLOBE, Metro/Region, at 15; Inskip, *supra* note 158, at 25A.

177. LYNN, *supra* note 122, at 25, 31, 149.

178. *Id.* at 113-114, 139. The organization's mission is to "create opportunity for women's growth, leadership and power in order to attain a common vision: Peace, justice, freedom and dignity for all people. The Association will thrust its collective power toward the elimination of racism wherever it exists and by any means necessary." YWCA Factsheet (on file with author).

179. LYNN, *supra* note 122, at 113-114.

180. GIDDINGS, IN SEARCH OF SISTERHOOD, *supra* note 129, at 16, 39, 43, 45, 70, 76, 77, 92, 96, 102, 113.

a commitment to racial uplift, self-improvement, equality for Black women, the improved image of Black women, leadership development, educational excellence, and the arts, in addition to providing an arena for friendship, sisterhood, and social events.¹⁸¹

Within two months of the founding of the organization, Deltas participated in the 1913 suffrage march on Washington.¹⁸² Stated founder Florence Toms:

Yes, we marched and we did receive criticism, but we expected that. Those were the days when women were seen and not heard. However we marched that day in order that women might come into their own, because we believed that women not only needed an education, but they needed a broader horizon in which they may use that education. And the right to vote would give them that privilege.¹⁸³

On a more local level, the founding of Delta Sigma Theta provided crucial support to their members on white campuses at a time when Black students were not permitted to share housing, food or other services offered to white students.¹⁸⁴

In addition to the more traditional sorority activities of banquets and balls, the Deltas established a variety of programs to further their goals, including scholarship awards, college loan funds, libraries, cultural events, job and education counseling and mentoring for young people, food banks, day care centers, the provision of supplies for Black hospitals, homes for delinquent girls and teacher training.¹⁸⁵ In addition to their early support of suffrage, the Deltas participated in conferences, projects, lobbying and direct action, often in coalition with other organizations, regarding a wide range of social issues, including lynching, segregation, voting rights, housing discrimination, sexual harassment, abortion rights, race discrimination in insurance, Black unemployment, sex- and race-based employment discrimination, the Equal Rights Amendment, the rights and needs of Black single mothers, and job training of Black youth.¹⁸⁶ Delta joined the historic March on Washington for Civil Rights in August 1963.¹⁸⁷

Over time, as with the nineteenth century organizations, Delta Sigma Theta has become increasingly focused upon social change and equality rather than upon social events, although both remain important.¹⁸⁸ According to Delta Paula Giddings, Delta social events cater in important

181. GIDDINGS, IN SEARCH OF SISTERHOOD, *supra* note 129. According to Delta Giddings, the organization has struggled over issues of class and color. *Id.* at 7, 20, 273-277.

182. *Id.* at 55-60.

183. *Id.* at 60.

184. *Id.* at 75, 82-83.

185. GIDDINGS, IN SEARCH OF SISTERHOOD, *supra* note 129.

186. *Id.* at 63, 111, 113, 126-130, 157-162, 180-181, 192-198, 201-202, 204-205, 208-209, 220-223, 240-245, 255-256, 261-269, 282, 290, 300-302.

187. *Id.* at 263.

188. *Id.* at 143, 146, 154, 156, 216, 247, 251-254.

ways to the needs of its members, who lead stressful lives and often experience feelings of isolation and alienation.¹⁸⁹ At present, over a quarter of a million women belong to the three major Black sororities, Delta Sigma Theta, Alpha Kappa Alpha and Zeta Phi Beta.¹⁹⁰ The significance of sisterhood to these groups echoes the earlier club movement. Stated Lillian Benbow, a recent Delta president:

Let there be no walls around us, my sisters. . . . Teach our eyes to see each other as we are, for in each other we see ourselves. When I look at you, I see myself. If my eyes are unable to see you as my sister, it is because my own vision is blurred. . . . I am my sister's keeper and my sister is mine. The keeping, my sorors, is not only to know the physical comfort, the verbal expressions of fellowship, it is the keeping somewhere in the quiet recesses of the mind, those silent, unexpressed and unexposed feelings known only to the heart.¹⁹¹

2. Increased Women's Activity in Integrated Organizations

In the post-suffrage era, integrated institutions became more common, and women began to move into traditionally male-dominated groups.¹⁹² A new and optimistic generation of women attempted to forge new identities on the basis of equality and partnership with men.¹⁹³ Women increasingly participated in mixed-sex social reform and labor organizations,¹⁹⁴ including unions, anti-war groups, civil rights organizations and peace groups.¹⁹⁵ Later, women participated in the American Friends Services Committee (AFSC), the National Association for the Advancement of Colored People (NAACP), and, later, "New Left" groups such as Students for a Democratic Society (SDS), the Southern Christian Leadership Conference (SCLC), and the Student Nonviolent Coordinating Committee (SNCC).¹⁹⁶ This participation provided valuable experience and insights for future organizing.¹⁹⁷

The trend toward participating in mixed-sex organizations was not an "either/or" proposition. Many women participated in both mixed-sex and all-female groups. For example, Black clubwomen often belonged to the YWCA, the NCNW or a Black sorority, plus the Urban League or the NAACP.¹⁹⁸ However, in the post-suffrage period, the perceived need

189. *Id.* at 146.

190. *Id.* at 21.

191. *Id.* at 283.

192. TILLY AND GURIN, *supra* note 27, at 24; M. Kent Jennings, *Women in Party Politics, in WOMEN, POLITICS AND CHANGE, supra* note 27, at 234.

193. Vandenberg-Daves, *supra* note 119, at 1325.

194. LYNN, *supra* note 122, at 122.

195. LYNN, *supra* note 122, at 142, 124-125; TILLY AND GURIN, *supra* note 27, at 11; Cott, *Across the Great Divide, supra* note 121, at 165-166; Jones, *supra* note 77, at 121-127.

196. LYNN, *supra* note 122, at 142.

197. Gittell and Shtob, *supra* note 54, at S73-S74; ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA, 1967-1975*, 26-27, 69 (1989).

198. LYNN, *supra* note 122, at 121; Cott, *Across the Great Divide, supra* note 121,

for gender-based solidarity declined.¹⁹⁹ Moreover, as the ideology of separate spheres dissipated a bit, there was an increased suspicion of single-sex relationships. As a result, single-sex organizing became somewhat marginalized, and even stigmatized as homosexual, while mixed-sex organizing was relatively privileged by the changing discourse.²⁰⁰ Some single-sex groups lost out as women devoted their energies to mixed-sex groups.²⁰¹

In these mixed-sex groups, women did not participate at the highest levels, and were often excluded from leadership and relegated to positions with little power.²⁰² For example, union leadership was and continues to be male-dominated and, in some industries, hostile to women.²⁰³ Males dominated (and in many cases continue to dominate) civil rights organizations, anti-war groups, and "New Left" groups, holding all the visible leadership positions and leaving women behind the scenes.²⁰⁴ Women who participated in both the YWCA and mixed-sex organizations noted that there was more leadership opportunity in the YWCA.²⁰⁵ Moreover, the mixed-sex groups ignored issues of women's status.²⁰⁶ In fact, it was women's subordination within SDS and other groups in the New Left and the civil rights movement that inspired the founding of the women's liberation movement.²⁰⁷

3. The "Second Wave" and Other Developments

Although the concept of a "second wave" of feminism in many ways overlooks important post-suffrage women's organizations, and mischaracterizes the nature of the "first wave" of suffrage organizing, the emergence of an explicit feminist movement in the late 1960s sparked a revived commitment to separate female organizing. This new movement is often described as having two branches: (1) the "liberal" branch, devoted to legal and political reforms, originating with the founding of the National Organization for Women (NOW) in 1966, and characterized by the battle for the Equal Rights Amendment; and (2) the "radical" branch,

at 164-165; Higginbotham, *supra* note 121, at 205.

199. Vandenberg-Daves, *supra* note 119, at 1325.

200. *Id.* at 1327, 1330-31, 1345.

201. Cott, *Across the Great Divide*, *supra* note 27, at 166.

202. LYNN, *supra* note 122, at 121-122; Ruth Milkman, *Gender and Trade Unionism in Historical Perspective*, in *WOMEN, POLITICS AND CHANGE*, *supra* note 27, at 101-102.

203. Milkman, *supra* note 27, at 95-97, 101, 104. The service unions such as AFSCME and SEIU are more inclusive, but females are still underrepresented in leadership when compared to membership. *Id.* at 97, 104-105.

204. LYNN, *supra* note 122, at 129, 142, 124-125.

205. *Id.* at 129.

206. *Id.* at 5, 10, 112, 125, 130.

207. *Id.* at 172-174; ECHOLS, *supra* note 197, at 23-50. Charlotte Bunch, an SDS activist with previous YWCA experience, found that she "wasn't prepared for invisibility." LYNN, *supra*, at 173.

typified by consciousness-raising groups, direct action and a radical analysis that demanded the destruction of systems of oppression, and originating with the 1967 split of radical women from SDS.²⁰⁸ In the nearly three decades that have elapsed, the two branches have overlapped at times,²⁰⁹ and the latter branch has generated several offshoots.

The initial motivations behind the two branches were distinct. The "radical" feminists were frustrated with the sexist male leadership they encountered in mixed-sex social reform organizations, civil rights groups and "New Left" and other counter-culture networks, and with the lack of leadership and power available to women.²¹⁰ Radical women were also influenced by the concept of Black power, and the decision of Black activists to organize separately, resulting in the 1966 expulsion of whites from SNCC and other radical Black civil rights groups.²¹¹ In 1967, radical women broke ties with the mixed-sex organizations, and began meeting separately.²¹² The founders of the National Organization for Women, the Women's Equity Action League and other "liberal" mixed-sex women's rights organizations were involved with the civil rights movement and the attempts to prod the government into enforcing Title VII's ban on sex discrimination in employment. In contrast with the "radical" wing of the movement, which rejected the model of the mixed-sex groups that came before it, founders of NOW explicitly envisioned an "NAACP for women."²¹³

The women's liberation groups resulting from the 1967 split engaged in consciousness-raising, theory-building and flamboyant direct action for social change.²¹⁴ Early groups included the Redstockings, The Feminists,

208. ECHOLS, *supra* note 197, at 23-50, 139 (radical feminists rejected NOW's assimilationist goals); RUPP AND TAYLOR, *supra* note 120, at 166, 179-186.

209. ECHOLS, *supra* note 197, at 199, 285.

210. *Id.* at 23-50, 116-18, 120; LYNN, *supra* note 122, at 172-174.

211. ECHOLS, *supra* note 197, at 36-37, 73.

212. *Id.* at 49. Echols relates the story as follows: Women at a 1965 SDS conference attempted to discuss the issue on women's status in SDS in a mixed-sex workshop. When the men reacted defensively, some women resolved to leave the group and meet by themselves. Several men followed the women, demanding that they be permitted to participate in the discussion. *Id.* at 34-35. In 1967, radical women presented their analysis to the SDS conference, asserting that "women are in a colonial relationship to men," and demanding child-care, right to abortion and contraceptives, the sharing of housework and that SDS males confront their own sexism. Males present rejected the analysis, and the statement was later published in a left newspaper next to a cartoon of a woman in a polka dot minidress and matching panties. *Id.* at 44-45. Later that year, at another leftist conference, radical women demanded abortion rights, 51% representation in voting and committee seats and that the conference condemn the media for its portrayal of women. The conference chairperson refused to introduce the resolution, telling one of the leaders, "Move along little girl; we have more important issues to talk about here than women's liberation." *Id.* at 47-49. Radical women began meeting separately the next week. *Id.* at 49.

213. RUPP AND TAYLOR, *supra* note 120, at 179-180.

214. ECHOLS, *supra* note 197, at 68-69, 75-98; LILLIAN FADERMAN, *ODD GIRLS AND TWILIGHT LOVERS: A HISTORY OF LESBIAN LIFE IN TWENTIETH-CENTURY AMERICA* 208 (Penguin Books 1992). Divisive struggles ensued over class, race, elitism,

New York Radical Feminists, Cell 16 and Radical Women.²¹⁵ Women of color also formed separate liberation groups, including the Third World Women's Alliance and the Combahee River Collective.²¹⁶ An offshoot of the radical feminist movement was the lesbian feminist movement. While lesbians had engaged in some organizing before this time, most notably in the organization Daughters of Bilitis founded in the mid-1950s,²¹⁷ explicitly feminist lesbian groups began to appear during the late 1960s.²¹⁸ Early examples were the Radicalesbians and the Furies.²¹⁹ Lesbian feminists began to organize separate lesbian spaces, including communes, and hoped to create enough separate institutions to create a "Lesbian Nation," a self-sufficient network of women-identified women communities.²²⁰ An overlapping offshoot was the growth of "women's culture," in which women attempted to create a "counter-reality" or a separate female power base that included separatist health centers, rape crisis centers, credit unions, job training and placement services, child care centers, bookstores, presses, garages, restaurants and festivals.²²¹

These institutions, by offering a separate culture in which women could avoid some aspects of sex-based oppression, may have encouraged retreat from the conflicts of the political arena.²²² Moreover, by reviving certain aspects of "separate spheres" ideology, some groups may have reinforced gender stereotypes.²²³ Despite the limitations of some, women's groups continued to meet the needs of their female members, and to provide women with the space and the empowerment to speak. They ultimately provided a space in which an analysis of and resistance to gender-based oppression could occur.²²⁴ Some groups thus challenged the prevailing ideology of female desire, rape and male violence, and demanded the

sexual preference, the relationship of the women's movement to the Left, the role of consciousness-raising as opposed to direct action and the roots of women's oppression. The significance of gender, as opposed to class, race and other differences, was often overstated. ECHOLS, *supra*, at 83, 85-92, 103-114, 118, 149-53, 155-56, 198, 203-220.

215. ECHOLS, *supra* note 197, at 139; Radical Women (flyer) (on file with author).

216. ECHOLS, *supra* note 197, at 293; King, *supra* note 15, at 46, 55, 69-70.

217. ECHOLS, *supra* note 197, at 211; FADERMAN, *supra* note 214, at 148-149, 190. Lesbians in the 1950s and 1960s also participated in all-lesbian softball teams. FADERMAN, *supra* note 214, at 161-62.

218. Faderman, *supra* note 214, at 216. The lesbian feminist groups also experienced struggles around issues of race and class. *Id.* at 235-37.

219. *Id.* at 206; ECHOLS, *supra* note 197, at 214, 228-38.

220. Faderman, *supra* note 214, at 217, 237-38.

221. *Id.* at 218-21, 226; ECHOLS, *supra* note 197, at 221, 272-81.

222. ECHOLS, *supra* note 197, at 55-56.

223. *Id.* at 250-54, 283-84 (critiquing rise of matriarchalism and mother earth essentialism linking "the female" with fertility and nurture). See also TILLY AND GURIN, *supra* note 27, at 10-12, 29-30. Tilly and Gurin link these institutions to nineteenth century women's organizing, but do not find them apolitical.

224. ECHOLS, *supra* note 197, at 244, 270-73; Marcelle Adolph, *The All-Women's Consciousness Raising Group as a Component of Treatment for Mental Illness*, 6:3 SOCIAL WORK WITH GROUPS 117 (Fall 1983).

right of self-determination, including birth control, abortion and alternatives to the nuclear family.²²⁵

Many of these organizations and separate institutions were short-lived, victims of inner factionalism and the conservative backlash of the Reagan years.²²⁶ Many survived, however, and new separate groups and institutions continue to be created. For example, the 18th annual Michigan Womyn's Music Festival recently took place.²²⁷ A brief review of the bulletin board in a local feminist bookstore reveals a variety of separate groups, classes and events for women, including consciousness-raising groups, self-defense instruction, car maintenance classes, writing workshops, conferences, retreats and vacations.²²⁸ New "radical" feminist groups, including the Women's Action Coalition (WAC), Lesbian Avengers and Guerrilla Girls, are devoted to direct action, street theater and protest to fight discrimination.²²⁹ Black feminists in Chicago have started an organization called African-American Women In Defense of Ourselves (AAWIDOO) to address issues unique to Black women.²³⁰ Lesbian professional groups have started, including the Professional Women's Network in New York, the District of Columbia's Bon Vivant and the San Francisco Bay Area Career Women.²³¹ Groups of lesbians of color, older lesbians and disabled lesbians have also formed separate groups.²³²

a. *The anti-rape and anti-violence movements*

Also emerging out of "second wave" feminist organizing was the anti-rape movement and the battered women's movement. By asserting women's right to control their bodies and lives, claiming that what happened between men and women in the privacy of their homes was deeply political, and providing an analysis of male domination, the "second wave" feminist movement set the stage for the anti-rape and anti-violence movements.²³³ Many rape crisis centers and battered women's shelters be-

225. ECHOLS, *supra* note 197, at 285-86.

226. *Id.* at 9, 284; Faderman, *supra* note 214, at 271-72.

227. Michigan Womyn's Music Festival 1993 flyer (on file with author).

228. Women's Center and Referral Service Newsletter, July/Aug. 1993 (on file with author); Phoenix Rising: A Weekend Conference For Women in the Industries of Entertainment, Sports and Business (flyer) (on file with author); Wild Women Weekend Retreats (flyer) (on file with author); 1993-94 Women's Vacations (flyer) (on file with author); Realistic Self-Defense Training in a Supportive Environment (flyer) (on file with author).

229. Louise Continelli, *In-Your-Face Feminism: From Moderates and Radicals Alike, Signs of New Energy*, BUFFALO NEWS, June 6, 1993, LIFESTYLES, at 1; Laura Blumenfeld, *One Year, A.H. (After Hill)*, WASH. POST, Oct. 13, 1992, at E5.

230. Janita Poe, *Black women join to chip away at their unique problems*, CHI. TRIB., May 18, 1992, at C1.

231. Faderman, *supra* note 214, at 277; Bon Vivant, The Premier Club for Gay Professional Women (flyer) (on file with author).

232. Faderman, *supra* note 214, at 286-289.

233. SUSAN SCHECHTER, WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT 29, 31, 65 (1982). *See also* 40-41,

gan as women's consciousness-raising groups or were started by feminist activists.²³⁴ "Second wave" feminists have not been the only women leading these movements — older groups like the YWCA and the National Council of Jewish Women, as well as survivors of rape and domestic violence, have played crucial roles in running shelters and crisis centers.²³⁵ Rape crisis centers and battered women's shelters offer a range of services to women, including hotlines, self-defense classes, rape prevention seminars, shelter, child care, information, legal advocacy and support groups.²³⁶

In addition to providing needed services to women who have experienced violence, the women involved in these movements, both staffers and survivors, are often transformed. First, by collectively struggling against male violence and its effects, these women develop close bonds with one another, become intensely conscious of both the extent of male oppression and the potential of women's strength, and learn the necessity of collective action to effect change.²³⁷ Second, women who run crisis centers and shelters learn important organizational skills, including how to create boards of directors, draft by-laws and procedures, write funding proposals, coordinate hotlines and negotiate with bureaucracies.²³⁸ In this way the anti-rape and anti-violence movements have built organizations of politically sophisticated and empowered women.²³⁹

b. *Women's colleges, revisited*

Recent years have also seen increased interest and enrollment in women's colleges.²⁴⁰ This interest has been sparked by a growing realization of the unequal treatment received by women and girls who attend mixed-sex schools, including less attention from teachers and domination by male students.²⁴¹ At the same time, there is a heightened appreciation

48-49, 91, 120-121 for movements' attempts and failures to adequately confront issues of race and class.

234. *Id.* at 33-34, 38-39, 56 (St. Paul shelter Women's Advocates began as a consciousness-raising group in 1971; Boston shelter Transition house started by former members of radical feminist group Cell 16; several Pennsylvania shelters evolved from feminist women's centers).

235. SCHECHTER, *supra* note 233, at 42, 49-50, 56, 69-70, 75, 84-85, 104, 122, 128.

236. *Id.* at 36, 38-39, 56-57, 88-89.

237. *Id.* at 39, 76, 78.

238. *Id.* at 38, 87.

239. *Id.* at 43. Increasing involvement by the government with anti-rape and violence programs, while at times providing crucial funding, has threatened these benefits of autonomous women's organizing. *Id.* at 41-42, 96-97, 106-107, 129-131. Schechter describes how the growing involvement of governmental social service agencies and "professionals" can undermine the feminist analysis of male violence and grassroots control of the battered women's movement.

240. Jeanette Stephenson, *Women's colleges called progressive; ranks of freshman up*, DALLAS MORNING NEWS, Feb. 2, 1993 at 14A.

241. AAUW Report, *How Schools Shortchange Girls* (1992); Susan Chira, *Bias Against Girls Is Found Rife In Schools, With Lasting Damage*, N.Y. TIMES, Feb. 12,

of the opportunities offered by all-female schools, including leadership training, role models and the freedom to explore subject areas traditionally dominated by males.²⁴² Studies show that women who attend all-female schools are high achievers.²⁴³ Renewed interest in women's colleges counters a trend toward educational integration which has been highlighted by several prominent court cases.²⁴⁴

4. Post-Suffrage Organizations and the Continued Relevance of Separatism

Today, while some women stress the need for female integration into traditionally male institutions, other women consider separatism to be an important tool in the fight against sex-based discrimination and oppression. Several of the traditionally all-female organizations have admitted males. For example, the League of Women Voters began accepting male members in 1974.²⁴⁵ In fact, the League hired a man in 1986 as national executive director.²⁴⁶ In 1987, the American Association of University Women voted to admit men.²⁴⁷ Similarly, many of the "second wave" women's groups are mixed-sex, the most prominent being the National Organization for Women. However, on both sides of post-suffrage women's organizing — within the continued women's club movement and within feminist, lesbian and women's self-help networks generated by the movement of the late 1960s — the buffeted option of separatism has been defended in the face of great social and legal pressure.

For example, the National Woman's Party was explicitly committed to a separatist, feminist organizational strategy — work by women for women. An early bequest to the group even specified that the property would revert to the decedent's heirs if the organization ever permitted a man to hold an office or a paid position. This directive reflected the posi-

1992, at A1.

242. Stephenson, *supra* note 240, at 14A; Anita Manning, *Mt. St. Mary's: "I make a difference"*, USA TODAY, Jan. 15, 1992, at 7A ("Things I said are heard," stated a Mt. St. Mary's senior); Gloria Goodale, *Women's colleges remain a vibrant force in education*, CHRISTIAN SCI. MONITOR, June 20, 1983, at 14; Chris Black, *A Case for Women's Colleges: Do Single-Sex Schools Weed Out Male Bias?*, ORLANDO SENTINEL TRIB., June 4, 1990, at C1; Patti Hartigan, *Women students fight to preserve single-sex colleges*, BOSTON GLOBE, May 17, 1990, at 85 ("You're not the audience, you're the player," said a Simmons junior).

243. M. Elizabeth Tidball, *Women's Colleges and Women Achievers Revisited*, 5:3 SIGNS 504 (1980).

244. *Mississippi U. for Women v. Hogan*, 458 U.S. 718 (1982); *U.S. v. Virginia*, 976 F.2d 890 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 2431 (1993) (The defendant is the Virginia Military Institute, or VMI.). These cases involve public schools and the Equal Protection Clause.

245. Editorial, N.Y. TIMES, May 12, 1974, §4, at 18; Eleanor Blau, N.Y. TIMES, May 7, 1976, §1, at 1.

246. Betty Cuniberti, *In League of Women Voters, the Top Job Has Gone to a Man From South Pasadena*, L.A. TIMES, Sept. 18, 1986, pt. 5, at 1.

247. *The Nation*, L.A. TIMES, June 30, 1987, pt. 1, at 2.

tion of the group, which defeated several resolutions to admit males from the 1940s to the 1960s. An attempt in the 1950s by one NWP leader to work more closely with men, and her hiring a male on the national staff, created a controversy in which the pro-integration leader was ultimately ousted.²⁴⁸

In the late 1960s and early 1970s, one of the few things that the founders of the first radical feminist groups agreed upon was the need to organize separately, although they offered various rationales.²⁴⁹ In general, however, women have been divided on the issue of separate organizing. Some women view separatism as essentialist, and prefer to work with whomever is a helpful ally, whether male or female. Some women of color are uncomfortable with excluding men with whom they share the experience of racism.²⁵⁰ Some lesbians are reluctant to exclude gay males, as lesbians and gay men are united in their experiences of homophobia.²⁵¹ Significant numbers of women, however, continue to participate in separate organizations.²⁵² For example, the Michigan Womyn's Music Festival excludes males,²⁵³ as does the Women's Action Coalition.²⁵⁴ Although they work with men and non-Black women in the political arena, AAWIDOO members segregate themselves to work through issues from a common frame of reference.²⁵⁵

Anti-violence networks, including battered women's shelters and rape crisis centers, usually take the position that a male presence on hotlines or in shelters is antithetical to the services they provide, and that an all-female environment offers safety, encourages self-help, and provides a

248. RUPP AND TAYLOR, *supra* note 120, at 33-35, 40, 57-59.

249. Some thought that women should organize separately out of the principle that a female power base was needed to attack male supremacy, and that working with the oppressor could not effectuate change. ECHOLS, *supra* note 197, at 59, 61, 63-64, 73, 104, 118, 279. Stated one radical feminist: "N.O.W. was always afraid to support the principles of all-female groups, despite the absolute necessity for an oppressed class to organize out of earshot of the oppressor and build an independent base of power." *Id.* at 154. Others, particularly those who broke off from SDS and other Left groups, thought of separate organizing as a means not to create a separate women's movement, but to work with the Left from a position of greater equality. *Id.* at 52, 59, 61, 104, 118. This became a more difficult position to maintain as males on the Left were consistently hostile or patronizing, and as the Left itself declined. *Id.* at 120, 122-24, 128-29, 134-135. Others asserted more generally that separate spaces would give women an opportunity to develop personally and politically. *Id.* at 59. In that light, some noted that excluding males was important because women had difficulty expressing themselves around men. *Id.* at 61.

250. Poe, *supra* note 230, at C1.

251. Faderman, *supra* note 214, at 192-93, 199, 210-211, 228, 279, 293-94, 296, 301 (noting coalitions between lesbian women and gay men, including mixed-sex groups such as Mattachine, the Alice B. Toklas Democratic Club, ACT-UP (AIDS Coalition to Unleash Power), Queer Nation and gay-lesbian churches).

252. Of course, participation in single-sex institutions does not preclude work in mixed-sex organizations.

253. Michigan Womyn's Music Festival 1993 flyer (on file with author).

254. WAC flyer (on file with author).

255. Poe, *supra* note 230, at C1.

space in which survivors can learn to challenge and overcome male dominance and violence. These organizations typically exclude males from counseling and hotline staff and from shelter premises, and often exclude males from leadership positions. Males who are employed are often limited to work that does not involve great interaction with survivors, such as maintenance.²⁵⁶ Similarly, women's self-defence classes are often all-female.²⁵⁷ As might be expected, these separate spaces have engendered controversy. In Minnesota, a proposal for funding for a women's shelter was rejected because it was "sexist" in that males would be excluded from using the shelter.²⁵⁸ The Women's Transit Authority, a free rape prevention ride service for women, has lost its funding from the University of Wisconsin because of its single-sex policies.²⁵⁹

Some women's colleges and their students continue to defend their all-female status, often in the face of great hostility grounded in symmetrical analysis. For example, at Mills College in the spring of 1990, young women wearing "Better Dead Than Co-ed" T-shirts and posting signs stating "Empower Women" temporarily shut down the school after learning of the Board's decision to admit males.²⁶⁰ Women's colleges across the country held rallies and demonstrations in solidarity with the Mills students.²⁶¹ The Board recanted their decision to admit men in the wake of student and alumnae opposition.²⁶² Editorials and letters to the editor condemned the decision to keep Mills College all-women, proclaiming that "discrimination is discrimination," and decrying the "feminist double standard."²⁶³

256. Conversation with Maggie Severe, D.C. Rape Crisis Center, July 28, 1993; SCHECHTER, *supra* note 233, at 199-200, 258-260.

257. "Women's One-Month Self-Defense," "DC IMPACT," in Realistic Self-Defense Training in a Supportive Environment flyer (on file with author).

258. SCHECHTER, *supra* note 233, at 96-97. After intense organizing by the organizers, the funding was granted. In a related incident, a male volunteer who was blocked from the board of directors of a homeless women's shelter complained to the Boston Globe that men had been turned into a "second-class members of the [shelter] community." The director responded that the shelter wanted to provide female role models to the residents. Adrian Walker, *At Rosie's Place for women, no place for men at top*, BOSTON GLOBE, July 25, 1990, Metro/Region, at 25.

259. Katherine Kruse, Comment, *The Inequality Approach and the BFOQ: Use of Feminist Theory to Reinterpret the Title VII BFOQ Exception*, 1993 WIS. L. REV. 261, 271 n. 81.

260. Cynthia Gorney, *At Mills College, "Better Dead Than Coed": Students Man the Barricades to Keep School a Women's Place*, WASH. POST, May 12, 1990, at B1 (recounting joke in which Mills board chair comments to college president, on the morning of the strike, "Oops, we empowered a few too many, and just a little too much"); *Protests Shut Down Mills College After Vote to Admit Men*, WASH. POST, May 5, 1990, at A8.

261. Patti Hartigan, *Women students fight to preserve single-sex colleges*, BOSTON GLOBE, May 17, 1990, LIVING, at 85.

262. *Mills to Stay "For Women"* — *For Now*, WASH. POST, May 19, 1990, at A3.

263. *A Women-Only College is Discrimination*, Letter to the Editor, N.Y. TIMES, June 7, 1990, at A22 ("the decision to keep Mills College women-only smacks of a feminist double standard"); *What's Good Enough for Mills Should Be Good Enough for VMI*,

a. *Separatism and the YWCA*

For most of this century, the YWCA has consistently resisted efforts to become a mixed-sex organization. By the 1920s, the YMCA was offering programs for women and girls, including Women's Auxiliaries.²⁶⁴ YWCA leaders suggested that the YM be transformed into a mixed-sex organization, and called for increased cooperation between the YM and the YWCA. The YWCA had long been devoted to a distinct, women-led, women-oriented organization that offered job training and leadership development for young women and championed (though did not necessarily achieve) the solidarity of females across race and class lines. YWCA leaders saw organizational autonomy as a key to developing in young women the strength to make true equality possible.²⁶⁵ The YW thus opposed the trend toward integration and resented the incursion of the YM into its domain. Specifically, YWCA women feared that integration of the two organizations would lead to the domination by YMCA leaders and a net loss of leadership possibilities for women.²⁶⁶

The statements of YWCA women made during a conflict in the late 1920s indicate an explicit understanding of the potential consequences of integration. One YWCA leader commented, "The YWCA is not a glorified auxiliary. Cooperation does not mean waiting on tables."²⁶⁷ Another YWCA leader noted that in mixed-sex groups, women "have prepared the food and washed the dishes, while the men have made the decisions."²⁶⁸ Still another YW leader commented as follows on a YMCA proposal: "Do the supporters of this amendment [promoting integration of the organizations] want an officially recognized Ladies' Aid Society in the Y.M.C.A., or are they wanting equally able women presidents, women administrators, women program builders, women budgeteers, etc., to take their places besides the men with equal recognition and equal pay?"²⁶⁹ A 1928 YWCA report explained that the YWCA was "*not a program for women. It is an organization of women . . . Work done by a Young Men's Christian Association among women and girls is done within a structure for which women are not responsible.*"²⁷⁰ Another YW report attributed

WASH. POST, Editorial, May 26, 1990, at A27 ("discrimination is discrimination"). A Maryland man filed complaints against Goucher College and Hood College, two all-female schools. *Baltimore bus driver says women's colleges discriminate against men*, UPI, Aug. 25, 1985, available in LEXIS, Nexis Library, UPI file. The same man has also filed a complaint about YWCA membership policies. See *infra* note 281.

264. Significantly, one of the problems with the YMCA Women's Auxiliaries was the difficulty experienced by the YM in finding qualified female leaders. Apparently the qualified leaders chose to work within the YWCA. Vandenberg-Daves, *supra* note 119, at 1332.

265. *Id.* at 1443.

266. *Id.* at 1326, 1332, 1334-35, 1338-40.

267. *Id.* at 1339.

268. *Id.* at 1340.

269. *Id.* at 1341.

270. *Id.* at 1340 (emphasis in original). It is not surprising, then, that leaders of the

the following attitude to the YM: "Women should not seek separate organizational experience. Their place is in organizations for which men are responsible."²⁷¹

By 1933, the YMCA had decentralized its membership qualifications to permit local organizations to admit girls and women, and now admits women as full members into all branches.²⁷² But the YWCA has continued to defend its single-sex status. In 1954, despite pressure from the YMCA and the community funding organizations, the YWCA national board unanimously rejected a proposed merger with the YMCA.²⁷³ The YW board maintained that a mixed-sex organization could not provide the leadership development opportunities for women, and that the YWCA must retain its identity in order to preserve its mission of meeting the distinct needs and concerns of women.²⁷⁴ In 1960, a YWCA study strongly endorsed the maintenance of a separate women's organization in order to "work for a greater measure of freedom for women." The 1961 national convention unanimously endorsed the principle of a "separate autonomous women's organization."²⁷⁵ This principle continues to hold sway. In response to the question of merging with the YMCA, national president Ann Stallard recently stated, "I think we have totally different agendas. . . . However, the next time I see a YMCA with a battered women's shelter or the men in the leadership of the YMCA producing a program for men who batter . . . then I will know the new millennium has come and I will say, 'Brothers, we're ready to embrace you.'"²⁷⁶ In June 1988, the YWCA voted overwhelmingly to reaffirm the position that only women can be full members; men are permitted to be associate members.²⁷⁷

The YWCA has defended its single-sex policies as redress for historical discrimination against women and as a means to improving the lives of women by providing services and leadership development.²⁷⁸ The group

liberal, mixed-sex National Organization for Women make the opposite point — that NOW is *not* an organization of women, but an organization *for* women which men can join and even lead.

271. *Id.* at 1444.

272. *Id.* at 1445; *YWCA Resists Admission of Men*, N.Y. TIMES, July 12, 1988, at A22.

273. LYNN, *supra* note 122, at 115.

274. *Id.* at 115.

275. *Id.* at 116.

276. Joyce Valdez, *supra* note 176, at D1.

277. *YWCA Resists Admission of Men*, *supra* note 272, at A22; *Towson man wants to join YWCA*, UPI, Nov. 25, 1988, available in LEXIS, Nexis Library, UPI file; Ann Japenga, *When Men Can't Join the Club*, L.A. TIMES, July 11, 1988, pt. 5, at 1.

278. Japenga, *supra* note 277, at 1; Penny Singer, *Clubs Confronting Issues Over Gender*, N.Y. TIMES, Aug. 21, 1988, §12WC, at 14; *Towson man wants to join YWCA*, *supra* note 277. See also Frederick Elkin, *Pressures toward Cooperation in Voluntary Associations: The YMCA and YWCA*, 5:1 J. OF VOLUNTARY RES. 16 (1976) (YWCA resists pressure to merge with YMCA out of commitment to women).

For example, the Montreal YWCA offers "handywoman classes" car repair, carpen-

has also noted that the organization is not a site for business networking or corporate deals.²⁷⁹ However, the national YWCA's emphatic defense of its single-sex status has been worn down by both internal and external pressures. Several branches have indicated their desire for a move toward a mixed-sex organization, and one branch was disaffiliated when it changed its policies to admit men.²⁸⁰ Powerful pressure has also come from "reverse discrimination" suits and the funding community.²⁸¹ The issue will arise again at the June 1994 convention.²⁸²

try and plumbing. According to one of the teachers, "we did accept [men] in the early years but it just didn't work. . . . Women were afraid to ask questions because they didn't want to be considered stupid and some of them dropped out. . . . Our mandate, after all, is for women." Annabelle King, *Handy is Dandy*, THE GAZETTE (MONTREAL), Aug. 29, 1991, at F1.

279. *Id.*

280. YWCA, UPI, June 3, 1988, *available in* LEXIS, Nexis Library, UPI file (Ogden, Utah YWCA chapter disaffiliated by the national board in 1988; Tacoma YWCA decided to hire male director). The Tacoma YW board president stated, "We believe here in Tacoma that men and women can work together. We don't believe we're going to lose our focus by hiring the best possible candidate who happened to be a man." *Id.* See also UPI, May 19, 1988, *available in* LEXIS, Nexis Library, UPI file (five women resign from Salem YWCA board in protest of single-sex policy).

281. YWCA, UPI, June 3, 1988, *supra* note 280 (Ogden branch under pressure from state and other funding sources). In 1987, a group of men brought a suit against the YWCA because they were not eligible under YWCA bylaws, which require that branch directors be full YW members, for the position of the executive directorship of the YW's Tucson branch. To settle the lawsuit, the YW agreed in 1993 to consider men for leadership positions at its local chapters and to push for an amendment of its bylaws. *YWCA Settles Men's Lawsuit*, N.Y. TIMES, Jan. 3, 1993, at A16. Similarly, when the national YWCA threatened to disaffiliate the Tacoma, Washington YWCA branch for its decision to hire a male director, the United Way and other funding sources in turn threatened to withdraw \$300,000 from the Tacoma branch if they bowed to the national YW. The branch protested the national position, and filed a lawsuit against the national board to prevent disaffiliation. To settle the dispute, the YWCA agreed not to disaffiliate the branch, and to cooperate in a national study on the effects of male leadership in the YWCA. YWCA, UPI, Oct. 26, 1988, *available in* LEXIS, Nexis Library, UPI file; *YWCA Resists Admission of Men*, *supra* note 272, at A22. In 1988, a man filed a complaint with the Maryland Human Relations Commission after he was denied full membership in the Greater Baltimore YWCA. *Towson man wants to join YWCA*, *supra* note 277. This same man has also filed a complaint against Gaucher, a women's college. See note 263, *supra*. See also *Rights commission approves seven discrimination agreements*, UPI, Jan. 24, 1989, *available in* LEXIS, Nexis Library, UPI file (Louisville YWCA agreed to implement affirmative action plan for hiring entry-level male employees); Penny Singer, *supra* note 278, at 14 (Central Westchester YMCA refuses to have men on their policy-making board of directors, citing need for leadership opportunities for women); YWCA, UPI, April 20, 1988. *available in* LEXIS, Nexis Library, UPI file (Salem, Oregon YWCA votes not to admit males as full voting members).

282. July 30, 1993 conversation with YWCA Executive Office spokesperson.

5. Post-Suffrage Organizations and the Diversity of Women's Voices

In the nineteenth century, women's organizations, both radical and "traditional," ultimately agreed that women's voices should be heard in the public arena. The result of this collective challenge to a central tenet of separate spheres ideology was the suffrage victory of 1920. The coalition of women's groups across the spectrum was unique, and its remarkable occurrence does *not* mean that women's organizations, or all-female organizations, necessarily collaborate to achieve agreed-upon goals.²⁸³ In fact, much of the history of women's organizations in the twentieth century reveals the diversity of women's voices, particularly within discourse on the meaning of women's equality.²⁸⁴

For example, the all-female National Woman's Party was formed to lobby for the Equal Rights Amendment.²⁸⁵ Several professional organizations, including the National Federation of Business and Professional Women's Clubs, the National Association of Women Lawyers, and the American Medical Woman's Association, joined with the NWP in coalition for the amendment.²⁸⁶ In the late 1970s, the mixed-sex NOW took on the ERA battle.²⁸⁷ However, until the early 1970s, many other women's groups, including the YWCA, the League of Women Voters, the National Women's Trade Union League, the National Council of Negro Women, and the National Council of Catholic Women were opposed to the ERA as they felt that the causes of women's inequalities could not be addressed by an amendment granting women legal equality. These groups sincerely believed that protective labor legislation (almost certainly impermissible under the ERA) improved the lives of working women. They were also offended by the racism and classism of the ERA's leading proponent, the National Woman's Party.²⁸⁸ The YWCA did not endorse the ERA until 1973.²⁸⁹ Radical feminist groups opposed or ignored the amendment, deeming it a reform designed to co-opt the movement and promote the assimilation of women into a sexist society.²⁹⁰

Similarly, since the late 1970s, even self-defined feminist women and their organizations have continued to sharply differ on the meaning of equality. Some of the differing arguments include: formal equality must

283. See Cott, *Across the Great Divide*, *supra* note 27, at 172 (discussing the "unique power of disenfranchisement to bring diverse women into coalition"). In fact, suffragists agreed upon little else but that women should have the vote. *Id.* at 155-156.

284. *Id.* at 170-72; TILLY AND GURIN, *supra* note 27, at 21, 23.

285. Freeman, *supra* note 136, at 458.

286. RUPP AND TAYLOR, *supra* note 120, at 46-47, 59; Freeman, *supra* note 136, at 462-463.

287. RUPP AND TAYLOR, *supra* note 120, at 24.

288. *Id.* at 5, 59-64; Freeman, *supra* note 136, at 458-464; LYNN, *supra* note 122, at 131-132.

289. LYNN, *supra* note 122, at 174.

290. ECHOLS, *supra* note 197, at 200.

be consistently pursued to break down gender stereotypes that harm women; preferential treatment is necessary in some circumstances to achieve equality in a context of social inequality; a more radical challenge to patriarchal systems is required to liberate women; and "female difference" should be recognized and celebrated. The equality debate swirls around such seemingly varied issues as pregnancy leave benefits, divorce reform, pornography, butch-femme roles, bisexuality, monogamy, sado-masochism and surrogacy.²⁹¹

The important contributions of all-female groups to sex equality does not depend, however, upon the ability of women or their organizations to agree upon political goals or even the meaning of women's equality. Rather, it is founded upon the transformative effect that all-female organizations can have upon some women's lives in the historical and contemporary context of women's relationship to men and to the public sphere. That said, it should also be noted that female-only spaces can play a meaningful role in the struggle for equality by providing women the opportunity to pursue criticisms and analyses of the patriarchal world outside of the male gaze, and to develop strategies for action towards ending women's oppression. And, while women's voices are diverse, political solidarity among some women and their organizations is possible when strategies are employed to reach women in different social circumstances. It may be that the rise of mixed-sex organizations has made this solidarity more difficult to achieve.²⁹²

C. *The Equal Treatment Model and "Reverse Discrimination"*

Anti-discrimination statutes are the most likely bases for "reverse discrimination" challenges to all-female organizations. In determining the merits of the application of an anti-discrimination statute to a particular single-sex club, Supreme Court case law²⁹³ has focused on two interrelated issues: (1) whether the particular state or city public accommodations law applies to the particular group; and (2) whether a group's practices are constitutionally protected.

In appraising a single-sex group's claim of constitutional protection

291. *Id.* at 287-291; Faderman, *supra* note 214, at 230-34, 249-269.

292. TILLY AND GURIN, *supra* note 27, at 26; Freedman, *supra* note 9.

293. The three leading cases are: *New York State Club Ass'n v. City of New York*, 487 U.S. 1 (1988) (associations which are not distinctly private may not discriminate against women under New York City's law mandating nondiscrimination in groups categorized as "public"; Court upheld state's interest in promoting economic equality between sexes by allowing women to participate in business-related clubs); *Bd. of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537 (1987) (equality in business world is paramount state concern; California's Unruh Act upheld); *Roberts v. United States Jaycees*, 468 U.S. 609 (1984) (Brennan for majority applied balancing test: state's interest in eliminating discrimination outweighed attenuated associational freedoms asserted by Jaycees; Jaycees did not exemplify the kind of intimate attachments warranting constitutional protection; Kiwanis might be labelled as private) (O'Connor, J., concurring, distinguished unprotected commercial organizations from protected expressive organizations).

under the Supreme Court's model, a court considers both (a) the right to privacy, by which certain intimate or private relationships are protected from unwarranted government interference, and (b) the First Amendment, which protects the right of individuals to associate for the purpose of engaging in protected speech or religious activities.²⁹⁴ As to the right to privacy, the court attempts to place the club on a continuum ranging from the most intimate (like the family) to the most attenuated of personal attachments (like a business).²⁹⁵ In determining whether an organization is protected by the right to privacy, the court considers "factors such as size, purpose, selectivity, and whether others are excluded from critical aspects of the relationship."²⁹⁶ For example, an organization with selective membership and guest policies that does not routinely open its doors to the public at large might be defined by the court as "private." A large business enterprise would not be deemed "private."²⁹⁷

The First Amendment protects a range of expressive activities, such as speech, assembly, petition, and the practice of religion. It also protects the related right of association with others "in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends."²⁹⁸ "Freedom of association . . . presupposes a freedom not to associate."²⁹⁹ In evaluating a club's claim of First Amendment protection, a court considers whether protected expressive activities conducted by the club would be affected in any significant way by the introduction of the excluded persons.³⁰⁰ As the statutes on their face have no effect upon the expressive activities of the organizations, and as the assignment of particular viewpoints on the basis of gender is a troublesome proposition rejected by the Supreme Court as sexual stereotyping,³⁰¹ such a showing is difficult. Even if admission of the excluded persons causes some slight infringement upon the members' right of expressive association, it is justified by the state's compelling interest in eliminating discrimination.³⁰²

These standards treat certain groups differently on the basis of constitutionally-protected activities, but do not otherwise distinguish between various single-sex groups.³⁰³ Any group deemed "public" and which can-

294. See *Rotary Int'l*, 481 U.S. at 544; *Roberts*, 468 U.S. at 617-618.

295. See *Rotary Int'l*, 481 U.S. at 545-546; *Roberts*, 468 U.S. at 620.

296. *Rotary Int'l*, 481 U.S. at 546; see also *Roberts*, 468 U.S. at 619-620.

297. *Roberts*, 468 U.S. at 620.

298. *Id.* at 622.

299. *Id.* at 623.

300. *Rotary Int'l*, 481 U.S. at 548-549.

301. *Roberts*, 468 U.S. at 628.

302. *Rotary Int'l*, 481 U.S. at 548-549. In *Roberts*, the Court found a compelling interest in eliminating discrimination against women, and in assuring equal access by women to the acquisition of leadership skills and business contacts as well as tangible goods and services. *Roberts*, 468 U.S. at 625-7. The Court found a compelling interest to prevent acts of invidious discrimination in the distribution of publicly available goods, services, and other advantages.

303. A large body of literature exists which discusses the role of First Amendment or privacy rights in the application of state anti-discrimination statutes. The literature does

not demonstrate that its policies are justified by First Amendment interests is governed by the state and local anti-discrimination laws, whether the group is all-male, all-female, traditional, or remedial. The significant element in the Court's analysis is exclusion on the basis of gender (or another basis prohibited by the statute). Men's and boys' groups have been forced to admit women,³⁰⁴ but the same tools have compelled women's and girls' groups to admit men.³⁰⁵

not question the "equal treatment" approach, but instead argues about where on the continuum protection from state intervention should start or stop. Individual articles thus tend to favor anti-discrimination interests or associational rights. For work favoring the interest in ending discrimination, see Burns, *supra* note 113; Catharine M. Goodwin, *Challenging the Private Club: Sex Discrimination Plaintiffs Barred at the Door*, 13 SW. U. L. REV. 237 (1982); Kimberly S. McGovern, Note, *Board of Directors of Rotary International v. Rotary Club of Duarte: Prying Open the Doors of the All-Male Club*, 11 HARV. WOMEN'S L.J. 117 (1988); Gerald L. Edgar, Note, *Roberts v. United States Jaycees: Does the Right of Free Association Imply an Absolute Right of Private Discrimination?*, 1986 UTAH L. REV. 373; Daniel L. Schwartz, *Discrimination on Campus: A Critical Examination of Single-Sex College Social Organizations*, 75 CAL. L. REV. 2117 (December 1987). For work focusing on the importance of associational rights, see Douglas Linder, Comment, *Freedom of Association After Roberts v. United States Jaycees*, 82 MICH. L. REV. 1878 (1984); Steven M. Colloton, Note, *Freedom of Association: The Attack on Single-Sex College Social Organizations*, 4 YALE L. & POL'Y REV. 426 (1986).

304. *New York State Club Ass'n v. City of New York*, 487 U.S. 1, 1; (1988); Bd. of Directors of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537 (1987); *Roberts v. United States Jaycees*, 468 U.S. 609 (1984); *Isbister v. Boys' Club of Santa Cruz*, 707 P.2d 212 (Cal. 1985); *NOW v. Little League Baseball, Inc.*, 318 A.2d 33 (N.J.), *aff'd*, 338 A.2d 198 (2d Cir. 1974); *Frank v. Ivy Club, State of N.J. Dep't of Law & Pub. Safety, Div. of Civ. Rights, D. Ct. 05-1678-1680* (1985); *Rogers v. International Ass'n of Lions Clubs*, 636 F.Supp. 1476 (E.D. Mich. 1986); *Quinnipiac Council, Boy Scouts, Inc. v. Commission on Human Rights and Opportunities*, 528 A.2d 352 (Conn. 1987). But see also *Lincoln v. Mid Cities Pee Wee Football Ass'n*, 576 S.W.2d 922 (Tex. Ct. App. 1979) (sex-separatist conduct could be considered an expression of individual's social, moral, cultural, and religious beliefs); *Schwenk v. Boy Scouts of America*, 551 P.2d 465 (Or. 1976) (Boy Scouts not sufficiently businesslike to fall within the state's statute).

305. For suits and complaints against all-female clubs, see notes 280-81, *supra*, for YWCA, and notes 309, 311, *infra*, for San Francisco's Metropolitan Club. See also Peggy Hernandez, *All-Female Club to Seek Exemption from Bias Rule*, BOSTON GLOBE, Oct. 5, 1988, Metro, at 33 (all-female Chilton Club to seek exemption as social, noncommercial club); Peggy Hernandez, *In About-Face, Chilton Club to Admit Men*, BOSTON GLOBE, Oct. 28, 1988, Metro, at 1 (Chilton Club votes to admit males under pressure from city's licensing board); *Two Clubs for Women Are Charged With Bias*, N.Y. TIMES, Dec. 18, 1987, at B8 (two men, including Sidney Siller, founder of the National Organization for Men, file complaints against New York's all-female Cosmopolitan Club and Colony Club); *Private Club Review Asked*, WASH. POST, July 6, 1988, at B5 (District's Woman's National Democratic Club decides to allow males to become full voting members after John Banzhaf filed complaint with Human Rights Office); Greg Henderson, *Two Women's Clubs Threatened with Discrimination Suit*, UPI, July 5, 1988, available in LEXIS, Nexis Library, UPI file (John Banzhaf threatens to sue District's all-female Washington Club and Sulgrave Club); Lawrence Feinberg, *District Bans Sex Bias at Large Clubs*, WASH. POST, Sept. 30, 1987, at A1 (bias law's proponent says that law applies to all-female Washington Club, Sulgrave Club, and Woman's National Democratic Club, stating that "discrimination is offensive no matter on whose behalf it is practiced").

1. The Possibility of Adaptation

Although the existing model is forcing some all-female groups to change, it has been successful in dismantling some ancient strongholds of male power. Before waging an all-out attack on the blanket application of anti-discrimination doctrines to all-female groups, it is necessary to evaluate the price of adaptation to these doctrines. Like all-male clubs, all-female organizations may adapt to anti-discrimination statutes by: (1) creating constitutional shields by avoiding public or commercial activity and/or by imposing stringent criteria on membership, or (2) admitting males while attempting to maintain a focus on those issues and activities that are

For suits and complaints against women's gyms, see Evan Gahr, *Should Men Sweat the Details of Trying to Fit?*, WASH. TIMES, May 21, 1991, at E1 (male files complaint May 13, 1991 with District's Department of Human Rights against Spa Lady); Ruth Marcus, *Court Sits Out Aerobics Dispute: Men Seek to Exercise Their Rights in Rockville Women-Only Classes*, WASH. POST, Jan. 21, 1987, at B3 (male plaintiffs complaining to Montgomery County Human Relations Commission about exclusion from aerobics obtained order directing gym to let males into class or offer substantially similar program); *Women's Gym Sued for Reverse Sex Discrimination*, UPI, Jan. 10, 1987, available in LEXIS, Nexis Library, UPI file (lawsuit filed by three men against San Francisco's Women's Training Center; plaintiffs' lawyer says, "discrimination is discrimination"); Jordana Hart, *Ladies-Only Policy Angers Members of Fitness Center*, BOSTON GLOBE, Apr. 1, 1990, NORTHWEST WEEKLY, at 3 (former members of health club converted into all-female club plan to file complaint with state attorney general); SAN DIEGO UNION-TRIB., Mar. 26, 1993 (National Organization for Men files sex discrimination suit against all-female gym); Lyn McCafferty, *Men, No Longer Welcome, Leave Gym With a Lawsuit*, PHILADELPHIA INQUIRER, Sept. 1, 1992, at B12 (men file lawsuit against LivingWell Fitness Center); *Spasuit*, U.P.I., Mar. 11, 1987 (male suing women-only gym drops suit, citing women's privacy interest); T. W. McGarry, *New Client of Feminist Sues Burbank Club: Allred Again Challenges All-Women Gym*, L.A. TIMES, Mar. 26, 1987, Metro, at 6; *Romano v. Bohemia Health Operating, Inc.*, No. P-S-50528-77 (N.Y. Div. Human Rts., April 14, 1980) (woman-only health spa challenged). See also LivingWell v. Penn. Human Relations Commission, 606 A.2d 1287 (Pa. Commw. Ct.), *app. denied*, 618 A.2d 401 (Penn. 1992) (exclusionary policy of all-female gym upheld); E.E.O.C. v. Sedita d/b/a Women's Workout World, et al., 755 F. Supp. 808 (N.D. Ill. 1991), *summary judgment vacated*, 816 F. Supp. 1291 (N.D. Ill. 1993) (complaint against women's gym that hires only female employees).

For Title IX suits against all-female sports teams, see *Mularadelis v. Haldane Central School Bd.*, 427 N.Y.S.2d 458 (N.Y. App. Div. 1980) (ruling against male plaintiff); *Petrie v. Ill. High School Ass'n*, 394 N.E.2d 855 (Ill. App. Ct. 1979) (ruling against male plaintiff). See also *Att'y Gen. v. Mass. Interscholastic Athletic Ass'n*, 393 N.E.2d 284 (Mass. 1979).

For challenges to all-female colleges, see *Mississippi U. for Women v. Hogan*, 458 U.S. 718 (1982) (exclusion violates equal protection); *Rights*, UPI, Aug. 25, 1985, available in LEXIS, Nexis Library, UPI file (male files grievance regarding Goucher College; Goucher president responds that all-female colleges help students overcome discrimination). See also *Op. At'y Gen. Md.* 103 (1980) (finding that state ERA does not preclude Goucher's single-sex policies).

meaningful and useful to women members.³⁰⁶ Several all-female clubs have already been forced to choose between these options.³⁰⁷

Many existing women's clubs may already enjoy constitutional protection. In practice, the equal treatment model may have more impact on all-male groups. Traditionally, all-female groups have been fairly intimate and expressive. Women's support groups, consciousness-raising groups and communes, being generally noncommercial and intimate, are almost certainly constitutionally protected. Some women's groups may also rely upon their exclusive membership criteria to create constitutional protection. For example, were Delta Sigma Theta ever faced with a reverse discrimination suit, its stringent admissions requirements would be helpful in asserting associational privilege.³⁰⁸

Women's groups may also take steps to "privatize" and obtain protection from anti-discrimination requirements. San Francisco's all-female Metropolitan Club is an example of a group that adapted to an anti-discrimination mandate to maintain its single-sex status. After the Club was threatened by the City Attorney's office with a suit pursuant to the city's anti-discrimination ordinance, an ad hoc committee sued the Club to prevent the Board of Directors from admitting men.³⁰⁹ The committee argued that admitting men would lead to male dominance and control of the athletic facilities.³¹⁰ In November 1990, the Club voted to completely privatize its operations, so as to escape classification as a public accommodation under the city's ordinance.³¹¹

The privatization solution is problematic, particularly in the long-term. As all-female organizations become increasingly concerned with commercial and professional interests,³¹² and as they make an effort to be increasingly inclusive in their membership, they may no longer enjoy the protection of the public-private continuum. Avoiding public or commercial activity would restrict remedial professional development or job training.

306. In choosing a male director, the Tacoma YW board president stated, "We believe here in Tacoma that men and women can work together. We don't believe we're going to lose our focus by hiring the best possible candidate who happened to be a man." *YWCA*, UPI, June 3, 1988, *supra* note 280.

307. *Kay*, *supra* note 134 (San Francisco's Metropolitan Club privatized to retain single-sex status); Hernandez, *supra* note 305, at 1.

308. See GIDDINGS, IN SEARCH OF SISTERHOOD, *supra* note 129, at 7.

309. *Special Advisory Committee v. Metropolitan Club of San Francisco*, filed in San Francisco Superior Court (March 1990); *Kay*, *supra* note 134.

310. *Metropolitan Club Suit Dropped*, SAN FRANCISCO CHRONICLE, May 18, 1990, at A26; Anne Strook, *Court Stops All-Female SF Club From Admitting Men*, SAN FRANCISCO CHRONICLE, March 9, 1990, at A6; *Women's Club Told to Detail Co-Ed Plan*, L.A. TIMES, March 11, 1990, at 34A. A Metropolitan Club member also informed me that some women were opposed to admitting males because of homophobic fears that gay men would then join and use the same gym equipment and pool.

311. Thomas G. Keane, *3 Private Clubs Don't Plan to Change*, SAN FRANCISCO CHRONICLE, December 13, 1990, at A4.

312. See *Kay*, *supra* note 134, at 859 (Metropolitan Club beginning to have network of professional and business women).

Moreover, prohibitions on receiving money through commercial activities might place an intolerable financial burden on some clubs. Because of prohibitions on receiving money through commercial activities, the decision to privatize has placed an increased financial burden on the Metropolitan Club.³¹³ Similarly, instituting stringent membership requirements to obtain constitutional protection might be counter to a group's desire to reach as many women as possible. The Women's Action Coalition, for example, explicitly welcomes "all women."³¹⁴ Moreover, women's groups which are currently "exclusive" often struggle over their membership criteria, and might wish to eliminate these prerequisites. For a time, Delta relaxed its academic requirements in response to this crisis.³¹⁵

Admitting males to all-female groups is also problematic. While in many cases it is unlikely that an all-female group would be deluged with male applicants upon the abandonment of its single-sex policies, the presence of even some males might nullify much of the benefit of female-only space by muting some women, importing the "male gaze" and decreasing leadership development opportunities. Moreover, those clubs with the most to offer women might find their successful efforts ironically repaid by increasing numbers of male members, re-creating the sex-based hierarchy found in virtually every mixed-sex organization.³¹⁶ Direct and even indirect efforts to discourage the participation of males might be found to violate many anti-discrimination mandates.³¹⁷

Until new anti-discrimination doctrines are developed that consider important distinctions between single-sex organizations, adaptation tech-

313. *Id.* at 858-89.

314. WAC is Watching (flyer) (on file with author).

315. GIDDINGS, IN SEARCH OF SISTERHOOD, *supra* note 129, at 277-288. The requirements were restored in 1977. *Id.* at 295.

316. See Part II, section B, subsection 2, *supra*. Studies from other disciplines confirm the historical and contemporary experience of mixed-sex groups. Psychologists studying the group dynamics of all-female groups versus gender mixed groups have found that women, more than men, feel trapped by their gender roles when acting within mixed groups. Johnson and Shulman, *Gender-Role Composition and Role Entrapment in Decision-Making Groups*, 3 GENDER & SOCIETY 355 (September 1989). They are less likely to act as leaders and more likely to fall into traditional roles (e.g., clerical work, compromise). Elizabeth Aries, *Interaction Patterns and Themes of Male, Female and Mixed Groups*, 7:1 SMALL GROUP BEHAVIOR 7 (Feb. 1978); Porter, *Are Women Invisible as Leaders?*, 9 SEX ROLES 1035 (October 1983). Men interrupt women more frequently than do women in mixed groups. Lynn Smith-Lovin, *Interruptions in Group Discussions: The Effects of Gender and Group Composition*, 54:3 AM. SOC. REV. 424 (1989). Women have lower expectations for themselves in mixed groups than in single-sex groups, and are less likely to value women's contributions or to articulate feminist views. Nancy Toder, *The Effect of the Sexual Composition of a Group on Discrimination against Women*, 5:2 PSYCHOLOGY OF WOMEN Q. 292 (Winter 1980).

317. It is not difficult to imagine (given opponents like the National Organization for Men) suits against mixed-sex women's organizations prosecuted on a "hostile associational environment" theory. In fact, important issues of the treatment of women admitted to formerly all-male institutions may arise as the first female student is admitted to the Citadel. See *Woman Registers at Citadel, Then is Barred*, N.Y. TIMES, Jan. 13, 1994, at A12.

niques are useful tools for some all-female groups. But requiring extreme acts by groups dedicated to women to escape the "the arm of the law" enacted to empower women is illogical and unfair, and the overall results are unacceptable. Forcing women's groups to avoid the public or commercial arena to protect female space undermines the important contributions such groups can make to gender equality through these public avenues.

2. The Possibility of Extended First Amendment Protection For All-Female Groups

Larger all-female groups might be able to obtain constitutional protection on First Amendment grounds where an all-male group of the same size might not. Although finding in *New York State Club* that the large organizations covered by the statute would not normally be constitutionally protected under the First Amendment,³¹⁸ the Court allowed that:

It is conceivable, of course, that an association [covered by the statute] might be able to show that it is organized for specific expressive purposes and that it will not be able to advocate its desired viewpoints nearly as effectively if it cannot confine its membership to those who have the same sex, for example, or the same religion.³¹⁹

The characteristics of women's organizations (*e.g.*, providing a space for women's voices not available in mixed-sex groups), and of some male groups (*e.g.*, organized to discuss embarrassing or intimate gender-based emotional or health issues, or men's problems with women, such that the presence of women would inhibit speech), could implicate First Amendment protection distinct from the right to privacy. The Court's construction, however, is predicated upon a correlation between sex and "viewpoint." The diversity of women's voices negates such a correlation. Moreover, the appropriate correlation here is between the expression of the diverse voices of women and the context of all-female space as opposed to mixed-sex space. Thus, upon closer inspection, this "loophole" in the existing model draws tighter and demands the use of new models. Even assuming that an appropriate distinction based on expressive need could be advanced under the Court's doctrine, in practice this distinction would inevitably require judicial recognition of the historical and contemporary context of women's relationship to men and to the public sphere.

IV. PROPOSED CHANGES TO THE EXISTING MODEL

The following proposed solutions attempt to supplement the Court's model, not replace it. The solutions offered would not alter any constitutional protections already enjoyed by certain groups, but would exempt

318. The City of New York statute covers any organization with over 400 members that provides regular meal service and receives payment for services from nonmembers for the furtherance of trade or business. *New York State Club Ass'n*, 487 U.S. at 12.

319. *New York State Club Ass'n*, 487 U.S. at 13.

other groups, not constitutionally protected, from the application of anti-discrimination statutes. While the Court's model endorses an equal treatment approach, it hints at some of the distinctions mentioned herein.

A. *New Distinctions: Beyond the Public-Private Continuum*

The Court's model requires blanket application of anti-discrimination statutes to all groups not constitutionally protected under the First Amendment or the right to privacy. Thus, as to unprotected groups, the model is one of "equal treatment" or "anti-differentiation": all unprotected, single-sex groups are rejected, regardless of the manner in which they function or the effect of their exclusionary policies.³²⁰ New legal distinctions are possible if various anti-subordination models are considered in place of the equal treatment model.

Under an anti-subordination model, policies that perpetuate the historical subordination of groups are rejected even if facially neutral, while policies which ameliorate subordination are embraced even if facially differentiating.³²¹ Anti-subordination can be contrasted with the existing model of anti-differentiation, which focuses on equal treatment of individuals ("color-blindness" or gender blindness). The anti-subordination principle supports statutes that require powerful all-male groups to admit women, while permitting the existence of some all-female groups for their ameliorating effects. For example, to decide whether an all-female nursing school must admit men, as the U.S. Supreme Court did in *Mississippi Univ. for Women v. Hogan*,³²² an anti-subordination model asks, "Do women's colleges perpetuate the historical subordination of women or another group?" A further inquiry is, "Do women's colleges ameliorate the subordination of women or another group?"

More specifically, an anti-subordination model analyzes the particular institution for its effects on subordination: "Does the institution reinforce traditional views of women or does it provide women with the skills and tools to fight their subordination?"³²³ In fact, the Supreme Court in *Hogan* utilized a similar analysis (without an "anti-subordination" label), albeit deciding the case against the all-female institution.³²⁴ As to the first

320. For literature espousing a feminist "equal treatment" model, see DAVID KIRP, et al., *GENDER JUSTICE* (1986); Reagan, *In Support of the ERA*, in *FEMINISTS FRAMEWORKS* (1978); Wendy W. Williams, *Equality's Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate*, 13 *N.Y.U. REV. L. & SOC. CHANGE* 325 (1985); *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 7 *WOMEN'S RIGHTS L. REP.* 175 (1982); Phyllis A. Dow, *Sexual Equality, the ERA and the Court—A Tale of Two Failures*, 13 *N.M. L. REV.* 53 (1983).

321. Ruth Colker, *Anti-Subordination Above All: Sex, Race, and Equal Protection*, 61 *N.Y.U. L. REV.* 1003 (1986).

322. 458 U.S. 718 (1982).

323. COLKER, *supra* note 321, at 1065.

324. See Kay, *supra* note 134, at 861-62, for reconsideration of the outcome in *Hogan*.

issue (whether the institution reinforces traditional views of women), the Court stated:

Mississippi has made no showing that women lacked opportunities to obtain training in the field of nursing or to attain positions of leadership in that field when the MUW School of Nursing opened its doors or that women currently are deprived of such opportunities. . . . When MUW's School of Nursing began operation, nearly 98 percent of all employed registered nurses were female. . . . Rather than compensate for discriminatory barriers faced by women, MUW's policy of excluding males from admission to the School of Nursing tends to perpetuate the stereotyped view of nursing as an exclusively woman's job. . . . MUW's admissions policy lends credibility to the old view that women, not men, should become nurses, and makes the assumption that nursing is a field for women a self-fulfilling prophecy.³²⁵

The opinion considered the second issue (whether the institution provides women with skills and tools to fight subordination) as follows:

MUW's policy of permitting men to attend classes as auditors fatally undermines its claim that women, *at least those in the School of Nursing*, are adversely affected by the presence of men. . . . The uncontroverted record reveals that admitting men to nursing classes does not affect teaching style, . . . that the presence of men in the classroom would not affect the performance of the female nursing students, . . . and that men in coeducational *nursing schools* do not dominate the classroom.³²⁶

As to both issues, the opinion's analysis limits itself to the situation of a nursing school, but does not necessarily preclude a different finding given a different set of facts — a particular all-female institution (*e.g.*, a women's trade school) might challenge traditional views of women, and in a particular situation an all-female setting might provide skills and tools not available in a mixed-sex setting.

In considering the acceptability of a particular differentiating policy pursuant to the principles of anti-subordination, several factors are relevant, including the historical context of the exclusion, the remedial function (or lack thereof) promoted by the exclusion, and the injury (or lack thereof) imposed by the exclusion. Thus, as applied to all-female organizations, an anti-subordination model considers: (1) the differences between the historical experiences of men and women, and the historical roles of their respective organizations; (2) whether the exclusionary policy of a particular all-female organization serves a remedial function for subordinated groups; and (3) whether the exclusionary policy of a particular all-female organization imposes a subordinating injury.

1. Distinction on the Basis of Historical Experience

In *Rotary International v. Rotary*, the U.S. Supreme Court found

325. Hogan, 458 U.S. at 729-30.

326. *Id.* at 730-731 (emphasis supplied).

that California's anti-discrimination statute did not violate Rotary International's constitutional rights to privacy and expressive association. Moreover, the Court held that even if the statute slightly infringed upon these constitutional rights, the infringement was justified because it served the state's compelling interest in eliminating discrimination against women.³²⁷ The Court has also cited, in *Rotary International* and *Roberts v. U.S. Jaycees*, the compelling state interest in providing women equal access to leadership experience and business contacts, as well as to tangible goods and services.³²⁸ An historical distinction between the experience of men and the experience of women already has been, at least implicitly, recognized by the Court — women have been discriminated against on account of their sex, men have not.³²⁹ Men's clubs have historically exacerbated this sex-based discrimination, while women's clubs have not, and have often ameliorated sex-based discrimination. This distinction may be used to defend the existence of all-female organizations.³³⁰ In a public response to a "reverse discrimination" suit against the YWCA, the national director defended the organization's all-female policy as an "affirmative response . . . to provide redress and compensation for discrimination against women as a class."³³¹

327. *Rotary Int'l*, 481 U.S. at 549.

328. *Roberts*, 468 U.S. at 626 ("Assuring women equal access to such goods, privileges, and advantages clearly furthers compelling state interests."), at 632 (O'Connor, J., concurring) (emphasizing "the power of States to pursue the profoundly important goal of ensuring nondiscriminatory access to commercial opportunities in our society."); *Rotary*, 481 U.S. at 549.

329. Men have, of course, experienced the limitations of the gender roles historically assigned to males (e.g., machismo), and these limitations have contributed to a dissatisfaction experienced by individual males. It seems to me, however, that "discrimination," indicating class-based exclusion and animus, is an inappropriate word for these limitations, given the allocation of power. Thus, I will use the word "limitation" for this issue. This formulation, however, does not consistently apply. When male gender is crossed with race or sexual orientation, discrimination and all of its class-based implications may be an appropriate descriptor. Thus, while both male and female African-Americans were characterized as sexually deprived and were assaulted and murdered, African-American males were uniquely subjected to public lynchings, in which African-American males accused of rape or other sexual crimes against white womanhood were murdered in public ceremonies. The historical legacy of lynchings targeted at African American males certainly constitutes race-based discrimination, and may also constitute race-and-gender-based discrimination. More generally, most sex-based limitations (imposed upon men) are closely intertwined with sex-based discrimination (against women), and thus addressing sex-based limitations may ultimately help women. See section 2, *infra*.

330. See part 4, below. In *Mularadelis v. Haldane Central School Board*, 427 N.Y.S.2d 458 (N.Y. App. Div. 1980), at issue was a federal statute prohibiting discrimination in educational programs receiving federal money but expressly permitting single-sex teams unless there was no team for the other sex and "opportunities for members of that sex have previously been limited." Defendants argued that the phrase must refer only to the female sex because only females have been limited in athletic opportunities. The state court ruled against a male plaintiff who sued to join his high school's all-female tennis team.

331. *Towson Man Wants to Join YWCA*, *supra* note 277.

An anti-discrimination statute which distinguishes on the basis of history between all-female and all-male groups tends to utilize a sex based classification³³² — women's groups are exempt; men's groups are regulated by the statute.³³³ This type of model is asymmetrical, a distinct type of anti-subordination model, also called a "special treatment" model.³³⁴ In creating a statute that recognizes history, it is difficult to articulate the connection between all-female groups as a class and the elimination of discrimination, and to demonstrate that the remedial legislation favoring women is sufficiently tailored to meet that goal. Without the use of additional distinctions permitting case-by-case analysis, asymmetrical models using a gender classification are subject to the criticism that they are over- and under-inclusive. Asymmetrical models are further subject to the countervailing tide of American jurisprudence that disapproves of the remedial use of suspect classifications such as race or gender. Such remedial classifications favoring historically oppressed groups must meet the same equal protection standards required of classifications that burden these groups.³³⁵ Such a requirement makes it unlikely that this kind of remedial legislation will be successfully implemented in the foreseeable future.

2. Distinction on the Basis of Function

Although all-female groups do not necessarily promote the equality of women, many all-female groups, either directly or indirectly, serve remedial goals by providing women with leadership experience, female mentors and a forum for self-expression. Many encourage challenge to male dominance and promote remedial professional development. In these ways, all-female groups contribute to the equality of women. Similarly, while all-male groups often function to reinforce the existing power structure, they do not intrinsically do so, and a particular all-male group might contribute to gender equality by ameliorating sex-based limitations encountered by males or by opposing discrimination against women.

332. Other factors may also be pivotal for this analysis. Gender crossed with another factor might be the pivotal point for the analysis. Thus, organizations of African-American women working against race-and-sex-based discrimination could be protected under this analysis. Similarly, organizations of lesbian women working against sex-and-sexual-orientation-based discrimination could be protected. Race is another pivotal factor. For example, the analysis articulated in this paper could be applied to organizations of African-American people working to ameliorate the effects of race-based subordination.

333. Historical distinctions could also recognize the limitations of gender roles historically assigned to males by the dominant culture. This type of analysis is considered here as a function-based analysis. See section 2, *infra*.

334. For examples of scholarship proposing asymmetrical, "special treatment" models, see: RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* (1978); ELIZABETH WOLGAST, *EQUALITY AND THE RIGHTS OF WOMEN* (1980); Elizabeth Fox-Genovese, *Women's Rights, Affirmative Action, and the Myth of Individualism*, 54 *GEO. WASH. L. REV.* 338 (1986).

335. *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989); compare *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978) (Marshall, J. dissenting).

In contemplating whether a particular single-sex group, whether male or female, serves a remedial goal by ameliorating the effects of sex-based subordination, the following factors are relevant considerations: (1) whether the well-being and advancement of the group members (or potential group members) have been hindered by identified (a) sex-based discrimination or (b) a related sex-based limitation upon personal development, and (2) whether the group, with its single-sex and other membership criteria, functions to remedy the effects of this identified sex-based discrimination or limitation, thereby promoting the well-being and advancement of its actual and potential members. The factors may be reworked or expressly defined to include the particularized discrimination that occurs when gender crosses with other factors: gender-and-race-based discrimination and gender-and-sexual-orientation-based discrimination are two important examples.³³⁶

Sex-based limitations upon personal development are those limitations that are not directly founded upon disproportionate allocations of power, but which do contribute to the dissatisfaction experienced by individuals (usually males). These limitations may include the restrictions of available gender roles (*e.g.*, the pressure placed upon males to exhibit machismo), a lack of same-sex role models (*e.g.*, the absent father), and/or physiological distinctions (*e.g.*, the ability or inability to give birth). When considered closely, many of these limitations are closely intertwined with various forms of sex-based discrimination (against women), as well as race- or class-based discrimination.³³⁷ A function-based model may focus on limitations linked to sex-based discrimination, or can simply state that its purpose is to address all forms of sex-based limitations, whether these limitations are linked to discrimination, culture, biology, demographics, or unknown sources. Where a group perpetuates stereotypes about the disadvantaged group members, thus enforcing sex-based limitations, the group is not entitled to protection under a function-based model.³³⁸

336. As noted previously, the analysis outlined in this paper could also be applied to race-based discrimination to protect, for example, all-Black organizations.

337. For example, a lack of male role models may be linked, at least in part, to the stereotypical breadwinner role assigned to males and the corresponding discrimination against women, who have been denied access to jobs and economic power. Men who work are often absent from the lives of young men. Men who cannot work may leave the situation, or may not function as effective role models. The problem is exacerbated by AFDC regulations that perpetuate a historical legacy of white interference with Black and poor families. Thus, the lack of male role models in some communities may also be linked to race-based and class-based discrimination. Similarly, while pregnancy is a biological condition, its treatment historically has been so thoroughly tainted by sex-based discrimination that the obstacles experienced by pregnant women can be considered a result of discrimination rather than biology.

338. Feldblum, *supra* note 118. Under Feldblum's model, an all-female group is not entitled to protection unless the following function-based criteria are met: (1) the group has suffered a gender-based disadvantage; (2) the group's exclusionary policy is adopted with the intention of helping members overcome disadvantages; (3) the group is not based upon and does not perpetuate stereotypes among the disadvantaged group, and (4) the

Under a doctrine using this function-based distinction, the following groups, with the proper showing, might find protection, even assuming a lack of constitutional protection: a women's group for professors (but probably not a group for male professors), a men's group for nurses (but possibly not a group for female nurses), a men's group for fathers, a women's group for working mothers, a group for boys without role models where the boys are provided with male mentors,³³⁹ a group for girls to have female role models who present a range of employment options, and a women's group devoted to self-defense.³⁴⁰ These groups would find protection because they support their members in struggling against sex-based discrimination and limitations, such as employment discrimination, restrictive stereotypes, a lack of role models, or sex-based violence.

3. Distinction on the Basis of Injury

While distinctions based upon function are important, courts are often reluctant to make such distinctions, and are more comfortable making distinctions on the basis of injury. The Court in *New York State Club v. City of New York* upheld the statutory exclusion of benevolent and religious organizations from a statute attempting to eradicate the professional exclusion of women and minorities.³⁴¹ The exception was based upon the City's belief that the exclusive policies of benevolent and religious organizations did not injure women and minorities in their professional advancement:

The City Council explained that it limited the Law's coverage to large

group does in fact help women overcome disadvantage. Feldblum's model is designed with remedial women's groups in mind, though the same test could be applied to identify remedial male groups.

339. This issue has arisen in Detroit, Baltimore, Miami, Chicago, and elsewhere where public schools or classrooms for African-American boys have been proposed in order to address problems of identity, self-esteem and learning identified in a particular group of boys. Isabel Wilkerson, *Are Public Schools Legal if Only for One Sex?*, N.Y. TIMES, Aug. 14, 1991, at A17; Kenneth J. Cooper, *Three Rs and Role Model In Baltimore Third Grade: Single-Sex Class Harnesses Boys Instincts*, WASH. POST, Dec. 5, 1990, at A1. A problem arises in the event that the solutions to the problems attempt to recreate sex-based discrimination. For example, a program for troubled boys which teaches them to "be men," "be strong," assume the breadwinner role, and act as the "head" of their families may improve the self-esteem of the boys at the expense of freedom and self-determination for the girls.

In Detroit, the proposal was dropped by the school board after a lawsuit was filed by the American Civil Liberties Union and the NOW Legal Defense Fund. *Detroit School Board Gives Up Fight for All-Male Schools*, UPI, Nov. 7, 1991, available in LEXIS, Nexis Library, UPI file. In Miami, a pilot project was abandoned after the Department of Education warned the school district that the class violated Title IX. Wilkerson, *supra*.

340. YWCA leaders have defended their organization's single-sex status by noting its programs that remedy discrimination and function to promote the well-being of women. These programs include battered women's shelters, job training for displaced homemakers, and rape-crisis hot lines. Japenga, *supra* note 277, at 1.

341. *New York State Club Ass'n*, 487 U.S. at 16-18.

clubs and excluded smaller clubs, benevolent orders, and religious corporations because the latter associations 'have not been identified in testimony before the Council as places where business activity is prevalent.' [citation omitted]. . . The City Council's explanation for exempting benevolent orders and religious corporations from Local Law 63's coverage reflects a view that these associations are different in kind, at least in the crucial respect of whether business activity is prevalent among them, from the associations on whose behalf appellant has brought suit. Appellant has the burden of showing that this view is erroneous . . .³⁴²

Similarly, in *LivingWell v. Pa. Human Relations Commission*,³⁴³ a state court emphasized the lack of injury caused by the exclusion of males from membership in all-female health clubs, and rejected the "discrimination is discrimination" argument advanced by the Commission:

The only harm the Commission advances is that the men will not be allowed to exercise at certain LivingWell locations. However, the Commission admits that there are other facilities just as convenient where men can exercise in a coed environment. Unlike gender discrimination that would result in the non-hiring of males, or where an exercise establishment has other facilities where business or "networking" is conducted, no harm exists to any male by being excluded from LivingWell's facilities. . . . [T]he Commission has not advanced any public policy reason for inclusion of males, other than "because males are excluded, *per se*, it is against public policy."³⁴⁴

In defending the all-female status of the YWCA, leaders have noted that the club is not a place of business networking, suggesting that men are not injured through their exclusion.³⁴⁵

In addition to the injury to professional advancement, courts have recognized the injury of stigma that exclusion may cause. For example, the Court in *Roberts* found any infringement upon association justified by the compelling state interest in preventing the "stigmatizing injury" that results from exclusion based on "archaic and overbroad assumptions about the relative needs and capacities of the sexes."³⁴⁶ Such exclusion "deprives persons of their individual dignity and denies society the benefits of wide participation in political, economic, and cultural life."³⁴⁷ In *Petrie v. Ill. High School Ass'n*,³⁴⁸ a state court found that the exclusion of males from an all-female volleyball team "carries no stigma of unworthiness to the excluded class."³⁴⁹ Similarly, in *Att'y Gen. v. Mass. Interscholastic Athletic Ass'n*,³⁵⁰ a state court considering a rule excluding boys from girls'

342. *Id.*

343. 606 A.2d 1287 (Pa. Commw. Ct.), *app. denied*, 618 A.2d 401 (Penn. 1992).

344. *Id.* at 1293.

345. Japenga, *supra* note 277, at 1.

346. *Roberts*, 468 U.S. at 625.

347. *Id.*

348. 394 N.E.2d 855 (Ill. App. Ct. 1979).

349. *Id.* at 859.

350. 393 N.E.2d 284 (Mass. 1979).

teams stated: "Certainly it can be said that no stigma attaches to the boys who would be shut out."³⁵¹

Distinctions of injury, then, can be made between single-sex groups. The effect of a sex-based exclusion from a powerful all-male group is usually not equivalent to the effect of a sex-based exclusion from an all-female group.³⁵² The injuries caused by the exclusion of women from all-male groups are substantial, well-documented, and often concrete. They include, among other things, loss of economic opportunity, denial of educational experience, and denial of access to elected or appointed officials. These losses are often not available through alternative settings. On the other hand, the injuries caused by exclusion from all-female groups are rarely articulated,³⁵³ and opponents instead advance a "discrimination is discrimination" rationale. The exclusion of females from all-male groups usually causes the type of injury contemplated by those who championed anti-discrimination doctrines.³⁵⁴ It is not clear when, if ever, the exclusion of males from all-female groups causes such an injury.³⁵⁵ However, current legal doctrines of sex discrimination assume an equivalent, legally cognizable injury from the fact of exclusion alone. If some single-sex groups are to remain protected, then this assumption must be challenged,

351. *Id.* at 291.

352. Kay discusses distinctions between all-male and all-female clubs in San Francisco: "The context of female exclusion from [all-male] clubs like the Bohemian Club or the Olympic Club — with memberships numbering in the thousands and where business contacts are made at the highest level, even if no deals are made at the table — is quite different from male exclusion from clubs like the [all-female] Metropolitan Club — where a membership base among younger business and professional women is only recently developing." Kay, *supra* note 134, at 859.

353. One of the more concrete articulations is found in the suits against women's gyms, where male plaintiffs argue that the gym at issue is the most conveniently located to their home or work. Weighed against this convenience is the women members' desire for an environment in which their bodies are not subject to "the male gaze" — where they are more insulated from a male-focused perception of female bodies.

354. But not always. For example, a distinction may be drawn between the injury caused girls excluded from a boy's recreational or athletic facility (*i.e.*, girls are deemed unimportant and/or unathletic), and the injury caused girls excluded from an all-male classroom dedicated to the problems of identity, self-esteem, and learning unique to a particular group of troubled boys. Even in the latter case, an important consideration is whether girls with unique self-esteem or other problems are similarly provided with tailored learning environments. See note 338, *supra*.

355. Kay considers the possibility using facts similar to those of the *Hogan* case: "[L]et's suppose there's a male nurse who is trying to climb the ladder and wants to make contacts and he's excluded from the club. Now, I think in that case he might say that he is being stigmatized, he is being treated unfairly, simply because of his sex. He is being hampered in his ability to penetrate the market, and there you might have an example of a case where this man is being denied access to powerful people who could help his career who happen to be women. But then, of course, you have to look at nursing in the context of the medical-health care delivery system, and it's not clear to me that these women in nursing dominate that market. So maybe the male nurse could not make out a case for admission to the club even under those circumstances." Kay, *supra* note 134, at 861-62.

and distinctions must be made between the effects of exclusionary policies upon excluded persons.

If exclusion in and of itself is not suspect, then whether exclusion gives rise to legal relief should depend upon whether an injury has occurred. A legally cognizable injury might be defined as follows: (1) a significant loss of (a) access to an elected or appointed official, or (b) economic opportunity, or (c) educational experience, where (2) the loss serves to perpetuate existing disparities in political, economic, or educational opportunity, or (3) an exclusion that, when examined for its cultural meaning, constitutes a stigma against the excluded group.³⁵⁶

If an opportunity offered by a single-sex group is *not* equally available outside the exclusive group, and *cannot* be easily replicated by a group of excluded persons, then the exclusion causes injury. Because powerful groups usually may obtain the opportunities desired, the exclusivity of oppressed groups does not serve to perpetuate existing disparities in political or economic power.³⁵⁷ Moreover, whether a stigma is created by exclusionary practices depends upon the circumstances; not every exclusion is pejorative.³⁵⁸ Often whether or not exclusion connotes a stigma depends upon whether the exclusion is imposed by an empowered group or chosen by a subordinate group. This distinction between compulsion and choice is often overlooked.³⁵⁹ Rhode notes that "the exclusion of men from women's liberation groups or garden clubs no more conveys inferiority than the exclusion of whites from black associations or Protestants from Jewish social organizations."³⁶⁰

4. Equal Protection and Compensatory Purpose

While clubs are not themselves state actors, states that permit all-female groups to maintain their separatist policies while forcing all-male groups to admit women are themselves vulnerable to equal protection challenges from male plaintiffs. State action could arise in a variety of ways. Obviously, an explicit statutory exemption for women's groups, or a

356. See Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987); *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 387 (1978) (Marshall, J. dissenting).

357. Deborah L. Rhode, *Association and Assimilation*, 81 NW. U.L. REV. 106, 122 (1986).

358. *Id.* at 122; Paul Varela, Note, *A Scout is Friendly: Freedom of Association and the State Effort to End Private Discrimination*, 30 WM. & MARY L. REV. 919, 949 (1989); William P. Marshall, *Discrimination and the Right of Association*, 81 NW. U. L. REV. 68, 93-99 (1986).

359. A dissent in *LivingWell v. Pa. Human Relations Commission* argued that the court was "perpetuating an antiquated notion regarding the status of women in society" akin to the court's nineteenth century holding which excluded women from the state bar. 606 A.2d at 1295-96. The dissenting judge did not recognize a distinction between permitting women to choose an all-female space, and requiring women to remain in their separate sphere of domestic inferiority.

360. Rhode, *supra* note 357, at 122.

subset of women's groups, would constitute intentional disparate treatment by the state. State action might also be found in a state's refusal to enforce its anti-discrimination statute symmetrically against both women's and men's groups. A plaintiff would have to show that this refusal constituted intentional discrimination. State agencies or city attorney offices may legitimately prioritize by importance the cases they wish to pursue, and so long as these decisions are not motivated by intentional discrimination, any disparate impact is not actionable under the equal protection clause.³⁶¹

State action could even arise in the event that statutes are amended to include facially neutral exceptions for particular types of (male or female) single-sex groups. Although this type of statutory language is facially neutral, state action may be found if the context of the enactment reflects significant state involvement in private acts of discrimination. In *Mulkey v. Reitman*,³⁶² the California Supreme Court considered the constitutionality of a facially neutral state statute (adopted by the electorate through an initiative measure) effectively nullifying several state laws prohibiting housing discrimination on the basis of race, religion or national origin. The California Supreme Court found, and the U.S. Supreme Court agreed, that given the historical context of the enactment, the facially neutral statute constituted governmental encouragement of private discrimination on the basis of race, and therefore violated the equal protection clause.³⁶³ Thus, a court could theoretically find that by amending a statute with facially neutral language that permitted women's groups to exclude males, the state was encouraging discrimination against males by private (female) actors, and thereby engaging in sex-based discrimination prohibited by the Fourteenth Amendment.³⁶⁴

If sex-based discrimination by the state is found, then the state must show that its action is substantially related to an important governmental interest.³⁶⁵ In the context of remedial action, the state's defense is called the "compensatory purpose doctrine."³⁶⁶ For example, under this doctrine,

361. See *Washington v. Davis*, 426 U.S. 229 (1976).

362. 64 Cal. 2d 529 (Cal. 1966), *aff'd*, 387 U.S. 369 (1967).

363. 64 Cal. 2d at 541-42; 387 U.S. at 375-76.

364. The analogy is difficult to make. In *Mulkey*, the intent of the initiative was to permit private housing discrimination against African Americans, and to nullify statutes enacted to prohibit private housing discrimination against African Americans. In the context of women's clubs, the intent of the amendment would arguably be to permit discrimination against males, while the original statutes were enacted to prohibit discrimination against females and other oppressed groups. Given prevailing symmetrical, ahistorical analysis, however, anything is possible.

365. *Wygant v. Jackson Board of Educ.*, 476 U.S. 267 (1986). See also note 118, *supra*.

366. See *Craig v. Boren*, 429 U.S. 190 (1976); *Kahn v. Shevin*, 416 U.S. 351 (1974) (applying doctrine); *Schlesinger v. Ballard*, 419 U.S. 498 (1975) (applying doctrine); *Califano v. Webster*, 430 U.S. 313 (1977) (per curiam) (applying doctrine); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975) (refusing to apply doctrine); *Hogan*, 458 U.S. 718 (remedial purpose is not served by all-female nursing school, when nursing as a profession

the court in *Clark v. Arizona Interscholastic Ass'n*,³⁶⁷ citing the government's "legitimate and important" interest in "redressing past discrimination against women in athletics and promoting equality of athletic opportunity between the sexes," upheld the exclusion of boys from a girls' high school volleyball team.³⁶⁸ Under the compensatory purpose doctrine, a women's groups would be permitted special protection by the state only if the group served a remedial or other important governmental purpose; the mere absence of an injurious effect would not be enough.

B. *Applying Distinctions*

1. Statutory Purpose

In defending a claim against its membership policies under public accommodations statutes, an all-female group might attempt to raise the defense that its policies are in keeping with the purpose of the anti-discrimination statute, and thus should be permitted.³⁶⁹ A consideration of the purpose of a statute in permitting non-symmetrical results or "unequal treatment" was recognized by the Supreme Court in the pregnancy leave and affirmative action contexts.³⁷⁰ These cases, *Steelworkers v. Weber* and *California Fed. Savings v. Guerra*, permitted exceptions to the literal anti-discrimination mandates of Title VII and the Pregnancy Discrimination Act where these exceptions furthered the purpose of these statutes.

The anti-discrimination ordinance of New York City, for example, was passed with the following statement of purpose:

It is hereby found and declared that the city of New York has a compelling interest in providing its citizens an environment where all persons, regardless of race, creed, color, national origin or sex, have a fair and equal opportunity to participate in the business and professional life of the city, and may be unfettered in availing themselves of employment

correlates to stereotypical notions of women, but leaving open the possibility of all-female schools). Feldblum suggests that private, all-female groups might themselves defend their exclusionary policies using the compensatory purpose doctrine (though the doctrine is a defense to an equal protection claim against a state actor). Feldblum, *supra* note 118, at 219-225.

367. 695 F.2d 1126 (9th Cir. 1982), *cert. denied*, 464 U.S. 818 (1983).

368. *Id.* at 1131.

369. Feldblum suggests that an all-female group "can show that it was not intended by the state legislature to be included within the purview of the statute," and "can insist that a statute prohibiting discrimination on the basis of sex implicitly exempts from coverage any entity that advances the underlying goals of the legislation." Feldblum, *supra* note 118, at 222.

370. See *United Steelworkers of America v. Weber*, 443 U.S. 193 (1979) (valid affirmative action plan is not in violation of the non-discrimination mandates of Title VII, as such plans further the purpose of Title VII); *California Fed. Savings and Loan Ass'n v. Guerra*, 479 U.S. 272 (1987) (pregnancy leave option imposed by state upon employers not violation of Pregnancy Discrimination Amendment (PDA), as such leave standards further the purpose of the PDA).

opportunities. Although city, state and federal laws have been enacted to eliminate discrimination in employment, women and minority group members have not attained equal opportunity in business and the professions. One barrier to the advancement of women and minorities in the business and professional life of the city is the discriminatory practices of certain membership organizations where business deals are often made and personal contacts valuable for business purposes, employment and professional advancement are formed. While such organizations may avowedly be organized for social, cultural, civic or educational purposes, and while many perform valuable services to the community, the commercial nature of some of the activities occurring therein and the prejudicial impact of these activities on business, professional and employment opportunities of minorities and women cannot be ignored.³⁷¹

Under a *Weber/Guerra* analysis of statutory purpose, exceptions to the literal language are closely examined and must further the statute's purpose.³⁷² For example, a *Weber*-type exception would permit an historically male, mixed-sex club to recruit and accept female applicants over male applicants, without violating the non-discrimination directives of a public accommodations statute. This would further the statute's purpose of breaking down the old boys' network found in "certain membership organizations."

In the context of women's groups, the relevant statutory purpose is not (directly) the destruction of the old boys' network, but the general goal (in the words of the New York City ordinance) of: "providing citizens an environment where all persons have a fair and equal opportunity to participate in the professional life of the city." This goal is served by some all-female groups or communities that encourage challenge to male dominance and serve a remedial function in the professions. While such an exception violates the literal language of the statute, it serves the broader goal of gender equality by remedying the effects of sex-based discrimination.³⁷³ The professional functions of all-female groups are probably easiest for courts to recognize as promoting equality.

Assuming courts accept the above analysis, the *Weber/Guerra* exception may be limited by its "purpose" theory.³⁷⁴ To obtain the exception, women's groups may be required to demonstrate either their contribution

371. Local Law No. 63 of 1984, § 1, App. 14-15, *quoted in* New York State Club Ass'n v. New York City, 487 U.S. at 5-6.

372. *See* United Steelworkers v. Weber, 443 U.S. 193 (affirmative action plans permitted only where manifest imbalances in the work place — that is, a factually predicated remedial goal — and no unnecessary trammeling of third parties).

373. A related statutory purpose argument succeeded in *Mularadelis v. Haldane Central School Bd.*, 427 N.Y.S.2d 458 (N.Y. App. Div. 1980). The court interpreted an ambiguous Title IX regulation in light of Title IX's purpose — "the reduction and ultimate elimination of the disparity in overall scholastic athletic opportunities between male and female students" — to permit the exclusion of boys from girls' teams. *Id.* at 464.

374. *See* Guerra, 479 U.S. 272 (policy discriminating in favor of pregnant women that is based on stereotypical notions is not permitted by the PDA); *Mississippi U. for Women v. Hogan*, 458 U.S. 718 (1982).

to "providing citizens an environment where all persons have a fair and equal opportunity to participate in the professional life of the city," or to the "business, professional and employment opportunities of minorities and women." Women's groups that do not directly promote economic, educational, or professional equality may not be granted the exception.³⁷⁵ This emphasis upon professional development may detract from the indirect contributions of "traditional" women's groups to sex equality, including leadership development, organizational skills, mentoring and self-expression.

Another "statutory purpose" approach would permit exceptions because they do not impede the purpose of the statute; a positive contribution to the statute's purpose is not required.³⁷⁶ Under this version of the "statutory purpose" approach, a positive link between the effects of an all-women's group and the goals of the statute is not required; only the absence of a negative effect is required. Under this analysis, the goal of public accommodations statutes in the context of single-sex groups is narrowly construed as an end to the negative effects, including stigma and lost economic opportunities, of excluding individuals on the basis of sex from powerful single-sex groups. Because of the social, political and economic context in which all-female groups exist, they do not usually impart stigma upon males excluded from membership, nor do they exclude men from opportunities that the women members uniquely enjoy — opportunities in the broader society continue to be available to men.

2. Draft Statutory Exemption for Women's Organizations

Public accommodations statutes could be redrafted to include explicit exemptions to their anti-discrimination mandates for women's groups. A similar exception was upheld in *New York State Club Ass'n*; the statute exempted benevolent orders and religious corporations. In that case, the Court quoted the New York City Council, which explained that "benevolent orders and religious corporations have not been identified in testimony before the Council as places where business activity is prevalent."³⁷⁷ For similar reasons, an anti-discrimination statute could state: "Any club shall be deemed exempt from this statute if it is a club which admits only women." The statement of purpose could explain that women's clubs are excluded from coverage because they have not been identified as institutions which operate to create barriers to business and professional opportunities for males (*i.e.*, they do not injure). Or, the concept of injury could be incorporated into the exemption itself:

375. For example, a "ladies auxiliary," which has as a primary function the provision of support to an exclusive male fraternal organization, might flunk some function-based tests.

376. *See* *Petrie v. Ill. High School Ass'n*, 394 N.E.2d 855 (Ill. App. Ct. 1979) (exclusion of boys from girls' athletic teams upheld; exclusion of boys carries no stigma of unworthiness).

377. *New York State Club Ass'n*, 487 U.S. at 7

Any club shall be deemed exempt from this statute if it is a club that admits only women and that does not deny economic or educational opportunities to individuals excluded on account of their sex and thereby perpetuate existing disparities in economic, political, or educational power.

An exemption could also recognize distinctions in function:

Any club shall be deemed exempt from this statute if it is a club that admits only women and has as a primary purpose the amelioration of the effects of sex-based discrimination on its members.

3. Draft Bona Fide Associational Qualification (BFAQ) Exception

Another solution is to draft a sex-neutral exception permitting some single-sex groups to continue despite the statute's prohibitions. Title VII, the federal law prohibiting employment discrimination, includes such an exception: an employer may discriminate on the basis of sex "in those certain instances where . . . sex . . . is a bona fide occupational qualification reasonably necessary to the normal operation of [the] particular business."³⁷⁸ In the Title VII context, the bona fide occupational qualification (BFOQ) exception has been narrowly interpreted. In order for a discriminatory employment policy to qualify as a BFOQ, the job qualification must be necessary and must relate to the "essence" or to the "central mission of the employer's business."³⁷⁹

In the context of single-sex organizations, a bona fide associational qualification (BFAQ) is a possible solution.³⁸⁰ A BFAQ exception is appealing because, like the BFOQ, it is neutral on its face as to sex: it would permit single-sex groups of either sex where they met the criteria for a BFAQ. A sex-neutral BFAQ is more politically and judicially acceptable than a statutory purpose or sex-based exemption, as such a scheme appears, at least on the surface, as an "equal treatment" approach. Moreover, while even non-traditional all-male groups do not serve the compelling purpose women's groups serve in that they do not function to remedy gross disparities in political and economic power or the effects of sex-based discrimination, it may be argued that these groups should be protected in the interest of personal freedom from gender roles for men and women. The BFAQ concept is dangerous, however, because it permits courts to decide when an all-male group is not subject to the prohibi-

378. 42 U.S.C. § 2000e-2(e)(1).

379. *International Union v. Johnson Controls*, 499 U.S. 187 (1991) (being unable to bear children not BFOQ where occupational exposure to lead entails health risks, including risk of harm to fetus; requirement does not go to essence of the business).

380. A BFAQ might begin: "It shall not be unlawful for any organization to admit applicants on the basis of sex in those certain instances where sex is a bona fide associational qualification closely related to the normal operation of the organization . . ." One court has applied a BFOQ-styled exception to an all-female club. *LivingWell v. Pa. Human Relations Commission*, 606 A.2d 1287 (Pa. Commw. Ct. 1992). See *infra* nn. 343-344.

tions of the statute. As we know from the BFOQ example, a loophole permitting discrimination against women is dangerous in the hands of courts.³⁸¹

A BFAQ closely modeled on Title VII's BFOQ example would read:

It shall not be unlawful for any organization to admit applicants on the basis of sex in those certain instances where sex is a bona fide associational qualification reasonably necessary to the normal operation of that particular organization.

This language offers little guidance as to which single-sex groups would qualify for the exception. An argument could be made that this wording protects any *fraternal* organization, despite its role in imparting stigma or denying opportunities to women. Moreover, women's groups not explicitly or essentially devoted to "sorority" might not qualify.

An additional problem with a BFAQ closely modeled on Title VII's language is the uneven approach courts have taken under Title VII's narrow BFOQ language toward asserted interests in same-sex mentor relationships and single-sex spaces. Attempts to establish BFOQs addressing these interests generally utilize two overlapping theories: "role modeling" and "privacy." Cases are split on the acceptability of "role modeling" as a BFOQ, with most courts rejecting the theory.³⁸² The "privacy" BFOQs

381. See *Dothard v. Rawlinson*, 433 U.S. 321 (1977). The court upheld a BFOQ of male gender for prison guards, finding (without citing to any evidence in the record) that the employee's "very womanhood would undermine her capacity to provide . . . security" by inspiring sexual assault. *Id.* at 366. A similar dialogue occurred in *Philadelphia v. Pa. Human Relations Commission*, 300 A.2d 97 (Pa. Commw. Ct. 1973). In defending BFOQs of male and female gender for supervisors of a youth study center, the Executive Director argued that women would be vulnerable to attacks from boys, and that girls supervised by men would make "charges of molestation of other immoral acts . . . for the sheer sake of harassment." *Id.* at 101. The court subsequently upheld the BFOQ on other grounds. *Id.* at 103.

382. For cases rejecting "role modeling" BFOQs, see *Andrews v. Drew Mun. Separate School District*, 507 F.2d 611 (5th Cir. 1975); *Avery v. Homewood*, 674 F.2d 337 (5th Cir. 1982), *cert. denied*, 461 U.S. 943 (1983); *Ponton v. Newport News School Bd.*, 632 F. Supp. 1056 (E.D. Pa. 1986); *Weeks v. Southern Bell*, 408 F.2d 228 (5th Cir. 1969). For cases permitting "role modeling" BFOQs, see *Chambers v. Omaha Girls Club*, 629 F. Supp. 925 (D. Neb. 1986), *aff'd*, 834 F.2d 697 (8th Cir. 1987); *Philadelphia v. Pa. Human Relations Commission*, 300 A.2d 97 (Pa. Commw. Ct. 1972); *Torres v. Wis. Dept. of Health & Social Services*, 859 F.2d 1523 (7th Cir. 1988), *cert. denied*, 489 U.S. 1017 (1989).

Chambers is problematic from an equality standpoint. In *Chambers*, the court upheld a BFOQ of non-pregnancy for single employees ("Negative Role Model Policy") pursuant to which plaintiff, an African-American woman, was terminated from employment against arguments that the policy reflected certain race-and-sex-based stereotypes, including that single black pregnant women are immoral or a corrupting influence. See also *Harvey v. Young Women's Christian Ass'n*, 533 F. Supp. 949 (W.D. N.C. 1982) (dismissal of single, pregnant African-American female as poor role model upheld as legitimate, nondiscriminatory reason).

Philadelphia v. Pa. Human Relations Commission is relevant to the issue of single-sex schools or classrooms for troubled African-American boys. In that case, a state court

permitted by the courts have been limited to situations involving intimate touching, dressing, bathing or toilet functions.³⁸³

For example, Women's Workout World is currently struggling to establish a BFOQ of female gender for the employees of their fifteen all-female-member health clubs. Although the court has indicated its willingness to consider narrow privacy issues such as nudity and intimate touching, it has been less impressed by club members' desire for an all-female space and their objection to male *presence*.³⁸⁴ On the other hand, the court in *LivingWell v. Pa. Human Relations Commission*,³⁸⁵ applying a Title VII-styled state BFOQ exception to an all-female health club's exclusive *membership* (not employment) policies, developed an expanded "privacy" BFOQ. Specifically, the court recognized the impact of male presence (the "male gaze") upon the females who desired to exercise in an all-female environment:

Simply because all the cases until now have discussed the exposure of or touching of "intimate areas" of the body does not mean that each gender lacks a privacy interest in all other situations. . . . *LivingWell's* customers testified that they were sensitive about having men observe their bodies while exercising. If men saw them perform their exercises, they testified, they would feel self-conscious and uncomfortable about themselves and would not continue to be members of *LivingWell*. In contradicted testimony, Dr. Tanenbaum testified that it would be detrimen-

upheld a BFOQs for youth center supervisors of boys and supervisors of girls, noting psychological aspects of privacy and mentoring:

To subject a girl in this age group to a thorough search of her body by a male supervisor could cause not only a temporary traumatic condition, but also permanent irreparable harm to her psyche. It is no different where females supervise male juveniles. To have a woman supervisor observe daily showers of the boys at a time in life when sex is a mysterious and often troubling force is to risk a permanent emotional impairment under the guise of equality. . . . [G]irls and boys at this age relate better to Supervisors of the same sex. It is common sense that a young girl with a sexual or emotional problem will usually approach someone of her own sex A like situation prevails for the boys. To expect a female or a male supervisor to gain the confidence of troubled youths of the opposite sex in order to be able to alleviate emotional and sexual problems is to expect the impossible. 300 A.2d at 102-103.

383. See *Fesel v. Masonic Home*, 447 F. Supp. 1346 (D. Del. 1978), *aff'd*, 591 F.2d 1334 (3rd Cir. 1979); *Jones v. Hinds Gen. Hosp.*, 666 F. Supp. 933 (S.D. Miss. 1987); *Brooks v. ACF Indus.*, 537 F. Supp. 1122 (S.D. W.Va. 1982); *Norwood v. Dale Maintenance System*, 590 F. Supp. 1410 (N.D. Ill. 1984).

384. *E.E.O.C. v. Sedita, d/b/a Women's Workout World*, 755 F. Supp. 808 (N.D. Ill. 1991) (summary judgment on BFOQ issue granted in favor of plaintiffs), 816 F. Supp. 1291 (N.D. Ill. 1993) (summary judgment vacated on defendants' motion to reconsider). Defendants submitted a petition with over 10,000 signatures of club members stating that if males were hired in a "member-servicing capacity," they would no longer patronize the club. The court was most interested in the portion of the petition that cited concerns about nudity and intimate touching. 816 F. Supp. at 1296-97. The court was less interested in club members' angry reaction to the presence of a male manager. 755 F. Supp. at 811.

385. 606 A.2d 1287 (Pa. Commw. Ct. 1992).

tal to these women to exercise in front of men: ". . . [I]t would generate anxiety, shame, and embarrassment, and a painful level of self-awareness . . . in the sense that one is exposed and vulnerable and there isn't a whole lot that can be done to alter *the perception of the observer*."³⁸⁶

At least one case, *Torres v. Wis. Dept. of Health & Social Services*,³⁸⁷ has recognized the specific benefits of all-female space. In *Torres*, a women's prison in Wisconsin required corrections officers to be female. In defense of the policy, the female superintendent argued that it was a "rehabilitation" BFOQ, in that male guards in a female prison unavoidably hamper the state's efforts at rehabilitating the inmates. The defendants argued that at least sixty percent of the prisoners at the facility had been physically and sexually abused in their lives by males. The superintendent desired to use female guards to help the prisoners overcome the negative self-image that resulted from such abuse. The superintendent stated, "[if] we establish atmospheres where men are playing the primary dominant force, which is somewhat natural in a prison anyway, in terms of staffing, or power or authority over inmates, . . . that's just going to further compound what she's lived with in the past . . ." ³⁸⁸ The court initially rejected defendants' BFOQ, stating, among other things, that the BFOQ was inappropriate because "defendants have not shown that female inmates assigned to [the women's prison] have experienced more severe abuse and domination by men than have women in our society as a whole."³⁸⁹ At a rehearing *en banc*, the defendants' arguments were accepted, and the BFOQ was upheld.³⁹⁰

The ideal BFAQ, then, would step back from the narrow requirement of "necessity" usually required in the Title VII context,³⁹¹ and, using distinctions such as function or injury, would incorporate an express limitation based on the concept of anti-subordination. The exception could exempt organizations with exclusionary policies important to the group that also play a remedial function:

It shall not be unlawful for any organization to admit applicants on the basis of sex in those certain instances where (1) sex is a bona fide associational qualification, both important and closely related to the normal

386. 606 A.2d at 1292-93 (emphasis supplied).

387. 859 F.2d 1523 (7th Cir. 1988).

388. 838 F.2d 944, 955 (7th Cir. 1988) (Ripple, J., dissenting), *modified on reh'g en banc*, 859 F.2d 1523 (7th Cir. 1988).

389. 838 F.2d at 954. If the prevalence of harassment and violence against all women is an argument *against* legal protection for all-female space, then the game is up!

390. 859 F.2d 1523 (7th Cir. 1988). The court noted the defendants' need to "innovate" to advance the goal of rehabilitation. *Id.* at 1532. This argument is often made by those wishing to start single-sex schools or classrooms for African-American boys. Laurel Shaper Walters, *The Plight of Black Male Schools*, CHRISTIAN SCI. MONITOR, Sept. 9, 1991, at 8. A dissent from the *en banc*, echoing an argument often raised against women's colleges, cited expert opinion that the presence of males was valuable to inmates' eventual ability to adjust to the outside world. *Torres*, 859 F.2d at 1533 (Cudahy, J., dissenting).

391. See notes 379, 382-84, *infra*.

operation of that particular organization, and (2) that organization functions to ameliorate sex-based discrimination, sex-based limitations, or other types of sex-based subordination.³⁹²

In addition to exempting many all-female organizations, this wording would exempt some all-male groups, including some progressive men's groups and some educational experiments for troubled boys. However, the wording would still exclude most traditional men's groups from the exception.

The exception could also be written to exempt organizations with important exclusionary policies which do not injure:

It shall not be unlawful for any organization to admit applicants on the basis of sex in those certain instances where (1) sex is a bona fide occupational qualification, both important and closely related to the normal operation of that particular organization, and that organization (2) does not function to impart stigma to individuals excluded on account of their sex, and (3) does not deny economic or educational opportunities to individuals excluded on account of their sex and thereby perpetuate existing disparities in economic, political, or educational power, and (4) does not otherwise subordinate the class of excluded individuals.³⁹³

Of course, as to numbers (3) and (4), our legal system does not easily reason in terms of class, power or subordination. On the other hand, our legal system usually does grapple with issues of injury.

V. CONCLUSION

All-female groups continue to play a positive role in the movement for gender equality. By offering mentors, leadership training, support, education and a space for speaking out, all-female organizations have transformative effects upon the lives of their members and ultimately challenge traditional gender roles that define women's relationships to men and to the public sphere. In this way, all-female organizations promote the equality and well-being of women. While women continue to disagree on many issues, including the meaning of equality for women, female-only space can provide an opportunity for women to pursue criticisms and analyses of patriarchal structures, and to develop strategies for ending women's subordination. Prevailing symmetrical, ahistorical analysis threatens the continued role of all-female groups in promoting gender equality and the well-being of women. Despite the original purpose of anti-discrimination doctrines to advance equality by breaking down the "old boys' network," these doctrines are now offered as a rationale for

392. See note 338, *supra*. Feldblum's function-based model is similar to this BFAQ wording.

393. The function-based draft could also include an injury-based distinction:

"and (4) does not function to impart stigma to excluded individuals or deny economic or educational opportunities to excluded individuals such that existing disparities in political or economic power are perpetuated."

coercing women's organizations into becoming mixed-sex organizations. Mechanically-applied anti-discrimination mandates should be replaced by doctrines that recognize the distinctions creating the context in which a person is excluded. Anti-discrimination models that recognize distinctions of history, function and injury must be developed to protect remedial women's groups, and possibly remedial men's groups as well.

There is not a single path that leads to equality between women and men, nor is there a single form that the "women's movement" must take, whether it be "separatist," "integrationist," "radical," or "liberal." Women have different ideas about the best ways to organize, and this diversity of opinion is not itself cause for alarm. The feminist community should not seek its own mechanical organizing principle, but should vigorously defend female-only space as a legitimate and positive option for women.³⁹⁴ We disregard the importance of separate organizing at our peril. Separate women's organizations have played an essential role in the movement for women's equality since the mid-nineteenth century. It is my hope that we acknowledge this heritage and foster the continued existence of all-female organizations. In light of the backlash facing women today, a renaissance of separate organizing may be just what we need.

394. Specifically, feminist lawyers should support women's organizations that wish to remain single-sex by: offering instruction on how to obtain constitutional protection, if such protection is available without undue sacrifice and compromise; supporting application of the "statutory purpose" doctrine in the event that unprotected all-female groups are sued; and endorsing statutory language in anti-discrimination statutes that recognizes distinction of history, function and/or injury, and exempts organizations accordingly.

