

## Protective Legislation and Its Critics: an Enduring Legacy

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**Date :** December 8, 2017

Nancy Woloch, [A Class by Herself: Protective Laws for Women Workers, 1890s-1990s](#) (2015).

While some readers may already know this work, legal academics do not always keep up with monographs that focus on history. So, I will try to widen the audience for this excellent book.

*A Class by Herself* traces the story of “protective legislation” — e.g., laws regulating wages and hours — concentrating on debates over statutes that applied only to women. The story begins in the Progressive Era of the late nineteenth and early twentieth centuries, continues through the New Deal, and ends with questions about modern laws such as the Pregnancy Discrimination Act and Title VII. The book does an impressive job with multiple historical subjects: legal history, history of “worklaw,” history of feminist thought, and history of politics and of the state.

Most prominently, the book features a nuanced take on the tensions between “difference” feminists (who favored protections that applied only to women) and “equality” feminists (who insisted the same rules should apply to both sexes). Both sides get their due. The “Brandeis Brief” from *Muller v. Oregon* (1908), once romanticized for trying to bring evidence from social sciences into the courtroom and later castigated for its jarring patriarchal assumptions, gets a balanced treatment. Notably, the book covers a wide time period, and it shows the enduring importance of these debates while still putting them in specific political, social, and legal historical contexts. Scholars of modern law will have much to ponder with Woloch’s discussion of [UAW v. Johnson Controls, Inc.](#), 499 U.S. 187 (1991), an emphatic expression of the “equality” feminism the New Deal and Great Society had adopted, in which the Court held that an employer rule barring women from working around substances dangerous to pregnant women violated Title VII. While good history doesn’t necessarily need to draw explicit parallels with the present, it’s impressive to see such history done well.

Woloch also has a wonderfully interesting and complex cast of characters. The book features not only famous actors such as Florence Kelly (of the National Consumers League, an advocate of protective legislation for women) and Alice Paul (of the National Woman’s Party, an advocate of equality feminism), but also other fascinating, lesser-known figures, including but not limited to progressive contemporary Elizabeth Baker and, later, Women’s Bureau Director Esther Peterson. In this regard, Woloch adds some fascinating new primary sources, such as Baker’s PhD dissertation.

In telling this story, Woloch shows she understands the internal rules regarding legal doctrine (including debates between “sociological” and “formalist” jurisprudence) without pretending such evolution occurs in a vacuum. Much of the work is told from the point of view of reformers, and the book demonstrates both how political activists shaped the law and how the law shaped the strategies of activists. As with the best history, Woloch stresses how complex and contingent many events were: actual results were far from inevitable, and it is a virtue of the book that its goal is not to crown as “correct” one side or the other in the debates. Woloch rejects simplistic analysis, and her contributions include the memorable line, “[E]quality tends to favor those best equipped to claim it.” I liked this book a lot.

Cite as: Joseph Slater, *Protective Legislation and Its Critics: an Enduring Legacy*, JOTWELL (December 8,

2017) (reviewing Nancy Woloch, **A Class by Herself: Protective Laws for Women Workers, 1890s-1990s** (2015)), <https://worklaw.jotwell.com/protective-legislation-and-its-critics-an-enduring-legacy/>.