

National Gallery of Art, Washington, D.C. Rosenwald Collection.

Adam and Eve (1504), by Albrecht Dürer. "It is not good that the man should be alone," said the Lord (Genesis 2:18). The solution: woman. Despite the Lord's intentions, the sexes' first encounter was not a total success.

Men and Women

The most perfectly organized societies in nature are sexless ones, or those where sex differences have been minimized or somehow suppressed. In America, during the turbulent late 1960s and '70s, feminists began to suggest, in effect, that our own complicated society ought to move in that direction. The role of housewife and mother was disparaged as "unfulfilling"; women entered the labor force by the millions; discriminatory laws were struck down; divorce rates soared. Yet, as scholars note, boys and girls still behave differently as youngsters. The call to motherhood remains strong even to ambitious career women. Males and females continue to look at the world through different eyes. In an odd way, the feminist drive for sexual equality has spurred rather than eroded scholarly efforts to examine "masculinity" and "femininity." Here, anatomist John Fleagle looks at our evolutionary heritage; editor Cullen Murphy surveys the growing mass of research on sex differences in behavior; and constitutional scholar A. E. Dick Howard summarizes relevant developments in the law over the past two centuries.

IN THE BEGINNING

by John G. Fleagle

Sex differences first became a "social" issue some 600 million years ago. Into a world teeming with single-celled, asexual organisms there came a new kind of living thing, one that could not propagate by simple cellular division because it contained only one-half of the necessary genetic material. In order to reproduce, it had to acquire the other half by being fertilized. While oysters, orchids, and orangutans today "have sex" in different ways, the basic principle was laid down in the Cambrian age: For most species, it would take two to tango.

Sex was a watershed. In asexual organisms, such as algae, variation is limited; all organisms of a species are essentially

clones. No species can adapt rapidly to a new environment. Life on Earth was asexual for three billion years, and for three billion years life on Earth resembled a thin vegetable soup. Evolution was slow.

By contrast, every product of sexual reproduction is different, resulting from a mixture of two sets of genes. Not all of the organisms given life in this manner will survive in altered environments, but those that do have a fair chance of passing on the traits that made the difference. Sex stoked evolution, stoking it further when sexual "selection" became a consideration among the higher organisms that sex made possible, and often continuing to help it along by means of a sexual division of labor *after* procreation—among many fish, birds, mammals—that complemented the duality of fertilization itself.

A Living Legacy

Looked at coldly, sex may seem an absurd mechanism, disorderly, a generator of strife in nature as in society; much of human literature depicts sex mocking our intelligence, or challenging it. Yet, as Stephen Jay Gould has written, "odd arrangements and funny solutions are the proof of evolution—paths that a sensible God would never tread but that a natural process, constrained by history, follows perforce." As an evolutionary strategy, sexual reproduction *worked* for hundreds of millions of species. Eventually it produced *Homo sapiens*.

Homo sapiens now numbers some 4.5 billion individuals. Of these, few if any continue to live under conditions remotely approximating those in which humans lived and bred during 99 percent of their history as a species, before agriculture and animal husbandry abruptly changed the trajectory of our culture. Yet the genetic legacy of our past persists in all of us to an extent that is unquantifiable but certainly significant.

Included in this legacy are the numerous physical differences between men and women. Looking beyond the obvious differentiation in reproductive function and apparatus, one observes that most women are smaller than most men and have more body fat but less body hair. Newborn males are less likely to survive infancy than are newborn females. While not obvious

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at a glance to oglers at swimming pools, the tooth structures of men and women are instantly distinguishable to physical anthropologists, archaeologists, and forensic scientists. Lately, more subtle but no less distinctive differences have been discovered in brain cells.

Three Perspectives

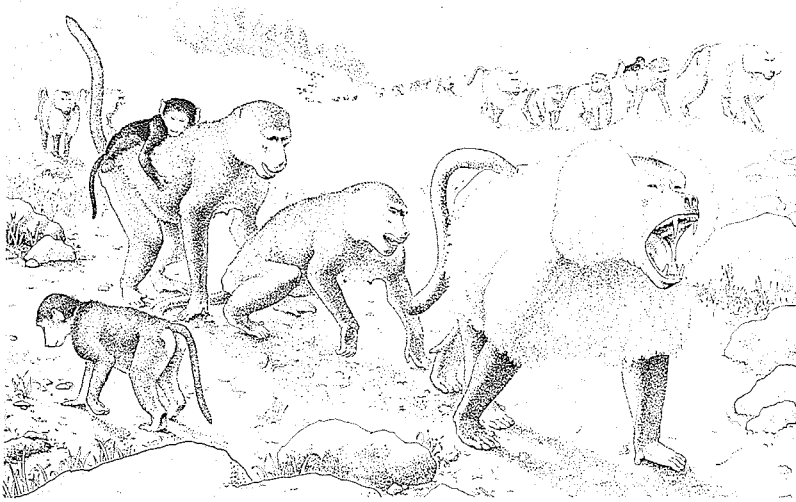
There must be—or have been—good reasons for such differences, for Nature is sometimes capricious with her favors, but rarely profligate. The search for those reasons has occupied an expanding (but still small) group of serious scholars drawn from many disciplines: paleontology, sociology, anthropology, biology, anatomy, zoology, sexology. It is a demanding field of inquiry, where facts are few and interpretations controversial.

The origins and implications of sexual differences in humans can be approached from only three directions, none of them totally satisfying, and none of them truly independent of the others. One way is to observe the behavior of our primate relatives. Another is to look at the fossil record. A third is to ponder human behavior today. Let us take these in order.

Compared to monkeys and apes, the physical differences between men and women—"dimorphism," to use the scholars' shorthand—are in some ways standard, in others confusingly unique. The truth is that monkeys and apes are themselves a very diverse lot. At one extreme, we have animals such as baboons in which males are nearly twice the size of females and have long, dagger-like canine teeth.* At the other extreme are animals such as the graceful gibbons of Southeast Asia or the tiny marmosets of South America in which males and females are virtually identical in size and appearance; to an untrained observer, even their genitals look alike. Then, there are the many intermediate species where sexual differences—in size, teeth, coloring—do exist but are limited and sometimes intermittent. Male squirrel monkeys, for example, seem to put on extra weight only for the breeding season.

There is a pattern in all this diversity: The degree of dimorphism appears to vary with the kind of social organization in which the various animals live. Species with the greatest male-

*A word needs to be said at the outset about teeth, since the reader will encounter mention of them frequently in this essay. To an anatomist, teeth are like fingerprints; from a single tooth a specialist can determine an animal's species, size, sex, and age, reconstruct the shape of its jaw, tell you what it liked to eat. Teeth are especially valuable to paleontologists, who are always working in the dark, trying to visualize creatures no one has ever seen. Teeth have one further advantage: They are extremely durable and may survive intact for millions of years.



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Polygynous, highly dimorphic hamadryas baboons leave their sleeping rock, each male followed by his harem, infants clinging to their mothers.

female differences in body size and canine size are polygynous. They live in small groups of one adult male and several adult females plus their offspring (like the sacred langurs of India) or in larger groups of several adult males and numerous adult females (like the large baboons of Africa). Species with no significant sexual differences live in monogamous family units.

The reason for this is sexual selection. Most sexual differences are the result of competition among members of one sex for reproductive access to members of the other sex; the sex that invests the least amount of time and energy in the offspring is the one in which the most intense competition occurs. In mammals, it is the females who carry the offspring before birth and nurse them afterward. The number of offspring that a female mammal can produce in any year is severely limited by the effort of gestation and lactation. Male mammals do not necessarily have such a heavy investment in each child. In many species, all the male contributes to his progeny is one sperm and the time it takes to copulate (three to four seconds in rhesus monkeys).

The potential reproductive success of a male mammal is thus much greater than that of any female. In a troop of monkeys or a herd of deer, a single adult male could father a dozen

or more offspring in one year while a female could only produce one. To do so, of course, he would have to fend off his randy brethren, but that may be possible if his canines or antlers are large enough (hence dimorphism). If successful, he will sire most of the offspring in a particular group and thus contribute disproportionately to the next generation.

This is an extreme situation. For most primates, and, happily, the majority of humans, fathering, like mothering, involves more than a chance copulation. In some species, fathers spend as much time and energy on their children as do mothers. While no male mammals carry their offspring around before birth (as male seahorses and certain frogs do), some carry them around for years after birth—take the siamang gibbons, for instance. While they cannot give milk to the infants, they *can* take the infants to food and show them what to eat.

Charming the Females

As we might expect, then, when males become indispensable in the rearing of young, most of the “nonmechanical” sexual differences in such things as teeth and size are reduced. This is not because competition among males for females is reduced. It is because competition among females for males is just as strong. Every female is looking for a “good man” as provider and protector. Hence, we get monogamous species organized into something close to nuclear families.

Sexual selection, Charles Darwin wrote in 1859, involves not only “the power to conquer other males in battle” but also “the power to charm the females.” And, as recent research makes plain, the “power to charm the females” is usually complemented by the “power of females to manipulate the males.”*

So much for contemporary monkeys and apes. Studying them may yield as many questions as clues, but many of the clues are solid. Of course, there are few “primate patterns” that we can ascribe with much assurance to our own heritage; the diversity is just too great. The best clues lie in the correlation we seem to find between the physical structure of the sexes within a species and that species’ social organization. This, when consid-

*Other factors probably influence sexual dimorphism in contemporary primates. Larger species show greater sexual differentiation than smaller ones do, although we don’t know why. Also, we know that feeding patterns can vary from sex to sex. A related factor is what are called “energy budgets.” One might initially suspect that, because they are smaller, females of sexually dimorphic species would use less energy than the larger males. However, because they usually have the additional demands of pregnancy and lactation, the caloric and nutritional needs of a small female are often *greater* than those of the larger male. Is the smaller size of the female in part a compensation for these extra demands?

ered in conjunction with what we have learned of contemporary primitive societies, can aid us in reconstructing the behavior of our extinct human ancestors, creatures we encounter only through fragments of bone or an occasional stone tool.

Our earliest known direct ancestor was an animal called *Aegyptopithecus zeuxis*. It lived about 30 million years ago in forests alongside a large meandering river near the present day Nile in Egypt. We have many pieces of its jaw with lots of teeth; we have a skull; and we have various bones of the arm and foot. There is enough to suggest that *Aegyptopithecus* was a sexually dimorphic species with males having larger canines and a much larger body size than the females. From this we conclude, by analogy with extant primates, that *Aegyptopithecus* was not monogamous but rather lived in polygynous groups, groups with more breeding females than males. The amount of male investment in child care was relatively small.

Hunters and Gatherers?

By about 10 to 12 million years ago, we get the first vague inkling of hominids. The recognizable "humanity" of these creatures—generally called *Ramapithecus* or *Sivapithecus*—is minimal. *Ramapithecus* were about the size of a chimpanzee. Like later humans, however, they seem to have had relatively broad, flat molar teeth and short broad canines. Unfortunately, the fossils from these animals are few and fragmentary, and it is virtually impossible to determine how many species are involved, much less the appearance of the two sexes of any one species.

Four million years ago, we finally come to creatures that are unquestionably hominids—members of our own family. The most famous hominid fossil is the partial skeleton of a young woman affectionately known as Lucy; the more formal name of the species she represents is *Australopithecus afarensis*, named after the Afar region of Ethiopia, where paleoanthropologist Donald Johanson of the Cleveland Museum of Natural History brought it to light in 1974.

Lucy, the most complete early hominid ever found, was about 3.5 feet tall. The males of the species were apparently much larger. These creatures had a small ape-like brain that was no bigger than an orange. Their teeth were not very sexually dimorphic. They were decidedly human in one very important regard—they walked upright on two legs. This fact was confirmed in 1976, with Mary Leakey's discovery of fossilized *Australopithecus* footprints at Laetoli in Tanzania.

What was the life of these early hominids like? How can we

explain the evolution of such distinctive human features as bipedalism and, later, tool use and increased brain size? And what, if anything, does sex have to do with it?

In the orthodox view of human evolution, early hominid society was seen to be based on an economy in which men hunted and women stayed home tending children, gathering wild vegetables, and awaiting the return of their husbands. Early hominids have frequently been described in terms that make them seem virtually identical to existing hunter-gatherer societies such as the !Kung bushmen of Southeast Africa—a definite injustice to both groups.

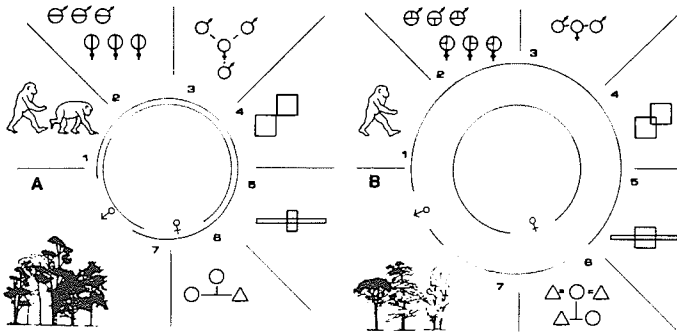
Recently this “man the hunter” image has been challenged on two fronts.

Adrienne Zihlman and Nancy Tanner, anthropologists at the University of California at Santa Cruz, rightly note that some of their colleagues, past and present, have shown an unwarranted male bias in their characterizations of living hunter-gatherer groups (and thus in their assessment of early hominid evolution). Women, they point out, provide the bulk of the food for these groups, for the meat supply is often unreliable. “Gatherer-hunter” is a more accurate description of their economies. Gathering by females, not male hunting, they argue, was probably the basic hominid adaptation. Bipedality, tool use, and increased intelligence all evolved in conjunction with this activity. (Zihlman speculates that the first “tool” may have been a sling “invented by mothers to carry their offspring who could not cling or walk.”)

Why Intelligence Evolved

Zihlman and Tanner see *Australopithecus* as very much like the chimpanzee (with whose genes 98 percent of ours are identical). Females and their offspring formed a basic foraging unit, and males foraged independently. There was no rigid social structure but rather a loose cluster of kin groups centered about females. Early hominids were different from chimpanzees, they believe, in that males were relatively more cooperative with females and not so aggressive toward one another. But males and females did not form permanent social bonds. Both sexes were promiscuous, with females, not surprisingly, showing a preference for more altruistic, sociable males.

Owen Lovejoy of Kent State University has a very different view of *Australopithecus*. He agrees with Zihlman and Tanner that hunting is not the key to early hominid evolution—nor is tool use or increased brain size, since both appeared more than

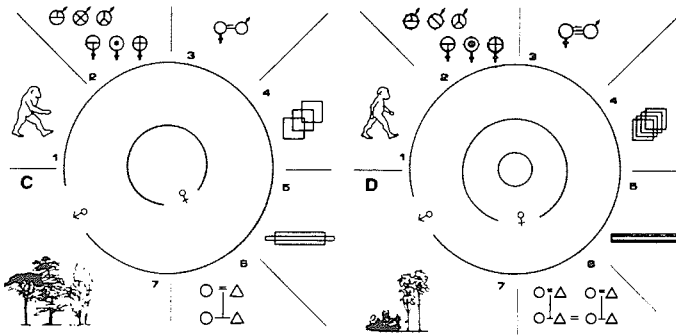


**THE LOVEJOY MODEL: SEX AND HUMAN EVOLUTION
DURING THE PLIOCENE AGE (5 to 2 million years ago)**

These diagrams illustrate the evolving conditions that, in concert, may have produced a fully erect hominid—and a recognizable family unit. Section 1 of each traces the progress of erectness. Section 2 refers to “epigamic” differentiation: Secondary sex characteristics make individuals more distinctive. Greater sexual selectivity results, gradually promoting monogamy (3), and an ability to raise three or four children at a time instead of seeing one to adulthood, then bearing the next (4). In section 5, the long bar represents the menstrual cycle, the rectangle the female’s period of sexual receptivity, which increasingly lengthens. Kinship relations are

a million years after *Australopithecus afarensis*.

In Lovejoy’s model, the evolutionary “breakthrough” of early hominids and their divergence from the line leading to modern-day apes was due to increased reproductive abilities—in particular, male provisioning of women and children. Bipedality and the consequent freeing of the hands made it possible for *Australopithecus* males to forage far from home and bring back food to the females and dependent young. Spared the need to provide their own sustenance, females could do a better job of raising more children to maturity. The social organization would have been monogamous, assuring males that the mouths they fed belonged to their own offspring, not to someone else’s. (The low canine dimorphism in *Australopithecus* supports this notion.) Lovejoy believes that the “intense social activity” of these family units—grooming, communicating, teaching the young—lies behind the rapid evolution of human intelligence.



By permission of C. Owen Lovejoy.

changing (6); the initial bond between mother and children expands into a family group with the male as responsible parent (circles and triangles denote males and females). All of this occurs within a changing environment (7), as tropical rain forest gives way to open woodland and savanna. The circles at the center denote foraging and movement. The inner circle is the core area, where women and infants spend their time; outer circle is the male range. In Diagram A, the circles are nearly the same; the female is not being given food by the male and must find her own. In B, the male travels farther to leave more food at the core for the female—and her larger family. In C, the male is bringing food back to his mate; she forages less. Finally, in D, a permanent home base is established. The mother can leave infants in care of aunts or older daughters and range more widely herself.

Like Desmond Morris, author of *The Naked Ape*, Lovejoy also argues that monogamy promoted several features unique to humans. Evolution of a conspicuous penis in males and of prominent breasts and buttocks in females provided a degree of individuality and enhanced sexual attraction. The loss of the estrus cycle in human females meant that they were always sexually receptive; unaided by any external cues of fertility—i.e., going into heat—hominids had to copulate regularly to ensure conception. This, Lovejoy contends, “would increase pair-bond adhesion and serve as a social display asserting that bond.”*

*In the loss of estrus, zoologist Sarah Hrdy sees more than a hint of female manipulation. Concealed ovulation may have allowed females to “confuse the issue of paternity” in order to “draw several different males into the web of possible progenitors.” Then as now, such a situation had its advantages. A controversial review of the literature on loss of estrus and related topics can be found in Donald Symons, *The Evolution of Human Sexuality* (1979); Symons’ views are challenged, or qualified, by Hrdy in “The Evolution of Human Sexuality: The Latest Word and the Last,” *The Quarterly Review of Biology* (September 1979).

What about the extreme *size* dimorphism noted in several species of *Australopithecus*? According to Lovejoy, the larger size of the males, who spent longer periods of time traveling to and from food sources, gave them greater protection from predators; the smaller size of the stay-at-home females enabled them to better hide from their enemies (and, for good measure, reduced their caloric-protein requirements).

Sarah Hrdy and William Bennet of Harvard University have questioned Lovejoy's association of monogamy and extreme size dimorphism because of its rarity among other primates. Along with Walter Leutenegger at the University of Wisconsin, they suggest that *Australopithecus afarensis*, like other very dimorphic primates, was probably not a paragon of uxoriousness. What the polygyny theorists cannot explain is the lack of canine dimorphism in early hominids. If male-male competition was truly responsible for male-female size differences, why didn't it involve the large canines associated with "bluff and threat" tactics? Perhaps, as NYU anthropologist Cliff Jolly has suggested, canine reduction in hominids was unrelated to their social life and simply reflected dietary habits and the way they chewed their food.

Genes, Culture, Evolution

Sometime between one and two million years ago, *Homo erectus*, a member of our own genus, first appeared in Africa. *Homo erectus*, a very human-like creature, is almost invariably described as being similar to a living "hunter-gatherer," much to the dismay of Zihlman and Tanner who argue that there is no evidence for a heavy reliance on big-game hunting until about 500,000 years ago. Only then, they say, would a meaningful division of labor have appeared, as men killed the game, and women gathered fruits and vegetables and butchered the kills.

It would help to know how much bigger men were than women during this period, but that is something we just cannot establish. There aren't enough complete skeletons. Everyone agrees, however, that sexual dimorphism in *Homo erectus* was less than that in *Australopithecus*.

Homo erectus gave rise to *Homo sapiens* about 100,000 years ago. Among the extinct populations of our own species are the much-maligned Neanderthals, who lived in Western Europe between 100,000 and 40,000 years ago. These big-brained, heavily built people differed from contemporary humans in many ways, but sexual dimorphism was not one of them. Erik Trinkhaus of Harvard has shown conclusively that Neanderthal females

were, on average, about 10 percent smaller than males, which is about the same difference we find between men and women today. The same holds true for the Neanderthals' more successful contemporary, *Homo sapiens sapiens* (Cro-Magnon "Man").

By now, however, it no longer makes sense to look at humans from a purely paleontological point of view. The Neanderthals, for instance, inhabited a complex culture; they had language, religion, medicine. They probably wore clothes. Culture was a new way of passing on behavioral traits from one generation to the next. It was an evolutionary invention that enabled humans to adapt to new environments with even greater flexibility, and it rendered some previous adaptations obsolete. In a sense, then, human beings' behavior during the past 100,000 years evolved faster than did their bodies. For this reason, the leap by analogy from primate or hominid behavior to our own becomes especially treacherous, even if we concede that the roots of culture lie in our genes.

What meaning, then, does our long sexual evolution have for men and women in 1981? The answer is complicated and, even in terms of physiology, as yet incomplete.

Our basic mammalian heritage remains a fact of life. Differences in absolute size and strength continue to characterize men and women, although they have probably been decreasing for thousands of years, with men gradually becoming more like women. Such differences were more important in the past than they are now. In the West, and even in developing nations (where rural women have long engaged in arduous tasks), the male's physical advantage in size and strength seems increasingly irrelevant for all but a few jobs.

"The Twig Is a Little Bent"

Only women can bear and nurse children. "We may regret this fact, glory in it, or simply accept it," zoologist David Barash has written, "but it remains, nevertheless, an indelible part of our biology." Someone must also raise the kids; young primates cannot take care of themselves. Beyond birth, however, it no longer *has* to be the mother who invests the most time and energy in child care. Culture now provides other options.

Usually, however, it *is* the mother. Just as it is always the men who go to war, women's predominant role in the socialization of children is virtually universal. So is a division of labor by sex—a phenomenon, by the way, that need not be excoriated as exploitation. (A sexual division of labor in other animals usually means that the male is contributing more, not less, to his off-

spring's well-being.) We know that certain "male" and "female" traits—aggressiveness in the one, for example, and a maternal instinct in the other—were under positive selection for millions of years. Many of these differences are hormonally induced; men's and women's brains differ in this as in other ways. "At birth," E. O. Wilson has said, "the twig is already a little bent." For this reason, boys and girls brought up in a "neutral" environment would probably still end up behaving like boys and girls—a phenomenon documented among the !Kung San, who raise their children without regard to sex.

Most humans, however, are not brought up in a sexually neutral fashion, which brings us back to culture. The nature/nurture argument is a cliché, but that does not undermine the validity of the debate. All cultures have distinguished between men and women—usually but not always by reinforcing what sex differences there are. Most of what are now perceived as injustices done to women over the millennia can probably be laid at culture's door, bearing in mind that culture, at least in part, is a product of biology.

Hence, one should not look for simple explanations of sex differences in behavior. Our own evolutionary history is especially difficult to unravel, partly because of our biased viewpoint, and partly because, as bipedal, naked apes with big brains, we are so unlike any other mammal that no analogy is quite appropriate. But simple explanations, often tinged by ideology, are the currency of much popular writing on the subject. Some hold that sexual roles are genetically fixed in their entirety. Others would like to believe that all of the behavioral differences between the sexes are learned. Neither explanation is adequate, and both miss the important point: Sex differences, genetic or learned, need not lead to injustice. Of course, "need not" and "do not" are old foes.

We have a long evolutionary history of sexual differences both physical and cultural. Pretending that we don't is as foolish as pretending that those differences somehow paint us into a corner. Both genes and culture can change, but both are inherently conservative. Ultimately, history will show, I think, that genes prove to be more flexible than societies, that culture is the harder nut to crack.

A SURVEY OF THE RESEARCH

by Cullen Murphy

God fashioned Eve from Adam's rib, the Bible says, but scholars these days would turn the metaphor on its head. As psychologist June Machover Reinisch has put it, nature "imposes masculinity against the basic feminine trend of the body." That may be part of the reason why there is a 500 percent greater incidence of dyslexia in boys than in girls and why girls have more stamina. Then again, it may not. The scholars keep at it.

Stacked on a library table, the literature on sex differences in behavior and physiology published in scholarly journals during the 1970s by chemists, sociologists, physicians, and other researchers would stand about six feet high. That does not include a dozen or so reputable books, such as Eleanor Maccoby and Carol Nagy Jacklin's *Psychology of Sex Differences* and John Money's *Love and Love Sickness*.

As they peel the onion of sex, scholars have scrutinized males and females in the workplace, in the army, in the schools, and in the uterus. They have contemplated "deviance" as a clue to "normality" and drawn lessons from the experience of wallabies and coral-reef fish. Where the specialists have been less successful is in imposing theoretical order on our expanding body of knowledge. That men and women *do* differ, biologically, cognitively, and behaviorally, no one disputes—although such differences, it must be stressed, are usually not absolute but apparent only as averages when groups of men and women are compared. Yet, as psychologist Jeanette McGlone writes, "Questions such as 'Why?' and 'Does it matter?' remain unanswered."

Those two questions, of course, are what the fuss is all about. The staunchest believer in equal opportunities for both sexes will, if he or she is honest, concede that the real world is not Plato's cave. Rightly or wrongly, men and women have long assumed—and still assume—that differences in expectations and behavior exist between the sexes; over time, through countless adjustments and accommodations, they learned to live with what they thought those differences were, constructed their societies accordingly, came to depend on one another in different ways, to behave in one way when with one's own sex and another in mixed company.

During the past decade, scientists have probably quadru-

pled what is "known" about *biological* differences between the sexes. Men's and women's brains seem to be dissimilar in certain respects, but the human brain remains a mystery, and drawing inferences is like writing on sand. In some ways, social scientists are more helpful, at least in limning the broader implications of the way men and women behave. One fact that does emerge clearly—and here the research merely ratifies common sense—is that, regardless of their origin, gender-linked traits appear, and acquire significance, at varying ages for men and women.

Males, the Vulnerable Sex

It begins at fertilization. Men and women will never again be so much alike as they are during the first seven or eight weeks after conception. Until then, although the male possesses a "Y" chromosome in addition to an "X" (the female has a pair of Xs), male and female embryos appear identical. Scientists debated for years whether it was the distinctive Y or the extra X that prompted sexual divergence. It turns out to be primarily the Y.

The mechanics of this process are still not entirely clear. In essence, though, midway through the first trimester, the male embryo secretes a hormone that incites his previously undifferentiated gonads to develop into testes. These produce another hormone, testosterone, which in turn programs further development of male sex organs. If an XY embryo cannot produce testosterone, or cannot metabolize it, it is in for trouble and will develop, however quirkily, along a pre-programmed female line. In a sense, then, all human beings are female until something acts to make some of them male.

The likelihood of error in male development is extraordinary. About 140 boys are conceived for every 100 girls, but various defects cause most of those extra boys to succumb before birth. A differential remains even then (about 106 boys are born for every 100 girls), but males are more susceptible to childhood diseases. Boys are also more likely to stutter and to be colorblind. Males may be, as Henry Higgins put it, a "marvelous sex," but they are also exceedingly vulnerable.

The first connection between hormones and behavior was made long ago, in 1849, by the German scientist Arnold Berthold. Berthold discovered that castrated roosters stopped fighting and lost their interest in hens. Research into hormones and their effects intensified during the 1970s. In some nonmam-

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"Once upon a time, before everything got screwed up . . ." was the caption of this mid-1970s William Hamilton cartoon, as divorce rates grew.

mals, researchers discovered, the injection of male hormones (androgens) before birth can change a female into a male. Certain mature fish can change their sex when confronted with new environmental conditions. Nothing so extreme has been demonstrated in mammals, but female offspring of rhesus monkeys that have been heavily dosed with androgens do exhibit "male" behavior—"rough and tumble" play, for example, and the mounting of other females.

For ethical reasons, scientists do not conduct experiments on humans. Here, they have had to glean information from "experiments of nature"—e.g., children with brain damage, hermaphrodites—or by pondering the unexpected side effects of hormones administered to avoid toxemia of pregnancy. John Money of Johns Hopkins and Anke Ehrhardt at Columbia have studied girls with adrenal hyperplasia, an enzyme defect resulting in production of massive amounts of androgens. These girls, they found, became extreme "tomboys," were very athletic, and rarely played with dolls. Most studies confirm that boys, on the average, are more aggressive than girls, and most

studies indicate that testosterone probably has something to do with it. Hormones may not make certain types of behavior inevitable but merely, as John Money puts it, "lower the threshold so that it takes less of a push to switch you on to some behavior."*

Reading, Writing, 'Rithmetic

The male and female timetables continue to vary after birth. As neurologist Richard Restak has noted, girls at the age of four months are far more attentive than boys to "social contexts": faces, speech patterns, and tones of voice. Girls begin to talk sooner. Boys, on average, are the first on their feet; they have better total body coordination throughout their lives but somewhat less stamina. They are more curious, more active, and more mechanically inclined.

No one knows how much (if any) of this to attribute to chemistry, how much to child rearing. Parents treat boys and girls differently, and that difference rubs off. For example, if girls learn to talk earlier, it may be due primarily to the fact that most mothers spend more time chatting to their infant girls than to their baby boys. Hormones do leave an imprint on men's and women's livers, kidneys, and the nerve endings in their brains. They differentiate the hypothalamus into a male and female type. What scientists cannot establish is whether hormones account for the many observed differences in the way male and female brains work.

The most striking difference is in brain "lateralization." In right-handed people, the left hemisphere of the brain is primarily responsible for verbal skills, the right hemisphere for spatial-perceptual skills. But this lateralization is less pronounced in girls than in boys—so much so that in girls, one side of the brain seems to be able to make up for deficiencies in the other. Thus, girls have a lower incidence of dyslexia, aphasia, and infantile autism. Thanks to her neural "insurance," an adult woman will recover faster, and more completely, from a stroke.

As they progress through school, girls, on the whole, are superior in tests for verbal competence while boys do far better on spatial-perceptual tasks. Girls learn to read faster and are better at picking up foreign languages. Boys are far more proficient at, say, left-right discrimination, map-reading, and the manipulation of objects in space. Some scientists argue that male superiority in these areas may result simply from the way they are

*The study of the possible behavioral effects of sex hormones is complicated by the fact that there are three categories of them—*androgen*, *estrogen*, and *progesterin*—and all three are found in varying degrees in men and women.

brought up: Outdoor activity, sports, and so on would all contribute to a "sense of place." Other researchers, reviewing the evidence from "experiments of nature" and other endocrine anomalies, detect a direct biological cause.

Male superiority in mathematics—demonstrated in study after study—remains a puzzle. Newsmagazines talk loosely about a male "math gene." Until the release of a Johns Hopkins study of 10,000 students earlier this year, most specialists were inclined toward a cultural explanation: Girls fared poorly in math because they were never encouraged, by parents or teachers, to do well. Some 71 percent of boys elect to take math in high school. Only 63 percent of girls do.

While "socialization" is clearly a major factor, the Johns Hopkins study found that the male-female difference in mathematical aptitude was greatest among the boys and girls who were *best* at math. When the mathematical portion of the Scholastic Aptitude Test was administered to eighth graders with equivalent math preparation, half of the boys but not one of the girls scored above 600. It is possible that boys' math proficiency is related to their spatial-perceptual acuity, but again, whether this trait is biologically "primed" is a matter of debate.

Different Creatures?

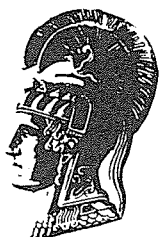
Women are far more sensitive than men to odors, tastes, and touch, as well as to extremes of light and sound. For example, they can detect Exaltolide (a musk-like odorant) when it is dispersed in quantities as low as one part per billion; the male threshold is 1,000 times higher. "It may be," conclude June Reinisch, Ronald Gandelman, and Frances Spiegel, "that males and females are essentially quite different creatures, whose perceptions of the world differ markedly even when confronted with similar physical environments."

It is not necessary to understand the origins of these differences in order to glimpse some of their down-to-earth implications, particularly for boys and girls starting elementary school. As some scientists and educators are beginning to point out, throwing both sexes together in a classroom and teaching them in the same way may be doing each sex an injustice.

Because of boys' greater spatial-perceptual skills and girls' superior verbal ability, it may be better to use the "look-say" method of teaching reading with the former and the "phonics" method with the latter. Schoolboys tend to be far more "hyperactive" than girls (95 percent of all clinically hyperactive children are male). One reason could be that the classroom envi-

THE PENTAGON'S BOLD EXPERIMENT

No other nation in history has moved so far so fast to *integrate* women into the military, traditionally a male precinct. Since 1972, the Pentagon has abolished the separate WACs, the WAVES, the Women Marines. It has admitted women into West Point and Annapolis (1976), ordered women to duty with the 82nd Airborne Division, sent them to sea (aboard non-combatant ships), and given them Air Force flight training. More often, women have been assigned to truck companies, logistics units, and Hawk missile crews. They are barred by statute or policy only from front-line combat, not from battle zones.



Why? Feminist lawsuits and congressional pressures followed the demise of the draft in 1972. The Army, in particular, found it hard to attract enough qualified, or even semi-qualified, male volunteers despite high monthly pay (now \$551). Restoring the draft was political suicide. Under Presidents Nixon, Ford, and Carter, Pentagon civilians saw using more women as a way to fill the gap. And today, 158,000 servicewomen account for roughly nine percent of total Army strength, 11 percent of the Air Force, seven percent of the Navy, four percent of the Marine Corps. Under Carter, the overall goal was 250,000 women, or 12 percent of all service personnel, by 1985.

Anthropologists, sociologists, psychologists have flocked to study this radical—but not total—shift toward a “gender-neutral” military force. Statistics piled up. A 1977 Brookings Institution study suggested that, in theory, women could fill close to one-third of all Army jobs and 94 percent of all Air Force jobs. Not to move further in this direction, said the authors, would deny American women “equal opportunities for social and financial betterment.”

As the studies went on, Army field commanders reported that the women were diligent, better educated, and better disciplined than were the males. However, they also discovered that women have babies; indeed, over the course of a year, Army women have a 14 percent pregnancy rate. Before 1975, pregnancy was cause for a woman's automatic discharge from the service. Now it is officially regarded only as a “temporary medical disability.”

ronment is oriented more aurally/verbally than visually. Opportunities for rambunctious young males to work off steam are few. In the early grades, at least, school is geared to skills that come naturally to girls. Ninety percent of the time, the teacher is also a woman. In later grades, when certain subjects with a

What this meant was that, in the field, unit leaders now had to ponder their women soldiers' pregnancy status and child-care problems when scheduling training or overseas deployment. In 1979, Jimmy Carter's Army Secretary, Clifford Alexander, warned U.S. commanders in Europe that, in case of Soviet attack, they would have to evacuate an estimated 1,700 pregnant Army soldiers from the war zone at once (along with more than 200,000 U.S. military dependents).

Army studies showed that pregnancy helped boost the 1979 attrition rate of first-enlistment women soldiers to 40 percent versus 31 percent for their male counterparts—exacerbating an already high overall dropout rate under the all-volunteer system.

Contrary to the expectations of feminists and Pentagon civilians, women enlistees showed little interest in signing up for Army specialties long reserved for males, such as truck-driving or tending missiles. When assigned to such "nontraditional" tasks, they re-enlisted at far lower rates than those women assigned to "traditional" women's work—in administrative, clerical, and health-care jobs—which could be pursued more easily later, in civilian life. (Indeed, men assigned to traditional women's tasks showed the same reluctance to stay on.)

Other matters were less susceptible to social scientists' statistical analysis. Congressional committees last year heard much testimony: about "fraternization," destructive of unit discipline, between senior males and junior females; instances of male GIs chivalrously doing the women's work in heavy-duty units—or harassing them; complaints that the presence of 300 women (among 4,000 male midshipmen) at Annapolis, long an incubator for male combat leaders, had led to a general "softening" and dual standards, resented by many men, of leadership, discipline, physical fitness. (The Marines segregate recruit training and much of officer training—and report high morale among both sexes.) Meanwhile, researchers argued that thousands of able-bodied men remained in rear-echelon office jobs where women could easily be substituted.

Last spring, under the Reagan administration, the Pentagon ordered a "pause" in the bold advance toward a largely "gender-neutral" Army, pending a major review of how well the new "non-traditional" use of women fitted the basic Army mission: readiness for combat.

heavy spatial-perceptual content are introduced—math and the sciences, for example—girls tend to lose their advantage. In these courses, too, the teacher is most often a man.

A radical overhaul of the educational system would cause more problems than it would solve. But some tinkering may be

in order. "The nerves that feed the brain," Virginia Woolf speculated in 1928, "would seem to differ in men and women, and if you are going to make them work their best and hardest, you must find out what treatment suits them."

The onset of puberty generally coincides with the three years of junior high school, but again the male-female timetable differs. In most girls, estrogen begins to build up in the body between the ages of 10 and 12; boys get their hormonal burst on average two years later. In both sexes, one result is a period of rapid physical growth, lasting for two to four years in girls and for six years or longer in boys—on into college.

Puberty is the second time in male and female lives that hormones exert a sudden, decisive, and unquestionable impact. In women, they control the onset of menstruation and regulate it thereafter until menopause. They determine the shape of the female pelvis and the level of body fat. (About 25 percent of the body weight of mature women is fat, compared to 14 percent for men.) Hormones spur sexual maturity in men and promote the growth of body and facial hair. The males' bones grow longer, their shoulders broader; they acquire 10 percent more heart and lung capacity than do females.*

Mirroring Society

During adolescence, the difference in verbal skills between men and women begins to narrow, but the gap in spatial-perceptual skills does not. Boys start getting better grades than girls do. Certain patterns in behavior and expectations continue to firm up. A window on these years is provided by the U.S. Department of Education's comprehensive *High School and Beyond* (1980), a survey of 58,000 secondary school students.

Not surprisingly, boys and girls in high school mirror the larger society. Already, the males have taken after-school jobs and entered the labor force in greater numbers than have the females; they are working longer at their part-time jobs (22.5 hours a week versus 18.6) and making more money (\$3.38 per hour versus \$2.99). By a margin of 64 to 41 percent, the boys are more likely to participate in school athletics; they have far more disciplinary problems. Girls are the mainstay of extracurricular activities other than sports. They spend more time reading (unless the reading matter is a newspaper) and talking on the

*All of this will give men an advantage in most sports—one that can be only partly offset by a woman's use of anabolic steroids (male hormones). In some sports, women excel. Their superior "fine motor" coordination makes them better shots at the target range. Women dominate long-distance swimming, thanks to their body fat (which gives them greater buoyancy and a layer of insulation) and their narrow shoulders (which lessen water resistance).

phone. (According to Ma Bell, the girls will, as adults, initiate 60 percent of all nonbusiness telephone conversations.)

What about the future? Both sexes see themselves taking "traditional" jobs—the girls lean toward teaching and clerical work, for example; the boys indicate a taste for managerial and blue-collar jobs. High school girls are more concerned than boys about "finding the right person to marry," high school boys are more apt to envision "having lots of money." More boys than girls look forward to having no children at all; more girls than boys hope to have "four or more."

Who Drives the Car?

Scholars trying to account for such persistent contrasts do not, typically, invoke the Y chromosome. The numerous biological differences between the sexes are, admittedly, suggestive. It is hard to deny that, somehow, they flavor the way men and women think and act, if only by ensuring that the sexes are attracted to each other physically—a matter of no little consequence. It is harder, however, to perceive a significant link between biological differences and the proportion of high school boys behind the counter at McDonald's. The fact is, sex-role "stereotyping" leaves an indelible mark on males and females. Cultures where this does not occur can readily be found only in science fiction.

Human beings, generation after generation, have had no trouble encouraging boys to "act like boys" and girls to "act like girls." This continues to happen even as sociologists relentlessly track down, isolate, and "weight" all the variables that contribute to the process. How important is it that little boys play with toy soldiers and little girls with dolls, how much do parents have to do with it, and what long-term effects does it have? In school, boys are typically criticized by teachers for behavior problems; girls for deficiencies in their academic work. What special difference does this make? No one really knows.

Cultural pressure obviously has a cumulative impact over the years. Combined, perhaps, with genetic factors, it leaves women, on average, less assertive than men, more sensitive emotionally, more disposed to tackle some academic subjects than others. Occupationally, it often channels men and women into different kinds of jobs and puts far heavier pressure on men to win social status and self-esteem in the workplace. Our culture's "reinforcement" conditions males and females in subtler ways: in their interactions with one another (who asks for a date, who drives the car); in their relative outspokenness when



Drawing by Charles Dana Gibson.

The Greatest Game in the World—His Move, by Charles Dana Gibson (1867–1944). It is still the male who asks for a woman's hand, still the female who allows him to believe the decision was entirely his.

members of the other sex are present; in the tensions and satisfactions they may experience on the job; in the way they deal, as consumers, with salesmen, merchants, repairmen.

For good or ill, both men and women respond more favorably to a male "voice of authority," whether it belongs to a traffic cop or a corporate executive. The way they read newspaper articles is conditioned, too, with certain types of stories—crime, fashion, foreign affairs—variously gaining enhanced credibility according to whether the by-line is a man's or a woman's. Advertisers, aided by psychologists, aim most of their TV commercials at the female psyche, not only because women still do most of America's shopping but also because they watch more television—nine hours and 29 minutes more per week in the 35-to-54 age bracket. Male and female political behaviors continue to differ, although the difference is not as pronounced as it once was.

Unfortunately, for a variety of reasons, the actions and attitudes of adult men and women have not been studied as systematically as those of children and adolescents. Up through high school, boys and girls share certain common experiences. They are sequestered for large parts of their lives in public institu-

tions. The federal government has long sponsored sophisticated studies of children's social and educational development. And childhood learning and medical disabilities—often a clue to sex differences—have always been a focus of attention.

The Coeducation Paradox

Adults are a more diverse lot, their lives more complex. We have plenty of general statistics about men's and women's jobs and education. But in-depth research necessarily focuses on smaller, more cohesive groups of individuals. Here, the availability of funding and the "relevance" of the subject tend to favor some groups over others: men and women at "elite" universities rather than those at community colleges; women executives "climbing the corporate ladder" rather than women on the assembly line (and most people on assembly lines are women). Especially since the rise of the women's movement, researchers have been more interested in females than in males—a propensity that is less pronounced when boys and girls are the object of study.

That said, the existing studies do raise some intriguing questions.

One example involves higher education. By 1970, the historic education gap between men and women had virtually been eliminated. On average, both sexes finished high school and about half a year of college. At the same time, however, many of the nation's elite schools—ranging from small colleges such as Haverford to universities such as Princeton—remained "male bastions." Angry voices were raised, and, during the 1970s, despite alumni grumbling, all of the elite all-male institutions that had not already done so opened their doors to women.

A decade later, scholars have begun to assess the impact. So far, at any rate, it appears that equality of opportunity is not necessarily the surest path to similarity of outcome.

The most comprehensive study of the effects of coeducation was sponsored by Brown University and published in 1980. It was based on a survey of 3,300 men and women at Barnard, Brown, Dartmouth, Princeton, the State University of New York at Stony Brook, and Wellesley. One major finding was that women at coed schools tended, in effect, to lose much of their worldly ambition. They majored in fields where women had always done well—the humanities, the arts, the social sciences. While men and women aspired to graduate school in equal numbers, in practice the women aspirants experienced significant attrition. They seemed, in sum, "to be adjusting their plans

downward" to a greater extent than were men students.

Shortly after release of the Brown study, the Women's College Coalition, a Washington-based association, reported that America's 118 women's colleges had recovered from a brief slump and recorded a net enrollment increase of 15 percent since 1970. Up to 30 percent of the women at many of these schools were majoring in math and science. The report's message, though never bluntly stated, was that women's colleges were still uniquely equipped to motivate women to excel in the courtroom, the operating room, the boardroom.

Nothing to Fear but Success

Why has this been the case? The most obvious explanation is that coeducation, while it erases the sexual differential statistically, enhances it in practice. Researchers have long known that boys and girls are most likely to make "cross-sex" curricular choices when they are educated separately. Studies in Britain have demonstrated, rather common-sensically, that boys in secondary school can become rather taken with French, fine arts, and even cooking—given the reinforcement of 30 other males in the class. Similarly, girls in British single-sex boarding schools show an unusual affinity for math, physics, and athletics when the only other men around are "the school chaplain, two gardeners, the boilerman . . . the part-time tennis coach, and the headmistress's male dachshund."

Matina Horner, the president of Radcliffe College, has observed in many women a "motive to avoid success," rooted in a belief that femininity and intellectual achievement are "desired but mutually exclusive goals." From grade school on, the women who do best academically tend to be more assertive and aggressive than their female peers, while just the opposite is the case with boys: Margaret Mead versus Mr. Chips. Coeducation injects sexual tensions into that equation. Women are competing against men but also *for* men. And coed schools are often suffused with "hidden" inequalities; the proportion of female faculty is invariably lower than it is at women's colleges (where 51 percent of the tenured faculty are women).*

Whether they are attending single-sex or coeducational schools, most college women *say* they are willing to put their careers above marriage and children. Indeed, a 1980 *Change* mag-

*What does coeducation do for *men*? Comprehensive studies have not been done. Anecdotal evidence suggests only that males, in general, spend more time and energy on social life at mixed-sex institutions. That single-sex education still appeals to some men is attested to by the existence of 111 all-male colleges.

azine survey found that college women are more likely than men (87 to 82 percent) to consider a career "crucial" to their happiness. The entry of large numbers of women into the labor force beginning in the late 1960s—whether in search of a "career" or just a "job"—is among the most significant phenomena of the postwar era. As Peter Drucker has written: "We are busily unmaking one of the proudest social achievements of the 19th century, which was to take married women *out* of the work force so they could devote themselves to family and children."

About 39 million adult women, including 55 percent of all mothers, now hold full- or part-time jobs. While half of them are still employed in "traditionally female" jobs—those like stenography or teaching elementary school, where more than 80 percent of all workers are female—women have made extraordinary gains in virtually every occupation. One-third of all accountants today are female (versus one-sixth in 1960); one-half of all tailors and bus drivers are women, as are 33.5 percent of law school students (compared to 3.6 percent in 1963). While women physicians (10 percent of all M.D.s) still tend to shun careers in aerospace medicine or orthopedics, they are coming to dominate other medical specialties, such as obstetrics-gynecology.

Dropping Out

The impact of all this on American society has been immense. One reason that the unemployment rate is so high—7.5 percent in September 1981—is not because women are taking jobs that would otherwise go to men but because 1.8 million women are out "looking for work," which is the U.S. Labor Department's threshold for inclusion in the labor force. For a full-time working mother, raising a family can become a severe challenge. No survey shows that menfolk do their full share of the housework. Of course, there may be compensations. Few intact families where both the husband and wife work are below the poverty line. (Some 51 percent of all married couples are "dual-earner" families.) But 21 percent of all working mothers are without husbands, and 44 percent of these are living below the poverty level.

The income of women who work full-time is only 59 percent that of men—relatively less than it was in 1955. But it is by no means clear how much sex discrimination or, more important, the concentration of most women in low-paying occupations (e.g., nursing) can account for the earnings gap. France, West Germany, and Sweden are all experimenting with programs that would diversify women's employment and thereby elimi-

U.S. MEN AND WOMEN: SOME COMPARISONS

Health Women have a marked advantage in longevity over men—77.1 versus 69.3 years in the United States. In any given year, twice as many men as women die of heart disease, 50 percent more die of cancer. However, the average American woman pays two more visits to the doctor than a man does every year, and, as a group, females undergo 5 million more operations annually than do males. Throughout the industrial world, women evidence a far higher recorded incidence of depressive psychoses and psychoneuroses. But most alcoholics are men, and males have a 290 percent higher suicide rate than females.

Education There are currently more women than men in college (5.9 versus 5.7 million) but somewhat more men than women in graduate or professional school (862,000 versus 709,000). While women stay numerically abreast of men through the master's degree level, males earn about 70 percent of all Ph.Ds. Fewer than 13 percent of doctoral degrees awarded in 1980 in mathematics or the physical sciences were granted to women.

Crime For all races, ages, and income levels, men are far more likely to commit a criminal act than are women (except for prostitution); only one out of five serious crimes—murder, robbery, arson—are committed by women. In 1979, some eight million arrests were made for various offenses; women accounted for 1.3 million of them. But women's arrest rates are growing in virtually all nonviolent categories and, overall, are rising faster than men's. Some of women's gains reflect increased employment opportunities—e.g., the 24 percent increase in embezzlement by females in 1979.

Employment Of 98.8 million working Americans, 38.9 million are women. Men and women are represented in every occupational category, but the percentages vary. Only one percent of the nation's 48,000 kindergarten teachers are men; only 0.01 percent of the 554,000 auto mechanics are women. Contrary to popular belief, the earnings gap between men and women is greatest in traditionally male jobs (law, medicine), smallest in traditionally female jobs (teaching, nursing).

Politics Men were more likely to go to the polls than women until the 1980 election, when women cast slightly more than their share of the 86.5 million votes for President. On balance, women lean more toward the Democratic Party than do men and are more likely to consider themselves liberals. The margin, however, is slight. Whether a political candidate is a woman does not seem to affect the way men or women cast their ballots. This was not always so. Through the 1950s and '60s, women tended, disproportionately, to shun candidates of their own sex, for reasons that remain unclear.

nate the "parallel labor market." But such experiments fail to address a central problem: Female labor force participation slumps deeply between the ages of 25 and 35 as women bear and rear their children. As economist Lester C. Thurow observes, "If there is any one decade when it pays to work hard and be consistently in the labor force it is the decade between 25 and 35." This is when lawyers become partners, academics get tenure, blue-collar workers become supervisors or acquire new skills, and businessmen move onto a "fast track." "For those who succeed," Thurow says, "earnings will rise rapidly. For those who fail, earnings will remain flat for the rest of their lives."*

The XYZ Affair

All of women's gains during the past decade have not erased this basic fact. Nor has the advent of effective contraception, which made *regular* employment possible for many women, dampened the urge to bear children. Increasing numbers of women, who entered the labor force five or 10 years ago telling pollsters and reporters that the most important thing to them was proving themselves on the job, can now be found proudly showing off their new babies in the maternity wards.

The *Wall Street Journal* reported recently on firms that were being disrupted by a wave of pregnancy leaves at the managerial level. Between 1972 and 1980, the number of women in their 30s having children grew from 57,000 to 104,000. The mean age of mothers at Chicago's Northwestern Memorial Hospital is now 33. Many women-executives-turned-mothers drop out of the labor force until their children have grown up; of those who return to work right away, a large proportion opt for a "slower track."

The phenomenon is not confined to the executive suite. In 1980, Carl Hoffman and John Shelton Reed reported on the strange case of the XYZ Corporation. XYZ (the pseudonym for a "Fortune 500" company) had been charged by several female employees with sex discrimination and taken to court. It seemed to be an open and shut case: While 82 percent of entry-level clerical jobs in the company were held by women at XYZ, their promotion rates lagged far behind men's.

Hoffman and Reed found, however, that the female clerks were far more likely than the males to be content with their present jobs. When asked if they would like a promotion, only 43

*Part of the current earnings gap—an unquantifiable part—is a statistical artifact resulting from women's recent *gains* in the labor force. Because millions of young women are just starting out—often in jobs traditionally held by young men—their wages and salaries reflect entry-level status. Young women account for 13.5 percent of Harvard's Faculty of Arts and Sciences but hold only 3.3 percent of the 356 tenured chairs—so far.

percent of the women (versus 74 percent of the men) said yes. The tendency was most pronounced among women who were married. Fearing that enhanced responsibility would cut into the time they could spend with their families, only 12 percent of them ever sought a promotion. They rarely worked overtime.

Theory vs. Reality

“Even after all discrimination, blatant and subtle, is eliminated,” the authors conclude, “‘imbalances’ will persist as a result of the tendencies of men and women to make different choices, even when given the same range of alternatives to choose from.” In Sweden, women are far more likely than men to pick jobs with shorter workdays when given the choice. In America, some 75 percent of all part-time jobs are held by women, and 29 percent of all working women work part-time.*

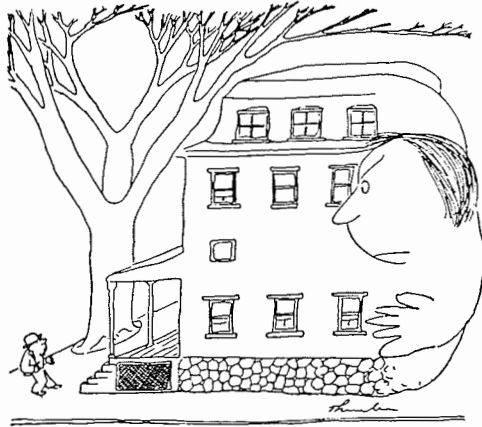
This raises some thorny questions about “affirmative action.” Viewed in the aggregate, men and women demonstrate different attitudes toward work. If only because their careers are not interrupted by pregnancy, men, as a group, advance faster than women, as a group. And, again as groups, men and women variously favor some occupations and shun others; not in our children’s lifetime will half of all physicists be women. In light of all this, how realistic are numerical hiring and promotion goals for corporations, factories, universities? As some scholars note, it may be that the chief problem now is at the level not of aggregates but of individuals: ensuring true equal opportunity for those women whose ambitions *do not* conform to the norms of their sex; who are determined, whatever the cost, to compete with men in occupations that may always be dominated by men.

Over time, at least two choices that working women must make have far more ramifications than the same choices when faced by men: whether to get married; whether to have children. It is probably no coincidence that a 1976 Harvard University survey of its junior faculty revealed that 61 percent of the institution’s married women professors had no children compared to only 32 percent of their male peers. It is perhaps no coincidence, either, that virtually every male chief executive officer of a major American company is currently married, while 54 percent of the female CEOs are divorced or never married.

*This difference in motivation—or in priorities—also shows up when men enter “traditionally female” jobs. It is a little noticed phenomenon, but between 1972 and 1978, the number of male secretaries rose by 24 percent, telephone operators by 38 percent, and nurses by 94 percent. (Their total numbers are still small, however.) According to the *Wall Street Journal*, the men in these jobs are often getting promoted faster than the women.

Home, by
James Thurber
(1894–1961). Do
women still rule the
roost? Possibly. But
in only 33 percent of
married couples does
the husband go off to
a job while his wife
stays at home.

Copyright 1942 James Thurber; copyright
1968 Helen W. Thurber and Rosemary
T. Sowers, from *Men, Women and Dogs*.
Published by Harcourt Brace Jovanovich.



There are, perhaps, other kinds of tradeoffs. A recent study of 123 women who graduated from business schools in 1977 and 1978 found that they were “paying a price” for success. They demonstrated significantly more stress than their male colleagues, much of it due to worry about how things were going at home. (Other studies, however, suggest that holding a job may improve a woman’s mental health.) Although it is impossible to say whether more employment has anything to do with it, women’s overall *physical* health has deteriorated relative to men’s during the past 30 years. They are suffering from more ulcers and respiratory ailments than ever before. They have not been as quick as men to quit smoking. “Adult women,” writes the University of Michigan’s Lois M. Verbrugge, “are adopting lifestyles which bode ill for their longevity.” They are, in short, behaving more like men.

We do not live in an ideal world and rarely agree on what an ideal world would be. Even when we do agree on some incremental “improvement,” it is generally difficult to bring about. For example, every bit of poll data indicates much rethinking by employers, employees, and ordinary citizens about the relative capabilities of men and women. The old notion that “a woman’s place is in the home” finds a dwindling number of adherents. If the Gallup Poll’s measure of people’s ideals were an accurate reflection of their behavior, the National Organization for Women might have disbanded long ago for lack of new fields to conquer. In fact, as everyone knows, human beings take a more personal, less abstract approach to their own lives. “Give me chastity,” St. Augustine prayed, “but not yet.”

At a time when many popular attitudes are slowly, unevenly changing, when legal and social barriers to women's autonomy and advancement are falling, and when American society is patiently absorbing the resultant aftershocks, it is sometimes easy to overlook the things that never change. Men and women still manage to fall in love, still seem to draw some special comfort from one another that they don't get from their own sex. They still get married and have children, and enjoy their little boys and girls in different ways. Having both a mother and a father at home is still the best way for a child to grow up; single-parent households are, statistically, candidates for trouble and, collectively, a troublesome burden on the larger society. Biology aside, despite the misunderstandings and injustices they have imposed, differences between the sexes contribute something vital to our lives and essential to our civilization. For most people, in the end, being male or female is not a circumstance to be overcome but one to be savored, and the odds are good that this useful sentiment will long survive.

A NOTE ON SOURCES: This essay has been drawn from more than 100 studies published in scholarly journals during the past decade, as well as from numerous books (treated in the Background Books essay), and from reports appearing in the *New York Times* and the *Wall Street Journal*. The most useful studies for the general reader include the following: nine articles in a special issue of *Science* (Mar. 20, 1981) on the current understanding of sex differences with respect to ontogeny, phenotype, and hormone-sensitive actions; Gini Bara Kolata, "Sex Hormones and Brain Development," *Science*, Sept. 7, 1979; June Machover Reinisch, "Influence of Early Exposure to Steroid Hormones on Behavioral Development," paper delivered to the Postgraduate Assembly of the Endocrine Society, New York, N.Y., Oct. 1980; Eleanor E. Maccoby and Carol Nagy Jacklin, "Sex Differences in Aggression: A Rejoinder," *Child Development*, no. 51, 1980; Camilla Persson Benbow and Julian C. Stanley, "Sex Differences in Mathematical Reasoning Ability: A Five-Year Longitudinal Study," The Johns Hopkins University, Baltimore, Md. (1980); Sandra F. Witelson, "Sex Differences in the Neurology of Cognition: Psychological, Social, Educational, and Clinical Implications," in E. Sullerot, ed., *The Feminine Situation* (1981); U.S. Dept. of Education, *High School and Beyond: A Capsule Description of High School Students* (1980); Brown University, *Men and Women Learning Together* (1980); Women's College Coalition, *A Study of the Learning Environment at Women's Colleges* (1981); Warren E. Miller, Arthur H. Miller, and Edward J. Schneider, *American National Election Studies Data Sourcebook, 1952-78* (1980); Carl Hoffman and John Shelton Reed, "Sex Discrimination?—the XYZ Affair," *The Public Interest*, Winter 1981; Laraine T. Zappert and Harvey M. Weinstein, "Sex Differences in Adaptation to Work," paper delivered to a meeting of the American Psychological Association, Montreal, 1981; Kathleen V. Shea, "Psychological Health of High-Achieving Women Executives," Northwestern University (1979); Ronald C. Kessler and James A. McRae, Jr., "Trends in the Relationship Between Sex and Psychological Distress: 1957-1976," *American Sociological Review*, Aug. 1981; Lois M. Verbrugge, "Recent Trends in Sex Mortality Differentials in the United States," *Women and Health*, Fall 1980. All statistical data on employment and education are from the U.S. Department of Labor and the U. S. Department of Education.

THE SEXES AND THE LAW

by A. E. Dick Howard

Given the infinity of reasons why men and women may invoke the law, it is intriguing to discover that eight of the opinions handed down by the U.S. Supreme Court during the term ending in 1981 turned directly on issues of gender.

In fiscal year 1981, the Equal Employment Opportunity Commission filed 129 sex discrimination suits and processed 2,303 complaints lodged under the Equal Pay Act. Several hundred "palimony" suits were working their way through the courts. An Oregon man was charged by his wife with rape (but acquitted). All around the country, groups such as the Women's Legal Defense Fund approached legislatures and the bench to combat sex discrimination—on the job, in academe, at the bank—and to press their various views on women's status generally. Small counter-organizations of men began to appear. During the 1970s, in short, gender moved into the courtroom, vying for the place occupied by race the decade before.

Today, it is sometimes hard to see the forest for the trees. Legal relations between the sexes—and the various rights and obligations of men and women *as* men and women—are codified in thousands of federal, state, and local laws, in a maze of bureaucratic regulations, in union contracts and university guidelines. These vary widely. And, owing to pressures from women and men, the rules of the game are always being modified. Thus, while most Americans can hardly be unaware that matters of gender have become courtroom issues, it is difficult to get a clear sense of what *has* happened during the past decade or so and what *has not*. Some perspective is in order.

The legal status of women during the 19th century, in America as elsewhere in the world, was one of considerable inequality. Women could not vote or sit in legislative bodies, and they were absent from bench, bar, and jury. The rights of a married woman (for example, over the property she might have brought to the union) were severely circumscribed. The old Blackstonian precept was invoked—that a woman's "very being . . . is suspended during marriage." In law, husband and wife were one, and the husband was The One.

Such strictures were not whimsical, even if they were misguided. "Nature," wrote physician Alexander Walker in 1839,

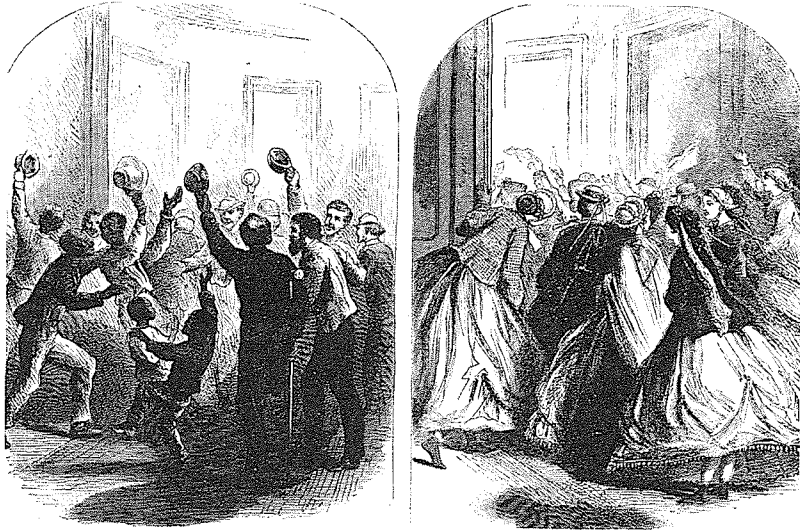
“for the preservation of the human species, has conferred on woman a sacred character to which man naturally and irresistibly . . . renders a true worship.” In the conventional (male *and* female) view of the time, women, however influential or capable in the home, needed to be insulated from certain worldly pressures and duties. Sometimes, they merited special legal protections that men were not granted. In *Muller v. Oregon* (1908), the Supreme Court upheld a state law limiting a woman’s workday to 10 hours, despite the fact that in 1905 it had struck down a similar law that applied to both men and women. In the event of divorce, women were given preference in child custody, and family support was presumptively the father’s obligation.

Unrest at Seneca Falls

There was, then, a certain philosophical consistency uniting these restrictive and protective measures: a belief in the uniqueness of each sex, and thus in the special role played by each in society. To shield women, especially mothers, from some of the economic and physical stresses of the 19th-century world was regarded as “enlightened” by the liberals of the day. That women of all ages and experience were also barred from full participation in politics was simply not seen by many members of either sex as a matter of much urgency.

Some women were, of course, restless under such a regime. In 1848, the first women’s rights convention in the United States was held at Seneca Falls, New York, and Elizabeth Cady Stanton’s litany of complaints focused in particular upon women’s unequal legal status. The Seneca Falls delegates met during the same year that abortive socialist uprisings were sweeping Western Europe. Each had about the same immediate impact on the formal social order, which is to say virtually none. In the aftermath of the American Civil War, Congress passed and the states ratified the Fourteenth Amendment (1868), securing the legal rights of the newly freed slaves, but not disturbing the existing

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From Harper's Weekly, April 28, 1866. Library of Congress.

The Fourteenth Amendment passed in 1866, guaranteeing blacks' civil rights. Feminists rejoiced. If race was irrelevant, could sex be far behind?

status of women. Indeed, Section 2 spoke specifically of "male citizens," and some women opposed ratification of the amendment hoping to forestall the first appearance of the word "male" in the Constitution.

During the next nine decades, the Supreme Court heard only a few cases involving the rights of women, and its decisions amounted to a string of rebuffs. In *Bradwell v. Illinois* (1873), the Court upheld Illinois's power to prohibit women from practicing law. Two years later, the Justices ruled that male-only suffrage did not infringe upon women's rights as citizens. In 1948, in *Goesart v. Cleary*, the Court upheld a Michigan law providing that a woman could obtain a bartender's license only if she were the wife or daughter of the male owner of a licensed liquor establishment. And in *Hoyt v. Florida*, the Supreme Court readily affirmed the constitutionality of a state law that provided, in substance, that no woman would serve on a jury unless she volunteered for duty. That was in 1961, the first year of John F. Kennedy's New Frontier.

Lest one lose perspective, we should recall that, outside the area of race, the Court was slow to use the Fourteenth Amendment's "equal protection" or "privileges and immunities"

clauses to limit government power in general. Mrs. Bradwell's effort to invoke the privileges and immunities clause failed, but so did virtually every *man* fail who tried to gain redress by invoking the same clause. Still, the Court's decisions on gender distinctions were flavored by assumptions about woman's "separate place." A classic example is Justice Joseph B. Bradley's concurring 1873 opinion in *Bradwell*: "The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."

Later, during the years of the "activist" Warren Court (1953–69), when the Justices were employing the equal protection clause to achieve sweeping change in legislative reapportionment, civil rights, and criminal justice, distinctions based on gender were allowed to stand.

It was not until the 1970s that the Court began to use the Constitution to redress sex discrimination. By then, Presidents, Congresses, and state legislatures had been dealing with the matter for a decade, setting in place a variety of measures that dramatically altered the legal perquisites of women.

In terms of Washington's formal recognition that sex discrimination was a problem, impetus was provided by President John F. Kennedy's Commission on the Status of Women (1961), chaired by Eleanor Roosevelt. The commission urged women's groups to start challenging discriminatory laws in the courts and to press their claims in Congress. One result was the Equal Pay Act of 1963, which established the principle of "equal pay for equal work." The next year, Title VII of the Civil Rights Act prohibited discrimination on the basis of both race and sex (although the words "and sex" had been added to the bill at the last minute by Southern Congressmen who believed, wrongly as it turned out, that this broadening of the act's coverage would ensure its defeat). In 1967, President Lyndon B. Johnson amended Executive Order 11246 to extend "affirmative action"—a notion first introduced by Kennedy—to women.*

Under President Richard M. Nixon, the Equal Pay Act and the Civil Rights Act were strengthened. In 1972, Congress passed an Equal Rights Amendment, sought by women's groups since 1923, and sent it to the states for ratification.† Meanwhile, anti-

* As originally conceived by JFK, affirmative action meant little more than that business corporations should recruit at black colleges and establish informal ties with minority organizations. The concept has, of course, evolved since then into a controversial, complex compensatory scheme characterized by numerical "goals" and "timetables" set by bureaucrats, legislatures, and courts.

† Section 1 of the amendment states simply that "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

discrimination provisions routinely began appearing in such diverse legislation as the Comprehensive Employment and Training Act (1973), the Crime Control Act (1973), and the Disaster Relief Act (1974).

These federal efforts came at a time when new or revived controversies—over contraception, abortion, sexual permissiveness, women's obligations to self and family—were beginning to emerge and as books such as Betty Friedan's *The Feminine Mystique* (1963) and Kate Millett's *Sexual Politics* (1971) were helping to rekindle and fortify a long dormant "women's liberation" movement. The National Organization for Women was founded in 1966, just as a massive new influx of women into the job market was beginning.

Is Sex Like Race?

Not surprisingly, by the early 1970s, challenges to gender distinctions were finding their way to the Supreme Court's calendar in record numbers. The Burger Court's response, at first, was tentative.

In equal protection cases, the Warren Court had evolved a "two-tiered" standard. In all cases involving racial discrimination, the Court closely scrutinized a challenged state action, putting the burden of proof on the state to justify the use of a racial classification by showing some "compelling state interest." Such a standard was virtually impossible for a state to satisfy. In other equal protection cases, however, the Court applied a much more permissive test: Was there a "rational basis" for the classification? This standard was quite easy to satisfy.

In the sex discrimination cases coming before the Burger Court, a key question was whether classifications by sex should be judged by the same "strict scrutiny" standard that applied in race cases.

In 1973 (*Frontiero v. Richardson*), four Justices argued for just such a standard. They contended that sex, like race, is an immutable characteristic; that sex frequently bears no relation to ability; and that gender classifications were inherently suspect. While a majority of the Justices in *Frontiero* refused to embrace strict scrutiny, they did strike down the challenged law—a federal statute automatically allowing a serviceman to claim his wife as a dependent, but requiring a servicewoman to prove her husband's actual dependency in order to claim him. Obviously, something was in the wind.

Since 1973, cases involving alleged gender discrimination have crowded the Court's docket. In most of these, the Court has

STATE ERAs: GUIDE TO THE FUTURE?

Proponents of a federal Equal Rights Amendment contend that ERA would give courts "a clear basis for dealing with sex discrimination." They often point to the record of states that have adopted equal rights amendments to their own constitutions. In fact, the impact of state ERAs is not so clear-cut.

All told, 17 states now have constitutional provisions prohibiting gender-based discrimination. Ironically, four of these states have refused to ratify the federal ERA; two of them never ratified the Nineteenth Amendment, which gave women the vote in 1920.

Application of home-grown ERAs differs from state to state; some states without such amendments are more progressive than are some states that have them. Virginia's judges have taken a tolerant view of gender distinctions, despite the clear legislative intention in 1971 that the state's new ERA be strictly interpreted. Yet courts in California, which has no ERA, have methodically struck down sex-based statutes, without any explicit constitutional basis for doing so.

In some states, judges rely on the "rational basis" requirement: To be constitutional, a law with gender-based distinctions need only bear a rational relation to a legitimate state objective. This renders a state ERA virtually irrelevant. Thus, the Louisiana Supreme Court in 1975 (*Louisiana v. Barton*) rejected the argument of a husband, charged with "criminal neglect" of his wife, that the relevant statute violated the state's ERA because it applied only to men. "It presently remains a fact of life," the justices concluded, "that . . . the husband is invariably the means of support for the couple."

In other ERA states, judges apply a stiffer "strict scrutiny" test. The Illinois Supreme Court, for example, in 1974 declared unconstitutional the principle of "maternal preference" in child custody awards, even when children of "tender age" are involved (*Marcus v. Marcus*). Courts in Pennsylvania and Washington have struck down laws prohibiting interscholastic athletic competition between boys and girls. (Contact sports were not exempted—as they are in federal anti-discrimination regulations.)

By and large, state courts have reflected the piecemeal approach of the U.S. Supreme Court, judging cases on their merits and applying no rigid principles, regardless of the existence of state ERAs. Absolute "equality" has sometimes yielded to a woman's (or man's) right to privacy. Five ERA states have upheld a sex-based definition of rape, citing women's "unique physical characteristics." The chief impact of state ERAs has been to goad legislatures into rewriting laws. Courts have not been flooded by lawsuits.

When people *have* gone to court, a state ERA has tended to be what the courts made of it. What they made of it was often patterned on principle but stitched with the "facts of life."

upheld the "equal rights" claim. In so doing, the Justices have struck down laws that, for example, required women school teachers to take mandatory pregnancy leaves, virtually excluded women from juries, and assigned different ages of majority to men and women. During the 1978 term, eight Supreme Court cases involved sex discrimination. In six of them, the ruling favored the claim alleging sex discrimination. Some of these cases, interestingly, were brought by men. Thus, in *Orr v. Orr*, the Court struck down an Alabama law stipulating that only husbands could pay alimony.

While moving to an "intermediate" level of scrutiny—demanding that gender classifications be justified not simply by pointing to a "rational basis" but by showing that they serve "important governmental objectives"—the Court has stated that distinctions based on sex *may* be valid if they are somehow compensatory. Thus, in 1974, the Court upheld a Florida law granting a \$500 property tax exemption to widows but not to widowers; Justice William O. Douglas concluded that the statute was "reasonably designed to [cushion] the financial impact of spousal loss upon the sex for which that loss imposes a disproportionately heavy burden." A year later, in *Schlesinger v. Ballard*, the Justices rejected a male naval officer's attack on a military "up-or-out" promotion system giving a female a longer time in grade before being discharged for want of promotion.

In more recent decisions, however, the Court has been somewhat stickier about requiring proof that a scheme of preference really is intended to be compensatory. *Orr v. Orr*, the alimony case cited above, is an example. Justice William J. Brennan, Jr. noted in his opinion that such statutes *favoring* women risk "reinforcing stereotypes about the 'proper place' of women and their need for special protection."

The Abortion Cases

Some of the most controversial rebuffs to female litigants have come when the Court has decided that a certain classification is not based on gender at all. In *General Electric v. Gilbert* (1976), the Court affirmed the legality of an employee insurance plan that excluded pregnancy-related disabilities. The Justices reasoned that the exclusion divided beneficiaries into two groups based not on *sex* but on *pregnancy*, with the "pool" of nonpregnant persons including both men and women. In 1979, the Court upheld a Massachusetts law giving veterans preference (in hiring by government), contending that the classification was based on military service, not sex; as it happened, only

two percent of veterans in Massachusetts were female.

Allegations of sex discrimination by no means exhaust the gender cases coming before the Supreme Court. The most important single decision by the Burger Court involving the status of women is surely *Roe v. Wade* (1973), affirming a woman's constitutional right to have an abortion during the early stages of pregnancy. Predicated on the notion of a woman's right to control her own body, *Roe* has enormous implications as a measure of contemporary thinking about the status of women. This decision was bolstered in *Planned Parenthood of Missouri v. Danforth* (1976), when the Justices declared, among other things, that a husband has no right to veto a wife's decision to have or not have an abortion. Should a man be liable for support of a child he did not want and which a woman insisted upon having over his objections? This touchy issue is now cropping up in lower courts.

Three Steps Back

The Supreme Court has also decided a series of "personal autonomy" cases, holding that certain intimate decisions (e.g., the use of contraceptives, even by minors) are protected by the Constitution. Because so many of the autonomy rulings relate to family life and childbearing, they tend to reinforce the change in thinking about women's place in society generally.

All told, the Supreme Court's equal rights and sex discrimination cases point up the sociological interplay between court and country. This is not to say that the Justices follow the election returns; that is a notion that distorts the reality of the judicial process. Yet, while the Court may not veer with the weather of the day, it is affected by the climate of the age. Changes in America's social values will ultimately be acknowledged in Supreme Court decisions.

An obvious question, then, is what effect the recent upsurge in conservative sentiment will have on future court cases. Affirmative action regulations, for example, which continue to stir considerable resentment among businessmen and educators, are part of the red tape the Reagan administration has vowed to trim. The Equal Rights Amendment, which got off to a fast start a decade ago, has now bogged down.

Some of the Supreme Court's most recent decisions seem to indicate a retrenchment of sorts. While standing by their 1973 abortion decision, the Justices ruled in 1977 that neither the states nor Congress is obliged to fund nontherapeutic abortions with public money and that public hospitals could refuse to per-

form such abortions. In 1980, the Court upheld the Hyde Amendment, which cut off federal funding for most abortions.

In the area of sex discrimination specifically, the 1980 Court term yielded several decisions that some see as signaling a new direction. In the most noted case, *Rostker v. Goldberg*, the Supreme Court upheld the constitutionality of all-male draft registration. Although Justice William H. Rehnquist invoked "intermediate scrutiny," he upheld the federal law by raising the question of whether, for the purposes of the statute, men and women are "similarly situated." For military purposes, Rehnquist concluded, they are not, because various laws and policies bar women from serving in combat. Earlier in the same term, Rehnquist had written a decision (*Michael M. v. Superior Court of Sonoma County*) rejecting a constitutional challenge to a California law punishing men, but not women, for having sex with an under-age partner. There, too, he invoked the "similarly situated" criterion—only women can get pregnant. In a third case (*Russell v. Russell*), the Court held that a military pension, as the "personal entitlement" of the person who earns it, may not become part of the property settlement in a divorce.

While the National Organization for Women has complained that such decisions give a "governmental imprimatur" to sex discrimination, none of these cases necessarily undermines the position staked out by the Court in its previous rulings. In two of the three cases—those involving rape and draft registration—men were the alleged "victims," charging that *their* rights were being violated. The pension case, like the earlier Massachusetts veterans preference case, did not turn on a gender distinction at all, the Justices concluded. Moreover, the draft decision stemmed largely from the Court's historic reluctance to intervene where Congress has made judgments about military preparedness.

Room to Maneuver

The outcome of another sex discrimination case decided by the Court in the same term offers evidence that the Justices are not backing away from a basic commitment to equal rights. In *County of Washington v. Gunther* (1981), the Court rejected the argument that in suits alleging job discrimination brought under Title VII of the Civil Rights Act of 1964, a plaintiff must limit his or her claim to seeking "equal pay for equal work"—the standard set by the Equal Pay Act of 1963. Rather, the Court said, litigants are also free to sue for equal pay for "comparable" work. (*County of Washington* was brought by "matrons" in Ore-



Our case for sex discrimination.

Aetna Life & Casualty.

Treating men and women equally can be unjust, argues Aetna Life & Casualty in this 1981 advertisement. "Consider the nearly double crack-up rate of male drivers 25 and under versus female drivers 25 and under." With unisex rates, "Sister Sue would pay 40 percent more for auto insurance. Brother Bob could pay 20 percent less. Unfair!"

gon who guarded female prisoners and were paid \$200 less per month than male "deputies" who guarded male prisoners.) The Court's decision here could pave the way for a series of "comparable worth" lawsuits.

In its case-by-case adjudication of sex discrimination issues, the Supreme Court during the 1970s articulated no broad new concept of the Constitution. However, several generalizations emerge from the decisions of the past decade that at least provide some useful guidelines.

First, the Court has greatly curbed legislative power to pass laws embodying gender distinctions where there is no "important government objective." Today, there is no legitimate state objective in keeping women off juries or out of bars, any more than there is in keeping them away from the polls. As a result of the abandonment of old stereotypes, hundreds of suspect state and federal laws have been wiped off the books. This constitutes a minor revolution.

Second, the Court has determined that there may exist a compelling state interest in treating women more favorably than men—to compensate for the effects of past discrimination. However, it has applied this notion fastidiously, leaving ample room for men to challenge laws that, in certain circumstances,

benefit females but not males who are similarly situated.

Third, implicit in much of the above, the Court has affirmed the legislature's right to make *some* distinctions based on gender—when an important governmental objective is at stake. In *Parham v. Hughes* (1979), the Justices upheld a Georgia law that only the mother of an illegitimate child could sue for its wrongful death. Observing that paternity but not maternity may be in doubt, they reasoned that Georgia had a legitimate interest in preventing spurious lawsuits. As Justice Lewis F. Powell, Jr. has written, discrimination by sex is not “inherently odious,” and the Court recognizes the remaining room for legislative judgment in this area.

So far, the Supreme Court has not reviewed the issue of sex-based differences in insurance rates and pension benefits. In general, women enjoy lower premiums than men on life insurance (because they live longer); women under age 25 pay less for automobile insurance than their male counterparts (because they have about 50 percent fewer accidents). They pay more for disability insurance than do men (because their average claims tend to be higher, until age 60). Because women have a longer life-span, on average, than men, the monthly payments they collect after retirement on an annuity may be less than those of a man who paid the same premiums for the same period of time. All of these differentials are based on “actuarial” tables that are continually revised by insurance companies; state regulatory agencies have by and large upheld them in principle, though often insisting on specific modifications.

The Limits of Competence

If the Supreme Court has enunciated no sweeping “one man, one vote” kind of doctrine in the area of gender, it is because the issues involved are so complicated and the principles are rarely clear-cut. “Important state interest” is not an unequivocal standard, for it can mean different things at different times. Some of the laws that the Court has lately struck down might once have satisfied that standard. When fewer women worked outside the home and those who did could barely earn a living, it was hardly bizarre to burden a husband as a matter of course with the obligation to support his wife in the event of divorce. One day's “enlightenment” is the next day's anachronism. Affirmative action, for example, will be defensible only so long as lawyers for women's groups and racial minorities can convincingly invoke the continued “effects of past discrimination.”

Society is not static, and no bill of rights for women (or

men) will settle every issue of gender distinctions forever. A gray area will always exist where what is "right" or "wrong" is a matter of judgment. When, in 1976, the Supreme Court overturned Oklahoma's two-tiered drinking age—a higher one for men than for women—it did so largely because the state was unable to show that men were responsible for significantly more alcohol-related traffic accidents than women (the justification for the law). But what if the male accident rate had, in fact, been shown to be 500 or 1,000 times greater than that of women?

Would the Court, for that matter, have acted differently in *Roe* if the theory of fetal "viability" had been radically altered by routine test-tube conception? Would the Justices have decided what they did in *Parham* if a foolproof medical test for paternity had been available? One need not answer such questions to recognize that changing realities set certain limits on judicial capability to make final determinations. The law can be an effective spur to shifts in human behavior, but changing behavior just as often leads to shifts in law. Moreover, not all of the restrictions or protections that assigned 19th-century women a "special place" were codified in statutes, just as not all, or even most, of women's recent gains in the workplace or in access to graduate schools can be laid at the door of Congress or the Supreme Court.

The Court was never meant to act as a social barometer, but it does not exist in a vacuum. Nor does the law. Eleanor Smeal, president of the National Organization for Women, recently predicted that if the Equal Rights Amendment failed of ratification, and women consequently had to fight sex discrimination on a case-by-case basis, "we'll be working on this until the year 3000." In fact, we'll probably be working on such issues until, and beyond, the year 3000 anyway. The courts will repeatedly have to determine, in real-life cases, where circumstances are as complicated as men and women can make them, what constitutes "equal rights" in practice, what constitutes "abridgment" of those rights, and when such rights may have to be qualified in light of other social interests.

We will not, I believe, ever retrace the major legal steps already taken. But, on occasion, as realities dictate, the law will continue to view men and women differently, no matter how "differently" may be defined as time goes on.

BACKGROUND BOOKS

MEN AND WOMEN

As long as there are men and women, there will be an audience for books about men and women. Most of the studies now in print embrace a general principle amiably enunciated by James Thurber and E. B. White in **Is Sex Necessary?** (Harper, 1929; 1975, paper; Queen's House, 1977, cloth): "While the urge to eat is a personal matter which concerns no one but the person hungry . . . the sex urge involves, for its true expression, another individual. It is this 'other individual' that causes all the trouble."

The chief focus of historian Carl Degler's **At Odds** (Oxford, 1980) is on the *modus vivendi* that evolved between the sexes during the 19th and early 20th centuries. Citing letters, diaries, medical writings, and other evidence, he disposes of several myths: that the Victorians shrouded sex in a "conspiracy of silence"; that the "cult of domesticity," which kept middle-class women in the home, was a kind of male conspiracy.

Rather, Degler shows, women championed domesticity—and solidified their control over all aspects of family life. They wielded their moral authority to combat prostitution, alcohol abuse, and the exploitation of working-class women.

As for sex, what restraint there was represented a strategy by women to free themselves from unwanted pregnancies. Aided by doctors, 19th-century wives also experimented with birth control and abortion, though without consistent success.

All of this coincided with the first feminist movement in Europe and America. "We have had the morality of submission and the morality of chivalry and generosity," wrote phi-

losopher John Stuart Mill in **The Subjection of Women** (Appleton, 1869; MIT, 1970, paper). "The time is ripe for morality of justice."

Mill's essays on the unhappy status of women went far beyond most feminist rhetoric of the day. Law was not the only villain, he contended; rather, the most basic relationships between men and women—e.g., within marriage and the family—cried out for overhaul. His was a decidedly "modern" view, anticipating such books as Simone de Beauvoir's **The Second Sex** (Knopf, 1953, cloth; Random, 1974, paper), and Kate Millett's **Sexual Politics** (Doubleday, 1970, cloth; 1971, paper).

Millett's book, widely acclaimed at the time, is wide-ranging, even diffuse. Drawing on Henry Miller, Sigmund Freud, and Nazi Germany, as well as on research in biology and psychology, Millett argued that sexual domination (by men of women) was "the most pervasive ideology of our culture."

She predicted, rightly, that issues of gender would have political implications; wrongly, that women would join blacks and students "in a growing radical coalition" to bring forth "a world we can bear out of the desert we inhabit."

Most modern feminist writings rest on the assumption that differences in male and female personality and behavior can be accounted for entirely by "social conditioning." Steven Goldberg disagrees. In **The Inevitability of Patriarchy** (Morrow, 1973, cloth & paper), he notes the "universality of male dominance" and concludes that this is the way Nature intended life to be.

"At the bottom of it all man's job is to protect woman and woman's job is to protect her infant." Feminists who say otherwise, Goldberg says, are "forever condemned to argue against their own juices."

Elizabeth Gould Davis presents a different view of matriarchy in **The First Sex** (Putnam's, 1971, cloth; Penguin, 1972, paper). She argues that, long before recorded history, there existed an advanced civilization populated only by women (who were capable of reproducing themselves). It was, she writes, "a golden age of queendoms, when peace and justice prevailed on earth."

Biologists, primatologists, and other serious scholars have advanced more tentative conclusions about men and women in prehistory. Zoologist Sarah Hrdy wrote **The Woman That Never Evolved** (Harvard, 1981) "to correct a bias within evolutionary biology"—namely, the notion that natural selection operated primarily on males, that it was the men who adapted while women remained passive spectators as the world around them changed. Hrdy makes a compelling case for the importance of female-female competition for men—the same kind of "trial-by-fire" intra-sex conflict that (in the conventional view) was so important to male evolution.

The eight contributors to **Woman the Gatherer** (Yale, 1981), edited by Frances Dahlberg, provide a useful modification of the dominant "man the hunter" view of early hominid society. Museum tableaux depicting hirsute males tracking saber-toothed tigers have elements of high drama, Dahlberg admits. But hunting, by itself, is not the stuff stable societies are made of. While the men were away, women sustained the rest of the community, securing protein

from catfish, termites, snails, gerbils. Not very heroic, Dahlberg says, "but what is lost in drama is gained in diversity and complexity."

Two other books provide a more comprehensive view of men and women over time and males and females of various species: David Barash's **The Whisperings Within** (Harper, 1979) and Donald Symons' **The Evolution of Human Sexuality** (Oxford, 1979).

Each of the four scholarly studies just mentioned above is written with *brio*. All of them are easily accessible to the general reader.

The best primer on the subject of sex generally is John Money's **Love and Love-Sickness** (Johns Hopkins, 1980, cloth & paper), which concisely and authoritatively covers everything from hormones to homosexuality to mathematical ability.

Two useful adjuncts are Richard Restak's **The Brain: The Last Frontier** (Doubleday, 1979, cloth; Warner, 1980, paper) and Eleanor E. Maccoby and Carol Nagy Jacklin's **The Psychology of Sex Differences** (Stanford, 1974, cloth & paper). Maccoby and Jacklin reviewed the published research—more than 1,000 articles—and divided scholars' findings on sex differences into those that were undocumented (that girls are more "social"), those that were well-established (that boys are more "aggressive"), and those on which the jury was still out (almost everything else). The book's main flaw: It is nearly a decade out of date.

Where do men and women stand relative to one another in education, politics, the workplace? Ann Oakley's **Subject Women** (Pantheon, 1981, paper only) is a good place to look for answers. The book is balanced and comprehensive. Data come from both Britain and the

United States.

Jessie Bernard provides a more idiosyncratic view in **The Female World** (Macmillan, 1981). Bernard set out to look at women and *only* women: their friendships, the "sub-worlds of children and girls," literature and art, the "ethos" of the female world. It is a revealing work of "anthro"pology; perhaps the most revealing aspect of it is that Bernard cannot keep men out of the story.

It is a problem, the way men always seem to intrude. In her autobiographical **The Cinderella Complex** (Summit, 1981), Colette Dowling describes how she, a divorced mother of four, proudly and independently making her way in life, suddenly fell in love again and discovered the balm of dependence. Gradually Dowling abandoned her writing career in favor of "home-making—blissful homemaking" in Rhinebeck, N.Y.

Her liberated boyfriend was nonplused—"unhappy with what looked, increasingly, as if it might develop into a permanent inequity." He was, after all, paying the bills and supporting someone else's children.

Men, it seems, are often both surprised and confused. "There are still no clear, consistent cues from women as to what an appropriate, complementary male contribution is in many situations," as Eric Skjei and Richard Rabkin point out in **The Male Ordeal** (Putnam's, 1981).

Perhaps it is because women themselves do not always know. In 1963, Betty Friedan published **The Feminine Mystique** (Norton, 1963; 2nd ed., 1974, cloth; Dell, 1977, paper)—the call to arms of the modern middle-class women's movement.

Friedan described "the problem that has no name":

"As she made the beds, shopped for groceries, matched slipcover material, ate peanut butter sandwiches with her children, chauffeured Cub Scouts and Brownies, lay beside her husband at night—[the housewife] was afraid to ask even of herself the silent question—'Is this all?'"

Domesticity, Friedan wrote, had been glorified out of all proportion. Yes, it was often a source of satisfaction; yes, writing "Occupation: Housewife" on the census form was enough for some women. But others felt "incomplete."

Friedan warned that there was no "easy 'how-to' answer." She cautioned that getting "a job, any job" was not necessarily a solution. Husbands would, willy-nilly, have to be "sensitized." Girls would have to be brought up to expect more and strive for more. In ways that were not yet clear, the larger society would have to change.

Nearly two decades have passed. Writing in **The Second Stage** (Summit, 1981, cloth), Friedan looks back on what women have gained. A great deal, she believes. But, Friedan adds, "in our reaction against the feminine mystique . . . we sometimes seemed to fall into a *feminist* mystique which denied that core of woman's personhood that is fulfilled through love, nurture, home."

There is, Friedan contends, a new "problem that has no name": how to combine love, work, marriage, children—and freedom. It is a dilemma that makes "sexual war" self-defeating, Friedan believes, for it is one that can be resolved only if it is confronted by both sexes, together.