Legalizing Gender Inequality: Courts, Markets, and Unequal Pay for Women in America, by Robert L. Nelson and William P. Bridges. New York: Cambridge University Press, 1999, 393 pp. $59.95 (cloth), $19.95 (paper).

Arbitrating Sex Discrimination Grievances, by Vern E. Hauck. Westport, CT: Greenwood, 1998, 208 pp. $59.95 (cloth).

These books explore how the law is used to fight for gender equality at work. Both address the effects of discrimination law on employer practices, and both explore what happens when employers and employees fail to resolve their differences privately; this is where their similarities end. Robert Nelson and William Bridges, two sociologists (the former also holds a J.D.), analyze how employers succeeded in promoting in the courts an economics-based view of labor market wage setting that has thwarted plaintiffs. Employers have succeeded despite significant evidence that gender and organizational politics play large roles in wage setting. Vern Hauck, a professor of industrial relations and a practicing labor arbitrator, has written a practical treatise on how to manage sex discrimination grievances. Perhaps because they are so different in orientation, together these books paint a striking picture of America's system for regulating employment discrimination. The hallmark of this system is procedural rather than substantive justice, and hence in practice, the system is highly reactive, litigious, and individualistic.

Nelson and Bridges tackle one of the most perplexing consequences of federal antidiscrimination law. The Civil Rights and Equal Pay Acts, both now approaching their 40th birthdays, have not equalized men's and women's wages. The courts have read these laws narrowly: They have not, for instance, considered that gender differences in managerial pay at Sears imply discrimination. They have generally refused, absent direct evidence of explicit discrimination, to find against employers who pay men and women different wages for substantially similar work.

The judicial definition of discrimination has had the effect of rendering between-job wage discrimination legal, or to invoke the title, of *Legalizing Gender Inequality*. To back this definition, the courts accepted the view from economics that the invisible hand of the labor market assigns wages. Hence, employers may offer very different wages for male- and female-dominated jobs that carry nearly identical duties and conditions, so long as they do not explicitly link pay to sex. Nelson and Bridges argue, with clarity and grace, that market wages are significantly influenced by organizational wage-setting decisions. As organizational hierarchies themselves are gendered, the cumulative effect can be to establish discriminatory market prices for labor. If each employer systematically offers inferior wages for female-dominated jobs, the net result will be unfair market wage rates.

Nelson and Bridges do not dismiss market mechanisms altogether, but they do argue that organizational politics play a major role in wage setting. Their organizational inequality paradigm suggests that wages are determined in part by current standards and practices, which are shaped by male managers inclined to favor their own sex. Wages are also determined by organizational tradition, which tends to favor male-dominated jobs. Whereas both comparable-worth theorists and labor econo-

mists trace gender differences in pay to labor markets, differing in whether gender bias or human capital underlies market wage rates, Nelson and Bridges trace pay differences to organizational processes.

In an inspired choice of method, they revisit evidence presented in four key legal cases, examining both wage data and evidence of how wages were set. Plaintiffs fared poorly in these cases, establishing precedents that favor employers. With quantitative data, Nelson and Bridges show that market wage rates and individual abilities do not explain the gender wage gaps in these organizations. With information on how wage decisions were reached, they show that organizational politics contribute to the gap in even the most bureaucratized and seemingly neutral of pay systems. They also demonstrate that the courts might well have found in favor of plaintiffs by accepting a more organizational view of wage determination.

They begin with the first "comparable worth" case, filed in 1974 by clerical workers at the University of Northern Iowa (*Christensen v. State of Iowa*), in which plaintiffs showed that the university paid male workers on the physical plant more than female clerical workers who, in an internal job evaluation study, were assigned identical pay grades. The plaintiffs lost at trial and on appeal, and Nelson and Bridges conclude that discrimination persisted because male administrators rejected their own job evaluation study. In the second case, *AFSCME v. State of Washington*, the Ninth U.S. Circuit Court overturned a district court comparable-worth finding in favor of public-sector plaintiffs. Nelson and Bridges show that male administrators manipulated the bureaucratic system of benchmarking key jobs to local wage rates. They chose which jobs to benchmark, which area employers to survey, and which data to exclude as faulty, with the result that their market survey exaggerated actual male-female wage differences.

In the third case, *EEOC v. Sears Roebuck & Co.*, female managerial plaintiffs complained that by giving local executives control over managerial pay, the firm sustained inequity. Despite statistical evidence of disparities, the court found no evidence of discrimination. The authors find that discrimination was endemic at Sears but that it was decentralized, lodged in the individual decisions of hundreds of male executives. The fourth case involves a successful discrimination suit brought against a pseudonymous bank where male and female employees were explicitly treated differently. Even under the most bureaucratized components of the wage-setting system, the power of men in the bank's hierarchy helped to foster inequity. For instance, executives chose to exempt certain male-dominated jobs from wage setting by job evaluation, raising wages of those jobs but not of those dominated by their female counterparts.

As defendants in important sex discrimination suits, these four employers are not entirely typical. But the extent of wage inequity Nelson and Bridges find is not exceptional, which suggests that the cases are not outliers. Their painstaking reanalysis of these cases produces compelling evidence of how gender inequality was reinforced rather than challenged by the courts. By accepting the dominant economics-based view of labor market wage setting articulated by defense attorneys, the courts justified the status quo. The courts, in the process, neglected the substantial evidence of discriminatory wage-setting practices within organizations, practices that Nelson and Bridges document so ably. The cases clearly show that the prevailing view of how

wages are set, propounded by economists, has had a disastrous effect on efforts to undermine between-job wage inequity. Nelson and Bridges imply that a more realistic view, propounded by organizational sociologists, would have had an altogether different effect. In the end, the authors make a strong case that labor markets' wage rates are socially constructed by identifiable organizational actors, contributing to both the new economic sociology and the organizational view of inequality that Jim Baron and Bill Bielby promoted two decades ago.

Arbitrating Sex Discrimination Grievances is a different kind of animal. Hauck writes from the position of an experienced labor arbitrator (and on the heels of his own 1997 book, *Arbitrating Race, Religion, and National Origin Discrimination Grievances*). In the first 50 pages of text, Hauck reviews the difficulties of using labor arbitration to address sex discrimination complaints, which may be covered not only under antidiscrimination clauses in collective bargaining agreements but also under civil rights law. Hauck traces the history of arbitration and case law in this area, showing that arbitration outcomes have been governed by a wide range of principles.

Following three steelworker cases in 1960, the courts have generally treated labor arbitration as legally binding. But one complication of discrimination grievances is that complainants who are not satisfied by arbitration can typically resort to the federal courts, particularly when union contracts are not compatible with civil rights law or when arbitrators fail to punish activity that contravenes civil rights law. Arbitrators, thus, must be particularly sensitive to case law precedent in handling discrimination grievances, lest their judgments should be vacated by the courts.

In the second section of the book, Hauck turns his sights on four areas of sex discrimination arbitration: employment status, employment conditions, sexual harassment, and pregnancy and childbirth. If the first section of the book makes the case that labor arbitration can be a useful way to remedy sex discrimination grievances, the second section reviews some of the case law on which arbitrators should rely. Readers who are not practicing arbitrators will find, in these sections, cogent reviews of case law in the four areas. These sections also show how principles from union contracts and legislation have been used in the process of labor arbitration. Hauck, thus, leads us through the court interpretation of civil rights law and also through illustrations of labor arbitration outcomes in each of the four areas.

Although these two books differ widely in their goals and intended audiences, taken together, they paint a distinctive picture of America's uniquely litigious system for redressing employment discrimination. Other developed countries have fought gender discrimination with what in effect are quotas, with diversity measures in national collective bargaining agreements, with wage compression policies that reduce pay differences between groups, and with public work/family benefits designed to reduce women's traditional home disadvantage. That is, instead of creating abstract rights to equal pay and nondiscrimination in employment and expecting individual lawsuits to promulgate those rights, other countries have developed more proactive and collective policies. Those policies depend less on the courts, and they depend less on employer initiative in combating discrimination and employee initiative in pressing claims. These two books describe a legal approach based firmly in individual

rights, with organizational solutions based firmly in bureaucratic personnel practices and formal labor contracts. In short, they describe a system that Philippe Nonet and Philip Selnick (1978) might depict as seeking procedural rather than substantive justice. By both accounts, this system frequently fails to achieve even simple procedural fairness.

—*Frank Dobbin*
Princeton University

REFERENCES

Hauck, V. E. (1997). *Arbitrating race, religion, and national origin discrimination grievances.* Westport, CT: Quorum Books.

Nonet, P., & Selnick, P. (1978). *Law and society in transition: Toward responsive law.* London: Octagon Press.

Modern Manors: Welfare Capitalism Since the New Deal, by Sanford M. Jacoby. Princeton, NJ: Princeton University Press, 1997, pp. 360. $60.00 (cloth), $17.95 (paper).

Recently, under the influence of a series of works that began with Gosta Esping-Andersen's (1990) *Three Worlds of Welfare Capitalism*, *welfare capitalism* has come to refer to modern capitalism as modified by the welfare state, broadly construed. However, the term has an older and still more commonplace usage than the one linked to income security, poverty reduction, and labor-inclusive corporatist policy. This second meaning refers to the *welfarism* of capitalist firms: their provisions of corporate "soft welfare" services (e.g., sports leagues and recreational facilities), retirement and health insurance, profit sharing and savings plans, employment stabilization schemes (e.g., layoff policies), workplace regulations and worker rights (e.g., seniority provisions; grievance procedures), worker representation and participation schemes (e.g., company unions and worker councils), worker training and education schemes (e.g., welding training, sensitivity training, "free enterprise" pamphlets), and the like.

Modern Manors instructively examines the second sense of welfare capitalism, although not without many cross-references to the first. The work is foremost by an analytical history of corporate welfare capitalism in the United States since the onset of the New Deal. However, folded into this history are at least preludes to two other histories, one a history of organizational theory as welfare capitalist ideology and utopia and the second the history of a corporate conservative movement centered on the National Association of Manufacturers (or NAM), which preceded the New Right/