GENDER AND THE LAW

SEATS AND WASHROOMS:
SINGLE-SEX PROTECTIVE LABOR LEGISLATION
IN PENNSYLVANIA

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I. INTRODUCTION

This paper will address the history of the adoption and enforcement of single-sex protective labor legislation in the last two decades of the nineteenth century in Pennsylvania. A chronological outline and description of the protective labor legislation adopted in Pennsylvania in the last decades of the nineteenth century will show the variety of world views and beliefs of those who lobbied for, enforced and opposed the legislation. Oddly enough, in later years, manufacturers and working women jointly opposed single-sex protective legislation, while middle and upper class men and women, trade unions (men, and some union women) supported it.

Alice Kessler-Harris, writing on the first efforts to shorten hours pointed out that early lobbyists employed gender neutral arguments that the general welfare of society would be improved by protective labor regulation.

Initially, the search for shorter hours was not sex-linked. Rooted in the mercantilist tradition or a Jeffersonian sense of justice, it incorporated the Tudor and colonial ideas of a balanced society that offered fair rewards to all its members. Shortening hours would serve the general welfare in two ways. It would ensure that available jobs were shared, and it would make possible, as the Lowell mill operatives had pointed out, an educated and aware citizenry. These demands for shorter hours became the cornerstones of the movement for protective labor legislation.¹

Uriah Stevens, founder of the Knights of Labor, advocated shorter hours on these grounds in 1871.² Pennsylvania was among the first states to respond to these
pleas. In 1848 it adopted a law declaring that ten hours was a legal working day for all workers, unless a contract provided to the contrary. In 1868 it reduced the legal working day to eight hours for all workers, absent a contract otherwise. The exception for contracts to the contrary rendered worthless these laws, and others states’ laws to the same effect.

Although the sex-neutral arguments satisfied legislators, the courts rejected them whenever they were used to support any sort of substantive regulation of laborers’ working conditions. As early as 1884 the New York Supreme Court struck down a law which prohibited, on the grounds of the health and general welfare of the state, the manufacture of cigars in tenement houses. "[S]tates that tried to legislate working conditions for adult males found their laws unceremoniously struck down in the courts." Lobbyists responded creatively to these setbacks with arguments based on the special nature of women and their place in the world. Kessler-Harris’ brief narrative of the arguments used to support protective legislation contains the seeds of the major arguments asserted in favor of single-sex protective legislation.

Since the courts rejected the assertion that the general welfare demanded regulation for all workers, proponents moved to the position that women in their capacity as child bearers andrearers served the state’s welfare in a special way. The idea that their service to the state entitled women to special protection spread rapidly.

Tactically, the argument grew out of the difficulty in getting any kind of protective legislation past lawmakers.
and courts. Much of the energy behind attempts to limit the hours of women and children in the 1880s and 1890s came from those who believed that women could be an "opening wedge" in obtaining laws for all the unorganized. Shorter hours for some, they argued, along with adequate factory sanitation and safety devices, would inevitably lead to better conditions for all workers. . . . But a substantial amount of pressure for such legislation came from those who genuinely felt that women's peculiarly vulnerable position demanded special protection. When this argument was made by unskilled workers competing with each other for jobs, it carried conviction. Their pressure, for example, encouraged Massachusetts lawmakers in 1874 to limit the labor of women and children to sixty hours per week.\(^9\)

The special needs and role of women were asserted as a justification for regulation primarily by middle and upper class men. They were the true believers in the argument that women were inherently weaker, and had a special role in life physically (reproduction) and morally (instilling on future generations moral values). Middle class reform women were divided between those who sincerely believed in their special role, and those who merely exploited the belief of legislators and other pivotal men of power in it in order to achieve other goals.\(^10\)

Working men, through their unions, tended to argue that the impracticality of organizing women justified direct regulation to make up for women's inability to actconcertedly against capital.\(^11\) It was argued that women could not be organized because they were not in the workforce long enough. This argument lacks good faith since most unions discouraged the organization of women. Some trade union women accepted this justification. Working men, however, were much more likely motivated by the competition they faced from women in the workforce.
This overview of the various opinions sets the stage for the enactment of the first sex-specific labor law in Pennsylvania.

II. CHRONOLOGY AND DESCRIPTION OF PENNSYLVANIA'S SINGLE-SEX REGULATORY SYSTEM

There were two main kinds of protective legislation enacted and specifically directed at women: job exclusions and on-the-job regulation. The first law specifically directed at women was a enacted in 1879 and prohibited the employment of women waitresses in theatres and showhouses.12

Its enactment is the earliest manifestation of the evolving rhetoric about female domesticity. Although express evidence of its proponents is lacking, the measure was most likely a response to middle class men and women's concern's about prostitution. Waitressing in general had a poor reputation which deterred many women from pursuing the generally higher wages available in the field.13 "Among waitresses themselves many disapproved of those who worked in restaurants that served liquor, despite the significantly larger tips available in these places."14

Middle and upper class men apparently won the day here with their concern for the moral purity of women.15 Middle class reform women would eventually use their supposed expertise in morality to justify their efforts to enact sanitation and other protective regulation in the workplace.

This early law was followed six years later by a series of three laws prohibiting the employment of women and all children under age 14 in and about coal mines and collieries, except in
clerical and secretarial positions.\textsuperscript{16} Two of the laws appeared in general acts regulating mine safety.\textsuperscript{17} Alexander Trachtenberg, in his history of Pennsylvania protective legislation for coal miners, suggests that these provisions were merely prophylactic because women were not employed in the mines at any rate.\textsuperscript{18}

Women had never been employed in the mines of Pennsylvania or, indeed, anywhere in the mines of the United States. The Scottish, Welsh, and English miners, whose sisters, wives, and mothers worked in the mines of their home countries, never introduced woman labor into the Pennsylvania mines.\textsuperscript{19}

The third provision, however, was enacted separately, and was broader than the other two. Where the others only prohibited women from working "in and about" the mines, 1885 Pa. Laws No. 202 prohibited the employment of women "in and about the coal mine, or any of the manufactories of coal . . ." Trachtenberg suggests that this act was a "special act . . . aiming to do away with the work of Hungarian women in hauling coke, which provision could not be incorporated in the mining law."\textsuperscript{20}

The separate enactment of this exclusion casts doubt upon the validity of Trachtenberg's suggestion that women were not working in the mines in Pennsylvania, and implies that organized labor was beginning to exclude at least some women who competed with them. The dangerous nature of mine work, which justified the regulation of it for men, gave middle and upper class legislators a convenient justification consistent with their evolving concern for women's health, for excluding women altogether from the mines.
In 1887 the first piece of legislation regulating the conditions of women on-the-job was enacted. This was the seats law and in it the arguments and motivations of the various groups came into full bloom. The law required every person, firm, association, individual, partnership or corporation, employing female employees in any manufacturing, mechanical or mercantile establishment in this State, [to] provide suitable seats for the use of the female employees so employed, and shall permit the use of such by them, when they are not necessarily engaged in the active duties for which they are employed.21

There was a fine of between $25.00 and $50.00 for violations, which was to be assessed upon conviction before "any magistrate, alderman or justice of the peace . . . ."22

In all likelihood, the act was not enforced by the local bodies placed in charge of it. Local prosecutors, magistrates and police had no incentive to take on the politically powerful factory and store owners in their communities.23 For their part, the larger firms probably discouraged enforcement even against the smaller, less powerful firms, on the ground that it would be better not to start any adverse trends. Enforcement probably did not begin until Pennsylvania created the office of the state factory inspector, whose sole job it was to enforce the various laws for the protection of child and women workers.24

Contemporary expressions of the intent behind this law are scarce. However, later references make plain that the primary supporters of the law were middle and upper middle class men who were concerned about women's reproductive health. Middle class reform women also supported the act, but generally on less sex-
specific grounds.

The viewpoints of upper and middle class men was given a "scientific rationale" in 1875 in the work of two Massachusetts physicians, Edward H. Clarke and Azel Ames and their respective books, *Sex in Education* and *Sex in Industry.*

The primary hypothesis of these two very influential doctors was that woman's reproductive cycle was in extremely delicate balance with the rest of her life. Upset either and the consequences were dire. On the menstrual cycle, Clarke wrote,

> During the epoch of development, that is, from the age of fourteen to eighteen or twenty . . . the system . . . is peculiarly susceptible, and disturbances of the delicate mechanism we are considering, induced . . . by constrained positions, muscular effort, brain work, and all forms of mental and physical excitement, germinate a host of ills. Sometimes these causes, which pervade . . . our . . . schools . . . produce an excessive performance of the . . . function, and this is equivalent to a periodical hemorrhage. Sometimes they produce an insufficient performance of it; and this, by closing an avenue of elimination, poisons the blood, and depraves the organization. The host of ills thus induced are known to physicians . . . as amenorrhea, menorrhagia, dysmenorrhoea, hysteria, anemia, chorea, and the like.

The proper place for women in such a situation as this was in a passive role, an observer, sequestered and protected from the working world where hustle, bustle and confusion reign. "The 1890 stereotype of the woman who remained in her element showed her as a delicate vine clinging for support to man, the sturdy oak. As a dutiful wife and mother, she created in the home a sanctuary for all the higher virtues."

James Campbell, Pennsylvania's third factory inspector, almost expressly adopted Ames and Clarke's hypothesis in a talk
he gave on working women to the International Association of Factory Inspectors in 1897:

What effect the influence of factory or store life has or may have on these girls, is a question which belongs more properly to the physiologist, but I cannot refrain from making a few observations. We all know that the years from 10 to 14 are the most critical from a physical standpoint in the life of a woman. The effect of standing on the feet for hours and the exhaustion from the heated, often vitiated atmosphere, and frequently a nervous strain due to the whirl and buzz of machinery, cannot but bring about an effect which must tell with power on future generations.28

The concern is clearly for the reproductive health of women and how that will impact upon future generations. T.A. Bradley, a deputy factory inspector made a similar argument in support of a shorter workday for women. He insisted that we should all recognize that when any person, and especially a female, stands behind a counter for ten long hours in a day, they are certainly entitled to our deep consideration and should not be asked to work longer . . .29

Middle class reform women, although they may have believed to an extent the assertions about their reproductive vulnerabilities, were much more hesitant to admit it. They emphasized the features women had in common with other workers. Mrs. Fanny B. Ames, just such a reformer, and an inspector in Boston, emphasized to a convention of the International Association of Factory Inspectors in 1897 that anyone would be wearied by the work of the girls in the mercantile houses.

How many of us would endure the test of keeping good natured and clear headed if compelled to stand for four or five hours at a stretch, touching elbows -- a peculiarly irritating thing to most people -- with fellow-workers; at the same time measuring off ribbon,
answering questions, giving directions, calculating prices, taking addresses and seeing that change and packages finally reach the right customer.

The next major piece of sex-specific factory legislation was the Factory Act of 1889, which among other things imposed sanitation and ventilation requirements on employers of ten or more women and children. In many states, the natural succession was from child labor laws, to seats requirements, and then to sanitation regulations. In Pennsylvania, the seats laws preceded the Factory Act of 1889, the first major piece of child labor and sanitation legislation. The act, entitled "An Act to regulate the employment of women and children in manufacturing establishments, mercantile industries, laundry or renovating establishments, and to provide for the appointment of inspectors to enforce the same, and other acts providing for the safety or regulating the employment of said persons" had several features which placed it amongst the top in the nation in terms of enforceability and coverage.

Section one prohibited the employment of minors for more sixty hours in a week. Since there was no daily limit the number of hours that a minor could be required to work, the provision did not prohibit employers from working children four days in a row for fifteen hours each day. This was a common practice. Parents would then send the children to work in a different factory for the other three days. In 1893 the legislature amended the law to allow only twelve hours labor per day, up to sixty hours in a week. In 1897 the legislature applied this
hours limitation to women also.

Section two prohibited the employment of children under the age of twelve years old, and required certification of the age by the parents of any working child under sixteen years of age. The Factory Act of 1893 raised the minimum age to thirteen. 34

Section three required employers of women and children to "post and keep posted in a conspicuous place in every room where such help is employed, a printed notice stating the number of hours [of work] per day for each day of the week required of [children]. . . ." According to Professor Brandeis, this sort of provision was one of the early innovations by Massachusetts which made enforcement of the hours limitations possible and practical. 35

Section four defined the scope of the Act's coverage, and was a matter of great contention. It excluded from the Act's requirements any "firm or corporation employing less than ten persons who are women or children . . . ." 36 An immediate controversy was created over the meaning of children under the Act, which the Attorney General resolved by saying that under this act, a child was any person less than sixteen years old. 37

The Factory Act of 1893 reduced the number of employees triggering coverage to five, and omitted the reference to persons "who are women or children." The Act simply excluded persons, firms and corporations "who employed less than five persons" from the provisions of the Act. 38 The obvious intent of the legislature was to expand the scope of the Act to cover all
employees in all factories and shops.

The legislature, however, forgot to amend the title of the Act, which remained "An Act to regulate the employment and provide for the safety of women and children . . ." Clever employers argued that the Act, by its title, precluded application to them unless they employed five or more women or children. The state's attorney general agreed with the argument, and the factory inspector's jurisdiction was limited to only those places where five or more women or children were employed.39 Continual lobbying by the inspectors lead in the to the repeal of this entire section in the Factory Act of 1897 and reformation of the title of the Act to read "An act to regulate the employment and provide for the health and safety of men, women and children . . . ."40 The practical effect of this was to impose on all employers the obligation to report serious injuries to the Factory Inspector and to comply with the safety requirements.41

Sections five and six governed the appointment of a factory inspector and up to six deputies, one-half of whom were to be women.42 The chief factory inspector was to serve a three-year term and submit to the governor a written report of the work of the department each year by November 30th.43

The requirement that at least one-half of the deputy inspectors be women was a practical consequence of the fact that middle class reform women strongly supported sex-linked protective legislation, and were, in many states, the best
available experts in the field. For example, Florence Kelley, first factory inspector in Illinois, received her appointment after Henry Demarest Lloyd rejected the post and recommended her because of the expertise she had gained as a volunteer.

The factory inspector was also given the very important power of prosecuting in any court of competent jurisdiction all violations of the Factory Act himself. Violations of the act were misdemeanors punishable by a fine of up to $500. This was significant because it vested in a state officer, who would be less vulnerable to the power politics of local companies and capitalists, the full power to prosecute violations of the act.

Sections seven and eight required employers to cover well and elevator holes, and to put protective guards on dangerous machinery and gave the inspector the power to determine compliance with the sections.

Section nine required factory and store owners to file a report on any "fatal or serious injury" sustained by an employee with the factory inspector within 48 hours of the injury. The report was to set out the cause of the injury.

Section ten required employers of females to provide them with wash rooms and water closets separate and apart from those for male employees. These were required to be properly screened and ventilated at all times. The section was designed to eradicate two principal evils: unhealthful conditions which spread disease, and the stigmatic impact on women of having to go home without first cleaning themselves up. The rationale for
making special provision for women only was the perceived nexus between sanitation and morality, and woman's special role as protector of moral conduct.**

Section eleven mandated that all covered employees be allowed 45 minutes for lunch. The factory inspector was authorized to allow a shorter lunch, and often did so at the request of the employees. The employees would request a shorter lunch during the week so that they could get off earlier on Saturday.**

Section twelve authorized the factory inspector to order changes made to such items as if the heating, lighting, ventilation, means of exit in case of fire, sanitation, were not sufficient or in compliance with the laws. The operator had 60 days to make the changes ordered.

The vesting of authority to enforce the fire escape laws was an important innovation, but short-lived. In 1885 Pennsylvania had amended a 1879 law which required the owners of all hotels, seminaries, colleges, academies, hospitals, asylums, store-houses, factories, manufactories or workshops, tenement houses, and the board of directors for the schools to install rope fire escapes on all floors above the second.*** This law was to be enforced by a local board of fire commissioners in each city, or, if there were no already established board, by a board of county commissioners to be appointed for the task.**** Local enforcement was ineffective because the administrators were easily intimidated by the powerful factory owners and industrialists in
their jurisdictions.\footnote{52}

The attorney general nullified the 1889 Factory Act's grant of authority by interpreting the parallel jurisdiction of the state factory inspector to be subordinate to that of the local fire or county commissioners. Consequently, if a local commissioner approved the escapes installed and issued a certificate so stating, the state factory inspector was bound by that judgment.\footnote{53} In addition, the jurisdiction of the factory law extended, initially, only to those places of employment where ten or more women and children worked.\footnote{54} It was not until 1897 that express and unconditional enforcement authority was given to the factory inspector to enforce the Fire Escape law.\footnote{55}

The rest of the sections dealt with administrative matters, such as districting and where to locate the factory inspectors' main office.

The Factory Law of 1893 made some changes in addition to extending coverage of the act to "five or more persons" as mentioned above. Laundries were added to both the title and substantive portions of the Act, thus bringing another industry which employed large numbers of women under its protective umbrella.\footnote{56}

Section twelve of this law gave the factory inspector express authority to enforce the fire escapes laws. The state's attorney general limited this broad grant of power to apply only to those premises which the inspector already had jurisdiction to inspect. Thus, only those factories in which five or more women

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or children were employed were affected.

The 1889 Factory Act illustrates the maturation of the arguments for female domesticity advanced by middle class men. The drafters of the legislation inextricably grouped the fates of women and children together. The rationale for treating them together might be called the reproductive connection. Healthy women were a key to healthy children, in whose hands the fate of the republic itself eventually lies.

Children were the main concern. In the hands of children rested the future survival of the American way of life; and in the wombs of women rested the future children. To this end, the greatest focus of the factory laws was on the health and education of children. Long hours toiling in factories weakened them physically and prevented them from getting an adequate formal education. Regulation to protect the reproductive health of women was merely another means of ensuring that America's children would be healthy and adequately prepared to carry forward the work of the republic.

In addition, women played a special role in the raising and education of children. On them rested the responsibility for instilling in the next generation the proper moral values. For this reason, legislation to protect women's moral fiber was justified. The 1889 Factory Act's provisions requiring improved sanitation represents the perceived link that legislators saw between sanitation and morality.

The belief that a sanitary environment had a purifying
impact on the mind as well as the body was widespread among both upper and middle class men and middle class reform women. The connection between the two derived from a widespread belief about the evils of unsanitary conditions, especially in factory work, summed up by the physician Azel Ames:

The influences that bring about . . . moral . . . perversions are notably abundant in . . . industrial employments. The disregard paid the decencies of life in the location and condition of water-closets, etc.; the laxity with which clothing is worn, and postures are assumed, in the processes of manufacture; the constant association of both sexes . . . the temperature, excitement of emulation, etc., are all actively operative for evil. 

A particularly egregious example of the filth of some of the factories was reported in the second factory inspector’s report. The factory inspectors felt compelled to prosecute a cotton and woolen waste manufacturer because he not only refused to comply, but was obstinate and insulting to the deputy inspector who tried to compel him.

The factory in question was in a shocking condition at the time of the arrest, and he has still refused to comply with our orders except in a single exceptional case. The closets are situated in a back yard, a sort of barricaded cow stable, and the employees (many of whom are women and girls) in order to use the same, have to come down several flights of stairs from a room heated to from seventy to ninety degrees and traverse a back yard, which is very often wet, muddy and unfit for passage thus endangering the health of every one of the employees who must use said premises. In addition to the above, the only wash room he has provided is a solitary hydrant, in the same back yard, where scores of girls must take their turns to get a wash.

In this context, it is not surprising that middle class men and women believed there to be a connection between health and morals which would justify their imposing on the lower class their
values. Mrs. Glenn, a deputy inspector in Pennsylvania, read a paper on the origins and effects of factory regulation in which she described one of the benefits of the factory law to be the impact on the morals of the workers who are forced to endure it.

The employees whose homes, perhaps, are not the most attractive, will be taught by the comforts derived from enforced cleanliness in shops and stores to carry this influence into their own abodes. Too strong a plea cannot be made for the factory law, and the working people in states without such a law should be envious of the condition of the people where it does exist."  

In his 1893 report, Chief Inspector Watchorn reports on the progress made in enforcing this sanitation provision, and then notes that sanitary conditions are vastly improved, removing dangers to health, and above all, the moral atmosphere will be purified, and children of tender years will not be subjected to the immoralizing influences which have obtained heretofore."

In his 1894 report, he again commented upon the desirable social aspects of sanitation:

It is the unanimous opinion of the factory inspectors that it is not the habits of the people which make the surroundings in factory life undesirable, but on the contrary, desirable conditions provided by an employer makes the habits of the people employed by him of a very superior order.

Prior to the enforcement of this law, it was a very common everyday occurrence in all manufacturing towns and cities to find young girls (whose daily toil at the loom or spindle, had soiled their hands, faces and clothing) denied all provisions essential to personal comfort. In many places no consideration was shown her in the important matter of lavatories, and when night came she was compelled to walk home, or suffer the humiliation of going into a street car in her soiled clothes and grimy hands and face.

The commendable pride which is inherent in the average American boy or girl, almost invariably drove
them to the former alternative, and when it is remembered that this frequently involved a walk of several miles after a hard day's work, it is not difficult to understand why the employees generally rejoice at the advent of a better state of affairs, a higher standard of civilization.  

The following year, at the convention of factory inspectors, Mr. Splaine, delegate from Massachusetts gave his opinion that the four most important enforcement needs were fire escapes, the guarding of dangerous machinery, ventilation, and "the condition and fitness of the retiring rooms, and at the same time, all matters bearing directly or indirectly upon sanitation."  

It is apparent that the sanitation laws were often adopted not because of scientific proof that diseases festered in filth, but because of the perceived connection between morality and sanitation. A clean environment led to a clean mind. To the extent that women needed clean minds in order to instill proper values upon their children, these too were regulations to protect future generations and American heritage. In addition, there was the desire by the middle class reform women, like Deputy Inspector Glenn, who endeavored to raise the lower classes up to middle class standards.

Factory inspectors and middle class reform women (two groups between which, it has already been noted, there was substantial overlap) joined in support of single-sex protective legislation for women for the purpose of setting a precedent which could later be expanded upon and used to justify regulation of all workers.

A discussion at the convention of the International
Association of Factory Inspectors for 1894 is typical. The Association’s president argued that hours laws need not be made applicable to both sexes, because that would make it more difficult to pass, and, it was unnecessary to do so, because, wherever there is a law in operation regulating the hours of labor for women and children, it is much easier to have such a law amended than to introduce and carry through new measures while the effect of continually reducing hours for women and children would bring about a like result in the hours of the male adult.

This argument was repeated later in the same convention when the delegates were trying to agree on appropriate resolutions. The discussion focused on whether the convention should adopt a resolution calling for the reduction of all workers hours by statute, one calling for a 48-hour work week for women and children, or both.

Mrs. [Florence] Kelley [first Chief Factory Inspector for Illinois] rose in defense of the forty-eight hour recommendation, saying that to do otherwise than adopt the substitute would be to take a retrograde step. That eight hours for women and children means the reduction of hours for all labor alike. It would be impossible to work many factories for two hours a day without female and child labor, and the uniform enactment of such a law will bring about that long agitated measure of reform.

While the impact of maximum hours legislation on other groups is a step removed from the target group, the impact of protective guards on machinery, of fire escapes and improved sanitation redounds immediately and directly to the benefit of the other employees as well as to the women.

Male trade unions also vigorously supported single-sex protective labor legislation for women. Although their
rhetoric echoes that of middle class men, their actual concern was much more basic: they perceived women as a threat to their jobs (and their wages). They supported the regulation of women as a means of economically disadvantaging them. Their rhetoric spoke of women’s place, and the regulation can be seen as a penalty on women who stepped beyond the scope of their proper realm into man’s world: the workplace. Woman’s place is in the home, raising the future of America. To the extent that regulation causes women to lose jobs and return to the home, it has the desired effect of putting them back in their place.

In the eyes of the unions, women had two primary impacts on the job market: they displaced male breadwinners and they drove down wages. "'Every woman employed,' wrote an editor in the American Federationist, 'displaces a man and adds one more to the idle contingent that are fixing wages at the lowest limit.'" Interestingly, even employers occasionally blamed women for the low level of wages. They claimed that the level of wages was driven down by women who did not "need" to work, and who would therefore work for very little. The American Federation of Labor repeatedly called for equal wages, primarily on the belief that if factories were required to pay men’s wages, they would prefer to hire male workers. The Knights of Labor, the largest union in 1885, fully supported an eight-hour law for women.

At the 1897 convention of the International Association of Factory Inspectors, the governor of Michigan words of warning sum
up the tone of these perceptions:

More stringent laws should be passed to prevent the employment of children in many lines of work. Children and women are too often employed to do the work that ought to be performed by the able-bodied men with families out of employment." He then encouraged the legislature to adopt reforms which would "redound to [their] credit and honor."76

Pennsylvania's chief inspector, who may well have had union roots himself, warned of the dangers of female displacement of male jobs. Chief Inspector James Campbell emphasized

[Another factor which has become momentous to the perpetuity of our institutions, social stability and moral health is the displacement of adult male labor by child and female labor. . . . Competition in business and the tremendous rivalry of competitors has been a potential factor in the displacement of male by female and child labor. It frequently happens that daughters, sisters, and in many cases, wives, are employed at a pittance paid the father or husband, and he who was the willing support of the household, is forced to tramp the streets in idleness. The competition of females in employment formerly, entirely, and indisputably allotted to males has been most remarkable, and the effects, while difficult to estimate, so far as my observation goes, are far from what can be desired.77

It must be noted that the loss of jobs may merely have been a perception, not reflected in actual census data.78 If this were so, then the alarm that women's entry into the job market caused can be attributed to the effect their taking a non-traditional role had upon men. Even if the perceived loss of jobs by men were actual, the sources of this job loss and wage depression can be attributed to many causes other than the employment of women. The economy was in a bad depression and there was an enormous influx of immigration during the last two decades of the nineteenth century.79
At any rate, union and working class men supported labor legislation for the purpose of economically handicaping women. They succeeded.

Protective legislation had an adverse impact on wage-earning women. Consequently, wage-earning women tended to oppose such legislation unless it regulated all workers. Middle class women reform groups, however, such as the League of Women Voters and the Women's Trade Union League, enthusiastically advocated protective labor legislation --first as a device to entice wage-earning women into the suffrage movement, then as a panacea for their ills. . . .

All of these groups offered the same double-pronged rationale. Women, they argued first, 'were inadequately organized' and therefore had been unable 'to obtain the better conditions enjoyed by the men who have obtained them through the power of their labor unions.' To prevent women from becoming, in the words of a NWTL pamphlet, 'underbidding competitors' who would 'drag down the standards of all industry', they needed labor laws. And, second, women had special need for these laws 'to permit efficient motherhood and healthy children.'

Elizabeth Brandeis, economist and reformer, echoed these views when she described the efforts of the lobbyists arguing for Massachusetts' first single-sex hours law in her book on the history of labor legislation in the United States. The lobbyists for the ten-hour law targeted textile mills (which had notoriously long hours) because the preponderance of women and children in that industry had made organization particularly difficult. The legislation was really desired to bring the textile mills up to the ten-hour standard which had been secured in other trades largely through trade union action. The restriction of the bill to women and children was expected to facilitate its passage, and it
was realized that the preponderance of these groups in
the textile labor force would necessitate a general
reduction of hours in the mills. Thus in
Massachusetts as in England the men employed in the
textile industry decided to "fight the battle from
behind women's petticoats."*1

These women attacked the social problems of the poor and working
classes, but in ways that made their efforts seem like natural
extensions of their home duties.*2 Consequently, they went from
homemaking and cleaning to sanitation; from care of the moral
fiber in the home, to the same in the factory. Their strategy,
which was to appeal to the beliefs and world-views of middle
class men as justifications for their activism, worked for them.

Additional openings for women's special expertise
emerged out of the progressive analysis of economic
opportunity and political democracy. . . Women who had
been involved in charities had a special role to play
in shaping new legislative approaches to children and
women in the family. Many of the paid jobs created to
meet these social concerns went to women who already
demonstrated proficiency as volunteers in areas where
men had scarcely stepped. Jobs as factory inspectors,
child labor investigators, visiting nurses, and truant
officers; jobs in bureaus of labor statistics and in
the personnel offices of large industries now opened to
women as part of their social role.

The strategy was much less successful for working women.
This conflict of interests is the best example of the enormous
gap between the perceptions and beliefs of the two economic
classes.

Middle class reform women often refused to believe that
protective legislation had any adverse impact on women wage
earners at all, despite ample testimony to the contrary.
Professor Brandeis concluded in her work on protective labor
legislation that
while in many instances there were other causes, in the preponderant number the causes of reduction in hours was a reduction in the legal maximum. As for the consequences of legal maxima and their reduction, careful investigation revealed practically no dismissal of women employees on this account and no diminution in their opportunities for employment.\textsuperscript{63}

On the contrary, at least in Pennsylvania, and likely throughout the regulated country, the regulation of women and children often resulted in their dismissal for the simple reason that it was more economical to dismiss them and pay a man’s wages than to make the sometimes extensive changes required by the Factory Act. This impact is well documented by both the Chief Factory Inspector and some of his deputies.

In his second annual report to the governor, Chief Inspector Watchorn urged the governor and legislature to abolish section four, which limited the Act to employers of ten or more women and children and thereby make the law equally applicable to places where one woman or child was employed as where ten were employed. His rationale was one woman or child worker was as much in need of protection as ten were, therefore it was unfair to the child or woman to not regulate all of their workplaces. He wrote

Section four should be abolished entirely, for by its operation unscrupulous employers shirk all responsibility by reducing (wherever possible) their number of employees who are minors under sixteen years and females to nine, and then to defy the department.\textsuperscript{64}

Three years later, Deputy Inspector Isabella G. Coombs urged the same thing, on the argument that it was unfair to competition:

It often strikes an employer as an unjust act that place [sic] certain regulations on his establishment and has no hold on an adjoining one employing but one less person of the age or sex required to come within
its provisions; thus allowing the one man a financial advantage in the unrestrained conduct of his business. In consequence, it frequently happens that the one found under the jurisdiction of this department exchanges either a female or minor employe for a man, or else diminishes his force so as to compete with his neighbor on the same footing. Either change proves a loss to the person discharged, whom the law was intended to benefit.

"Laws that regulated lighting, seating, and ventilation arrangements under which women could work often served in fact to prevent women from being offered certain kinds of jobs." Those working women who did support the legislation, came to their position only reluctantly. Women trade unionists, for example, sometimes conceded that the lack of organization among women lead to the need for special protection just to be able to come up to the level of benefits men received through concerted effort.

Concerted political activity women workers during this period is lacking. They were not organized. Many were working every minute they had just to keep their wages. Later on, however, particular groups and trades would mobilize in force to oppose legislated nightwork prohibitions.

Another class of opponents to broad factory regulation were the manufacturers, industrialists, and their associates in the legal field. In Pennsylvania the state's attorney general and the court system lead the opposition. The attorney general manifested his opposition by reading every Factory Act as narrowly as possible. The state supreme court did this as well, and also limited the effectiveness of some legislation designed
to create new opportunities for women. These political figures undoubtedly felt the pressure of the major industrialists of the state to limit the effectiveness of the protective labor lobby.

The attorney general succeeded for an entire decade in limiting the application of the Factory Acts to those places where women and children were employed. Another example of the attorney general's opposition was the way he limited the factory inspector's authority over places in need of fire escapes, despite common knowledge that the local inspectors were ineffective.

Chief Inspector Watchorn, at the 1894 International Association of Factory Inspectors convention, commented on the intransigence of his home state's attorneys and judges in a discussion about the effectiveness of Rhode Island's minimum age law for children. That law required only the parents' attestation to the minor's age in order for the child to work.

Mr. Watchorn said that inspectors could not be held responsible for the construction or efficiency of factory laws, but it was his opinion, that if the judges and lawyers of Rhode Island were of the same order of beings as were judges and lawyers in Pennsylvania, the laws of Rhode Island would rarely be enforced. His comments must have been based in part upon his personal experience with the numerous opinions of the attorney general limiting his and his department's authority.

III. CONCLUSION

Protective labor legislation was adopted in Pennsylvania for women for a number of reasons, and was supported and opposed by
a host of groups. The primary division was along class lines, as middle class reform women were ideologically closer to middle and upper class men than they were to working women. They were not able to fully understand the needs of working women. If they had, they might not have so readily supported single-sex protective legislation designed to set a temporary precedent harmful to working women, with the hope that eventually legislation for all workers would be enacted. Middle class men were primarily concerned with the future viability of the republic, and the reproductive health and morals of women to the extent that they would impact upon future generations.

Male workers and trade unions overwhelmingly supported single-sex protective legislation for women because it kept the women from competing with them in the job market. They argued women's domesticity, and the alleged facts that women workers drove down wages and displaced male workers.

Women workers were disadvantaged by such legislation. They were too disorganized (and too outnumbered at any rate) to lobby effectively against it. Some trade union women voiced their opposition, but others joined male unionists in the belief that single-sex protective legislation was necessary because organization of women was impractical.
Time Line

1848  PA enacts a declaratory 10 hour day law for all workers from the statute & Brandeis at 467

1868  PA enacts a declaratory eight hour day for all workers (i.e., eight hours is a legal day's work unless there is a contract to the contrary). 1868 Pa. Laws No. 99.

1879  PA enacts law to prohibit women from being waiters at theatres, showhouses, etc. 1879 Pa. Laws No. 84, Section 2 (p. 74).

1885

PA enacts three mine safety laws regulating anthracite mines, bituminous coal mines and women. Women and all children under age 14 were prohibited from working in and around mines and collieries, except in clerical and secretarial capacities. 1885 Pa. Laws No. 218, art. IX (anthracite coal mines), and 1885 Pa. Laws No. 205, Section 16 (bituminous coal mines). According to one historian, this provision was merely prophylactic because there were no women employed in the mines themselves anyway. Trachtenberg, History of Legislation for the Protection of Coal Miners in Pennsylvania, New York (1942), at 116.

PA also enacted a separate provision, 1885 Pa. Laws No. 202 which prohibited the employment of women "in and about the coal mine, or any of the manufactories of coal . . .", the purpose of which was apparently to exclude Hungarian women who had been hauling coke in the mines. Trachtenberg, History of Legislation for the Protection of Coal Miners in Pennsylvania, New York (1942), at 155.


1887

PA enacts its Seats Law requiring seats to be provided to women on the job. 1887 Pa. Laws No. 7, Section 1.

International Association of Factory Inspectors created (from: Proceedings & also Brandeis at 629)

1889

PA enacts law requiring provision of separate washrooms and water closets for female employees. 1889 Pa. Laws No. 235, Section 10.

PA Fire Escape Law amended to give Factory Inspectors power to order improvements. However, parallel authority with local fire commissioners became a loophole which completely undermined the effectiveness of the law.

1891
PA reenacts mine safety law of 1885, including Section IX, which prohibited the employment of all women and children under 14 in mines. 1891 Pa. Laws No. 176.

PA enacts law retroactively authorizing payment of salaries for and expenses of the factory inspectors. 1891 Pa. Laws No. 1.

1893 Florence Kelley "largely responsible" for passage of sweat shop and hours act in IL; appt'd first factory inspector; 1895 IL Sup. Ct. Hs hours law unconstit. Brandeis: 465-66

1896 117 factory inspectors in entire U.S. (17 sts have factory or mine safety laws -- but only 9 of these sts, including PA & IL, had separate depts for the enforcement of the factory acts) Brandeis at 632

1897 The Factory Act (including legislation giving inspectors the full & unquestionable authority to order erection of fire escapes). Section one mandates a twelve-hour day/sixty-hour week for women; section four reenacts the seats requirement; section 8 reenacts the washrooms requiremnt.

PA enacts an enforceable 10 hour day law Brandeis: 467

1910 Triangle Waist Factory Fire 145 women die; investigation into enforcement efforts: conclusion: "The Commission made a statement which could probably have been echoed in any other state if a similar investigation had been made: 'it is substantially conceded that the present system of enforcement of factory inspection is totally inadequate." Brandeis at 638-39

1. "Women had never been employed in the mines of Pennsylvania or, indeed, anywhere in the mines of the United States. The Scottish, Welsh, and English miners, whose sisters, wives, and mothers worked in the mines of their home countries, never introduced woman labor into the Pennsylvania mines."


2. Id. at 183.


7. Id.

8. Id.


10. An excellent example of the latter was Mary O'Reilly, deputy inspector from Pennsylvania for many years. In her 1895 report to the chief inspector she supported the inclusion of women under the maximum hours law that covered minors. She had two principal arguments. The first was, implicitly, that if women had the bargaining power that freedom of contract envisioned, they would only work 60 hours per week. She wrote:

   The argument that is usually advanced . . . is that adult women should be privileged to work as long as she chooses. In this they are quite right, only they have not gone far enough. They have not sought to learn her choice, or if they did, even a less than 60 hour limit would be allowed her as a matter of her own choosing.

   Her second argument appealed directly to middle class men's beliefs about the delicate nature of women and their nurturing function. She wrote:

   It may be that [women] were intended to fill the places
of [the minors who were covered by the 60-hour law],
but their very industrial environment being utterly
slavish, soon makes of them subjects not for home grace
and beauty, but rather a physically degenerating class
fit only for medical treatment in the hospital and
home.

Factory Inspector's Report, Pennsylvania Official Documents of
1895, vol. 8, at 17.

An example of the former was probably Mrs. Glenn, also a
deputy inspector in Pennsylvania. Mrs. Glenn read her paper,
"The Factory Law -- Its Cause and Effect," to the 1897 Convention
of the International Association of Factory Inspectors. She
wrote:

With a keen appreciation of the increase in trade, and
a desire to attract the purchasing public, proprietors
of stores and owners of factories placed the comfort of
the employees secondary in the arrangement of their
establishments, and so great was the discomfort of
female employees, accompanied by the employment of so
many children scarcely out of infancy, that the
legislature of Pennsylvania in 1889 enacted a law "To
regulate the employment and to provide for the comfort
of women and children," etc. . . .

Who would condemn the regulation of child labor,
or the ten hours (which should be eight) a day limit
for the employment of women or the provisions for
proper sanitation in stores and workshops? These, in
the opinion of the writer, are the vital and most
essential points, not ignoring the importance guarding
dangerous machinery.

Factory Inspector's Report, Pennsylvania Official Documents of
1897, vol. 2, p. 646 -- 47. Transcript of Proceedings of the
International Association of Factory Inspectors, paper of Mrs.
Glenn.

Mrs. Glenn may have misstated the law of Pennsylvania on the
maximum number of hours per day a woman or minor could be made
to work, was twelve hours a day or sixty per week.

11. See Kessler-Harris, Out to Work, New York (Oxford University
Press, 1982) at 153 and 201. Kessler-Harris disputes the
argument that women could not be organized. She asserts that,
male union members did not want to organize them because they did
not want to compete with them.

12. 1879 Pa. Laws No. 84, Section 2, p. 74.

14. Id.

15. They would not always have it so easy. Much later women would attack men's use of this justification to uphold prohibitions on night-work and the logical contradictions inherent within its selective use. E.g., when it was used by the U.S. Supreme Court in 1924 to justify prohibitions on night-work in New York, "[t]he court did not find the exemption of singers, actors and cloakroom attendants unreasonable, leaving women to wonder at the hypocrisy of a state that held female morality in less regard than male need for entertainment. Jane Norman Smith, leader of the New York division of the militantly feminist National Women's Party, angrily wrote to the New York Times, 'To carry the plea of restriction on the grounds of general welfare would require prohibiting women doctors and nurses from working after 10 o'clock at night, actresses from appearing on the stage after that hour, stage and cabaret dancers from performing . . . .'" Kessler-Harris, Out to Work, New York (Oxford University Press, 1982) at 195.

16. 1885 Pa. Laws No. 202 (women prohibited from working in and about coal mines "or any manufactories of coal"); 1885 Pa. Laws No. 205 (prohibition on employment in or about bituminous coal mines); 1885 Pa. Laws No. 218 (same, anthracite mines).

17. 1885 Pa. Laws No. 218, art. IX was part of a general act regulating anthracite coal mines. 1885 Pa. Laws No. 205, Section 16 was part of a general act regulating bituminous coal mines.


19. Id.

20. Id. footnote at 156.


22. Id. Section 2.

23. Professor Brandeis notes a 1908-09 study of three states where enforcement of regulatory labor laws was left to the initiation of local police, prosecutors and grand juries, that no record of a single prosecution for violation of the acts could be

24. See infra notes 32 et seq., 44-46 and accompanying text.

25. Id. at 114.


27. Smuts at 124.


Mrs. Fanny Baker Ames, originally from Canandaigua, N.Y., taught teaching in Cincinnati public schools for five years before doing volunteer work in the Civil War in military hospitals. She became the second wife of Charles G. Ames, a Massachusetts Unitarian minister, in 1863. They were both suffragists (associated first with Lucy Stone, but later with Susan B. Anthony and Elizabeth Cady Stanton). Between 1872 and 1888 they founded several charity organizations in Philadelphia, including the Philadelphia Society for Organizing Charity, a central clearinghouse to coordinate efforts on behalf of the needy. In 1891 she began a four-year term as Boston's first woman factory inspector. James, Edward T., James, Janet W., Boyer, Paul S., Notable American Women: 1607-1950 Massachusetts (Belknap Press 1971) at 39-40.

31. "An Act to regulate the employment and provide for the safety of women and children in mercantile industries and manufacturing establishments, and to provide for the appointment of inspectors to enforce the same and other acts providing for the safety or regulating the employment of said persons." 1889 Pa. Laws No. 235 (May 20, 1889) (commonly called, the Factory Act of 1889). A copy of the Factory Act appears in Appendix A.
32. Fannie Ames, in her paper on the growth of regulation of mercantile houses, wrote as follows:

"It has gradually become apparent, that for the protection of the employed, legal regulations and restrictions are as necessary in mercantile as in manufacturing establishments; but the fact that the conditions are more under public observation has modified the need of legislation and changed its emphasis.

The laws, which have been partly experimental and may still need modification have had relation first, to the employment of children; then to the providing seats for women; and lastly to sanitary arrangements such as had been found requisite in factories.


33. "An Act to regulate the employment of women and children in manufacturing establishments, mercantile industries, laundry or renovating establishments, and to provide for the appointment of inspectors to enforce the same, and other acts providing for the safety or regulating the employment of said persons." 1893 Pa. Laws No. XXX, Section 1.

34. 1893 Pa. Laws No. XXX, Section 2.

35. Brandeis, Elizabeth History of Labor in the United States: Labor Legislation, New York (MacMillan Co. 1935) at 463. Massachusetts' 1874 law limited liability for violations to "wilful", and thereby undermined enforcement of the act severely. Id. Pennsylvania's law was never limited this way, but section 4 defined factory as only those places where ten or more women and children were employed. This proved to be a large loophole. See infra.


41. See infra page 12.

42. 1889 Pa. Laws No. 235 Sections 13, 14. This number was doubled in the Factory Law of 1893, Section 13. Eventually, the department consisted of 20 inspectors, two clerks, and the factory inspector.

43. These reports, which contain not only a large amount of written opinions and the transcripts of the proceedings of some of the International Association of Factory Inspectors' conventions, also include voluminous statistics on enforcement, types of accidents, compliance orders issued, etc. They are the primary source for much of the information in this paper.


44. See Kessler-Harris, Out to Work, New York (Oxford University Press, 1982) at 114-16, esp. 115.


46. 1889 Pa. Laws No. 235 Section 17.

47. Contra notes 25-26 and accompanying text, discussing how the seats law was neutralized by the vesting of enforcement authority in local politicians.

48. See infra at text accompanying notes 25-29

49. See e.g., Factory Inspector's Report, Pennsylvania Official Documents of 1891, vol. IV, at E. 83. Chief Inspector Watchorn wrote:

A very important change is required for Saturday, [minors should be given a half holiday].

The change on Saturday is a rather radical one, but it is very necessary, for so great is the desire
for a Saturday short day, that in very many places, fifteen or thirty minutes are added to the first five days, and special requests for the shortening of the meal time each day, in order that fifty-four, or fifty-five hours may be worked at the conclusion of Friday's work.

Ten hours and a half work for five days in the week with a hurried lunch at noon instead of a reasonable meal time cannot fail to sap the life and vitality out of the children of tender years (who are to be found in battalions in every manufacturing center of the state), and lay a foundation for a puny race rather than one of stalwart strength of body and intelligence of mind.

Id. The concern for the health and welfare of future generations is obvious.

50. "An Act to amend an act, entitled 'A supplement to an act, entitled 'An act to provide for the better security of life and limb in cases of fire in hotels and other buildings,' approved the eleventh day of June, Anno Domini one thousand eight hundred and seventy-nine, providing additional means of escape," approved the first day of June, Anno Domini one thousand eight hundred and eighty-three." 1885 Pa. Laws 165 (June 3, 1885) (for obvious reasons, commonly known as The Fire Escape Law).

51. Id.

52. "In the prosecution of this work [factory inspection], the fire escape law has been a source of much embarrassment. After an inspection, the means of egress in a factory are found altogether inadequate, and an order is given to erect fire escapes under Section 12 of the Factory Act. The county and municipal authorities approve the condemned fire escape and thus obstruct the proper administration of the Department of Factory Inspection and the execution of the law. Full authority should be given to the Factory Inspector in such cases." Factory Inspector's Report, Pennsylvania Official Documents of 1893, vcl. 7, pp. 5 - 6, report of Chief Inspector Watchorn.

He made a similar complaint in 1891 in his first report: "Factory Inspectors should either be required to report to the fire-escapes commissioners, or the factory department should be given full authority to deal with fire escapes in all manufacturing and other establishments coming under the jurisdiction of the said factory department. It has occasionally happened that we have given orders for improved means of egress in case of fire (from various establishments) and while our
orders were being carried out, some other authority would order something else." Factory Inspector’s Report, Pennsylvania Official Documents of 1891, vol. 4, p. E85.


54. Factory Act, Section 1.

55. See "An Act to amend section one of an act approved the third day of June, Anno Domini one thousand eight hundred and eighty-five, entitled 'An act to amend an act, entitled 'An act to provide for the better security of life and limb in cases of fire in hotels and other buildings,' approved the eleventh day of June, Anno Domini one thousand eight hundred and seventy nine, extending the provisions thereof to buildings used in whole or in part for offices not of fire proof construction." ("The Fire Escape Law of 1897.") 1897 Pa. Laws XXX (July 12, 1897); and "An Act to regulate the employment and provide for the health and safety of men, women and children manufacturing [sic] establishments, mercantile industries, laundries, renovating works or printing offices, and to provide for the appointment of inspectors, office clerks, and others to enforce the same."

1897 Pa. Laws 26 Section 10 ("Factory Act of 1897" or the "1897 Act"): ("and any manufacturing or mercantile industry, laundry, workshop, renovating works or printing office requiring exits or other safe-guards provided for in the fire escape law, the same shall be erected and located by order of Factory Inspector regardless the exemption [sic] granted by any board of county commissioners, fire marshal or other authorities . . . .").

This authority came only at the end of long lobbying by the factory inspectors. The comment of Chief Inspector Watchorn in 1891 was typical.

... Factory Inspectors should either be required to report to the fire-escape commissioners, or the factory department should be given full authority to deal with fire escapes in all manufacturing and other establishments coming under the jurisdiction of the said factory department. It has occasionally happened that we have given orders for improved means of egress in case of fire (from various establishments) and while our orders were being carried out, some other authority would order something else.

56. 1893 Pa. Laws No. XXX, Section XXX (June 3, 1893). Inspector Watchorn, in his 1891 report to the governor, had recommended including either laundries, or, even broader, any place where minors and females are employed. Factory Inspector’s Report, Pennsylvania Official Documents of 1891, vol. 4, p. 84E.

57. Robert Watchorn, the Pennsylvania Factory Inspector in his second report to the Governor discussing the adequacy of the 60 hour per week limit on the employment of minors, wrote that "[t]he very origin of the act was the sufferings of the children who were compelled to work (whenever it suited unscrupulous employers) from twelve to sixteen hours per day, and yet, section one does not wholly prevent the employment of children for more than ten hours per day.” Factory Inspector’s Report, Pennsylvania Official Documents of 1891, vol. 4, p. E82 - 83. The problem was that while children could not be employed for more than sixty hours in one week, there was no limit on the number of hours they could be required to work on any one day.

Factory inspectors were appointed for three-year terms. 1899 Pa. Laws 235 Section 5. The ideologies of the administrations of Robert Watchorn and his successor, James Campbell, represent the development in ideas about the purposes and effects of the Factory Act. Mr. Watchorn, obviously, considered child labor to be one of the greatest problems facing his administration. By the time Mr. Campbell took office, the minimum age for employment was 13, and all minors under age 16 had to have a certificate from their parents certifying their age on file with their employer. Although the child labor problem was not eradicated, the situation had improved greatly. Consequently, Mr. Campbell’s concerns were often focused on other problems. Prominent among these were the sweat shops and the effects of employment on women and women on the labor market.

58. The concern for the education of children was prevalent throughout the child labor abolition movement. Discussions on minimum age and maximum hours laws for children always involved references to the need to educate children. In 1895 Pennsylvania passed a compulsory education law for children. In addition, night school programs for day working children were often promoted. See e.g., Factory Inspector’s Report, Pennsylvania Official Documents of 1894, vol. 8, p. 16 (discussing raising the minimum age for employment from 13 to 14, "An age limit is not the best standard to establish, but it appears to be the only feasible one, . . . especially so when the desired end is to prevent cruelty to children, and to decrease the ignorance which results from their early employment."); id. at 35, Report of Deputy Inspector, Mrs. Annie E. Leisenring, (that she had seen some very successful night school programs open for day workers in her inspections); Factory Inspector’s Report, Pennsylvania Official Documents of 1893, vol. 7, p. 39, Report of Deputy Inspector Mary O’Reilly (“While in Reading, Mrs. Leisenring and l
visited the night schools and it gave us pleasure to find a fair percentage of the children who worked during the day (no others are privileged to attend) present at the session, which lasted from 7 until 9 p.m."; Factory Inspector’s Report, Pennsylvania Official Documents of 1895, vol. v.8, p.16 Report of Deputy Inspector Mary O’Reilly (raising the minimum age from 13 to 14 would “insure a more general training of the young than can be attained up the age of thirteen”). In Massachusetts, truant Officers worked with the office of factory inspection to enforce the minimum age laws.

59. Writing on the topic of a mandatory half holiday on Saturdays, the factory inspector wrote: “Ten hours and a half work for five days in the week with a hurried lunch at noon instead of a reasonable meal time, cannot fail to sap the life and vitality out of the children of tender years (who are to be found in battalions in every manufacturing center of the state), and lay a foundation for a puny race rather than one of stalwart strength of body and intelligence of mind.” Factory Inspector’s Report, Pennsylvania Official Documents, id. The Factory Act of 1899 mandated at least 45 minutes for lunch. Employees, however, would petition the factory inspector to allow them a shorter lunch so that they could take a half day on Saturday.

60. Kessler-Harris, Out to Work, New York (Oxford University Press, 1982) at 101 (With regard to adequate wages: “A woman with sufficient means to support herself was less prone, it was thought, to succumb to the temptation so the seducer. Income was important because it was the key, though not the only, variable in keeping women 'moral' -- or fit for motherhood. And morality constituted the central feature of most investigative reports.”).

61. Oddly enough, for all the concern about the future viability of the republic, no causal connection was noticed between the wages women and children were paid for their labor (which were the lowest in the marketplace) and morality. Low wages had two negative impacts on the labor market: it depressed wages and it displaced some male workers. Women and children were paid much lower wages than men, regardless of where they worked or what they did. Unscrupulous employers would mechanize their factories, and then pay women and children the lower wages to run the machines.


69. Id. at 511. Eventually, both resolutions were adopted.

70. See e.g., Brandeis, Elizabeth History of Labor in the United States: Labor Legislation, New York (MacMillan Co. 1935) at 454 (organized labor came out strongly in favor of hours legislation for women).


72. Kessler-Harris, Out to Work, New York (Oxford University Press, 1982) at 154. According to Kessler-Harris, the American Federationist "was filled with tales of men misplaced by women and children. 'One house in St. Louis now pays $4 per week to women where men got $16,' snapped the journal in 1896. 'A local typewriter has placed 200 women to take the place of unorganized men,' announced an organizer in 1903." Id. at 155.


74. Id. at 156.


Transcript of Proceedings of the International Association of Factory Inspectors.

77. Id. at 649. Pennsylvania's second factory inspector, Robert Watchorn, was a successful union man turned oil tycoon. He was renowned for his generosity and humanity. *The National Encyclopedia of American Biography,* vol. XXXII (1945) at 452-53.

78. I was unable to locate data on the extent of male job loss and female job gain for this period.

79. People were not blind to these factors. The Convention of the International Association of Factory Inspectors in 1897 also adopted a resolution calling upon Congress to reduce immigration as a means of preventing further sweat shops and downward pressure on wages. *Factory Inspector's Report, Pennsylvania Official Documents of 1897,* vol. 2, p. 676, Transcript of Proceedings of the International Association of Factory Inspectors.

However, people chose to ignore these factors to a certain extent in their discussion of women because women posed an additional threat: the threat of leaving their proper sphere. This, of course, raises the question of who will then ensure that the American heritage of strong values will be inculcated on future generations. Many believed that "the very foundations of American society were rapidly crumbling under the impact of urbanization, industrialization, and the expanding privileges of women. The opposition to women's employment was concerned with far more than their place in the world of work." Smuts at 133-34.

Whether the actual impact of women on the market was to displace male breadwinners is a question of fact not necessary to resolve because what was significant to the legislators of the time, absent studies commissioned by them, was their perceptions. I have found no studies at the time about the actual effect of women on the job market. There have been recent ones though. One such on the cigar industry is found in Baxandall, Gordon and Reverby, *America's Working Woman: A Documentary History 1600-Present.* (New York, 1976).


84. Factory Inspector's Report, Pennsylvania Official Documents of 1891, vol. 4, p.84E.


87. Kessler-Harris, Out to Work, New York (Oxford University Press, 1982) at 204-05. These women, though, were most likely merely unwary victims of male trade unionists' rhetoric. Where women had been supported in their efforts to organize, they had done as well as men. Many times, though, the national unions would not support the organization of women. The true motivation of this was a desire to eliminate the competition, but they argued in terms of women's place and special weaknesses. See infra.

88. See e.g. Kessler-Harris, Out to Work, New York (Oxford University Press, 1982) at 191-95; 205; 211.

89. See supra nn.30-41 and accompanying text.

90. See supra text accompanying nn. 50-54.


The courts were conservative in this respect as well. In Commonwealth ex rel. Sherry v. Jencks, 154 Pa. 368 (1893). Miss Sherry, a school teacher, had been duly authorized by the directors of a grammar school to become its principal. The decision of the directors, however, had to be approved by the city controllers. Miss Sherry met all the technical requirements as they had been regularly applied to applications, yet the city controllers refused to approve her appointment. She filed a petition for mandamus to compel them to approve her appointment based in part on art. X, section three of the state constitution, which authorized the appointment of women to be school principals.

The Pennsylvania Supreme Court affirmed the trial court's pre-trial dismissal of the writ on the grounds that despite the statute, the controllers could, in some situations, deny the position to a woman based upon her sex. The opinion manifests the world-view underlying the reasoning:
No woman qualified for supervising principal should be refused appointment because of sex alone. In balancing the arguments for and against an appointment to a particular school, the board of education may, and they could not intelligently dispose of the question if they did not, consider the sex and age of the pupils; the kind of discipline; the measure of physical strength; the facility and experience in the management of pupils on the part of each of the applicants; and in so far as the sex of the applicant might seem likely to help or to be in the way of success in the maintenance of the discipline necessary for the good of the school, it may be considered with the other qualifications, and help to determine the choice. Standing by itself it is neither a controlling qualification nor disqualification. . . . The question of eligibility is one thing. The selection among a class of eligible is quite another. Sex ought not to affect the first, it may help under some circumstances to determine the last. Id. at 374.

The court to reach this result, ignored the issue of the unequal application of a rule requiring five years "approved" experience to Miss Sherry. The totality of the circumstances test set up by the court provides no real standard at all. Women are free to be deprived of as many jobs and opportunities as desired.