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Feminism, NGO's, and the Impact of the  
New Transnationalisms

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# Feminism, NGO's, and the Impact of the New Transnationalisms

## Abstract

This article discusses the importance of the dual emergence and interrelationship of transnational feminist activism and supranational political systems in three nations: Japan, the United States and Britain. The analysis gives special attention to the impact on national gender and gender equality policy making in nations that have been most eager to join international systems. Invoking European and international legal standards, gender equity feminists have pressed governments and employers to reform their policies and practices, threatening potentially higher costs and liabilities through expanded litigation, public embarrassment and/or loss of face. With respect to the three case studies in this chapter, the most profound impact of globalization and feminist activism has been felt in Britain, primarily due to its membership in the EU. Some change has occurred in Japan due to compliance with the United Nations (UN) Convention on the Elimination of Discrimination Against Women (CEDAW; the Women's Convention), which resulted in the passage of the Equal Opportunity Employment Law (EEOL). The least impact has been felt in the US, which has not been a party to transnational treaties related to gender equality.

## KEYWORDS:

## **Feminism, NGO's and The Impact of the New Transnationalisms**

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### **I. Introduction .**

This article suggests that transnational interactions concerning ideals and norms may generate external pressures on nations to conform. Such interactions may also strengthen internal political actors advocating the enactment of national policies that implement those norms. Nations that feel compelled, either through treaties, participation in international conferences or other transnational interactions, to seek acceptance in or to join a larger global community will tend to "race toward the top" in enacting policies that conform to emerging norms of gender equality. Thus transnationalism has had an impact on national policies related to gender equity, although the impact has been far from consistent and uniform. This essay will focus on the impact of globalization on three nations: Japan, Britain and the U.S.

New developments related to government and governance strategies, propelled in part by globalization, are creating a more proactive policy related to gender equality in some nations.<sup>2</sup> This argument reflects the work of other scholars, including Friedman and Hochstetler, Clark, Risse and others, who argue for increased attention to the role of nongovernmental access to global institutions, emphasizing as well their interaction with other NGO's and national states.<sup>3</sup> Subsidiary effects of internationalism, such as pressure for greater transparency and other forms of democratization, may also impact positively on women's opportunities.

The dual emergence and interrelationship of transnational feminist activism and supranational political systems has been significant for national gender and gender equality policy making especially in nations that

have been most eager to join international systems. The development of feminist policy communities and efforts toward achieving international and regional integration and agreements have accelerated this trend. This analysis will explore the emerging impact of informal pressures on national policy through the confluence of non-governmental organizations (NGO's) that advocate gender equality and international organizations and treaties that support such goals.

Feminists have utilized three types of institutions in order to generate international norms for gender equity and to pressure nation states to adopt them. In ascending order of level of significance in terms of direct authority and potential impact, they are:

- I) the creation of new international forms and venues such as world women's conferences. Feminists from countries that have been unresponsive to demands for change have incentives to participate actively in such forums.
- II) the "capture" or attempted "capture" of the machinery of the United Nations both to lend its institutional sponsorship to gender equity norms and to the draft and "market" binding treaties.
- III) Persuading transnational institutions with more direct legal and political power over nation states, most prominently the European Union (EU) to promulgate gender equity directives, or, (via the European Court of Justice - ECJ) to issue judicial rulings requiring member states to conform to EU gender equity norms.

Because the first two involve the least direct authority, they may have a less potent impact on the gender equity policies of nation states. They may therefore be most likely to be ignored or to produce merely symbolic policy change. Nations that are not subject to international norms at all such as the United States, would be likely to demonstrate the least responsiveness to *international* gender equity norms.

Changes in policy considered in this essay will include increased attention to gender related issues, discursive changes, as well as new policy approaches that are adopted into law. The gender equity policies to be considered relate primarily to equal opportunity in the labor market, although these vary in terms of costs of compliance, which may be used as an indicator of the degree of change they entail. Thus the policies may be grouped, according to specific policy and costs of compliance as follows:

Table One

<u>Policy</u>	<u>Cost of Compliance/Enforcement</u>
*maternity leave low (unpaid) to high (paid)	
*childcare	moderate-high
*equal pay moderate	
*anti discrimination low	-moderate
*affirmative action (positive low (depending on job discrimination) retraining)	
*sexual harassment	low

Invoking European and international legal standards, gender equity feminists have pressed governments and employers to reform their policies and practices, threatening potentially higher costs and liabilities through expanded litigation, public embarrassment and/or loss of face. With respect to the three case studies in this chapter, the most profound impact of globalization and NGO activism has been felt in Britain, primarily due to its membership in the EU. Some change has occurred in Japan due to compliance with the United Nations (UN) Convention on the Elimination of Discrimination Against Women (CEDAW; Women's Convention) which resulted in the passage of the Equal Opportunity Employment Law (EEOA). The least impact has been felt in the US, which has not been a party to transnational treaties related to gender equality. It should be noted, however, that those nations that have accepted inclusion of women's rights in some form of international agreement have agreed on a minimum standard for goals but not necessarily on specific policies or implementation.

## II. Internationalism and Feminism: Creating New Forums and Venues and The Process and Outcome to Date

The increased significance of international organizations, combined with the emergence of second wave feminism as a worldwide movement, have contributed to a new role for gender equality on the global stage. With the end of World War II, the discourse that shaped women and women's issues changed dramatically as the nature of world politics changed, the state

system was expanded, and human rights -with women's rights as a central component -was placed on the international agenda. <sup>5</sup>The world polity created transnational bodies through the UN and associated agencies, and these began to deliver specific instructions to member nations to modify existing laws, create new organizational structures, and undertake new research and development approaches. <sup>6</sup>The Commission on the Status of Women (CSW) was created in 1945. The UN Declaration on Human Rights was adopted in 1948 and called for equal pay for equal work. <sup>7</sup>In dialogue with such bodies as the International Labor Organization (ILO), an interwar creation, the CSW helped develop new international standards for employed women and to expand concepts of economic rights. <sup>8</sup>The idea of fusing all societal resources equally -a human capital approach -became widely accepted as a basis for encouraging women's full economic, political and social participation in society. "Standard setting" of new norms -through the drafting of international treaties such as 1979 Convention on the Elimination of Discrimination against Women (CEDAW; hereafter referred to as the Women's Convention) which followed a 1967 Declaration, proved to be very significant. Borrowing language from an earlier treaty, the Convention on the Elimination of All Forms of Racial Discrimination, the Women's Convention's purpose is to "ensure" that gender does not impede women's ability to exercise rights basic to international human rights law, rather than guaranteeing identical treatment for women and men. <sup>9</sup>

The Women's Convention deals with civil rights, the legal status of women, and reproductive rights and emphasizes non-discrimination in education, politics, employment, and economic and social life. It asserts norms of gender equality with regard to choice of spouse, parenthood, personal rights, and command over property. It declares that intentional or unintentional rules that treat women differently from men cannot be tolerated. States have the obligation to provide services that facilitate combining family responsibilities with family and public life. <sup>10</sup>

The importance of the enactment of such international conventions, pressure on nation states to ratify them, and the establishment of monitoring systems (e.g. annual meetings held at the United Nations) cannot be overstated. By 1990, the Women's Convention had been ratified by over 100 nations (including Japan to be discussed below): "many countries that have focused little if any attention on women's rights in the past do so today largely because of the treaty." <sup>11</sup>Two "equality in employment" conventions

adopted by the ILO in the 1950's were ratified by 112 and 110 countries respectively by 1991 (true of only 8 of 157 prior ILO conventions).<sup>12</sup> Even more impressive is the proliferation of national legislation that incorporates equal pay principles during the period after 1960. By the 1970's these had been adopted by over half the world's nations in contrast to just 10% prior to the convention's codifications.<sup>13</sup> These were followed by equal pay for equal value policies, and then "equality of opportunity" legislation.

For some, the rapid and general acceptance of the Women's Convention implies the recognition of gender equality as an international norm. Its function of monitoring and scrutinizing state policy may result in positive change. For example, Canada strengthened its sexual harassment laws as a result.<sup>14</sup> Another example of a national policy relying on the Women's Convention is in Tanzania where a court found in favor of women's land ownership based partly on the ratification of CEDAW.<sup>15</sup> The new Colombian constitution, adopted in 1991, incorporates provisions derived from CEDAW as well.<sup>16</sup> Australia has relied upon CEDAW in a court ruling dealing with sexual harassment,<sup>17</sup> while embarrassing testimony pressured both the Australian and Korean governments to commit themselves to legislative change.<sup>18</sup> The impact of CEDAW as a policy making instrument was enhanced by the passage of the "optional protocol" by the 1999 UN General Assembly, which permits individual women to lodge complaints pursuant to the treaty before international bodies.<sup>19</sup> However, the evidence is far from conclusive, or at best incomplete and ambiguous, with regard to change. Over 40 of the 133 parties to the Convention (as of 1994) have made a total of over 100 reservations to it as the price of ratification, suggesting considerable undermining of its integrity.<sup>20</sup> This convention is one of the most heavily reserved in implementation.<sup>21</sup> Some critics have contended that the Women's Convention has contributed to the marginalization of women's issues in "mainstream" human rights bodies, and that its implementation and obligations are weaker than in other human rights instruments.<sup>22</sup> "Human rights advocacy relies primarily on publicity and shaming" rather than enforcement.<sup>23</sup> The Convention establishes only one enforcement mechanism, CEDAW. Implementation and enforcement have been impeded by several factors. States do not report progress in a timely fashion, resulting in a backlog of complaints; there is no one standard for evaluation; and there is no mechanism to enforce individual complaints.<sup>24</sup> Some difficulties are mitigated by the work of the CSW, the

Women's Commission -which is more proactive, aggressively investigating violations. However, it also has weakened enforcement powers.<sup>25</sup> Even national governments that have not opted out are free to ignore provisions at will. "Ratification in and of itself does little to liberate women"<sup>26</sup> although it may create a lever through which to press for national changes or enforcement of existing laws.

### III. Internationalism and NGO's.

A significant and symbiotic relationship has developed between NGO's representing the international women's movement and new transnational structures and institutions, resulting in such events as the International Women's Year (1975) and Decade of Women (1976-85). They are representative of new subjects and actors in international politics and law: individuals and non-state actors make new claims that go beyond national citizenship.<sup>27</sup> NGO's have acted as catalysts for social change, often bringing expertise to bear on specific rights and providing information concerning rights in specific countries. There are now well over 15,000 NGO's that operate in three or more countries and draw their financial support from more than one country.<sup>28</sup> New communication technologies (fax, email, the Web) have helped to further interaction and relationships unthinkable in earlier eras. Electronic space has been seen as the contested province of global capital and multiple new social forces, the latter emphasizing its openness and lack of hierarchy and central control.<sup>29</sup> Conferences and institutional settings such as the UN and EU also provide space through which to discover, collectively construct and organize new entities.<sup>30</sup> Jane Connor of the UN Division of the Advancement of Women (DAW) contends that, "Women's human rights groups have seized political space and United Nations and other international conferences in a way that no other group has".<sup>31</sup> Lacking any equivalent to bureaucratic labor and socialist organizations, international women's organizations define themselves in relation to the state, global forces (including those who seek to limit their influence) and each other.<sup>32</sup>

Transnational advocates seek to change the behavior of nation states and international organizations.<sup>33</sup> Through shared values, common discourse, as well as dense exchange of information (and services), they seek to frame new issues, attract attention and insert them into favorable institutional venues.<sup>34</sup> The UN aided the creation of the international women's



movement and helped the development of new relationships among women's NGO's, national states and international networks.<sup>35</sup> Thousands of new non-official participants began to attend international events in advocacy roles. In particular, feminists from countries unresponsive to national women's movements have had particular incentive to throw their energies into such forums, appealing to international organizations and citizens in order to pressure their own governments to take action.<sup>36</sup>

The UN and CSW provided new contexts in which women's movements could meet, lobby and mobilize campaigns. Among their demands was pressure for international conferences on the advancement of women. In 1976, an International Tribunal on Crimes Against Women was one of the initial attempts at an international public hearing by feminists and an early effort to focus on violence against women.<sup>37</sup> The UN Decade for Women was initiated by 1975 as International Women's Year (IWY), and increased attention to issues of women's equality. World conferences devoted to women under UN sponsorship began to convene every five years, beginning in 1975 in Mexico City. By 1980, prior to the Copenhagen meeting attended by 8,000 women, 60 nations signed onto CEDAW. This conference marked the beginning of the international importance of NGO's as well as a new consensus on the importance of changing domestic, national law through an international feminist movement.<sup>38</sup> In 1985, the Nairobi conference, attended by 15,000 women, the second largest world conference ever, adopted a document entitled "Forward Looking Strategies for the Advancement of Women" toward the year 2000 (FLS) and embraced an explicitly feminist outlook.<sup>39</sup> The 1995 Beijing women's conference's NGO Forum was attended by close to 40,000 women.<sup>40</sup> There were 900 NGOs in consultative status before the Beijing meeting - 550 more groups had provisional status related to issues of sustainable development. According to one analysis, there were over 300,000 attendees and 3000 accredited NGO's at the Beijing meeting.<sup>41</sup> Their face-to-face interaction, information sharing and discovery of common concerns led to enhanced international and regional networking, and new impetus for national legislation. They participated in preparatory meetings, formed new caucus structures and negotiated effectively with national delegations.<sup>42</sup> At Beijing, NGO's and network representatives had significant impact by monitoring issues and inserting language into the conference's final document.<sup>43</sup>

Beyond world conferences and events specifically related to gender, feminist advocates have become a presence at conferences on food, population, (Cairo, 1994) human rights (Vienna, 1993), environment, and sustainable development. The 1993 World Conference in Vienna expanded the legitimacy and integration of gender concerns into the entire human rights system through its transnational organization labeled the “most coherent force at the Conference”<sup>44</sup> while the Cairo conference in 1994 saw the formation of an international women’s coalition to influence the outcomes.<sup>45</sup> At these and subsequent conferences, an NGO Women’s Caucus and other women’s caucuses have met daily to assess conference proceedings and to monitor the drafting process.<sup>46</sup>

The impact of world conferences has been to pressure nation states to take action, including the ratification of such international treaties as the Women’s Convention. The final document issued by the Beijing Fourth World Conference on Women, entitled the Beijing Platform for Action, provided a new international instrument by which to measure the commitment of nation states to women’s rights. Ninety percent of UN members have subsequently established some sort of national machinery that, at the very least, has increased access to political and economic resources for women.<sup>47</sup> Women activists have increased their ability to lobby and monitor with impact at the UN and within their national governments. The conjunction of international feminist activism and the internationalization of women’s rights issues has also produced many new international women’s organizations. A surge in international women’s NGO’s began during the UN Decade for Women.<sup>48</sup> These include the Women’s International Network (WIN), ISIS (International Women’s Information and Communications Service, International Women’s Rights Action Watch (ISIS), and the International Women’s Tribune Center. Numerous regional groups have developed as well while some have gained a foothold at the UN itself. Groups network through fax and now the internet, using new technology to foster a sense of international community. These efforts have contributed to better data collection and measurement related to several aspects of women’s participation.<sup>49</sup> “Producing more standardized knowledge in a rational plan and monitored way has been one of the main contributions of the modern campaign on women’s issues... to the world.”<sup>50</sup> Of course, the NGO sector is not monolithic; groups span the political and social spectrum, and vary in access to power and resources. Furthermore, they range from unstructured associations to large

professionalized organizational entities.<sup>51</sup> The latter include the Women's Environment and Development Organization (WEDO) which created a network of women's groups after the 1992 Rio UN Conference on Environment and Development (UNCED) and whose voice has been forceful in lobbying for inclusion of women's rights in all major international documents and conferences.<sup>52</sup>

The argument advanced here suggests that feminist NGO's have forcefully pressed the concept of "women's rights as human rights" in international arenas. As Hochstetler Clark and Friedman suggest: "NGO's challenge to the nation state has garnered some results since the 1995 conference"<sup>53</sup> The remainder of this article will be devoted to three case studies, to analyze the extent of actual implementation at the national level. As mentioned earlier, the three countries were chosen to represent a range of different outcomes. While the case studies do not provide entirely conclusive findings, they point to the significance of transnational as well as national factors in determining outcomes.

#### IV. Gender Equality in Japan: the Limits and Potential of CEDAW.

Japan's experience with regard to internationalization of gender equality issues demonstrates both the significance of international pressure in creating new approaches and the limits of symbolic response. In Japan, there would have been little change without international pressure. However, the thrust of the changes made is subject to state interpretation and the limitations imposed by national policymaking. The Japanese experience tests the potential of gender equality policy emanating from international forums and UN machinery.

The Japanese government ratified the ILO Convention on Equal Remuneration for Men and Women Workers for Equal Value (#100) in 1967 and the CEDAW in 1985.<sup>54</sup> Japan's decision to participate formally in the newly developing international norms related to gender equality may have been at least partially due to a desire to be considered a "modern" nation, worthy of prestige and acceptance.<sup>55</sup> The activism of Japanese feminist groups also may have "embarrassed" the Japanese government into signing the treaty, as they sought to prod the government into action through expanding norms of gender equity.<sup>56</sup> In a 1980 meeting of the Cabinet, it was decided that Japan would ratify the Women's Convention by July 1985,<sup>57</sup> in the final year of the UN Decade for Women. The Japanese

government began to review its statutes in terms of the Convention to reconcile its demands for gender equality, seeking a balance with national customs and law. In addition to the Equal Employment Law reviewed here, the government amended its Nationality Law to permit acquisition of citizenship through a Japanese mother married to a non-Japanese national. It also modified educational curricula that required only women to take compulsory home economics courses.<sup>58</sup> After protracted negotiations in the consultative committee, or *shingikai*, the tripartite group essentially accepted the views of employers, who insisted on a weak law, with provisions merely to “endeavor” to attain gender equality, as the price for acquiescing to any law.<sup>59</sup> The Equal Employment Opportunity Law (EEOL), passed in 1985, became effective the following year, meeting the UN deadline. While the Japanese government acknowledged this as a “historic” opportunity,<sup>60</sup> it concurrently amended the Working Women’s Welfare Law of 1972 and Labor Standards Law of 1947, to limit protective legislation for women, a move opposed by many women’s groups. Karube views the “international force of social change”, as exemplified by the UN Decade for Women and the Women’s Convention as failing to achieve true gender equality in Japan.<sup>61</sup>

Nonetheless, signing on to the treaty and the subsequent passage of the EEOL did produce some changes in Japanese society including some that were unforeseen. Among these was an increase in women attending four-year colleges, and an increase in hiring of female college graduates during the period of the “bubble economy”, in the late 1980’s. The law has certainly helped to increase the number of qualified women who can fulfill managerial and professional responsibilities.<sup>62</sup> Some women, albeit few, were able to gain access to the managerial or career track (*sogoshoku*), which involves transfers and more responsibility as well as higher wages, promotion and benefits. However, many large companies introduced a “two track system” after the law’s adoption, to essentially limit women to clerical tasks (*ippan shoku*). The combination of increased education and aspiration that resulted from the law’s passage, led to more women applying for full time employment. A combination of the collapse of the bubble economy and continued discrimination by employers led the government to open prefecturally based offices to investigate complaints of discrimination and harassment.<sup>63</sup> They have received 20,000 complaints per year since 1994.<sup>64</sup>

Thenon -coerciveweak lawthatwasadoptedessentiallyleft unchallengedthemaledominated, seniority -basedsystem, repletewith genderdistinctions. TheEEOLprohibitedemployersfromdiscriminating againstwomenineducation, trainingandbenefitsandwithregardto mandatoryretirementbasedonmarriage, childbirthorage. Weaker provisionsseekonlygoodfaitheffortsforrecruitment, hiring, job assignmentsandpromotion. A prefecturalmediationprocesswasputin placetoresolvecomplaintsbutrequiredtheapprovalof bothemployeeand employer. As a result, this process proved difficult to implement. Not surprisingly, only onemediationwas acceptedattheprefecturallevel, and itsoutcomedisappointedthewomencomplainantsbecauseitlacked concreteremediesthatl edtomorerelianceonlitigation. As of 1995, womenearnedonly57.7% ofmenandwomenheldonly1.5% ofmanagerial positions(manyofwhichmaybeonlytokentitles), suggestingthatthe conceptofequalpayforworkofequalvalue, althoughacceptedthr ough treatyratification, isalongwayoffinreality. <sup>65</sup>

Encouragementofsharedfamilyandworkresponsibilitiesasmandated bytheUNandILOwasnotincorporatedintotheEEOLanddidnotleadthe Japanesegovernmenttolimitlongworkinghours. In1995, Japanratified ILOconventions195and196, whichcalledforequalopportunityand treatmentformaleandfemaleworkerswithfamilyresponsibilities. <sup>66</sup> Promptedatleastasmuchbythedecliningbirthrateasinternational strictures, theChild CareLeaveActof1992providedunpaidleaveor reductionofworkhoursforeitherparent. In1995, aChildCareBenefit systemwaseestablishedwhichprovidedfor25% ofleavetobepaid. APart TimeWorkLaw, passedin1994, soughttoimprovethelotof parttime workers, mostofwhomarewomen, byprovidingthemaccessto unemploymentinsuranceandspecialprograms, including skillstraining. <sup>67</sup>

Theimpactofinternationalwomen'sactivismbeganin1975 - InternationalWomen'sYear -somewhatafterth ebeginningsof anew waveoffeminisminJapan. <sup>68</sup> TheimpactwasfargreaterinJapanthaninthe US, where"itwashardlynoticedbyanalreadyactivewomen's movement". <sup>69</sup> Bythetimeofthe1995Beijingmeeting, 6000Japanese womenattended.

Participationininternationalmeetingshasincreasedwomen'slitigation andactivismrelatedtotheEEOLinJapanaswellasotheractivities. <sup>70</sup> The

Japanese based Asian Women's Forum is one example; founded in 1977, its focus is the elimination of sexual exploitation of Asian women and the creation of stronger links between Japanese women and women throughout Asia.<sup>71</sup> The Asia Solidarity Network on Forced Military Comfort Women Problem was created in 1992 and involved groups in Japan, Korea, Indonesia and the Philippines.<sup>72</sup> Further evidence is seen in the activism of such groups as the Working Women's Network based in Osaka, which brought its complaints regarding the ineffectiveness of the EEOL before the ILO and Commission on the Elimination of Discrimination against Women, as well as the UN Human Rights Committee, in an effort to gain media and public attention to embarrass the Japanese government and force greater compliance.<sup>73</sup>

These efforts may have helped pressure the Japanese government into revising the EEOL through amendments, effective April 1999, that now mandate equal opportunity in recruitment, hiring, assignments, training and promotion (excluding on the job training).<sup>74</sup> The amendments also permit mediation to go forward through request from only one side, and names of recalcitrant employers are to be publicized. All remaining overtime protections of the Labor Standards Act were repealed at the same time. The changes do not create an independent agency, restructure the mediation process or provide more enforcement powers. Furthermore, there is no consideration of indirect discrimination, penalties for infringement of the law, requirements for positive action, consideration of mediation based on positive action or sexual harassment or attack on the "two track system." The amendments do require increased "consultation" regarding positive action and sexual harassment; subsequent Ministry of Labor Guidelines stress prevention of verbal or physical harassment, including a broad definition of "workplace" that encompasses after hours activity.<sup>75</sup>

Much of what is occurring embodies symbolic elements, but there may be elements of real change emerging, filtered through the lens of national policymaking and the continued preeminence of business pressure in this policy arena. At the very least, the recourse of Japanese feminists, to pursue international gender equality norms through ratification of CEDAW and the subsequent enactment of legislation, has raised awareness and influenced activism and litigation.<sup>76</sup>

## V. Regional Supranational Organization and Women's Rights

Another significant instance of the impact of transnationalism is to be found in the European Union (EU). Similar to the international community discussed above, the regionally-based EU has also provided a political arena for networking and contacts, research sharing, single issue campaigns and practical actions.<sup>77</sup> Article 119 of the Treaty of Rome that established the European Community (hereafter referred to as the EC, to apply to all European Union references) endorsed the concept of equal pay. This part of the treaty remained a dead letter for many years, as it was not implemented by member states, too weak in wording and context to have resonance immediately for women's equality in Europe.<sup>78</sup> However, in the early 1970's, it was reactivated by three European court cases, which stated for the first time that it was binding on member states. In addition, an Equal Pay directive in 1976 prohibited discrimination in promotion, benefits and training.<sup>79</sup> While initial debates around Article 119 failed to consider the interests of women or social justice – it was activist women who transformed the debate into a demand for equal rights.<sup>80</sup> A further step toward recognition of women's rights came with the announcement of the 1974 EEC Social Action Program, in which three Equality Directives were adopted which explicitly extended the concept of women's rights beyond equal pay to the equal treatment in social security, and statutory and occupational equal treatment in employment. This included access to employment, training, promotion and working conditions and entailing the absence of indirect discrimination and connection with family or marital status.<sup>81</sup> (For the first time, a broader ILO formulation of "equal pay for work of equal value" was utilized, which mentioned the relationship between paid labor and family roles.)<sup>82</sup> A subsequent directive dealt with the equal treatment for self-employed women and the protection of pregnant women's right to leave from work before and after pregnancy. The European Court of Justice (ECJ) granted private litigants the right to draw on EC law to challenge both governments and private employers on issues encompassed by Article 119 and the Equal Treatment Directive. Other community policies exhort member nations to promote equality with reference to sexual harassment, childcare, positive action and vocational training.<sup>83</sup>

The ECJ has been called second only to the US Supreme Court in its power, as it establishes the primacy of European over national laws. It is one of the most active tribunals in the development of international human

rights jurisprudence.<sup>84</sup> The Court has turned the Treaty of Rome into a Constitution that limits European governments just as the US Constitution constrains governmental action.<sup>85</sup> The EC has brought infringement proceedings against Britain for failure to fulfill treaty obligations. The ECJ has interpreted the Directives more broadly than the British legislation they spawned, permitting individual claimants to reverse adverse rulings under British law through appeal. ECJ decisions have forced the British parliament to amend laws in order to bring its practices in harmony with EC law and British courts to harmonize domestic law with European law.<sup>86</sup> In 1976, a decision of the ECJ found that Article 119 was directly binding on all member states, creating a firm legal base for women's rights in years to come. Together, Article 119 and the Directives constitute an "advanced legal framework" with considerable force in European nations.<sup>87</sup> The EC has, however, sought to maintain a balanced position, leaving national courts to develop their own approaches within the larger framework of advancing equality for women in an evolutionary manner.<sup>88</sup> The specific implementation of EC policy with reference to Britain will be discussed below.

An increased European focus on women's employment issues and beyond was enhanced in the 1980's by several factors: the new progressive majority in the European Parliament after 1984, an OECD conference on women in the labor market in 1980 and the activity around the UN Decade for Women discussed above.<sup>89</sup> From 1982-95, three EC action programs, coordinated by the sincere named Women's Bureau, the EC's Equal Opportunities Unit, maintained policy initiatives. The Commission on Women's Rights orchestrated a strong European parliamentary lobby that presented thorough analyses of women's status and pressed for specific demands.<sup>90</sup> A European Women's Lobby, established in 1990, represents Europe-wide and country-specific women's groups. Women's groups and their allies have focused on the EC as a vehicle for change. And have achieved many positive developments related to gender equity: for example, the EC Third Action Programme on Women emphasizes on "mainstreaming" the concept of equal treatment into all appropriate EC programs and policies. Gender-related policy machinery has been put in place: The European parliament has a women's committee and "women's policy" now has a budget and a unit; advisory groups have been established; and research and workshops have been funded. The expanding transnational women's network has helped to prevent erosion of hard fought policy gains,



as cost cutting and deregulation have taken hold almost universally.<sup>91</sup> A major impact of the EC's interest in equality has been the establishment of official and nonofficial networks of women who have gained roles in decision-making and have established an extended infrastructure that is difficult to dismantle or eliminate.<sup>92</sup> It is at the regional level that internationalism is likely to be practiced most intensively," according to one observer.<sup>93</sup>

Other analysts take a more critical stance and stress the limitations of women as transnational actors within the EC.<sup>94</sup> They point to the relative remoteness of EC decision-making and its distance from second wave feminists. In addition, women's entry, particularly in the social field, was late and limited, so their foothold is somewhat tenuous.<sup>95</sup> The number of policy initiatives has been relatively small and there has been difficulty getting the EC to focus beyond the framework of paid labor, and equal pay and treatment issues to a "difference" approach that deals with matters of family responsibility and organization.<sup>96</sup> The obdurate British government and the increasingly powerful transnational business community challenged new gender equality efforts, and a weakening labor organization was unable to fight back.<sup>97</sup> The efforts of the former were able to retard action on parental leave and parttime work for a number of years.

Nonetheless, the 1989 Social Charter marked a new recognition in Europe of the need for equal treatment for men and women. It extended the notion of "equal opportunities" and developed measures to recognize differences through positive action, and the work/family divide. The ratification of the Maastricht Treaty in 1993, suggested a new approach to integrating issues of social policy with those related to workplace activity.<sup>98</sup> One observer points to a three stage theory of gradual broadening of EC policy on women: the first stage, (1957-69) focused on economic equity and equal pay to prevent competitive disadvantage to any one member state; the second (1970-79) prioritized the impact of social policy for women; and the third (1980-86) emphasized newly broadened policy concerns including parental leave, rights for parttime workers and positive action.<sup>99</sup> While its restricted scope and partial implementation continue to limit the EC's role as emancipator of women,<sup>100</sup> its potential as a force for equal citizenship should not be dismissed. For many British women, EC membership has meant a significant strengthening of civil and social rights as the next section will suggest.<sup>101</sup>

The European Union's legal system has provided domestic groups with mechanisms that can be used to impose new costs on their government, giving weak interest groups the political lever to directly influencing national policy.<sup>102</sup> ECJ legal precedents create new material and political costs for government and private actors.<sup>103</sup> A change in EU policy is much harder for national governments to reverse than legal victories based on domestic law, because such reversals would require legislative consensus at the European level.

## VI. The EU and Gender Equity in England

The English experience with gender equality reflects both the limits of supranational politics on state autonomy and the impact of transnationalism in shaping British policy innovation. This section will illustrate how the gradually adopted gender equity policy to the "standard setting" initiatives developed by the direct authority of EC directives. Ultimately, EC law permitted women's rights advocates to force an unwilling British government to change public policy.

Under Thatcherite Conservative government, England resisted full inclusion in the new united Europe and refused to adhere to the Directive mandating parental leave and leave for family reasons. When proposed by the EC in 1983, it was vetoed by Britain and then adopted despite British opposition in 1993.<sup>104</sup> The Conservative British government also opted out of the Maastricht social policy agreement that provided three month parental leave for child care purposes as well as steps toward positive action for working women.<sup>105</sup> Lacking unanimous support, the Social Protocol was unable to acquire treaty status. The British government also opposed two out of three directives on atypical (non-fulltime, regular) employment.<sup>106</sup> In addition to refusing to participate in and lobbying against policies it viewed as abhorrent, the British government delayed compliance with and ignored certain EU directives. In the face of repeated demands and treaty obligations, it stalled, leading Lord Lester to observe that the government's delay in implementing an ECJ judgment on equal pay dating from 1982, "amounts to a continuing denial in the United Kingdom of the fundamental human right to sex equality in pay."<sup>107</sup> The Tory British government ignored some rulings until forced to do otherwise, responded slowly, and

was outright obdurate, as in its refusal to comply with the directive for pregnant workers and equalization of retirement and pension ages. <sup>108</sup>

From its inception, the EC has been reluctant to interfere in the internal affairs of member states – although it is within the competence of the EU to intervene, the requirement of ‘subsidiarity’ means that such authority should be exercised only if member states cannot achieve collective objectives.<sup>109</sup> Nonetheless, there is a good case to be made for the significance of the EC on numerous aspects of British policy toward gender equality. The EC’s supranational safeguards played a major role in preventing backsliding and eroding women’s rights during recession.<sup>110</sup> Gender equity feminists and the Equal Opportunities Commission (EOC) had considerable success in forcing a reluctant Conservative government to accept significant changes in equality policy.<sup>111</sup> Women’s interest groups, and later trade unions as well, mobilized around a litigation strategy, national judicial support obtained and follow through maintained to show the costs of not changing national policy.<sup>112</sup> While the passage of the Equal Pay Act (EPA) of 1970 and Sex Discrimination Act (SDA) of 1975 (and amendments to them) had multiple sources and only the latter occurred when Britain was an EC member, the importance of compliance with the Treaty of Rome, the Equal Pay (1975) and Equal Treatment Directives (1976) of the EC and various ILO conventions must be acknowledged.<sup>113</sup> It is possible that it was EC membership that forced the UK into its relatively forward-looking role regarding sex discrimination laws.<sup>114</sup> Similarly, EC pressure led to a strengthening of the equality machinery established by the SDA, the Equal Opportunities Commission (EOC). In order to comply with EU directives, resources (however limited) were made available to the EOC to promote sex equality and to accelerate the implementation of sex equality objectives. While the EU brought judicial proceedings against the UK to correct defects and exclusions in national legislation, the EOC used its legal resources to support a series of cases before the ECJ that clarified the rights conferred by European law.<sup>115</sup> These changes became part of the 1983 Equal Value (Amendment) regulations and the Sex Discrimination Act of 1986, which together removed loopholes from the original legislation and strengthened the principle of equal pay for comparable work.

The EOC has become an effective advocate for British women, successfully sponsoring cases that advance equality rulings and invalidate

portions of British law.<sup>116</sup> The UK has one of the highest levels of anti-discrimination litigation in the EC, most of it funded by the EOC trade unions.<sup>117</sup> The EOC is thus providing a significant resource for legal redress by complainants as well as to appeal for more favorable case court interpretations. The EC is also helping to diffuse the EC's equality principle to national laws through the large number of referrals from British Courts to the ECJ and the widespread reporting of the impact of the referrals. Domestic court rulings have become more willing to find in favor of women as a result.<sup>118</sup> A publication, the Equal Opportunities Review - regularly reports on the significance of national and supranational rulings. 119

## VII. Specific Policy Impacts<sup>120</sup>

ECJ rulings have narrowed exceptions to the SDA, incorporated "equal value" into the EPA, made retirements subject to discrimination law, and enabled married women to be eligible for the British Invalid Care Allowance.<sup>121</sup> In the *Marshall* case in 1986, the ECJ found that differential retirement ages for men and women was a violation of the Equal Treatment Directive, which led to subsequent amendments to the law, all favoring women. The Court has also ruled that sex discrimination in pensions was contrary to European law in *Barber v. Guardian Royal Exchange Assurance Group*. In *Enderby v. Frenchay Health Authority*, it ruled that a female employee's pay should be equal to males in different job categories and covered by Article 119 on equal pay. British policymakers are currently addressing other policies recommended by the EU, including rights for part-time workers and independent taxation of married couples.<sup>122</sup> *Webb v. EMO Air Cargo* ruled that employers could not dismiss pregnant workers. To comply with EC directives, the UK's Sex Discrimination Act of 1986 extended the scope of the law to cover all employers, extending coverage to those with fewer than 5 employees and to prohibit laws that force women to retire from employment at different ages than men. The Employment Act of 1989 reduced exceptions to the prohibition on sex discrimination, and the Pensions Act of 1995 equalized male and female pension provision (but not until the year 2020!).<sup>123</sup> A 1996 amendment to the SDA permitted industrial tribunals (which hear many British sex discrimination complaints) to award compensation for indirect discrimination.

Consideration of sexual harassment led to statements that it is already outlawed by the EU Equal Treatment Directive; national tribunals are relying increasingly on the Commission's Recommendation and Code of Practice. The Equal Treatment Directive obliged member states to review all protective measures and make changes where the "concern for protection that originally inspired them is no longer founded".<sup>124</sup> The British government complied by abolishing the ban on women in mines and on cleaning machinery. Other protective measures have given way to the principle of equal treatment except where pregnancy and maternity create particular risks for women. In the *Johnston* case, the ECJ raised questions regarding the use of protective legislation based on reproductive hazards and other biological and physiological distinctions that may lead to further changes in British practice.<sup>125</sup> The ECJ also abolished an upper limit on back pay in sex discrimination cases in *Marshall v. Southampton*, 1993. This bore concrete application when the British Ministry of Defense was found to have summarily dismissed pregnant personnel and they were able to receive large settlements (in cases supported by the EOC).

EC infringement proceedings against the UK alleging inadequate compliance have resulted in amendments to British laws. The EC has also been empowered to conduct formal investigations and has judicially reviewed national legislation, including the UK's Employment Protection (Consolidation) Act, which had prevented claims for unfair dismissal from those who worked less than 16 hours per week. They found that treating part timers differently amounted to indirect discrimination. Its 1996 ruling altered the structure of statutory maternity pay (SMP), increasing its value to women.<sup>126</sup>

It is difficult to establish a causal relationship between legal changes and material behavior. Female/male pay ratios have remained about the same (about 75%) and occupational segregation has remained at the same levels during the period under review. Nonetheless, the EC gave British feminists virtually their only enforceable mechanism to improve and seek more favorable interpretations of domestic legislation, particularly under neo-liberal domination. It provided a vehicle for intervention and regulation on gender equity issues in a period of deregulation and anti-rights primacy.<sup>127</sup>

### VIII. Gender Policy in Britain since Blair

The election of Tony Blair and the electoral victory of Labour appeared to have the potential of altering the previous government's obduracy toward gender based issues. Reinforcing the notion that national government still plays a key role in regulating gender-based policy, shortly after the election, Britain did sign on belatedly to the Social Chapter of the EU. This bound it to the parental leave, part time work and protection of pregnant women directives of the EC (the latter's impact preceded the Labour victory in 1996). Three months unpaid parental leave and provision for time off for caring responsibilities have been introduced into the UK. Pregnant women are eligible for forty weeks leave with six weeks paid at 90% of wages; a further twelve weeks may be paid at the same level as sickness benefit. Eligibility is conditional on two years employment with the same employer, of over sixteen hours per week.<sup>128</sup> Maternity leave has been standardized at 18 weeks for all with the right to return to work.<sup>129</sup> The government has adopted the EU Burden of Proof Directive to be implemented within three years, requiring an employer to justify any rules that have a greater adverse impact on one sex.<sup>130</sup> The government has committed itself to implementing "fairness at work" policy in line with the Part Time, Working Time and Young Workers Directives of the EU, which will also protect against unfair dismissal.

### IX. The United States - Progress on Gender Equality in a National Context

The argument presented here suggests that United States, initially a world "standard setter" regarding norms of workplace gender based equality, is currently falling behind in comparison to other nations, particularly with respect to acceptance of new norms that provide a more holistic approach to equity for working women. In contrast to Japan and Britain, the US has been slow to adopt emerging international norms of gender equality. The US has resisted ratification of CEDAW and other treaties, regarding the US Constitution as the preeminent safeguard of similar rights and freedoms.<sup>131</sup> It has been alienated from international legal strictures, preferring to operate within its own system. Even if ratification were to occur, the US would impose significant reservations,<sup>132</sup> such as noting the primacy of the US Constitution and rejecting the principle of women in the military, comparable worth to set

remuneration, and maternity leave with pay or comparable social benefits without loss of employment and seniority.<sup>133</sup> Because of its reluctance to submit to supranational rules, US policy on gender equality, unlike Britain and Japan, although impressive in many ways, has not benefited from a dialogue with the dual forces of transnationalism and feminism.

For example, in response to the 1995 Beijing UN Fourth World Women's Conference, the US established an Interagency Council on Women. By and large, its role has been symbolic, leading to little actual policy reevaluation and change.<sup>134</sup> However, subnational governments, including San Francisco and Maine, have passed legislation endorsing CEDAW within their jurisdictions, "standard-setting" efforts that may impact on the national government at a future time.<sup>135</sup>

In the US, despite the defeat of the Equal Rights Amendment to the Constitution in 1982, women's rights were steadily expanded through Title VII of the CRA, which extends the prohibition on employment discrimination to discrimination based on sex. The enforcement body established by the CRA, Equal Employment Opportunities Commission (EEOC) whose brief deals with racial minorities and women, and was initially more active in litigating cases and issuing guidelines than its British counterpart. In recent years, the two agencies have arguably become more similar, with the UK's EOC taking on a larger role discussed above.<sup>136</sup> Prodded by feminist groups, the EEOC came to see sex discrimination as a priority issue. The EEOC can investigate and conciliate complaints and grant complainants the right to seek remedies in court.<sup>137</sup> It can also bring class actions suits and issue *amicus* briefs, strengthening its role in policy. It has issued guidelines and advanced the gender equality agenda on affirmative action, pregnancy, insurance premiums, and sexual harassment. While there has been much disappointment with the agency, relating to the huge case backlog, turnover of personnel and charges of ineffectiveness, it has realized occasional major victories such as the \$40 million settlement in the AT&T case in 1973.

The Equal Protection clause of the 14<sup>th</sup> Amendment has been interpreted to include gender inequity although sex-based classifications have been subject only to intermediate scrutiny. Judges in the US have often played an active role in enforcing Title VII and awarded substantial remedies, although the conservative appointees to the judiciary and

bureaucracy after 1980 in the US and the liberalizing impact of the EC in Britain narrowed the gaps between the two nations.<sup>138</sup> Feminists and trade unions have sometimes been more effective advocates for change than their counterparts abroad, litigating and lobbying with impact at the state and national levels. Presidential executive orders 11246 and 11375 prohibited federal contractors from engaging in sex-based discrimination and established affirmative action in hiring, in effort to result in greater inclusion of women and minorities. Recalcitrant employees face the threat of funding cutoff. Affirmative action and the impact of private class action suits vigorously prosecuted by women, advocacy groups and their activist attorneys through the structure of American law enforcement have produced dramatic gains for American working women.<sup>139</sup>

At present, women comprise just 5% of top managers in the United States, although their numbers as administrators and managers have increased dramatically from 19% in 1970 to over 45% in the late 1990's, male wages in the 1990's, perhaps related in part to the fact that they tend to hold less high paying positions in the field, making American women perhaps the most successful in the world in holding high level positions.<sup>140</sup> Still, their incomes continue to lag behind those of men; they earned 71 - 75% of male wage in the 1990's, due in part to the fact that they tend to be employed in fields that pay less.

The major difficulty for American working women lies in the absence of other policies that might support them outside the workplace. For example, the US lacks a national comprehensive child care policy or mandatory maternity assistance. Since 1993, the Family and Medical Leave Act has provided for a three - month unpaid parental leave policy in companies with over 50 employees; while Japan has partially paid leave and Britain's emerging paid parental leave policy. Unlike other nations more attuned to emerging gender equity norms, there has been no attention in the US to the plight of parttime workers, who are primarily women

Unlike Japan, a non - Western relative newcomer to international norms, the US, a proud, self-confident hegemonic state, refuses to be "embarrassed" into signing most international treaties, including those related to emerging norms of gender equity. There may be several explanations: 1) the US may feel it has already led the world in enacting gender related policy, 2) it is reluctant to relinquish judicial power to



international courts; and, 3) American feminist advocates have not aggressively pressed for treaty ratification. In addition, the US has been reluctant to sign on to treaties because legal rules are often enforceable in courts by private parties, courts are unpredictable and independent and judicial remedies are very strong.<sup>141</sup> Because of the reluctance to engage in the new international community effort on gender, some contend that, currently, access to the EC has meant a higher level of continuity for British gender equity policy related to women and work than has been true in the US.<sup>142</sup>

## X. Conclusion

This analysis has provided evidence for the growing force of international gender equity norms within nation states, citing its concerns over sovereignty. The impact of three factors have been considered: the role of feminist NGO's in negotiating and "capturing" transnational institutions, the development of new international forums and treaties, and the promulgation of gender equity policies which may produce change within nation states (a product of the interaction between the first two). In none of the instances considered here has change occurred as a result of the "negative externalities" experienced by nation states thought to be world leaders in gender equity policy e.g. Sweden and the United States. Such nations have no economic incentive to pressure others to move toward gender equality.

This examination of three countries has shown that the United States' failure to participate in the new international system has meant that it is least affected, Japan has been affected to some extent by the weaker and less direct authority of UN based international treaties, while the EC approach, which involves the most intervention in member states, has produced the most change in a member state.

The issue of cost to government and business will affect the rate of acceptance of new policy, as Table One suggested. Governments and private sector organizations will be most likely to accept exhortations with limited costs and maximum symbolic resonance to avoid the costs of compliance with new international standards, particularly those with which it is most expensive to comply. In this regard, they are most likely to agree to minimal, general appeals for antidiscrimination policy. The extent of

resistance to strict implementation by the Japanese business community of the equal employment law (which still controls much of the political process) and by the British Tory government and business community to compliance with EC directives suggests that these actors view compliance with new international gender equity norms as having considerable costs. They can be expected to oppose efforts to institutionalize paid maternity or child care leave, mandate equal pay and promotion or provide new affirmative action opportunities, unless they can be persuaded that the short term costs will be justified by utilizing a more qualified and enduring labor force. However, they may prefer complying with more stringent equality policies if they know they will lose in the courts. Indeed, the threat of a legal case and potential liability, as well as adverse media coverage, can be a weapon in itself, altering the behavior of government and firms.<sup>143</sup> In the British case, lobbying by women's advocates and their allies created significant political and financial costs, including large settlements to sex discrimination plaintiffs. This process has been slow to develop in Japan, though there have been several recent settlements in cases involving discriminatory salary and promotion as company policies. Further study of the implementation of new gender equity directives within nation states is needed in order to assess the full impact of change.

Britain has been increasingly receptive to European approaches to gender issues, with an interactive process emanating from within government (the EOC), regionally-based transnational activists (feminist NGO's) as well as transnational and national courts and legislative bodies. Women's rights groups have been able to gain greater leverage over domestic policy through appeals to an overriding transnational institution. The EC has clearly acted as a "standard setter" which has changed national norms. This has led some of the most powerful nations in Europe to alter some of its policies and to increase regulation, suggesting a "race to the top" related to gender equity policy. The costs of violating and reversing EC directives have created significant incentives for compliance for government and employers.

In Japan, national and international pressure emanating from the UN, international treaties and women's NGO's have increased the government's attention to gender equality. The Japanese case may provide support for the "Baptists Alone" hypothesis: that laggard nations concerned about their international reputation and "keeping up" with other world democratic powers may adopt new human rights policies as a result. This appears to

have resulted despite the absence of negative externalities and pressure from multinational corporations. The Japanese response to the desire for new international stature (as well as domestic pressure from women's rights groups) has been to adopt the trappings, if not reality, of new standards and regulation related to gender issues. National policymaking, still reliant on business, the Liberal Democratic Party (LDP) and bureaucrats, has tended to invoke the symbols of gender equality with limited attention to serious implementation of change. Yet, changed expectations among women and the nation's continued, expanded exposure to the international community have created momentum which has resulted in some modification to existing practice and maintains pressures for more regulation of practices related to gender equity regulations. Continued concern for "losing face" due to adverse publicity generated by women's rights advocates has imposed new, albeit limited, costs on government and employers. One result has been the enactment of Amendments to the Equal Employment Law effective in April 1999. The Japanese cases suggest that the acceptance of even weak international norms may have an impact on gender policy change.

The US, in many ways a "standard setter" in the twentieth century's struggle for gender equity, has remained aloof from the strictures of international treaties, in the interests of national sovereignty. As a result, it has fallen behind in setting new standards for working women as it does not view itself as subject to the demands of global feminism and international rulemaking.<sup>144</sup> By ignoring important social policies that support working women whom must balance home and work responsibilities, US policymaking has neglected important aspects of gender equity.

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- <sup>1</sup>See Boyle and Preves, forthcoming.  
<sup>2</sup>Held, 26.  
<sup>3</sup>Friedman, and Hochstetler, 2; Clark, Friedman and Hochstetler, 2; Risse, 185 -88, 204.  
<sup>4</sup>The list of costs must remain speculative lacking specific data for each country.  
<sup>5</sup>Berkovitch, 100.  
<sup>6</sup>Ibid, 101.  
<sup>7</sup>Ibid, 103, 105, 110.  
<sup>8</sup>Ibid, 104.  
<sup>9</sup>Wang, 1995, 906.  
<sup>10</sup>Mahoney, 1996, 799.  
<sup>11</sup>Jacobson, 1992, 444.  
<sup>12</sup>  
<sup>13</sup>Ibid, 117.  
<sup>14</sup>Wang, 917.  
<sup>15</sup>Ibid.  
<sup>16</sup>Plata and Espriella, 1995, 401.  
<sup>17</sup>Landsberg -Lewis, 1998, 23.  
<sup>18</sup>Interview, Connors, DAW, 10/6/99.  
<sup>19</sup>Ibid.  
<sup>20</sup>Mahoney, 799.  
<sup>21</sup>Wang, 917.  
<sup>22</sup>Mahoney, 799.  
<sup>23</sup>Copelon and Petchesky, 363.  
<sup>24</sup>Wang, 917.  
<sup>25</sup>Wang, 920.  
<sup>26</sup>Staudt,  
<sup>27</sup>Sassen, 21, 96.  
<sup>28</sup>Axtmann, 17.  
<sup>29</sup>Sassen, 177, 194.  
<sup>30</sup>Waterman, 159.  
<sup>31</sup>Interview, 10/99.  
<sup>32</sup>Waterman, 154, 59.  
<sup>33</sup>Keck and Sikkink, 2; see also Boyle and Preves.  
<sup>34</sup>Ibid.  
<sup>35</sup>Sienstra, 110; Keck and Sikkink, 150.  
<sup>36</sup>Boyle and Preves.  
<sup>37</sup>Hoskyns, 36.  
<sup>38</sup>Jaquette, 50.  
<sup>39</sup>Sienstra, 144.  
<sup>40</sup>Keck and Sikkink, 169.  
<sup>41</sup>Clark Friedman and Hochstetler, 9.  
<sup>42</sup>Clark Friedman and Hochstetler, 16.  
<sup>43</sup>Ibid., 188.  
<sup>44</sup>Dorsey, 344.  
<sup>45</sup>Copelon and Petchesky, 348; Romany, 543.  
<sup>46</sup>Chen, 150.  
<sup>47</sup>Sienstra, 109.  
<sup>48</sup>Berkovitch, 160.  
<sup>49</sup>Ibid., 151.  
<sup>50</sup>Ibid., 152.  
<sup>51</sup>Silliman, 1999, 25.  
<sup>52</sup>Ibid., 39.



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- <sup>53</sup>Hoch stetler,ClarkandFriedman.  
<sup>54</sup>Hayashi,1990,19.  
<sup>55</sup>Gelb,1998,42;seealsoBoyleandPreves.  
<sup>56</sup>Mackie,271.  
<sup>57</sup>Kamiya,1995,40.  
<sup>58</sup>Ibid;Karube,12.  
<sup>59</sup>Ibid.,18.  
<sup>60</sup>Ibid.19  
<sup>61</sup>Ibid.,20.  
<sup>62</sup>Molony,298.  
<sup>63</sup>Gelb,1998,50;Karube,27.  
<sup>64</sup>Gelb,ibid.  
<sup>65</sup>H ayashi,1995,40;JWIE,22.  
<sup>66</sup>WWNWenttotheILO,1997,94.  
<sup>67</sup>Ibid.  
<sup>68</sup>Molony,282.  
<sup>69</sup>Ibid.  
<sup>70</sup>Gelb,1998,52.  
<sup>71</sup>Buckley,132.  
<sup>72</sup>KeckandSikkink,180.  
<sup>73</sup>Buckley,68.  
<sup>74</sup>Gelb,58.  
<sup>75</sup>MinistryofLaborann.#20,1998,1 -2.  
<sup>76</sup>Buckley,72.  
<sup>77</sup>Hoskyns,15 -16.  
<sup>78</sup>Ibid.,155;Reinalda,213.  
<sup>79</sup>Kenney,80.  
<sup>80</sup>Ibid.,57.SeealsoReinalda,213.  
<sup>81</sup>Hoskyns,103;MeehanandCollins,224.  
<sup>82</sup>Reinalda,213.  
<sup>83</sup>MeehanandCollins,224.  
<sup>84</sup>Wang,906;Kenney,60.  
<sup>85</sup>Kenney,Ibid.  
<sup>86</sup>Kenney,82.  
<sup>87</sup>Ibid.92 -3;113.  
<sup>88</sup>Ibid .,83.  
<sup>89</sup>Ibid.142.  
<sup>90</sup>Ibid.  
<sup>91</sup>ColganandLedwith,1996,297.  
<sup>92</sup>Hoskyns,196;O'DonovanandSzyszczak,195.  
<sup>93</sup>Waterman,162.  
<sup>94</sup>Reinalda,214.  
<sup>95</sup>Ibid.  
<sup>96</sup>Ibid.andHoskyns.  
<sup>97</sup>Hoskyns,145.  
<sup>98</sup>Hanmer,142.  
<sup>99</sup>ColganandLedwith,300.  
<sup>100</sup>Reinalda, 215.  
<sup>101</sup>Lister,8/98,324.  
<sup>102</sup>AlterandVargas,forthcoming.  
<sup>103</sup>Ibid.  
<sup>104</sup>O'Connoretal.,1998,86.  
<sup>105</sup>Hoskyns,134  
<sup>106</sup>Burchelletal,224.

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- <sup>107</sup>Q.inForbes,inNorrisandLovenduski,150.
- <sup>108</sup>MeehanandCollins,232.
- <sup>109</sup>Elman,9.
- <sup>110</sup>O'DonovanandSzyszczak, 208.
- <sup>111</sup>AlterandVargas.
- <sup>112</sup>Ibid..
- <sup>113</sup>LovenduskiandStetsonandMazur,118.
- <sup>114</sup>MeehanandCollins,233.
- <sup>115</sup>Ibid.,124.
- <sup>116</sup>Kenney,99.
- <sup>117</sup>KilpatrickinGardiner,38.
- <sup>118</sup>Forbes,150.
- <sup>119</sup>Forbes,150.
- <sup>120</sup>ThissectionreliesextensivelyonMeehanandCollins ,1996,223 -36
- <sup>121</sup>MeehanandCollins,234.
- <sup>122</sup>SeeBashevkin,60,foradiscussionofspecificcases.
- <sup>123</sup>FourthReporttoCEDAW,17,96.Thisextensivecompilationofdatarelatedtowomen,probablyfor thefirsttime,demonstratesaswelltheimportanceof Britain'sratificationoftheWomen'sConvention.
- <sup>124</sup>MeehanandCollins,229.
- <sup>125</sup>O'DonovanandSzyszczak,198.
- <sup>126</sup>FourthReporttoCEDAW,1999,92.
- <sup>127</sup>Bashevkin,15.
- <sup>128</sup>O'Connoretal.,84.
- <sup>129</sup>Ibid.,85,
- <sup>130</sup>Ibid.,19.
- <sup>131</sup>Mayer,740.
- <sup>132</sup>Ibid.,753.
- <sup>133</sup>Ibid.,80 2-4
- <sup>134</sup>U.S.FollowUp,May1996.
- <sup>135</sup>Landberg -Lewis,26 -8.
- <sup>136</sup>Kenney,140.
- <sup>137</sup>O'Connoratal,92.
- <sup>138</sup>Kenney,140.
- <sup>139</sup>Gelb,1989;McCann,andSaguy.
- <sup>140</sup>O'Connoretal,98;SpainandBianchi,1996.
- <sup>141</sup>IamindebtedtoRobertKaganforthisadditionalinsig ht.
- <sup>142</sup>Bashevkin,236.
- <sup>143</sup>AlterandVargas,opcit.
- <sup>144</sup>ThisviewwasvigorouslyarticulatedbyallpanelistsattheAnnualJusticeRuthBaderGinsburg DistinguishedLectureonWomenandtheLaw,"PanelDiscussiononCurrentTopicsinInternational Human Rights"December13,2001,AssociationoftheBaroftheCityofNYandNOWLegalDefenseand EducationFund.