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# Nelson, Robert L., and William P. Bridges, *Legalizing Gender and Equality: Courts, Markets and Unequal Pay for Women in America*

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relations du travail au début du XXIe siècle. Ces problématiques sont fort pertinentes, mais la façon dont elles sont traitées présente deux inconvénients. D'une part, même si certains passages ont été reformulés pour tenir compte des changements survenus au cours des six années qui se sont écoulées depuis la parution de la première édition, on peut déplorer que la plupart des références soient demeurées les mêmes et que la quasi-totalité datent des années 1980. C'est pourtant un chapitre consacré à la prospection ! D'autre part, les nombreuses questions soulevées sur l'avenir du syndicalisme et sur les défis auxquels cette institution est confrontée s'appuient à peu près exclusivement sur des auteurs français tels Crozier, Touraine, Rosanvallon, et Lemattre. Malgré la réputation et le sérieux des auteurs en question, en raison des différences énormes entre les contextes institutionnels des relations du travail en France et au Canada, cette réflexion aurait eu intérêt à être davantage alimentée par des sources nord-américaines, voire québécoises, par exemple le livre de Murray et Verge (recensé dans *RI/IR*, vol. 55, n° 1).

Les thèmes traités dans les quatre annexes viennent renforcer le caractère hétéroclite de cet ouvrage dont la quatrième partie nous avait déjà donné un certain aperçu. Non pas que des sujets tels l'évolution de la gestion des ressources humaines, l'interrelation entre la GRH, les relations industrielles et la négociation raisonnée, les communications organisationnelles et la résolution des conflits interpersonnels ne soient pas intéressants en soi, au contraire. Mais de les trouver traiter dans un volume qui porte également sur des sujets comme l'histoire des relations du travail dans plusieurs pays, le contenu des principales lois du travail, le fonctionnement des organisations syndicales et patronales ainsi que la négociation et la gestion de la convention collective ne peut que me faire penser à ce proverbe : « Qui trop embrasse, mal étreint ».

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***Legalizing Gender and Equality: Courts, Markets and Unequal Pay for Women in America***
by Robert L. NELSON and William P. BRIDGES, New York: Cambridge University Press, 1999, 393 p., ISBN 0-521-62169-0 (hb).

This is an in depth and critical study of Pay Equity as a law reform movement in the United States since 1970. The book traces the victories and defeats of the past, studies the reasons for the outcomes and then suggests a new methodology of approach.

Analyzing Federal Court decisions dealing with allegations of sex-based pay discrimination, Nelson and Bridges conclude that the Courts' decisions reflect a tension between the law's commitment to equality and the courts' reverence for free markets and efficiency. The authors show how the courts have not countenanced blatant discrimination against women workers. However, the courts have systematically rejected comparable work theories that rely on job evaluation studies. These studies have not been accepted as proof of discrimination and have failed to persuade the courts to oblige employers to correct inequities identified in job evaluation results. Instead, the U.S. courts consistently found that between job pay differentials reflect market wages or "acceptable business judgments" rather than invidious, gender based policies. The authors contend that these judicial decisions reflect the United State's courts' deeply held pro-market ideology but may not be analytically justifiable based on the evidence that had been filed in those cases.

The book challenges therefore the notion that there is an empirical foundation for the courts' acceptance that markets and efficiency are the primary determinants of the male/female wage gap. The authors describe the evolution of the law against sex-based pay discrimination, examine the judicial treatment of comparable work law suits, report on the successes of different types of discrimination theories and then embark on four case studies of pay discrimination litigation.

It is suggested that the Pay Equity movement suffered a "sudden death" approximately 14 years ago. The movement was derailed by judges, scholars and policy makers who dismissed the concept of pay equity as empirically unfounded and potentially dangerous to the American economy. The book argues that these claims are "largely untested, have far more limited application in the American economy than the discourse acknowledges and [...] are demonstrably wrong." Rather, the differences between male and female pay rates are the product of organizational processes for which employers could be held legally responsible and which could be the target of political action by groups of women within the work place.

Courts are viewed as important participants in maintaining the institutional gender gap in pay. The book shows how courts adopted and reinforced the orthodox "market" explanation of male/female earning differentials and gave legal sanction to gender inequality in organizations, effectively "legalizing gender inequality in pay."

The book does not support a "comparable worth" analysis as a solution for redressing gender inequality in pay. Instead, it calls for a reopening of the approach to anti-discrimination law and its application to sex based, between job pay differences. The authors seek to develop a new sociological framework for the analysis of gender inequality. They develop an "organizational gender inequality" theory and suggest an analytical approach that would view gender inequality in pay as an aspect of organizational system inequality.

The principle method used in this book is the examination of the data filed on wage setting practices in four landmark pay discrimination cases. It is argued that defendant employer organizations tended to disadvantage workers in predominantly female jobs by denying them power in organizational politics and reinforcing male cultural advantages. The authors call for an analysis that shows that gender inequality in a system is the direct result of organizational decision making.

It is suggested that two legal implications can be drawn from this work. The authors hope that their analysis of the market explanation for between job wage differences will compel scholars and judges to question the empirical underpinning of the leading precedents in the existing case law. If this new approach takes hold, courts and scholars might then reconsider those precedents and adopt a more critical stance towards market and efficiency explanations offered by employers.

One of the strengths of the book is the careful and empirical analysis of four legal decisions that dealt with claims of gender discrimination in pay. The case studies reveal the conditions that gave rise to the lawsuits, the kinds of organizational data that found their way into the legal record and the consequences of the legal results for the four organizations. Two public sector organizations are studied. One organization is said to show what the authors call "paternalism and politics in a university pay system." The other study shows "bureaucratic politics and gender inequality in a state pay system." The two private sector cases that are studied involve corporate politics, reorganization, managerial discretion and a financial institution that is described as a "male profit-making club."

The authors acknowledge that a major problem with their research design, from the standpoint of conventional methodology, is the difficulty of making generalizations from a set of four case studies. However, the authors are very candid about their approach, revealing its limitations as well as specifying its advantages.

The book concludes by recognizing that Pay Equity as an instrument of legal reform illustrates the paradoxical role that law plays in American society. While the laws against gender based pay discrimination and sex segregation are shown to have positively affected explicitly sexist employment practices, this created the appearance that the law was available as a remedy against gender injustice in the work place. However, the application of these laws also entrenched a form of gender based wage inequality *in organizations* by allowing for the continuance of wage differences between traditionally male and female jobs. The authors call upon sociologists to construct programs of empirical research that better articulate the relationship between organizations, markets and wages so that they can produce more powerful explanations of pay discrimination than economists and legal theorists have advanced thus far. This could, in turn, lead to a change in the legal and regulatory climate. Certainly one of the most interesting aspects of the book is the insights it offers into the dynamics of law reform litigation and the use of social science, economic theory, and data.

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***Regulating Workplace Safety : Systems and Sanctions***

par Neil CUNNINGHAM et Richard JOHNSTONE, Oxford : Oxford University Press, 1999, 423 p., ISBN 7-80198-268246.

Au départ, l'éditeur précise que la question au cœur de ce livre est de savoir comment la loi peut effectivement pénétrer les organisations pour les rendre plus sensibles aux efforts réglementaires. On est donc porté à croire, à craindre, qu'on va avoir affaire à des gens qui prônent une lourde réglementation comme moyen de résoudre les problèmes de santé et de sécurité dans les organisations et les entreprises. Mais rapidement les auteurs nous rassurent : ce qu'ils préconisent c'est non pas plus de règlements, mais des règlements plus intelligents, mieux ciblés pour être plus percutants.

Leur démarche repose sur une comparaison des systèmes législatifs et réglementaires en matière de santé et de sécurité du travail (SST), d'abord entre les diverses juridictions d'Australie, et qui fut ensuite élargie pour inclure la Grande-Bretagne, la Suède, le Danemark, les États-Unis et le Canada. Le tout est on ne peut mieux documenté, on n'a qu'à en juger par les 446 références. Pour étoffer certains points spécifiques de leur argumentation, les auteurs s'inspirent abondamment de l'Agence européenne pour la santé et la sécurité du travail et font également des rapprochements avec des réglementations connexes, comme dans le domaine de l'environnement, dans d'autres pays dont la Hollande. Et les autcurs, deux universitaires australiens notoires qui ont aussi des liens en Grande-Bretagne (Oxford) pour un et aux États-Unis (Berkeley) pour l'autre, sont particulièrement bien placés pour procéder à ces comparaisons et rapprochements.

La problématique est la suivante. Les règlements basés sur les spécifications (ex. un certain type de garde sur un certain type de machine), ainsi que les règlements basés sur les résultats (ex. 85 dB(A) comme niveau maximal de bruit dans un certain environnement) ont