Toward Comparable Worth: The Minnesota Experience

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That women earn less—much less—than men[1] remains a fact of American life, and neither a new nor an obscure one. Recognized since the time of the First World War,[2] this wage gap persists, despite a concerted effort beginning in the 1960's to address the problem through legislation. Advocates of wage equality for the sexes were in fact able to secure legislation advancing their goals. In 1963, the federal Equal Pay Act (EPA)[3] was passed; nine years later, Title VII was added to the Civil Rights Act of 1964,[4] and since that time, many state and local governments have followed the lead of Congress, passing laws which

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1. In 1977, median earnings for women were $8,618 per year, while median earnings for men were $14,626 per year. WOMEN'S BUREAU, U.S. DEP'T OF LABOR, THE EARNINGS GAP BETWEEN WOMEN AND MEN 6 (1979). In 1977, the 36.7 million women employed in the United States comprised 40.5% of the civilian workforce. BUREAU OF THE CENSUS, UNITED STATES DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 418-19 (1978). Almost 60% of women workers provide sole or vital support for themselves or others. TWENTIETH CENTURY TASK FORCE ON WOMEN AND EMPLOYMENT, EXPLOITATION FROM 9 TO 5, at 4 (1975) [hereinafter TWENTIETH CENTURY EXPLOITATION].

This disparity in income is most alarming at the lower end of the earnings spectrum. While the number of families below the poverty line headed by white men decreased by 51 percent between 1960 and 1981, the number of persons in female-headed households below the poverty line increased by 54 percent. R. Feldberg, Comparable Worth: Toward Theory and Practice in the United States, at 1 (on file with the *Yale Law & Policy Review*) (forthcoming in 10 SIGNS No. 2 (1985)). Female-headed households account for one out of every three households below the poverty line. M. RYAN, WOMANHOOD IN AMERICA: FROM COLONIAL TIMES TO THE PRESENT 238 (1979). Only 12% of all families in the country are currently classified as living below the poverty line. *Id.*

2. *See* M. GREENWALD, WOMEN, WAR, AND WORK (1980) (in-depth consideration of effect of World War I on wage and work patterns).

During the Second World War, "the War Labor Board regularly examined the content of 'women's jobs' to determine whether those jobs were being paid according to the requirements of the job and not according to the sex of the person performing the job." *Job Segregation and Wage Discrimination Under Title VII and the Equal Pay Act: Hearings Before the Equal Employment Opportunity Commission* 21-38, 23-24 (April 28-30, 1980) (prepared statement of Winn Newman, General Counsel for the International Union of Electrical, Radio, and Machine Workers, AFL-CIO and Coalition of Labor Union Women [hereinafter Newman Statement].

3. 29 U.S.C. § 206(d) (1976) [hereinafter "EPA"]. The EPA was an amendment to the Fair Labor Standards Act, 29 U.S.C. §§ 201-19 (1976).

4. 42 U.S.C. §§ 2000e to 2000e-17 (1976) [hereinafter Title VII].

targeted sex discrimination in employment.[5]

These initial enactments have not succeeded in bridging the wage gap.[6] Understanding why means examining two ways of conceiving wage differentials, each with its own implications for remedying gender inequality.

Early legislation was secured because proponents limited their program to the notion of "equal pay for equal work": the prohibition of unequal pay scales for men and women doing the same job.[7] A job should pay the same, the theory goes, regardless of whether it is done by a woman or by a man. If a man and a woman hold the same job, they should—all other things being equal—receive equal pay.

But women and men in fact tend to hold different jobs, and the jobs men hold tend to pay more.[8] Segregation of the sexes in the workplace, however it is explained,[9] consigns women to lower-paying jobs. This is where the wage gap, in large measure, comes from. Because men and women generally do not do "equal work"—if equal is understood in terms of having identical jobs—the goal of "equal pay" is elusive.

There is, however, another way of formulating the wage differential, a way which cuts across job categories and which therefore addresses the problem's most important source. The idea of "comparable worth" understands different jobs in terms of a common standard: the value each

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5. *See, e.g.*, A. COOK, COMPARABLE WORTH: THE PROBLEM AND STATES' APPROACHES TO WAGE EQUITY (1983) (exhaustive list of states and municipalities that have passed comparable worth ordinances and statutes).

6. *See* Barrett, *Women in the Job Market: Occupations, Earnings, and Career Opportunities*, in THE SUBTLE REVOLUTION 31 et seq. (Ralph E. Smith ed. 1980). *See also* TWENTIETH CENTURY EXPLOITATION, *supra* note 1, at 3. *Cf.* M. Ryan, WOMANHOOD IN AMERICA: FROM COLONIAL TIMES TO THE PRESENT (1979).

7. Gitt & Gelb, *Beyond the Equal Pay Act: Expanding Wage Differential Protections Under Title VII*, 8 LOY. U. CHI. L.J. 723, 741-742 (1977).

8. Reagan, *De Facto Job Segregation*, in WOMEN IN THE U.S. LABOR FORCE 90, 93-95 (A. Cahn ed. 1979) (women are crowded into occupations classified as "women's jobs"—secretary, teacher, etc.). *See also* F. BLAU, EQUAL PAY IN THE OFFICE 100 (1977) (stating that for occupational representation to become equal between the sexes, two-thirds of the male and female labor force would have to change jobs). *Cf.* L. HOWE, PINK COLLAR WORKERS: INSIDE THE WORLD OF WOMEN'S WORK 20 (1977) (excellent listing of female-dominated occupations and percentage of women in each such occupation).

9. Several explanations for sex-based wage disparities have been proferred, some of which are mutually exclusive. One prominent view is that women are crowded into a small number of low-paying jobs so that many women compete for each job; wages are low as a result of the artificially high level of competition. *See* COOK, *supra* note 5, at 11. *See also* Reagan, *supra* note 8, at 95. Another explanation for job segregation is that women have not been well represented by their unions. *See* TWENTIETH CENTURY EXPLOITATION, *supra* note 1, at 120. *Cf.* A. FARRIS, INDICATORS OF TRENDS IN THE STATUS OF AMERICAN WOMEN 177 (1971). The market perspective, however, dismisses job segregation as an effect, rather than a cause, of wage disparities. From this perspective, neutral mechanisms determine the level of pay in "women's jobs," just as they do for all jobs. *See* G. Crystal, *Comparable Worth?*, Wall St. J., Nov. 5, 1978, at 30, col. 4.

contributes to an employer's enterprise.[10] This value becomes the measure for wage equality: If two jobs are of comparable worth, then those who do them should be paid the same. In this way, the obstacles to wage equality posed by sex segregation are overcome.

A thorough-going commitment to wage equality, then, means calling for a regime of comparable worth. Such a regime is necessary if women are to achieve real progress in the workplace. But implementing comparable worth may be as difficult as its consequences would be far-reaching. First, the notion itself is open to a variety of criticisms going to both its coherence as an idea and its wisdom as social policy,[11] even if gender equality is a prime value.[12] Second, the practical political and institutional roadblocks in the way of comparable worth cannot be wished away.

This latter sort of concern is the subject of this Commentary, which leaves the case for comparable worth—it is a strong one—for others to make.[13] Rather, this discussion will focus on the question: how might such a regime be implemented? Advocates have pursued two major approaches: litigation under existing federal statutes, none explicitly establishing the ideal of comparable worth, and the passage of state comparable worth legislation. The Commentary examines both strategies, and locates the need for legislation in the clearly limited success of litigation. The nature of state legislative action as a means of implementing comparable worth is analyzed by way of a case study: the Minnesota experience suggests one context in which advocates of wage equality may succeed. The roads to a regime of comparable worth may, of course, be many. Which are the most certain and most direct is surely worth asking about.

I. *Federal Litigation: The Long and Uncertain Path to Comparable Worth*

Can litigation under existing federal statutes help bring about a regime of comparable worth? Neither the EPA nor Title VII explicitly

10. *See* COOK, *supra* note 5, at 4-6; Gasaway, *Comparable Worth: A Post-Gunther Overview*, 69 GEO. L. REV. 1123, 1123 n.6 (1981).

11. *See, e.g.*, P. Cox, *Equal Work, Comparable Worth, and Disparate Treatment: An Argument for Narrowly Construing County of Washington v. Gunther*, 22 DUQ. L. REV. 65 (1983); G. Crystal, *supra* note 9; L. Smith, The EEOC's Bold Foray into Job Evaluation, FORTUNE, Sept. 11, 1978, at 58 (trying to compare jobs is like trying to compare "apples and oranges," and wages should thus be determined by the market). *Cf.* Conway, Men vs. Women, FORBES, May 11, 1981, at 10.

12. *See* Nelson, Opton & Wilson, *Wage Discrimination and the "Comparable Worth" Theory in Perspective*, 13 U. MICH. J.L. REFORM 231, 295-296 (arguing that adoption of comparable worth would stymie job integration by reducing incentives for women to enter into traditionally male fields).

13. *See* Gitt & Gelb, *supra* note 7; Gasaway, *supra* note 10. *See also* COOK, *supra* note 5.

incorporates the notion of comparable worth. Judicial interpretation of the EPA, moreover, seems to have closed off the Act as an avenue for wage equality advocates. Title VII, in contrast, seems to be neither a dead end, nor a short cut to comparable worth. The discussion of federal litigation in this section, then, leads to an examination of a more direct route: state legislation.

Despite the importance of the EPA in the struggle against sex discrimination in employment, its value ends when that struggle is understood and pursued in terms of comparable worth.[14] The EPA enacts the notion of "equal pay for equal work." By its terms, a private employer subject to the Act may not pay women less then men who work in the same or substantially similar jobs.[15] The limited reach of this approach has already been shown, and the courts, perhaps predictably, have consistently declined to extend the coverage of the EPA to situations in which cross-job comparisons would be required to address the wage differential. The claim that different jobs of comparable worth must be compensated equally is not cognizable under the EPA.[16]

Advocates of comparable worth have had greater success under Title VII, which makes sex-based discrimination in employment illegal. The value of Title VII litigation has to date been premised on two things: 1) a particular understanding of the legal relationship between Title VII and the EPA which preserves the possibility of valid comparable worth arguments; and 2) factual situations which clearly set the stage for judi-

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14. *See* Gitt & Gelb, *supra* note 7.

15. EPA, 29 U.S.C. § 206(d) (1976). The EPA provides:

> No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: *Provided*, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

26 U.S.C. § 206(d)(1) (1976) (emphasis in original).

16. Substantial similarity between types of work is the standard in every federal circuit that has addressed the issue. *See, e.g.*, Thompson v. Sawyer, 678 F.2d 257, 272 (D.C. Cir. 1982); Odomes v. Nucare, Inc., 653 F.2d 246, 250 (6th Cir. 1981); Equal Employment Opportunity Commission v. Kenosha Unified School District No. 1, 620 F.2d 1220, 1225 (7th Cir. 1980); Hodgson v. Corning Glass Works, 474 F.2d 226, 234 (2d Cir. 1973); Schultz v. Wheaton Glass Co., 421 F.2d 259, 265 (3d Cir.), *cert. denied*, 398 U.S. 905 (1970). *See also* Gerlach v. Michigan Bell Tel. Co., 501 F. Supp. 1300, 1308-12 (E.D. Mich. 1980) (excellent analysis of legislative history behind EPA, leading court to conclude that Congress rejected comparable worth); Ross and McDermott, *The Equal Pay Act of 1963: A Decade of Enforcement*, 16 B.C. INDUS. & COM. L. REV. 1, 23 (1974).

cial implementation of a comparable worth scheme. This situation suggests that Title VII litigation is far from a sure way to a regime of comparable worth, despite its admitted achievements.

If Title VII is to be of use to comparable worth proponents, it must transcend the limitations of the EPA just discussed. It must, in other words, be understood as something more than another enactment of the equal pay for equal work standard.[17] In fact, an undesirable and narrow reading of Title VII is a real possibility—and thus a real threat to the implementation of comparable worth.

Such a reading has its origins in the ambiguous Bennett Amendment[18] to Title VII, which can be interpreted merely as making available to an employer the affirmative defenses enjoyed under the EPA or, more ominously, as incorporating the entire EPA into Title VII.

The full incorporation theory held sway in some federal circuits[19] until 1981, when the Supreme Court decided *County of Washington v. Gunther*.[20] By holding that the Bennett Amendment incorporated the EPA's affirmative defenses and not its equal work standard, the Court left open the possibility that more ambitious theories of sex-based wage discrimination could be advanced through Title VII litigation. But the Court made certain to point out that its holding did not turn on the "controversial concept of 'comparable worth.' "[21] Title VII, like the EPA, allowed an affirmative defense asserting that the challenged wage differential was based on "any factor other than sex"[22]—market conditions, for example—and the Court expressly declined to decide "how sex-based wage discrimination litigation under Title VII should be structured to accommodate" that defense.[23]

What *Gunther* means for the future of comparable worth cannot be understood without a grasp of the facts of the case. The situation at issue in *Gunther* has come to represent the typical fact pattern in successful Title VII comparable worth litigation—and thus defines the boundaries of the litigative strategy. The decisive fact in *Gunther* and in those post-*Gunther* cases implementing comparable worth is the existence, *before*

17. *See* Gitt & Gelb, *supra* note 7.

18. The amendment reads:

> It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of title 29 [i.e., the EPA].

42 U.S.C. § 2000e-2(h) (1976).

19. *See* Gasaway, *supra* note 10, at 1138.

20. 452 U.S. 161 (1981).

21. 452 U.S. at 166.

22. 29 U.S.C. 206(d)(1)(iv) (1976).

23. 452 U.S. at 171.

litigation, of a comparable worth study. Where such a study exists and where it has deliberately been left unimplemented, the courts are willing to make a finding under Title VII of intentional discrimination. But they are not willing to, in the words of the *Gunther* court, "make [their] own subjective assessment of the value of male and female . . . jobs, or to attempt . . . to quantify the effect of sex discrimination on . . . wage rates."[24]

Gunther involved a suit by female jail guards, who were paid less for work that was significantly different from that of their male counterparts. After analyzing the value of the two jobs, the employer determined that women guards should accordingly be paid 95% of the male wage—and then proceeded to pay them only 70% of that figure. The employer's assessment was used by the Supreme Court as the basis for a finding of discrimination.[25]

If an employer has made a comparable worth study, the courts expect him to follow its dictates—this is the lesson of several post-*Gunther* Title VII cases. The University of Houston, for example, was held to have discriminated against its women faculty members, who invoked a pay plan formulated by the university which recommended minimum salaries based on the value of the positions.[26] Based on the university's evaluation, twenty-one of the sixty-eight employees covered by the plan were being underpaid. Eighteen of the twenty-one were women, and they prevailed in their subsequent Title VII suit. Female employees of the State of Washington were similarly successful.[27] At the state's request, a consulting firm had developed a comparable worth compensation system. Finding that Washington "did not pay, and has not paid, predominantly female jobs the full evaluated worth . . . *established by the State's own job evaluation studies*," the court ordered compensation in accordance with the existing system.[28]

The court stressed that the comparable worth system ordered implemented was not of judicial initiation.[29] This is in keeping with the pattern of comparable worth litigation after *Gunther*: federal courts continue to reject wage discrimination claims which would require the

24. 452 U.S. at 181.

25. Gunther v. County of Washington, 452 U.S. 161, 181-82 (1981).

26. Wilkins v. University of Houston, 654 F.2d 388, 405-407 (5th Cir. 1981), *vacated on other grounds*, 459 U.S. 809 (1982).

27. American Federation of State, County, and Municipal Employees v. State of Washington, 33 Empl. Prac. Dec. ¶ 33, 976 (W.D. Wash., 1983). *See also* Connecticut State Employees' Association v. State of Connecticut, 31 Empl. Prac. Dec. ¶ 33,528 (D. Conn. 1983).

28. 33 Empl. Prac. Dec. ¶ 33,976, at 31,625 (emphasis added). It has been estimated that the cost of this back pay could approach $400 million. J. Lamar, *A Worthy But Knotty Question*, Time, Feb. 6, 1984, at 30.

29. 33 Emp. Prac. Dec. ¶ 33,976, at 31,625.

court to make its own assessment of job-value.[30] Title VII litigation, then, can take advocates of comparable worth only so far. Or rather, only if initial steps toward a comparable worth regime have already been taken, i.e., only if a comparative valuation study for a given workplace is in place, can such litigation advance their ends.

Gunther and its progeny have in some sense made the implementation of comparable worth through litigation an all-or-nothing proposition. An employer who takes no steps towards a comparable worth compensation system will not be saddled with such a scheme by the courts. But his adoption of a preliminary comparable worth study, given the disposition of the courts, seems to commit the employer to the (eventual) implementation of a comparable worth regime. This situation amounts to an argument for *legislative* strategies, which the Commentary now examines.

II. *Comparable Worth All at Once: State Legislation*

Because it cannot in and of itself bring about a comparable worth regime, litigation under Title VII represents, at best, a roundabout way to that goal. Legislation, in contrast, gets one there directly. Its advantages have not been ignored by supporters of comparable worth, who have generally directed their energies toward implementing comparable worth in the public sector. The experience of the State of Minnesota in addressing wage inequality within its workforce serves as an example, and, I hope, allows proponents to draw some lessons useful to their own efforts.

A. *Legislating Comparable Worth for the Public Sector*

Although sex-based wage discrimination is at work throughout the American economy, the public sector is in many ways the most promising place to begin its dismantling. If government is thought of as a model, or at least potentially model, employer, then it follows that it should serve as an example to the private sector in matters of wage equality. But focusing on the wage practices of state governments also follows from both an awareness of practical political considerations and from an economic hypothesis. The costs of restructuring compensation systems[31] to make up for pervasive undervaluation, the thinking goes,

30. *See, e.g.*, Plemer v. Parsons-Gilbane, 713 F.2d 1127, 1133-34 (5th Cir. 1983); Power v. Barry County, 539 F. Supp. 721, 726-27 (W.D. Mich. 1982).

31. *See* Lamar, *supra* note 28 (citing Hay Associates employee speculating that full implementation of comparable worth nationwide could cost up to $320 billion annually). *But cf.* MINNESOTA TASK FORCE ON PAY EQUITY, COUNCIL ON THE ECONOMIC STATUS OF WO-

are less objectionable if they are made to fall on the state and not on private employers. On such a view, targeting the public sector is at least partially dictated by political necessity. But this strategy may in fact have its own inherent value: because states are major employers in several job categories, such as secretarial and clerical positions, public sector comparable worth legislation may in fact raise the market wage for female-dominated jobs.[32]

Public sector comparable worth legislation is now in place in several states and is pending in many others.[33] Minnesota's experience in the area dates back to 1976, but it was another six years before the Minnesota legislature committed the state government to establishing "equitable compensation relationships," defined in terms of comparable worth, "between female-dominated, male-dominated, and balanced classes of employees in the executive branch," and provided a procedure for making comparability adjustments to existing payscales.[34] Today, a pending bill would extend the law's coverage to municipal employees.[35]

B. *The Evolution of the Minnesota Comparable Worth Statute*

The Minnesota statute has its origins in a series of reports on pay levels for women in state government. These reports documented the wage gap between male and female state employees, recommended a method for evaluating state job classifications, and ultimately persuaded the legislature to act. A favorable political climate enabled Minnesota

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MEN 29 (1982) [hereinafter MINNESOTA TASK FORCE] (estimating maximum cost of pay equity in Minnesota at $40 million, and calling for a phased-in program over several years).

32. Testimony before the Minnesota legislature in support of that state's comparable worth law bears this out:

> The State of Minnesota is the largest single employer in the State; therefore, what we do will significantly impact other employers in both local public jurisdictions and the private sector. Indeed, there are some job classifications where the state is the dominant employer; *we are the market.*

Comparable Worth Bill: Hearings in Minnesota Senate on H.F. 2005, March 20, 1982 (statement of B. Sundquist, Commissioner of Employee Relations) (emphasis added). *See also* COOK, *supra* note 5, at 25.

33. Cook provides a detailed discussion of states with comparable worth-oriented laws calling for public sector wage pattern studies. COOK, *supra* note 5, at 32-69. Cook also provides an excellent capsule summary of the comparable worth laws passed by each state. *Id.* at 70-84.

34. Minn. Stat. Ann. §§ 43A.01, 43A.02, 43A.05, 43A.18 (West Supp. 1984). The statute goes on to define "female-dominated" and "balanced" job classes as well as the procedure for comparability adjustments. Minn. Stat. Ann. §§ 43A.02, 43A.05 (West Supp. 1984). The statute applies only to the executive branch of Minnesota's state government, but 32,000 of Minnesota's workers are in the executive branch, and 14,000 of these are women. COOK, *supra* note 5, at 76. A bill currently pending before the Minnesota legislature would extend the force of this law to include the employees of all the municipalities in the state. H.F. No. 1766, 74th Leg., 1984 Minnesota Laws (copy on file with the *Yale Law & Policy Review*).

35. *See* H.F. No. 1766, *supra* note 34.

legislators to establish a compensation system whose operation now seems smoothly functioning. In Minnesota, comparable worth is becoming a reality.

The wage gap between male and female state employees and the concentration of women in a limited number of job classes were first documented in 1976 by the Twin Cities Chapter of the National Organization of Women (NOW).[36] The NOW report found "rather staggering . . . inequalities" based on gender and observed that "effective remedial programs" required "more detailed information . . . concerning the personnel practices which have led to the current situation."[37]

Further evidence of the problem was quick in coming, a product of the work of a legislative advisory committee established in the same year. The Council (now Commission) on the Economic Status of Women (CESW) held hearings in November and December of 1976 on women in state government. In March, 1977, the Council published its findings, noting that women in state government were paid less than men, that job classifications tended to be sex-segregated, and that the "fewer job classifications" into which women were concentrated did "not always reflect the responsibilities of the job holder."[38] The Council recommended further study of the state's job classification system in light of the notion of comparable worth.[39]

After the Council's study came a year-long comprehensive evaluation of the state personnel system, conducted by the Legislative Audit Commission and completed in the spring of 1978.[40] Even after adjusting for differences in education and seniority, the Commission found that the wage gap between men and women persisted, in a pattern which held across all occupational groups with significant numbers of both men and women employees.

Following up the work of the Legislative Audit Commission, the Minnesota Department of Finance, at the legislature's request, contracted with a nationally-known management consulting firm, Hay Associates, to study all public employment salary and benefit practices in the state. Although the Hay study, published in May, 1979, did not assign promi-

36. *See* Employment Task Force, Twin Cities NOW, The Position of Women as a Disadvantaged Group in Minnesota State Government Employment (1976) (on file with the *Yale Law & Policy Review*).

37. *Id.* at 2.

38. Council on the Economic Status of Women, Minnesota Women: State Government Employment 12 (1977) (on file with the *Yale Law & Policy Review*).

39. *Id.* at 13.

40. *See* Minnesota Legislative Audit Commission, Program Evaluation Division, The Minnesota Department of Personnel 50 (1978) (on file with the *Yale Law & Policy Review*).

nence to the wage gap in the way earlier inquiries had, its data still showed substantial disparities in compensation.[41] More important, the method used by Hay to evaluate jobs—a point system which had been widely adopted as a mechanism for implementing comparable worth—was eventually incorporated into the Minnesota compensation scheme.

That same month, a follow-up report of the Council on the Economic Status of Women noted only slight improvement in the position of women in state government: the vast majority of women workers were still concentrated in low-paying jobs.[42]

Frustrated with this lack of progress, the Council in October, 1981, established a Task Force on Pay Equity whose members included representatives of the Council and the state Department of Employee Relations, union officials, and influential members of the legislature. The task force analyzed the state's job classification system and confirmed that women were concentrated in a limited number of occupations.[43] Of special concern to task force members was the value of the Hay system in achieving wage equality. The system allowed cross-job comparisons, but, it was thought, tended to undervalue female-dominated jobs. Ultimately, the task force endorsed the system as the only practical alternative: it had been adopted elsewhere and the state had already spent substantial funds in obtaining Hay's expertise.

As the task force neared completion of its work, the 1982 session of the Minnesota legislature began.

C. *Implementing Comparable Worth in Minnesota*

Minnesota legislators who had served on the task force and on the parent Council sponsored legislation which committed the state to the idea of comparable worth but which did not call for immediate expenditures in line with that goal. Support for the bill was bipartisan, and its passage, noncontroversial. Testifying in favor of the bill were representatives of the state government employees union,[44] CESW staff members, and a somewhat less committed state Department of Employee Relations. There was no opposing testimony.

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41. Minnesota Department of Finance, Public Employment Study Final Report (1979) (on file with the *Yale Law & Policy Review*).

42. Council on the Economic Status of Women, Minnesota Women: State Government Employment Follow-Up Report (1979) (on file with the *Yale Law & Policy Review*).

43. The Task Force issued its report in March, 1982. Minnesota Task Force, *supra* note 31.

44. Under Minnesota law, state employees are divided into sixteen bargaining units for contract negotiation purposes. *See* Minn. Stat. Ann. § 179.74 (West Supp. 1984). Comparable worth wage hikes in Minnesota are implemented through the usual negotiation process with these bargaining units. *See* note 45, *infra*, and accompanying text.

The comparable worth system now in place in Minnesota provides a mechanism by which the underpayment of female state employees is identified and remedied. This process of making comparability adjustments in state pay scales takes place in four steps:

1. By January 1 of odd-numbered years, the Commissioner of Employee Relations submits a list of female-dominated classes which are paid less than other classes with the same number of Hay points. Also submitted is an estimated cost for full salary equalization on the basis of the assigned points.
2. The Legislative Commission on Employee Relations recommends an amount to be appropriated for comparability adjustments to the House Appropriations Committee and the Senate Finance Committee.
3. Funds are appropriated through the usual legislative process. These funds are part of the general salary supplement, but may be used only for salary equalization according to the job classes on the list submitted by the Commissioner. The funds may not be used for any other purpose and revert to the state treasury if not used for pay equity.
4. Appropriated funds are assigned to the appropriate [collective] bargaining units in proportion to the total cost of implementing pay equity for the persons in the job classes represented by that unit. Actual distribution of salary increases is negotiated through the usual collective bargaining process.[45]

To date, experience with the scheme suggests its feasibility. The adjustment process was set in motion for the first time in January, 1983, when the Department of Employee Relations presented the legislature with a list of underpaid female job classes and an estimated cost for salary equalization of $26.2 million. Minnesota's governor recommended that the necessary appropriation be spread out over a four-year period, and the Legislative Commission on Employee Relations endorsed that recommendation. But the legislature itself determined that implementation should proceed more quickly and $21.8 million was finally appropriated for the biennium.

The budgeted pay equity funds were assigned primarily to two bargaining units made up of clerical employees and nonprofessional healthcare workers. About 6,000 employees in 250 female job classes were eligible for the funds, and following contract negotiations in June and July of 1983, all eligible job classes received a pay hike. The newly adopted contracts were to reduce the wage gap between comparable male- and female-dominated state jobs by more than half.

45. Minn. Stat. Ann. §§ 43A.05, 43A.18 (West Supp. 1984).

III. *The Lessons of the Minnesota Experience*

Comparable worth for Minnesota state employees seems, then, to be working. What affect pay equity in the public sector will have on the wage gap in private industry remains to be seen. The future of comparable worth in Minnesota will be of interest to advocates of gender equality throughout the country. What *has* happened in Minnesota, and how it came about, offers some lessons already:

1) Comparable worth advocates must be able to present their case competently. In Minnesota, a solid foundation for comparable worth legislation was laid with detailed research and concrete proposals. Proponents alerted policymakers to the wage gap, documented its pervasive character, and provided a way for addressing the problem.

2) Advocates should propose comparable worth not merely as an answer to the concerns of the women's movement but also as good management practice. The key here is the establishment of a job evaluation system, which will begin to direct understanding of compensation systems toward the notion of comparable worth. In this respect, Minnesota proponents were able to invoke the respected Hay system and turn its conservatism into a value of sorts. (Advocates should *not* allow the acknowledged difficulties with the Hay system or any other scheme to sidetrack their efforts.)

3) Advocates should work to incorporate as many affected parties and concerns as possible in the process of establishing and implementing a comparable worth regime. The Minnesota task force received broadly-based input, the legislation finally passed respected the integrity of the collective bargaining process, and the subsequent appropriations acknowledged financial constraints on the state budget.

4) Advocates should seek to build implementation of comparable worth into the usual processes of government. In Minnesota, for example, the state's commitment to comparable worth was expressly incorporated by the state statute and the mechanism for actually achieving comparable worth was integrated into the budgeting and collective bargaining processes. The Minnesota scheme is thus self-perpetuating, requiring no new initiatives or non-governmental advocacy.

IV. *Conclusion*

This last point, unhappily, suggests the difficulties proponents of comparable worth may face in coming years. Minnesota's experience will not be easy to duplicate. Legislation was passed before real opposition was generated, and the system installed is so structured that a loss of

political enthusiasm for comparable worth would not immediately threaten its existence. It is, of course, one thing to keep the ball rolling and another to get it moving in the first place. Advocates of comparable worth in other states have this latter challenge and they must meet it in a political climate which is far from congenial. Much depends on their success: to move toward comparable worth is to move toward real gender equality. And it has already taken much too long.