

BOOK REVIEW

Equal Rights: The Male Stake

By Leo Kanowitz

Albuquerque: University of New Mexico Press, 1981*

It is hard to know what to do with a book that takes the right positions for the wrong reasons. Leo Kanowitz¹ has put feminists in a difficult position with the publication of *Equal Rights: The Male Stake*. The book consists primarily of reprints and revisions of articles previously published in various law reviews. Kanowitz sees himself as a friend of the women's movement; he writes that "[his] perspective is that of a person who has applauded most of the efforts and activities of that movement, and has in numerous ways participated in it"² I suspect, however, that most women involved in the struggle for equal rights will reject his help and his book, reasoning that, "With friends like this, who needs enemies?"

In *Equal Rights: The Male Stake*, Kanowitz defines sex discrimination as any social or legal practice that assigns roles, responsibilities, or privileges to persons based on their sex.³ He then argues doggedly against all laws that treat women and men differently, or that allow women and men to be treated differently on account of sex. He adamantly resists the concept of "benign" sex discrimination as a path towards equality between women and men.⁴ He includes several chapters (somewhat poignant to read in 1984) enthusiastically supporting the federal equal rights amendment, and one chapter urging states to pass their own ERAs. Moreover, he aims his book, in large part, at a male audience, and attempts to convince men to join

* Editor's Note: Relatively few voices address men's interests in women's rights. We see our review of *Equal Rights: The Male Stake* as recognizing and emphasizing the continuing need for more dialogue with and amongst men who write about this issue.

1. Professor of Law, University of California, Hastings College of Law.

2. Leo Kanowitz, *Equal Rights: The Male Stake* 105 (1981).

3. *Id.* at 15-16.

4. "Benign" sex discrimination is preferential treatment of women designed explicitly to compensate for past social and legal discrimination.

women in the struggle against sex discrimination.⁵

What distinguishes Kanowitz from others advocating the same goals is his basic premise. He believes that "men as well as women have been victimized by the arbitrary assignment of sex roles in law and society."⁶ As examples of current and historical "antimale discrimination," he cites draft laws, which compel men but not women to risk their lives in the armed services, alimony statutes, which historically obligated men but not women to support their ex-spouses after a divorce, custody law and practices, which typically prefer mothers over fathers in custody battles involving young children, and protective labor laws, which in many states limited the hours that women but not men could be forced to work by their employers.⁷ Kanowitz urges men to join in the fight against sex discrimination because "[t]he ending of such antimale discrimination at the hands of the law—which would result from the achievement of a system of legal sex equality—would obviously produce an immediate and direct benefit for males."⁸ The fight for sex equality should not be seen as a fight *between* women and men, he says; men have a "direct stake in the struggle for women's rights. . . ."⁹

The problem with Kanowitz's approach—a problem severe enough to ensure that the book will never gain acceptance as a tool in the struggle for the very goals its author supports—is twofold. First, his premise is simply wrong. Sex discrimination does not injure women and men in the same way or to the same degree. To say that it does indicates a fundamental lack of understanding of what sex discrimination is and how it works. Second, his tactics—attempting to enlist men in the women's movement by appealing to their direct self-interest—in the long run cannot help but exacerbate the antagonism between women and men that Kanowitz professes to deplore.

To fail to understand that it is women, not men, who are

5. Throughout his book, Kanowitz assumes that the goal of feminism is a "sex-blind" legal and social system. In fact, the desirability of pure neutrality is widely debated within the feminist community. Some who oppose gender neutrality argue that gender-neutral laws merely maintain the status quo because they do not take into account the effect of past discrimination. Others argue that gender-neutral laws actually harm women because they do not account for the fact that most "neutral" standards reward traditionally masculine behaviors and talents.

6. Kanowitz, *supra* note 2, at 3.

7. *Id.* at 27-28.

8. *Id.* at 3.

9. *Id.* at 11.

oppressed by sex discrimination is to fail to grasp the nature of the problem. Kanowitz perceives sex discrimination as nothing more than the sum total of the specific restrictions that such discrimination imposes on each sex. Throughout the book, he assumes that he can merely point out the restrictions imposed on both women and men, and that in doing so he has demonstrated that sex discrimination hurts everyone. In Kanowitz's view, while women have been injured by laws prohibiting them from voting or becoming attorneys, men have been injured by laws preferring mothers as custodial parents. It all sounds so simple.

What Kanowitz willfully ignores is that a behavioral restriction may be either burdensome or beneficial, depending on the value of what is denied. That is, Kanowitz closes his eyes to the role that *a priori* values play in class discrimination. Voting and the practice of law (activities historically denied to women) have always ranked higher in this society than taking care of children (an occupation historically denied to men). Society's ranking system values the things that women are prevented from doing more highly than the things men are prevented from doing. This ranking system can be (and often is) criticized as merely a way of devaluing traditionally female tasks. Nonetheless, an analysis of sex discrimination focusing merely on one facet of the phenomenon—the specific restrictions imposed on women and men—and ignoring the real-world impact of those restrictions, is next to useless as a tool for remedying a multi-faceted problem.

An analogy to race discrimination helps to illustrate this point. Under the slavery system in this country, Blacks (in most cases) could not be free, while whites could not be slaves. No one, however, needs to be convinced of the value system that forms the backdrop for the understanding that slavery oppressed Blacks, not whites. No one questions whether it is worse to be unable to free oneself than to be unable to sell oneself. Yet Kanowitz's approach to sex discrimination, if applied to slavery, would yield the conclusion that whites were injured by their inability to sell themselves just as Blacks were injured by their inability to free themselves.

No doubt individual men may be prevented by a sexist society from pursuing individually desired goals.¹⁰ It is not true, however, that "men at all ages have been victims of virulent

10. For example, a man named Joe Hogan was initially prevented from attending nursing school solely on the basis of his sex. See Mississippi University for

sex discrimination comparable to the kinds of discrimination that women as a group have suffered."¹¹ In ignoring the distinction between individual injury and class oppression, Kanowitz blinds himself to the reality of sexism in this country.

Kanowitz's failure to comprehend the nature and operation of sex discrimination renders his argument not merely shallow but actually dangerous. One of the author's asserted goals is to lessen the resistance of men to the equal rights movement, to convince men that the abolition of sex-specific laws and customs will benefit everyone. But by telling men that they have been "victimized" by sex discrimination in order to win specific benefits—freedom from the draft, the right to demand alimony, "permission" to stay home and take care of children—Kanowitz encourages men to treat the struggle against sex discrimination as a fight for direct benefits for men. Men who join the struggle only because Kanowitz has convinced them of their "stake" in the feminist movement will be dangerous allies at best, both because they fail to understand that sex discrimination is class oppression, and because they will have no incentive to stop at gender neutrality, Kanowitz's own asserted goal. Men motivated by direct self-interest would have every reason to press for laws requiring all divorced women to pay alimony to their ex-husbands, or to lobby for the repeal of the all-male draft and the institution of all-female conscription.

At a deep level, of course, it is true that both women and men stand to benefit from the struggle against sex discrimination. All human beings would ultimately benefit from a society that treats each individual according to her or his own talents and needs. The goal of a nonsexist society will not be achieved, however, if men are persuaded to join the cause only by appeals to their immediate self-interest.

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Women v. Hogan, 458 U.S. 718 (1982) (the Supreme Court held that the nursing school's admissions policy violated the fourteenth amendment).

11. Kanowitz, *supra* note 2, at 28.

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