1989

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THE MEANING OF SEXUAL EQUALITY: A COMPARISON OF THE SOVIET AND AMERICAN DEFINITIONS

ROSALIE B. LEVINSON*

"One of the achievements accomplished by the Soviet Union is to have ensured in practice the equality of women. Thanks to the measures effected by the Communist Party and the Soviet government, women have gained their rightful place in the life of the state . . . ."1

I. INTRODUCTION

A key theme of the Bolshevik revolution was the proclamation of the total equality of the sexes, and indeed feminists played a prominent role in the Marxist revolt.2 The above-quoted statement of Aleksandra Biryukova, a member of the Secretariat of the Central Committee of the Communist Party, claims the Soviet Union has achieved the goal of equality.3 Article 35 of the Soviet Constitution,4 the Soviet version of the failed Equal Rights Amendment in the United States,5 guarantees equal rights for men and women and several statutes have been enacted to realize this guarantee.6 For example, pregnancy leave and government-sponsored child care, key goals of the women's movement in the United States, have become a reality for Soviet women.7 On the other hand, a close examination of the laws as well as the culture which has developed in the Soviet Union makes it clear that the concept of total equality is

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2. See infra notes 15-16 and accompanying text.
5. Although the proposed Equal Rights Amendment received strong support in the Congress, winning approval in the House of Representatives by a vote of 354 to 24, 117 CONG. REC. H35815 (1971), and in the Senate by a vote of 84 to four, 118 CONG. REC. S9598 (1972), only 35 out of the necessary 38 states ratified it. See J. MANSBRIDGE, WHY WE LOST THE ERA 1 (1986).
6. See infra notes 65-69 and accompanying text.
7. Id.
not that which is propounded by feminists in the United States. Soviet women tend to be concentrated in the lower paid positions, and protective labor laws, condemned in this country as breeding discrimination, abound in Soviet labor legislation. Furthermore, the law is permeated with a concern for protecting and sustaining the role of women as center of the family—a type of "fifties" image of American women long since abandoned in this country.

This Article explores the legal and cultural position of women in the Soviet Union, initially tracing the historical growth and demise of feminism under socialism and then focusing on the current status. The Article will examine the myth of equal employment opportunity in the Soviet Union and the stark inequality of the sexes in the domestic realm. Throughout, comparisons will be drawn between the American and Soviet laws relating to women's rights.

II. HISTORICAL BACKGROUND

The women's movement has passed through several distinct phases in the Soviet Union. The sexual revolution, which began in the 1860s and early 1870s with the Tsar's emancipation of the serfs, first manifested itself in a struggle for equal educational opportunity. Initially, secondary schools were opened to young women, and by the 1870s women gained admission to universities and medical schools. Ultimately, in 1917, women received the right to vote, some three years before the franchise was extended to women in the United States through ratification of the

8. See infra notes 84-85 & 90-92 and accompanying text.
9. See infra notes 113-19 and accompanying text.
10. See infra notes 160-67 and accompanying text.
12. Id. Note that a statute enacted in the 1860s initially prevented women from enrolling or receiving degrees, so they simply audited courses. See id. at 54. In 1872, the first real institution for women was opened in Moscow, and finally in 1876, a decree was issued establishing women's universities in Russia. Id. at 81-82. Medical training was a predominant choice of the radical women at this time, and the movement to gain admission to medical schools culminated with the Women's Medical Institute in 1897. See Holland & McKeveiit, Maternity Care in the Soviet Union, in SOVIET SISTERHOOD 148 (B. Holland ed. 1985) [hereinafter SOVIET SISTERHOOD]. By 1913, 8% of all Russian doctors were women. Id. By 1950, the number of women in the medical profession climbed to 77%. See id. at 150. Today, there has been a slight decline to approximately 68% due to the current Soviet policy favoring male applicants. Id. at 150-51.
13. The Soviet Constitution guarantees all Soviet citizens who have reached the age of 18 the right to vote. KONS. SSSR art. 96. See generally R. STITES, supra note 11, at 198-222 (where the author traces the earlier abortive attempts on the part of various Soviet women's groups to secure the franchise).
Women played an instrumental role in the Bolshevik revolution—thousands were engaged in the movement and were welcomed into its ranks. Reacting to the downtrodden, oppressed status of women in tsarist Russia, a core group of women Bolsheviks set out to destroy all aspects of femininity. They cropped their hair, wore dark blue stockings, and promoted an atheistic, nihilistic ideology. Both in the 1860s and 1870s women played an instrumental role in plotting the assassination of the Tsar; in fact, it was a woman who led the successful bombing squad against Tsar Alexander II in 1881.

A key feminist leader during this period was Alexandra Kollontai. She wholeheartedly adopted Engels’ proposal of total equality between spouses, with children to be reared and educated on a communal basis and household tasks transformed into a public industry. Kollontai envisioned the disappearance of the family structure under socialism, and she advocated that party leaders adopt this as an immediate goal. As a result of feminist pressure, a 1917 decree provided that marriages be established on the basis of equality and mutual agreement of the spouses, and that they be terminable by the unilateral desire of either spouse. In general, this period was marked by a simplification of divorce actions, which was later condemned as nurturing “frivolous attitudes” toward family and family obligations. In the first seven months of 1918, 4,913 applications for divorce were submitted to the Moscow courts alone, while just 1,316 marriages were registered in the same period. These statistics are explained as reflecting the oppressed position of women in marriages which had been entered into before the revolution.

14. U.S. CONST. amend. XIX.
15. R. STITES, supra note 11, at 103-05.
16. Sofia Perovskaya, who gave the final signal to hurl the bomb at Alexander II was the “first woman political” to be hanged. Id. at 147-48. As early as 1866, however, other feminists were involved in assassination attempts. Id. at 118.
17. Engels, Origin of Family, Private Property and State in MARX AND ENGELS, SELECTED WORKS 508 (1986). Engels maintained that once the property incentive is eliminated, mutual love may emerge. Id. at 507. Both Marx and Engels argued that male domination was primarily attributed to property ownership, i.e., males want to pass their property on to their heirs and, in order to do so, they must be able to control women and children. See Engels, Principles of Communism, in THE COMMUNIST MANIFESTO 80 (P. Sweezy trans. 1968).
20. See id. at 824-26.
21. Id. at 828.
22. V. KURITSYN, THE DEVELOPMENT OF RIGHTS AND FREEDOMS IN THE SOVIET STATE
Lenin, who is viewed as the father of the modern communist state, was a staunch supporter of women's equality and emancipation. He stressed the need for the revolutionary transformation of society in order to liberate women. He urged the establishment of kindergartens and nurseries to free women to enter the labor force, as well as the development of the public dining hall to alleviate what he thought was household bondage. He contended that the revolution would end women's roles as "domestic slaves" by the socialization of all household tasks. In 1919, he proudly wrote:

In the course of two years of Soviet power in one of the most backward countries of Europe, more has been done to emancipate woman, to make her the equal of the 'strong' sex, than has been done during the last 130 years by all the advanced, enlightened, 'democratic' republics of the world taken together.

Within months of the creation of the Soviet Republic, decrees were issued and laws passed assuring this equality. Lenin wrote, "Our law has removed everything that denied women rights;" legislatively, the Republic has done "everything required of us to put women in a position of equality."

Thus, the Bolsheviks were probably the first to proclaim, by law, full equality for women in all aspects of life. A primary goal of the revolution was to integrate women into the new society, both legally as well as practically, by providing equal employment opportunity, freedom from previous strictures caused by marriage, the development of child care centers, and the performance of housework by professional staffs of men and women.

23 (S. Coopen trans. 1987). Divorces under the new decree could be obtained without stating grounds and by merely applying for one by mail eliciting the title "postcard divorce." Lecture delivered by R. Stikes at Georgetown University in May, 1988.

24. Biryukova, supra note 1, at 233 (stating that “[t]he greatest contribution to the theoretical elaboration and practical resolution of the woman question in the Soviet Union was made by Lenin.”).

25. See id. at 245; see also source cited infra note 28.


27. 30 V. LENIN, COLLECTED WORKS 122 (1965).

28. 28 V. LENIN, COLLECTED WORKS 180 (1965).

29. See id.

30. 30 V. LENIN, supra note 27, at 43.

31. R. STITES, supra note 11, at 264-66. Lenin wrote in his pamphlet entitled, On the
Even in these early years, however, there was divisiveness within the movement as to how to achieve full equality. A question arose, for example, regarding the desirability of a separate women's organization to deal with specialized women's problems. Lenin staunchly argued that there was no need for such groups, and, in fact, he viewed such institutions as "incubators of bourgeois feminism." He wrote, "We derive our organizational ideas from our ideological conceptions. We want no separate organizations of communist women!" Although Alexandra Kollontai generally agreed that an independent women's group might not be in the best interest of the socialist movement, she felt that there was a need for a special women's group within the Communist Party. The result was the creation of the Zhenotdal or Women's Department established in 1919 to conduct agitation and propaganda among working women. The group was part of the Communist Party and staffed by Party women, but it was not taken very seriously by male Party members or by the Party organization, and it met with open hostility on the part of certain elements. Nonetheless, Kollontai and other women in the movement assumed leadership positions in the Zhenotdal, and this became the branch through which women's issues at least were being debated.

Joseph Stalin's regime put an abrupt halt to the women's movement. In 1930, the Zhenotdal was disbanded, and Stalin sent Alexandra

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Emancipation of Women, that the proletarian dictatorship would mean women's equality "both legal and in practice, in the family, the state, and in society," cited in Y. Luri, Soviet Family Law at ii (1980).

33. Id. (citing V. Lenin, supra note 26, at 110).
34. Id.
35. Id. at 38.
36. See id.
38. Holt, The First Soviet Feminists, in Soviet Sisterhood, supra note 12, at 246-47 (commentary that the process of liberalizing women "ground to a halt with the cult of the personality under Stalin.").
39. McAndrew, supra note 37, at 94. The official word was that Zhenotdal was no longer needed because women had achieved full equality. Browning, Soviet Politics — Where are the Women?, in Soviet Sisterhood, supra note 12, at 212. The idea of a special women's organization was revived under Khrushchev's regime with the creation of the Zhenskie Sovety whose purpose was allegedly to raise the political consciousness of women. Id. at 212-13. It has been argued, however, that the organization failed to accomplish its purposes and instead it reinforced the sexual roles of women by undertaking such feminine-oriented tasks as supervision of child care centers. Id. at 222-23.
Kollontai, its key leader, to Sweden to serve as ambassador.\textsuperscript{40} He outlawed abortion\textsuperscript{41} and made divorce considerably more difficult by establishing a cumbersome procedural mechanism and by making its cost prohibitive.\textsuperscript{42} In general, he relegated women to a much more traditional role, perhaps best exemplified by a decree issued in August of 1944 by the Presidium of the Supreme Soviet, creating an honorary title of "Mother Heroine" conferred on mothers who had borne and raised ten or more children, and an "Order of Maternal Glory" conferred on mothers with seven, eight or nine children.\textsuperscript{43} These statutes exist today, and Soviet women wear their medals with pride.

Kollontai's writings prophesizing the demise of the traditional family unit under socialism were denounced and, instead, family stability became a core concern of the Soviet state: "One of the most important tasks facing Soviet institutions and the public is the strengthening of the family and an increase in its role in the perfection and development of the socialist way of life."\textsuperscript{44} It became the duty of Soviet women to bear children and to assume primary responsibility for their upbringing.\textsuperscript{45} As to the equality problem, the official Soviet position from 1930 until the mid-1960s was that "the woman question" had been solved and that,

\begin{itemize}
\item \textsuperscript{40} R. Stites, \textit{supra} note 11, at 325.
\item \textsuperscript{41} \textit{Id.} at 386-87; see also Juviel, \textit{Forward} to Y. Luryi, \textit{Soviet Family Law} at iv (1980) (noting that by 1934 abortions in Moscow outnumbered live births by four to one and the birth rate had dropped drastically; the decree banning abortions was passed in 1936).
\item \textsuperscript{42} Berger, \textit{supra} note 19, at 827. In 1944, the courts were given discretion to charge between 500 and 2000 rubles to obtain a divorce; parties had to prove grounds for divorce; and applicants had to appear before two separate courts before the divorce could be finalized. \textit{Id.} The author explains that a key reason for these 1944 revisions was Stalin's belief that strong families were necessary to deal with hooliganism of Soviet youths and to increase the birth rate in order to provide manpower necessary to industrialize the country. \textit{Id.; see also infra} notes 175-77 and accompanying text. On the other hand, an argument has been made that the liberal divorce laws actually led to greater exploitation of women, as men went from woman to woman, and thus many women were supporters of the more conservative family policy instituted by Joseph Stalin. See Holland, \textit{Introduction} to \textit{Soviet Sisterhood}, \textit{supra} note 12, at 22. Since 1968, the divorce procedure has again returned to a much more simple process, allowing couples with no minor children to secure a divorce by simply obtaining a certificate with the local registry office for 50 rubles. Peers, \textit{Workers By Hand and Womb}, in \textit{Soviet Sisterhood}, \textit{supra} note 12, at 133. Judicial proceedings are necessary only if the divorce action is contested or minor children are involved. \textit{Id.}
\item \textsuperscript{43} On the Approval of the Regulations of the Statute, the Regulations and the Description of the Maternal Glory Order of the First, Second and Third Classes and the Maternity Medal of the First and Second Classes, Decree of the Presidium of the Supreme Soviet of the USSR of Aug. 18, 1944, \textit{amended by} the Decree of the Supreme Soviet of the USSR of May 28, 1973, \textit{translated and extracted in Soviet Legislation on Women's Rights} 38-42 (V. Barnashov trans. 1978) [hereinafter \textit{Soviet Legislation}].
\item \textsuperscript{44} Buckley, \textit{supra} note 32, at 45 (quoting Zoya A. Yankova, a prominent Soviet sociologist).
\item \textsuperscript{45} \textit{Id.} at 45-46.
\end{itemize}
indeed, this was one of the key achievements of Soviet Socialism.46

In the 1970s the debate regarding the position of women in Soviet society was resurrected. Faced with decreasing manpower, increased divorce, "hooliganism" or juvenile delinquency among Soviet youths, and an increasingly serious alcoholism problem, a new discussion regarding the role of women surfaced in the Soviet press.47 It appeared that the demands placed on women to balance "production and reproduction" was producing a host of social problems which threatened the Soviet state. The proposed solution to these problems, however, did not include Kollontai's rhetoric regarding equality of the sexes.48 Further, feminism, as it is understood in the United States, continued to be denounced as bourgeois ideology divisive of the theory of a unified working class: "It connotes separatism and diversion from the path of socialism."49 Instead, the Soviet solution was to free women from their outside labor obligations so that they could concentrate their efforts on reproduction and building a stronger family unit.50

In 1979, a short-lived feminist movement was reported in Leningrad. An underground magazine, entitled An Almanac: Women and Russia, was published and distributed.51 The articles and poems in the Almanac poignantly portrayed the subjugation of women in the USSR by Soviet men and Soviet institutions.52 Its main subjects were the poor quality of social services and "the failure of men to pull their weight in the family."53 Copies of the Almanac were seized and further issues were banned.54 Four of the key members of the group were sent into exile in 1980, and another member was arrested twice and put on trial for slandering the Soviet state and system.55 One of the women was sentenced to four years in prison and two years in internal exile while the other was released on a two-year suspended sentence because of her ill health.56 Throughout this period, the women were subjected to frequent interviews and harassment by the KGB.57 Even within this feminist

46. Id. at 39.
47. See id. at 40.
48. Id. at 45. Soviet writings contend that history has proved Kollontai's views on the family to be "incompatible with the Soviet ideal of the socialist family." Id.
49. Id. at 30.
50. See infra notes 172-82 and accompanying text.
51. Holt, supra note 38, at 237.
52. Id.
53. Id. at 240.
54. Id. at 237.
55. Id.
56. Id. at 254-55.
57. Id. at 241.
movement, there was a major split as to how "the woman question" should be resolved. While some of the authors urged the need for a radical change in male and female roles, others simply rallied for greater government support to enable women to return to a more traditional family role, thus espousing the official Soviet solution to the plight of women. Aside from this abortive attempt, the radical feminist movement instigated by Kollontai and her followers has not been resurrected.59

III. THE CURRENT POSITION OF WOMEN IN THE SOVIET UNION

Today, women play a critical role in the Soviet economy. They account for 51.5% of the industrial, professional and office workers.60 Almost 85% of the female population between the ages of 16 and 54 hold regular jobs.61 Women constitute approximately 70% of the physicians, 30% of the attorneys, 40% of all scientists,62 and 87% of all economists.63 The Soviet Constitution, as revised in 1977, provides that women be accorded "equal opportunities of employment, remuneration and promotion."64 Soviet law mandates equal wage rates and salaries for men and women with the same qualifications, as well as equal access to educational and vocational professional training.65 Soviet law provides maternity

58. Id. at 247. Somewhat surprisingly, the predominant group that emerged after the split assumed a religious orientation and began to publish their own journals entitled Maria. Id. at 245. In light of the lengthy history of subjugation of women by the Russian Orthodox Church, this movement appears particularly ironic. One author explains, however, that because the priests contacted by the movement were prepared to update the Church's teaching on women, these women were willing to accept the traditional model of womanhood upheld by the Church. Id. at 247-48.

59. Barbara Holland, in her introduction to SOVIET SISTERHOOD, notes that since the exile of the writers of the Almanac the prospects for feminism developing in the USSR are especially dim. Id. at 22. Indeed, the response of the Soviet press to Western feminism has been exceedingly vituperous: "The Soviet press presented its advocates as hysterical middle-class women with nothing better to do and no understanding of the 'real' problems of the world." Holt, supra note 38, at 263.

60. Biryukova, supra note 1, at 235. The figures range from 39% in Tadshikistan, a Moslem Central Asian republic, to 55% in the Baltic republic of Latvia. Peers, supra note 42, at 117. This figure should be contrasted with the 27% figure that existed in the Soviet Union in 1929. Id. at 118.


62. Biryukova, supra note 1, at 236.

63. Smolowe, HEROINES OF SOVIET LABOR, TIME, June 8, 1988, at 29. Note that the large number of female physicians reflects a strong attraction that the Russian women have had for the study of medicine since the 1860s. R. STITES, supra note 11, at 83. Stites explains that many of the leaders of the revolutionary movement were also physicians, and that by the 1870s there were already far more women practicing medicine in Russia than anywhere else in Europe. Id. at 83-87.

64. Biryukova, supra note 1, at 234; see infra note 72 (quoting KONST. SSSR art. 35).

65. Biryukova, supra note 1, at 237. Note that 781 per 1000 working women have a
leave with full pay two months before and after childbirth, and a partial salary for a period thereafter.\textsuperscript{66} The Supreme Soviet recently increased the number of paid days for absences due to children’s illnesses from seven to fourteen,\textsuperscript{67} while Article 35 of the amended Constitution also envisages a gradual reduction of working time for mothers of small children.\textsuperscript{68} Almost 13 million children attend creche-kindergartens and nursery schools subsidized by the state.\textsuperscript{69}

At first glance, Soviet law appears to be quite protective of women’s rights. The Soviets have severely criticized the United States for its failure to pass the Equal Rights Amendment.\textsuperscript{70} They have enacted both Article 34 of the Soviet Constitution which expressly guarantees equality before the law without distinction based on sex,\textsuperscript{71} and Article 35 which states that women and men have equal rights in all aspects of Soviet life.\textsuperscript{72} Article 134 of the Criminal Code of the Russian Soviet Republic makes it a criminal offense to impede a woman in her efforts to take part in

higher or secondary education. \textit{Id.}

\textsuperscript{66} See Buckley, \textit{supra} note 32, at 47. Beginning in 1981, certain women became eligible for partially-paid child care leave, until their children reached the age of one year. \textit{Id.} Working women were permitted to take additional leave to care for newborns up to the age of 18 months, which might be extended to 2 years at a later date. \textit{Compare} Fundamentals of Labour Legislation of the USSR and the Union Republics (approved by the Law of the Union of Soviet Socialist Republics of July 15, 1970) [hereinafter Labor Legislation], \textit{translated and extracted in SOVIET LEGISLATION, supra note 43, at 75-78, art. 71.}

\textsuperscript{67} Biryukova, \textit{supra} note 1, at 246.

\textsuperscript{68} Kudryavtsev, \textit{The Rights, Freedoms and Duties of Soviet Citizens}, in \textit{THE FUNDAMENTAL LAW OF THE USSR, supra note 1, at 258.}

\textsuperscript{69} Biryukova, \textit{supra} note 1, at 245. This figure represents about 45\% of the pre-school population. Peers, \textit{supra} note 42, at 123. Families with low income are exempt from any payment for their children. \textit{See} Buckley, \textit{supra} note 32, at 48. Despite some problems of overcrowding, poor hygiene, and questionable staff quality, the facilities are operated five to six days per week and from nine to 12 hours per day; thus, they provide significant assistance for working mothers. Peers, \textit{supra} note 42, at 123.

\textsuperscript{70} V. Kuritsyn, \textit{Introduction to THE DEVELOPMENT OF RIGHTS AND FREEDOMS IN THE SOVIT STATE, supra note 22, at 12.}

\textsuperscript{71} Citizens of the USSR are equal before the law, without distinction of origin, social or property status, race or nationality, sex education, language, attitude to religion, type and nature of occupation, domicile, or other status. The equal rights of citizens of the USSR are guaranteed in all fields of economic, political, social, and cultural life. Konst. SSSR art. 34. Note, too, that Article 53 of the Constitution provides that “spouses shall be completely equal in family relations.” \textit{Id.} art. 53.

\textsuperscript{72} Women and men have equal rights in the USSR Exercise of these rights is ensured by according women equal access with men to education and vocational and professional training, equal opportunities in employment, renumeration, and promotion, and in social and political, and cultural activity, and by special labour and health protection measures for women; by providing conditions enabling mothers to work; and by legal protection, and material and moral support for mothers and children, including paid leaves and other benefits for expectant mothers and gradual reduction of working time for mothers with small children. \textit{Id.} art. 35.
state, public or cultural activities and provides a criminal penalty of up to two years in prison for violations. Article 73 of the Fundamentals of Labor Legislation of the USSR and the Union Republics prohibits both the refusal to employ a pregnant woman or nursing mother and the reduction of her salary. Article 172 of the Labor Code requires facilities which extensively use female labor to provide creches and kindergartens, as well as rooms to enable mothers to nurse their babies. General Secretary Mikhail Gorbachev has pledged to increase child allowances for low income families and to expand the preschool childcare centers. In addition, his plans include expansion of part-time employment opportunities to enable working women to stay at home. Finally, reproductive freedom has returned to Soviet women with a 1955 decree abolishing the prohibition on abortions.

Despite these gains, a closer analysis of the Soviet system, both legally and culturally, reveals that the Soviet concept of equality in both the employment and domestic realms is significantly different from that which has developed in the United States over the past two decades. Ironically, many of the laws of which the Soviets proudly boast as evidencing the protected status of women are precisely the types of laws which have been invalidated in this country as perpetuating stereotypical thinking about a woman's inferior position and her inability to compete with males on an equal footing.

A paternalistic attitude towards women is reflected in the laws of the Soviet Union as well as in the culture of the people. In addition to the protective labor laws, the heavy emphasis on maternity and child care in the law, in official statements by Soviet leaders, and in the Soviet press


74. Id.

75. Labor Legislation, supra note 66, art. 73.


77. Smolowe, supra note 63, at 30.

78. Id.

79. On Abolishing the Prohibition on Abortions, Decree of the Presidium of the Supreme Soviet of the USSR of Nov. 23, 1955, translated and extracted in, SOVET LEGISLATION, supra note 43, at 43. "Since the 1960s, 7 million abortions have been performed each year in the Soviet Union." Smolowe, supra note 63, at 30. Statistics indicate that "[i]n Moscow alone, there are 1500 abortions a year among girls under the age of 18." Id. It is estimated that up to 80% of all pregnancies in the Soviet Union are aborted, compared to the United States rate of about 30%. L.A. Times, Feb. 14, 1988, § 1, at 2, col. 1.

80. See infra notes 102-10 and accompanying text.
has perpetuated a cultural system wherein women continue to assume full responsibility for child care and domestic chores. The sections which follow support these propositions.

IV. THE MYTH OF EQUAL EMPLOYMENT OPPORTUNITY

A. Comparable Worth

Although, as mentioned earlier, 70% of Russian doctors are female, the statistics are somewhat deceptive. Women predominate in the medical profession, but a physician in the Soviet Union earns approximately the same wages as a skilled seamstress; factory workers earn more.81 In this country it has long been recognized that women tend to be concentrated in lower paying positions such as nursing and school teaching. The Soviet system is no different. Soviet women make up 99.5% of child care workers, 72% of the schoolteachers, 89% of the health care employees,82 85% of the textile workers, 93% of the sewing industry workers, 99% of the typists and stenographers, and 95% of the secretaries and clerks.83 The average salaries of female workers are one-third less than that of men.84 Women seldom occupy the highest paid position in their field — be that medical specialist, hospital director, factory supervisor or procurator.85 For example, in the medical profession women constitute 99.5% of the paraprofessionals, 90% of the laboratory assistants and 85% of the auxiliary physicians, whereas 90% of the Academy of Medical Sciences, 80% of the professors, and 60% of the medical

82. McAndrew, supra note 37, at 104.
83. Peers, supra note 42, at 119-20 (presenting several tables reflecting the distribution of the female population in the Soviet Union by occupation, which show that the concentration of women in certain job categories has actually intensified since data was first collected in 1959).
85. Fischer, supra note 61, at 311-12. In the legal field, most procurators, a prestigious position in the Soviet Union, are men, whereas women tend to be relegated to the lesser position of defense attorney. See D. KAMINSKAYA, FINAL JUDGEMENT 24-25 (1982).
specialists are male. In the field of education, women make up 77% of the primary school principals, but only 34% of those in secondary schools. In industry, they constitute only 16% of the directors of enterprises and section heads.

Although Soviet women are as educated as their male counterparts, many more women than men find themselves in positions for which they are overqualified. In the Soviet Union, heavy manual work, where women are most underrepresented and in fact sometimes legally excluded, pays the higher salaries, whereas white-collar jobs, where women are concentrated, are less financially rewarded. It has been stated that the salaries of women physicians, for example, "have been cruelly held down for the past twenty years," and, more generally, that "expansion of the Soviet welfare state has been staffed through the employment of qualified women, and then financed by holding down their salaries." A recent article in the Moscow Weekly supports this contention:

If all types of work are arranged in pyramid form of the qualifications necessary and the status attached [and that means wages or salaries], we find the following picture: each of the layers is more densely populated by women than the one above it. The same applies more starkly to the pyramid of administrative or educational posts.

In the United States, this same occupational segregation exists, but there is a major debate brewing about comparable worth, a theory which condemns this disparity in earning power that is caused by women occupying traditionally wage-suppressed jobs. The courts in this country

86. See Holland & McKevitt, supra note 12, at 151.
87. Peers, supra note 42, at 121.
88. Id.
89. Id. at 122. A Soviet study in the 1970s revealed that 40% of the women as compared to only 6% of the men surveyed were overqualified and overeducated for their positions. Id. Further, whereas only 10% of the women surveyed held highly skilled jobs, 46% of the males held such positions. Id.
90. Id. The author notes that this trend will continue due to the greater concentration in recent years of women in service and light industry. Id.; see also infra notes 115-19 and accompanying text (regarding the exclusion of Soviet women from certain occupations).
91. Walker, supra note 81, at 26. The article acknowledges, however, that a phased pay increase has been instituted for doctors but that it will take years to bring them to the salary levels of a skilled worker. Id.
92. Id. at 26; see also R. S Torres, supra note 11, at 399 (discussing the "occupational segregation" of women and the feminization of certain fields such as medicine).
have generally refused to find that this suppression of female wages violates federal laws prohibiting sex-based wage differentials and guaranteeing equal pay for equal work. There is, however, a movement afoot in several state legislatures to deal with this problem. In refusing to hold states accountable for sexually discriminatory wage disparities, federal court judges have reasoned that wage differentials in a capitalistic economy are due simply to market forces created by society, and are not attributable to the government. In sharp contrast, the carefully planned Soviet economy, where all wages are regulated by the state, cannot use this defense. It is especially ironic that the salaries of physicians, among the most lucrative in this country, became suppressed in the Soviet Union when women were concentrated in this field. It appears that women have not escaped this problem despite the Soviet "ERA."

B. State Protective Labor Laws

In 1873 the United States Supreme Court upheld a statute banning women from the practice of law, relying on the following premise:

94. See, e.g., Am. Fed'n of State, County and Mun. Employees v. Washington, 770 F.2d 1401, 1407 (9th Cir. 1985) (holding that while the state legislature may have discretion to enact a comparable worth plan, Title VII of the Civil Rights Act of 1964, "does not obligate it to eliminate an economic irregularity that it did not create"); accord Lemons v. City of Denver, 620 F.2d 228, 229 (10th Cir. 1980); Christian v. Iowa, 563 F.2d 353, 355-56 (8th Cir. 1977).

95. See Weiler, The Wages Of The Sex: The Uses and Limits of Comparable Worth, 99 HARV. L. REV. 1728, 1754-55 (1986) (listing states which have begun to implement pay adjustments for government employees, based on a comparable worth analysis, including Idaho, Iowa, Massachusetts, Minnesota, New Mexico, New York, and Washington); see also Clauss, supra note 93, at 83-86 (discussing recent state enactments); Shaw, supra note 93, at 118 (arguing that the best avenue to rectify depressed wages is through collective bargaining together with increased pressure on cities and on state legislatures).

96. See, e.g., Washington, 770 F.2d at 1407 (finding that even if the state is made aware that its pattern of wages departs from the principle of comparable worth, there is no obligation to act, absent evidence that the state decided not to raise the wages of particular workers because most of those workers were female).

97. The Soviets are currently living under the 12th Five-Year Plan. The goals of the plan are outlined by Secretary-General Gorbachev in his book. See M. GORBACHEV, PERESTROIKA: NEW THINKING FOR OUR COUNTRY AND THE WORLD (1987).
The natural and proper timidity and delicacy which belongs to the female sex evidently unfit it for many of the occupations of civil life. The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.\textsuperscript{98}

Thirty-six years later, the Court upheld a law barring women from working in factories for more than ten hours a day, again reasoning “as healthy mothers are essential to vigorous offspring, the physical well-being of a woman becomes the object of public interest and care.”\textsuperscript{99} The Court further noted that special legislation would always be needed for women “to secure a real equality of right.”\textsuperscript{100} As recently as 1961 the Court sustained a law permitting women to be placed on jury lists only upon their request since the “woman is still regarded as the center of home and family life.”\textsuperscript{101}

Today, these statements seem anachronistic—remnants of a way of thinking that has long been discredited. While protective labor laws are perhaps more the product of a paternalistic attitude towards women than the invidious form of discrimination which has characterized race prejudice, our courts and our Congress have acknowledged that such “protective” laws actually prevent women from competing on an equal basis in the employment market, and they perpetuate certain stereotypical presumptions about women.\textsuperscript{102} Justice O’Connor remarked in a recent case alleging gender discrimination that “if the statutory objective is to exclude or ‘protect’ members of one gender because they are presumed to suffer from an inherent handicap or to be innately inferior, the objective itself is illegitimate.”\textsuperscript{103} She stressed that even when a state alleges that its law is being enacted for a compensatory purpose, the statute must be closely examined to ensure that it is not based simply on stereotypical thinking about the role of the sexes.\textsuperscript{104} Applying this

\textsuperscript{98} Bradwell v. Illinois, 83 U.S. 130, 141 (1873).
\textsuperscript{99} Muller v. Oregon, 208 U.S. 412, 421 (1908).
\textsuperscript{100} Id. at 422.
\textsuperscript{102} See, e.g., The Supreme Court: 1973 Term — Leading Cases, 88 HARV. L. REV. 137, 138 (1974) (noting that “even clear ‘favors’ are part of a pattern of legal and social double standards which, in defining sex roles, limit a woman’s opportunity for individual fulfillment”); see also Frontiero v. Richardson, 411 U.S. 677, 684 (1973) (plurality opinion stating that “Our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of ‘romantic paternalism’ which, in practical effect, put women, not on a pedestal, but in a cage.”).
\textsuperscript{103} Mississippi Univ. for Women v. Hogan, 458 U.S. 718, 725 (1982).
\textsuperscript{104} Id. at 730.
analysis, the Court invalidated a University's policy of excluding males from its nursing school as simply perpetuating a stereotyped view of nursing as an exclusively female occupation.105

Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination in employment, has proven to be an important tool in striking down state protective labor laws.106 The courts have viewed Title VII as marking the death knell of the paternalism that characterized previous legislation in this country:

Title VII rejects . . . romantic paternalism as unduly Victorian and instead vests individual women with the power to decide whether or not to take on unromantic tasks. Men have always had the right to determine whether the incremental increase in remuneration for strenuous, dangerous, obnoxious, boring, or unromantic tasks is worth the candle. The promise of Title VII is that women are now to be on equal footing.107

Numerous state statutes excluding women from certain occupations or banning women from jobs requiring heavy lifting or night work have been invalidated through Title VII litigation,108 so that today it is quite uncommon to see this form of discrimination.109 It is now well accepted in the United States that the so-called pedestal upon which women were placed by state protective labor laws has really been a cage preventing

105. Id.
107. Weeks v. Southern Bell Tel. & Tel. Co., 408 F.2d 228, 236 (5th Cir. 1969) (holding that Title VII prohibited the exclusion of women from the strenuous, late-night job of telephone switch man).
108. See, e.g., Krause v. Sacramento Inn, 479 F.2d 988 (9th Cir. 1973) (invalidating a law prohibiting women from being bartenders); Bartness v. Drewrys U.S.A., Inc. 444 F.2d 1186 (7th Cir. 1971), cert. denied, 404 U.S. 939 (1971) (holding that collective bargaining contract provision allowing women to retire three years before men violates Title VII); Rosenfeld v. Southern Pacific Co., 444 F.2d 1219 (9th Cir. 1971) (invalidating minimum hour and maximum weight lifting laws for women only). Moreover, “less than a decade after passage of Title VII, federal courts had invalidated the hour laws of nine jurisdictions, the weight laws of three jurisdictions, and two job prohibition laws.” B. BABCOCK, A. FREEDMAN, E. NORTON & S. ROSS, SEX DISCRIMINATION AND THE LAW, CAUSES AND REMEDIES 271 (1975) [hereinafter BABCOCK & FREEDMAN].
109. See BABCOCK & FREEDMAN, supra note 108, at 271. By the mid-1970s the issue of state protective laws was so well settled that appeals were no longer taken from lower court decisions, and by 1973, 14 states had repealed their hour laws. Id. It has been noted that a key goal of the feminist movement was “to break down the legal barriers that restricted each sex to its predefined role and created a hierarchy based on gender.” Williams, Equity's Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate, 13 N.Y.U. REV. L. & SOC. CHANGE 325, 331 (1984-85).
women from achieving full equality.\textsuperscript{110}

In sharp contrast, a key theme in Soviet legislation is the protection of women. One prominent Soviet authority writes, for example, that a major goal of advanced socialism is to develop women's rights by "the consistent facilitation of working conditions for women, and providing them with relatively easier jobs."\textsuperscript{111} The theme of special protection for women workers has continued with the adoption of the new Soviet Constitution in 1977.\textsuperscript{112} Article 35 stipulates that equal rights for women are ensured "by special labor and health protection for women; by providing conditions enabling mothers to work; by legal protection, and material support for mothers and children . . . ."\textsuperscript{113} One Soviet authority explains:

\begin{quote}
[T]he new Constitution envisages special labor and health protection measures for women. Women cannot be employed in especially arduous and unhealthy jobs, or jobs that would involve moving weight heavier than stipulated by the law. In a number of jobs women are granted extra privileges under the law, such as the right to work a short day, have longer holidays, and retire early on a pension.\textsuperscript{114}
\end{quote}

This theme pervades much of the Soviet legislation regarding women's rights. The Fundamentals of Labor Legislation of the USSR contains special chapters prohibiting women from working in particularly unhealthy or strenuous positions, such as underground jobs.\textsuperscript{115} Other laws prohibit the employment of women for night work, and they provide that neither women with infants nor pregnant women may be assigned overtime work nor may such women be sent out on assignment.\textsuperscript{116}

\begin{itemize}
\item[111.] Tolkunova, Preface to Soviet Legislation, supra note 43, at 15.
\item[112.] KONST. SSSR art. 35. For the full text of this article, see supra note 72.
\item[113.] Id.
\item[114.] Biryukova, supra note 1, at 239. Pension laws provide benefits to men who reach age 60 with 25 years of employment, while vesting the same rights in women at age 55 with only 20 years of service. Regulations on the Procedure for Granting and Paying State Pensions (approved by the Decision of the USSR Council of Ministers of Aug. 3, 1972, No. 590, amended by the Decisions of the USSR Council of Ministers of Nov. 21, 1973, No. 852 and Mar. 7, 1975), translated and extracted in Soviet Legislation, supra note 43, at 173. Although workers engaged in certain occupations are afforded benefits at an earlier age, in each category women's entitlement vests at a younger age and with fewer required years of service. See id.
\item[115.] Article 68 states: "It shall be prohibited to employ female labour on arduous jobs, with unhealthy working conditions and underground jobs, except for a few underground jobs (non-manual labour or jobs connected with sanitary and communal service)." Labor Legislation, supra note 66, art. 68.
\item[116.] Article 69 states:
\end{itemize}
In addition to the protective labor laws, the Council of Ministers of the USSR has issued numerous decrees barring women from various occupations. For example, the Council issued a decree in 1957 declaring it necessary to discontinue the employment of women in underground jobs in the ore-mining industry.\textsuperscript{117} A decree issued in 1969 provides that any woman who is harmfully affected by radio frequency electromagnetic fields must be transferred to other work.\textsuperscript{118} As of January 1981, 460 occupations, mainly those encompassing arduous jobs in the construction, chemical, and metal industries and driving large vehicles, have been closed to women on the ground that they are harmful to their health.\textsuperscript{119} Although some of these protective enactments are aimed at pregnant or nursing women where special needs might survive even a challenge under Title VII,\textsuperscript{120} many of the laws are not limited in this fashion, but rather generally reflect the type of stereotypical thinking discredited by scientific evidence and rejected by courts in this country.\textsuperscript{121} For example, chemical

\begin{verbatim}
It shall not be permitted to employ women for night work, except in the sectors of the economy where there is a special need and where it is allowed only as a temporary measure.

It shall be prohibited to employ pregnant women, nursing mothers, and women with children under one year of age on night and overtime work, for work on days off, or to send them on assignments.

It shall not be permitted to employ women with children from one to eight years of age on overtime work or to send them on assignments, unless they give their consent.

Labor Legislation, supra note 66, art. 69.

117. On Measures to Replace Female Labour on Underground Jobs in the Ore-Mining Industry and at Underground Projects, Decision of the Council of Ministers of the USSR of July 13, 1957, No. 839, translated and extracted in SOVIET LEGISLATION, supra note 43, at 87-89. Note that the Council of Ministers is the highest executive organ in the Soviet Government, and it is responsible for supervising the work of the ministries and other governmental bodies.

118. Instructions on Safety Precautions in the Operation of Optical Quantum Generators at Research Institutions of the USSR Academy of Sciences (approved by the Vice President of the USSR Academy of Science on Feb. 21, 1969), translated and extracted in SOVIET LEGISLATION, supra note 43, at 106-07.


120. For example, airline policies requiring pregnant flight attendants to take maternity leaves, because pregnant women are more likely to be incapacitated during an emergency evacuation and because pregnancy-related symptoms, such as fatigue, nausea and spontaneous abortion, pose special safety risks, have been upheld by several circuits. See, e.g., Laffey v. Northwest Airlines, 740 F.2d 1071 (D.C. Cir. 1984), cert. denied, 469 U.S. 1181 (1985); Levin v. Delta Airlines, 730 F.2d 994 (5th Cir. 1981).

121. See, e.g., Eastern Airlines v. Burwell, 633 F.2d 361 (4th Cir.), cert. denied, 450 U.S. 965 (1981) (mandatory leave imposed prior to the thirteenth week is contrary to medical evidence and thus impermissible); Hayes v. Shelby Memorial Hosp., 726 F.2d 1543 (11th Cir. 1984) (employer cannot justify a fetal vulnerability program which excludes women from certain jobs absent objective scientific evidence that an unreasonable risk of harm to the fetus or potential offspring exists due to toxic hazards, that the hazard applies to women
\end{verbatim}
companies in the United States which randomly exclude all women have come under the attack of feminists who argue that such fetal vulnerability programs should not be characterized as a "woman's" problem, or as a battle between women's employment rights and fetal health rights.\textsuperscript{122} Scientific evidence establishes that male reproductive capacity is often equally affected by such chemicals and yet employers appear to be concerned only with the effect on female workers.\textsuperscript{123} Further, women are excluded only from traditionally male-intensive jobs, despite exposure to known hazards in traditional female occupations, such as the exposure to anesthetic gases by nurses, dental assistants and dental hygienists or the exposure to all kinds of harmful bacteria by hospital workers.\textsuperscript{124} Although recognizing an employer's right to show concern for fetal health and to avoid potential liability for harm to offspring, feminists in this country would demand that any exclusionary policy be narrowly tailored and that it be adopted only after fully exploring the availability of alternatives which might have a less discriminatory effect.\textsuperscript{125}

\textbf{C. The Pregnancy Dilemma}

The question of pregnant and nursing women requires greater analysis. There is a division within the women's movement in this country as to whether special protective legislation is necessary or desirable to deal with the unique problem of childbirth. On the one hand, it has been argued that because men and women are not similarly situated when it comes to this biological trait, and because at least 75\% of women will be affected by pregnancy at some point in their working lives,\textsuperscript{126} special laws

\begin{itemize}
\item but not to men, and that no acceptable alternatives exist which would have a less adverse effect on women); see also Finley, Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate, 86 Col. L. Rev. 1118 (1986).
\item 123. Id. at 665.
\item 124. Id. at 649.
\item 125. Id. at 667. The author also notes the similarity between the need for gender neutral laws regarding reproductive policy and the question faced by the court in the 1970s addressing maximum hour provisions for women only, which have since been replaced by gender neutral statutes. Id. at 655; see also Hayes, 726 F.2d at 1543 (applying this standard to a challenged fetal vulnerability program).
\end{itemize}
should be passed to enable women to compete equally with men. On the other hand, many feminists argue that women can achieve true equality only if pregnancy is viewed as comparable to other physical conditions. They contend that special rules and privileges disable women from competing with men in the work place and thus should not be countenanced.

The pregnancy dilemma sharply raises the deeper question of a woman’s identity. Professor Williams describes the debate between those who seek special and those who seek equal treatment as one between those who advocate “that the law recognize and honor a separate identity which women themselves consider special and important and, on the equal treatment side, a commitment to a vision of the human condition which seeks to uncover commonality rather than difference.” In a sense this statement encapsulates the core difference between the Soviet and American models of equality. The Soviets appear to whole-heartedly adopt and reinforce the “special identity” model. They criticize feminists in the United States for their focus on the sameness between men and women. Rather, they contend that “a more realistic socialist notion of...
equality . . . takes immutable differences between the sexes as a given point of departure."\textsuperscript{130} They argue that the special biological attributes of the female organism must be taken into account and that, because the functions of motherhood are "inalienable and irreplaceable," women inevitably belong to a "separate group of workers from men."\textsuperscript{131} 

Although some American women might be in agreement with this Soviet philosophy, many feminists in recent years have struggled with this identity question and some have become staunch advocates of the "equal treatment" model which focuses on the similarities between the sexes rather than on the differences.\textsuperscript{132} They contend that the "equal treatment approach to pregnancy is the one best able to reduce structural barriers to full work force participation of women, produce just results for individuals, and support a more egalitarian social structure."\textsuperscript{133} Their struggle has not been an easy one. The United States Supreme Court entered the pregnancy debate in 1974. In \textit{Geduldig v. Aiello},\textsuperscript{134} the Court held that classifications based on pregnancy do not constitute impermissible sex classifications;\textsuperscript{135} thus a state is under no obligation to provide disability benefits to pregnant women, even though other types of disabilities, including those which affect only males, are covered.\textsuperscript{136} Only laws which burden or penalize pregnancy violate federal law.\textsuperscript{137}

In reaction to the Supreme Court's holding on the unprotected status of pregnant women, Congress passed the Pregnancy Discrimination Act of 1978, which expands the protection afforded women under Title VII by providing that discrimination based on sex includes discrimination "on the

\textsuperscript{130} Buckley, \textit{supra} note 32, at 44.

\textsuperscript{131} Id. Another Soviet author writes, "Equality means to achieve according to abilities." \textit{Id.} at 48. And because women have two roles, one in production and one as a mother, they must be given a reduced work load. \textit{Id.}

\textsuperscript{132} Williams, \textit{supra} note 109, at 352-70. Williams more generally argues that whenever sex is used as a proxy for a more germane characteristic, such as strength, this produces "gender hierarchy" and it tends to allow individuals to be treated as "statistical abstractions rather than as persons with individual capacities, inclinations and aspirations — at enormous cost to women and not insubstantial cost to men." \textit{Id.} at 329-30.

\textsuperscript{133} \textit{Id.} at 351-52.

\textsuperscript{134} 417 U.S. 484 (1974).

\textsuperscript{135} \textit{Id.} at 497. The Court reasoned that the classification was between pregnant and non-pregnant persons, not between males and females. \textit{Id.} at 497 n.20.

\textsuperscript{136} It subsequently reached the same conclusion regarding Title VII's proscription of sex discrimination. See \textit{Gen. Elec. Co. v. Gilbert}, 429 U.S. 125 (1976). Had the Court found discrimination based on pregnancy to be sex discrimination, the state would have had to justify its law by showing that the classification was substantially related to an important government interest. See \textit{Mississippi Univ. for Women v. Hogan}, 458 U.S. 718, 724 (1982).

\textsuperscript{137} \textit{See, e.g., Cleveland Bd. of Educ. v. La Fleur}, 414 U.S. 632 (1974) (invalidating a law that required pregnant teachers to resign from their employment based on an irrebuttable presumption of incompetency or inability to perform).
basis of pregnancy, childbirth, or related medical conditions." Reflecting the equal treatment model, the statute does not force an employer to take any affirmative steps to facilitate child bearing; rather, it merely requires an employer to treat pregnancy disability the same as any other form of temporary disability. Indeed, the Pregnancy Discrimination Act may have had some negative repercussions in that employers who previously granted maternity leave may now have opted to restrict such leaves to the disability period. Thus, although the statutory definition of sex discrimination in Title VII was amended to include pregnancy and childbirth, and the discharge or refusal to hire because of pregnancy is now illegal, employers are under no obligation to provide disability benefits or to hold jobs open for pregnant women unless similar protection is afforded to workers suffering from other "temporary" disabilities.

In sharp contrast, Soviet law contains numerous provisions imposing affirmative obligations on the State to provide special protection and assistance to pregnant and nursing women. In addition to the laws 138, 139, 140, 141, and 142 providing in pertinent part that women affected by such conditions "shall be treated the same for all employment-related purposes ... as other persons not so affected but similar in their ability or inability to work ..., " the 1982 statute states that women affected by such conditions "shall be treated the same for all employment-related purposes ... as other persons not so affected but similar in their ability or inability to work .... "

Note, however, that one appellate court has held that an employer's 10-day maximum sick leave policy, which clearly affected women employees more severely than men, violates Title VII. Abraham v. Graphic Arts Int'l Union, 660 F.2d 811, 819 (D.C. Cir. 1981). For further support of this position, see Note, Employment Equality Under the Pregnancy Discrimination Act of 1978, 94 YALE L. J. 929 (1985). Compare Wimberly v. Labor and Indus. Relations Comm. of Missouri, 479 U.S. 511 (1987) (holding that a state may deny unemployment compensation to jobs lost due to pregnancy because persons suffering from other temporary disabilities are similarly unentitled to benefits).

This distinction reflects the general nature of the United States Constitution which has been interpreted to contain prohibitions against government misconduct, but which imposes no affirmative obligations or duties on the part of the government to provide services for its citizens. See, e.g., DeShaney v. Winnebago County Dep't of Social Services, 109 S.Ct. 998, 1006 (1989) (rejecting a due process claim brought against the welfare department for failing to intervene to protect a child known to be at risk, because the state did not by an "affirmative act" restrain the child's ability to protect himself); Jackson v. City of Joliet, 715 F.2d 1200, 1203 (7th Cir. 1983), cert. denied, 465 U.S. 1049 (1984) (describing the Constitution as "a charter of negative rather than positive liberties"); The duty to provide medical, protective or other services has been recognized only in the narrow context of inmates or individuals involuntarily committed to state institutions. Younberg v. Romeo, 457 U.S. 307 (1982); Estelle v. Gamble, 429 U.S. 97 (1976). Compare Harris v. McRae, 448 U.S. 297, 318 (1980) (states need not fund medically necessary abortions because the Constitution imposes no affirmative obligation to fund the exercise of fundamental rights); Lyng v. Northwest Indian Cemetery Protective Assoc., 108 S.Ct. 1319 (1988) (noting that the Free Exercise Clause is "written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the government"); Kadrmas v. Dickinson Public Schools, 108 S.Ct. 2481 (1988) (there is no constitutional requirement that a school district offer free bus services, even to families who cannot afford this cost).

Note that the Soviet Constitution, with its 174 articles, is replete with affirmative
prohibiting night work\footnote{Labor Code, supra note 76, art. 48.} and overtime work\footnote{Id. art. 54.} for pregnant women and nursing women, the Labor Code of the Russian Soviet Federative Socialist Republic affirmatively provides special daytime rest periods for nursing women,\footnote{Id. art. 169.} as well as free vouchers, which enable pregnant women to visit sanatoria and rest homes.\footnote{Id. art. 171.} Women in arduous jobs must be transferred to lighter work during pregnancy while being paid at their previous salary.\footnote{Holland & McKevitt, supra note 12, at 162.} Soviet law guarantees paid maternity leave of 56 calendar days before and after the birth of a child as well as the option of additional leave without pay until the child reaches one year of age.\footnote{Labor Legislation, supra note 66, art. 71.} In contrast, state statutes in this country seeking merely to guarantee unpaid leaves have been challenged as “reverse” discrimination.\footnote{See infra note 151.} Although the Supreme Court has upheld a California law requiring employers to provide up to four months unpaid disability leave to physically disabled pregnant women,\footnote{See California Fed. Sav. and Loan Ass’n v. Guerra, 479 U.S. 272, 292 (1987) (6-3 holding that the Pregnancy Discrimination Act of Title VII did not preempt this type of state law). Other states, including Montana, Connecticut, Washington, Hawaii, Kansas, New Hampshire, Iowa and California, have enacted similar legislation. See Samuels, Coffinberger & Fouts, Responding to Social and Demographic Change: Family and Medical Leave Proposals, 39 LAB. L.J. 748, 749 & 779 (1983) (discussing recent state enactments concerning maternity and parental leave) [hereinafter Family and Medical Leave Proposals].} concern exists in the women’s movement as to whether this is yet another example of a state protective labor law that will ultimately discourage employers from hiring women.\footnote{See Brief Amici Curiae of the Nat’l Org. of Women, Guerra, 479 U.S. at 272 (1987) (No. 85-494) [hereinafter NOW Brief]; see also Williams, supra note 109, at 328 (noting the split in the feminist legal community as to whether such laws should be favored or opposed). It has been noted that Guerra split the feminist community into four different camps: traditional feminists, such as Williams, who oppose the law; neofeminists who believed that the law properly provides special benefits for women workers because of their special role as mothers; realistic feminists who contend that biological differences justify such laws to ensure equal employment opportunity for both sexes; and “radical” feminists who argue that the law must acknowledge and compensate for “the inequities of reproductive biology,” which require women to make choices that men need not confront. Gale, supra note 127, at 463-66. Justice Marshall’s opinion in Guerra appears to have adopted the realistic viewpoint. He found that the law did not violate Title}
focuses on whether such laws discriminate unfairly against males who also suffer temporary disabilities for which guaranteed job return does not exist, or whether, on the other hand, such laws simply compensate for biological differences between the sexes. Although a handful of states require employers to provide some type of temporary disability insurance benefits for childbirth, it has been estimated that less than 40% of working women in the United States may expect even six weeks of paid maternity leave.15

Feminists who nonetheless oppose “special treatment” measures argue that a better alternative to the “pregnancy” problem is to offer all employees job protection for up to four months disability, rather than create the impression that women workers are more expensive to hire, prompting reluctance to employ them during childbearing years.153 Further, they seek gender-neutral laws which would offer all employees parental leave, thereby recognizing that either sex may undertake such responsibilities, rather than reinforcing traditional role assignments.154 This dilemma is perhaps of less concern in the Soviet Union where the State is the sole employer and where the refusal to employ or the dismissal of a woman on grounds of pregnancy or nursing subjects the Soviet official to dismissal from office or “corrective labor for a term of VII, but rather it simply allowed “women, as well as men, to have families without losing their jobs.” Guerra, 479 U.S. at 289.

152. Lewin, Maternity-Leave Suit Has Divided Feminists, N.Y. Times, June 28, 1986, at A52, col. 2. Note, however, that some gains have been made. For example, in 1973, 73% of women workers surveyed reported that they received maternity leave with full reemployment rights as compared to 59% in 1969. Quinn, Evaluating Working Conditions in America, 96 MONTHLY LAB. REV., Nov. 1973, at 32. On the other hand, as compared to other industrialized nations, the United States lags far behind. For instance, 75 nations, including all other industrialized societies, guarantee job leave and reinstatement and provide cash benefits for work absences due to pregnancy. Brief for Respondent at 42, Guerra, 479 U.S. at 272 (No. 85-494). In addition, 127 nations provide protection for pregnant workers that is similar to or greater than that provided by the challenged California pregnancy disability leave statute. Brief Amici Curiae of the Human Rights Advocate at 6, Guerra, 479 U.S. at 272 (No. 85-494).

153. For example, a bill introduced by Patricia Schroeder, currently entitled the Family and Medical Leave Act of 1988, H.R. 925, 100th Cong., 1st Sess. (1987), would grant new parents up to ten weeks of unpaid leave to care for a newly born, newly adopted, or seriously ill child. The bill has undergone significant change since it was originally introduced, but it has retained this gender neutral posture throughout. A similar bill currently pending in the Senate, the Parental and Medical Leave Act of 1988, S. 2488, 100th Cong., 2d Sess. (1988), is also written in gender neutral terms. See Family and Medical Leave Proposals; supra note 150, at 751-52; see also NOW Brief, supra note 151 (urging the Court to remedy the discrimination by extending the same fringe benefit to all employees). Professor Williams argues that feminists who seek equal treatment also seek “positive action,” but they simply disagree as to the form such action should take. Williams, supra note 109, at 376. She cites with approval the Swedish model which adopts an entirely gender neutral insurance and leave scheme. Id. at 377-78.

154. See Williams, supra note 109, at 354-55.
Such laws nonetheless entrench gender roles which obviously affect the position of women in Soviet society. The Soviet Union openly prides itself on its development of labor protection for pregnant women, nursing mothers, and women with young children as a cornerstone of Soviet policy "invariably pursued in Soviet legislation on women's rights." A key theme in Soviet law is to establish lower production quotas for pregnant women, to increase maternity relief and to allow special time off for nursing women and for women whose children are ill.

In short, according to Soviet doctrine, equality of men and women may be achieved only by "providing the best possible conditions for women to combine harmoniously their equal and broad participation in the life of society and the bringing up of their children." It is stated that this doctrine not only represents government policy but also "a moral law of socialist society." Achievement of equality in the Soviet Union contemplates affirmative steps to equalize the sexes by providing special privileges for female workers. Although many American women might welcome this approach to equality, much of the rhetoric resembles the paternalistic, protectionist philosophy which influenced the law in this country some thirty years ago. Arguably, Soviet women are not at the mercy of private entrepreneurs who will be reluctant to hire more expensive female labor. The emphasis on maternity and childbirth, however, is a double-edged sword in that it solidifies and perpetuates a mentality about women that stymies their ability to succeed in the workplace and that, at the same time, places significant pressure on women to conform to the traditional domestic role model. The next section reveals that this paternalistic attitude is not limited to the employment arena, but is a pervasive philosophy that permeates much of Soviet law and its society.

V. SOVIET ENTRENCHMENT OF TRADITIONAL GENDER ROLES

As previously discussed, the distinctive position occupied by women in the Soviet Union is reflected throughout its body of law. The

155. Criminal Code, supra note 73, art. 139. The same article is included in the criminal codes of all the other Union Republics, except for Estonia and Latvia. Id. n.1.

156. See Preface to SOVIET LEGISLATION, supra note 43, at 15.

157. See supra notes 142-48 and accompanying text. Note the emphasis placed on the necessity for mothers to have child care leave or part-time employment during child-rearing years, thus confirming the belief that childrearing is the mother's responsibility. Id.

158. Biryukova, supra note 1, at 234.

159. Id.

160. See supra notes 66-78 & 142-48 and accompanying text.
protective labor laws as well as the more specialized laws dealing with pregnancy, childbirth and child rearing all reinforce the role of woman as center of home and family life. The constitutional guarantee of equality in Article 35, which provides legal protection for "mothers and child" without mentioning fathers, embodies the Soviet attitude towards women. The Fundamentals of Public Health Legislation of the USSR clearly states that "motherhood shall be protected and encouraged by the state." Public health laws provide for maternity consultation centers, maternity homes, sanitoria for pregnant women and mothers with children, as well as creche, kindergartens and other children's institutions. Divorce statutes mandate that a husband may not, without the consent of his wife, terminate the marriage during the pregnancy of the wife or until one year after childbirth. Perhaps the most classic example of the emphasis on motherhood is the previously noted awarding of the Mother-Heroine title and medal to women with ten or more children and the Special Order of Maternity Glory award to women with seven or more children. In addition, women are given a bonus of 50 rubles upon the birth of their first child and 100 rubles for the second and third child, whereas a 6% tax is imposed on childless couples. All of these measures, of course, are a vast departure from the feminist notions propounded by Kollontai and her followers in the early years of socialism. Rather, as one commentator has noted, this emphasis on preservation of the traditional family unit is much more the product of

161. Konst. SSSR art. 35.
163. Id.
165. See supra note 43 and accompanying text.
166. Buckley, supra note 32, at 48. Note that the lesser sums are given for the fourth and fifth child, arguably to encourage optimal population reproduction while not rewarding the higher birthrate in the Caucasus and Central Asia, where authorities consider the birthrate to be too high. Peers, supra note 42, at 136-37.
167. Peers, supra note 42, at 133. Surprisingly, this tax has not affected the legalization of abortion, which remains the major form of birth control in the Soviet Union, readily available at a nominal cost, although under what has been described as inhumane conditions. Id. at 134. Arguably, the Soviet Government is reluctant to return to illegalization of abortion, because the experience under Stalin suggests that such an action would lead to massive defiance of the law and illegal abortions. Holland & McKevitt, supra note 12, at 152.
168. See supra notes 17-20 and accompanying text.
Stalin's regime than any Marxist theory.  

Stalin's traditionalist philosophy has been nurtured and solidified by a male-dominated Soviet Government. Women constitute less than a dozen of the 307-member Central Committee, and no woman has served on the all-important 13-member Politburo since the time of Khrushchev. Further, only 29% of the membership of the Communist Party is female. As one authority notes, "Soviet socialism does not appear, in essence, to have lessened the patriarchal hold. Currently there is little to suggest that the male membership of the CPSU intend to surrender their political monopoly, either as elites or as males." The Communist Party's swift and merciless destruction of the feminist group that produced the Almanac in the late 1970s confirms the accuracy of this description. Rather, Soviet ideology regarding women "reflects the needs and priorities of the Soviet state as defined by the male political leadership."  

Today at least three compelling reasons exist for Soviet leaders to subjugate women to a traditional role. First, and perhaps most significantly, is the concern of the Soviet state for its shortage of manpower,
which makes female reproduction and family stability top priorities.\footnote{175} Statistics indicate that the average population increase between 1951 and 1958 was 1.8\% whereas the figure had fallen to 0.9\% for the years 1970-78.\footnote{176} The Twenty-sixth Congress of the Communist Party in 1981 adopted a “comprehensive demographic” policy to deal with the stark decline in the birth rate.\footnote{177} That policy consists of providing incentives for childbirth and easing the burden on women who are balancing this task with their obligation to work.\footnote{178}

A second reason for the emphasis on motherhood and the traditional role model for women stems from the policy-makers’ belief that by strengthening the family, the problems of juvenile delinquency and alcoholism may be solved or at least ameliorated. It is argued that the entry of Soviet women into the work force and the concomitant loss of the male position as family breadwinner, are the key causes of male antisocial behavior, and thus women are urged “to cultivate their feminine qualities in order to rekindle the masculinity of their partners.”\footnote{179} Third, since the crippling economic austerity facing the state leaves absolutely no finances to underwrite the socialization of domestic chores as was promised by the Bolsheviks,\footnote{180} women must be encouraged to continue to provide such services without special remuneration.\footnote{181} The Twenty-sixth Congress of the Communist Party decided in 1981 that reinforcement of the traditional maternal role was needed for the betterment of the state, and because there was no feminist perspective at this policy-making level — the only feminist viewpoint having been squelched two years earlier in Leningrad — the steps which have been taken have indeed reified the traditional female role model.\footnote{182}

\begin{footnotes}
\footnote{175}{Id. at 50.}
\footnote{176}{Peers, supra note 42, at 126. Further data from the 1979 census shows that 25\% of Soviet women are childless, another 23\% have only one child, and 25\% have two children. \textit{Id.} at 128. The average family size in the USSR dropped from 3.7 persons in 1970 to just 3.5 persons in 1979. \textit{Id.} At the same time the population explosion in the Central Asian Republics, combined with a lower death rate among the Soviet citizens, has created a political dimension to this demographic crisis. \textit{Id.} at 130.}
\footnote{177}{The 26th Congress stated that this was a top priority. \textit{Id.} at 116, 131.}
\footnote{178}{Since 1981, new measures have been enacted to provide partial leave for mothers to care for their children for one year as well as the right to take an additional leave without pay until the child is 18 months old. Buckley, \textit{supra} note 32, at 47. Note that the Soviet Constitution makes employment a mandatory obligation imposed on all citizens. Violation of this duty is punishable as a criminal offense, \textit{i.e.}, parasitism. Article 60 provides that “evasion of socially useful work is incompatible with the principles of the socialist society.” \textit{KONST. SSSR} art. 60.}
\footnote{179}{Attwood, \textit{The New Soviet Man and Woman}, in \textit{SOVIET SISTERHOOD}, \textit{supra} note 12, at 73.}
\footnote{180}{See \textit{supra} notes 26-31 and accompanying text.}
\footnote{181}{Attwood, \textit{supra} note 179, at 71-72.}
\footnote{182}{The Soviets’ explanation for women’s low participation in politics is “biologism”},
\end{footnotes}
Statements by leaders of the Soviet Union clearly reflect this philosophy. Secretary General Gorbachev, in a 1987 address before the International Women's Conference in Moscow, referred to women's inherent functions: "those of mother, wife, the person who brings up children." In his book Perestroika, he condemns the failure of the Soviet state to attend to "women's specific rights and needs arising from their role as mother and home-maker," and he promises that under perestroika steps will be taken "to make it possible for women to return to their purely womanly fashion." Gorbachev's words are ironically reminiscent of statements made by United States Supreme Court Justice Bradley over 100 years ago in speaking of the "noble and benign" mission of women to bear and raise children.

Aleksandra Biryukova, who is the first woman in twenty-five years to be elevated to the 10-member Secretariat of the Central Committee of the Communist Party, writes that the Soviet state "[p]roclaimed motherhood to be woman's social function" and then took it upon itself to create conditions enabling women to combine their employment responsibilities "with their family and household duties." Commending the government on its efforts, she proclaims that, "This is not a simple matter. The desire to look out for her near and dear ones and keep her home cozy is typical of a woman." Another official writes:

A woman only shows her worth, her essence, when she, alongside participating in production and sociopolitical activities, also fulfills her social role in the family, connected with the specific character of her sex. The character and structure of a woman's personality will be incomplete if she abstracts herself from her family functions, and especially from the function of maternity.

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i.e., gender roles which are set by biological differences. Browning, supra note 39, at 232. Regardless of the cause, it is clear that men have defined the concept of sexual equality in the Soviet Union. Further, the Soviet disciplines of psychology and sociology appear to reinforce the traditional view of male superiority. Attwood, supra note 179, at 75.

183. Smolowe, supra note 63, at 35; see also Eaton, Soviet Women: More Rights — and Toil, L.A. Times, June 24, 1987, § 1, at 5, col. 1 (quoting portions of the Secretary General's address).

184. Smolowe, supra note 63, at 35.

185. M. GORBACHEV, supra note 97, at 117.

186. See supra note 98 and accompanying text.

187. Biryukova, supra note 1, at 247.

188. Id.

Soviet propagandists have been successful in enlisting the support of both men and women in their cause. A high priority on the agenda of the Soviet Women's Committee, the key Soviet women's advocacy group responsible for submitting legislation affecting women's rights, is the building of flexibility into female work schedules and the allowance of a shorter day for working mothers. In this country such laws might be viewed as creating an impediment to the achievement of full equality for career women, by rendering it extremely difficult for women to attain leadership positions in their fields, but in the Soviet Union these laws are welcomed as necessary concessions to enable women to fulfill their domestic tasks.

One Soviet woman commented to an American journalist, “In our country we have long since ceased to fight for the rights of women. We are fighting for the right to be women.”

This traditionalist attitude regarding the role of women is being reinforced throughout Soviet society. It is being taught in Soviet schools, it is discussed in Soviet publications, it is a key item on the


191. See, e.g., Williams, supra note 109, at 353 (arguing that feminists reject any laws or regulations that reflect “traditional preassignment of household and child-rearing tasks to women” as inhibiting career choices). Peers asserts that the development of part-time work, as well as the development of public services staffed by women “would lead to the greater economic dependence of women, poorer promotion prospects, wider wage differentials between women and men and . . . a lesser likelihood of more women achieving real, political power, concentrated, as they would be, in low-status, low-priority, non-productive sectors.” Peers, supra note 42, at 142-43.

192. Smolowe, supra 63, at 30. A Soviet social scientist writes, “Equality means to achieve according to abilities,” and that for women who must fulfill two roles, special treatment is required. See Buckley, supra note 32, at 48.

193. Quindlen, It’s Hard to be a Woman in Russia, Women’s Day, May 10, 1988, at 140. Interviews with women conducted by Time reflect the same views, that it is against the natural order for women to be the boss; that women live for their children; and that what Soviet women want most is for their home life to be good. Smolowe, supra 63, at 29-30.

194. See, e.g., McAndrew, supra note 37, at 95 (noting the prevalence of sex-segregated classes in Soviet schools where domestic skills are taught to young girls while metal and wood work are within the exclusive domain of young boys). Another authority notes the increase in articles and pamphlets asking teachers to devote more attention to developing “sex-appropriate” characteristics in children, and to include courses on strengthening the family. Attwood, supra note 179, at 70-71.

195. There are special women’s magazines in the Soviet Union that focus on women’s “natural qualities” and that reinforce the view that a woman’s biological role as mother is the “major determinant of her lifestyle.” McAndrew, supra note 37, at 95. The author notes, for example, that discussions on the domestic overburdening of women focus on industrialization of housework by the improvement of services, rather than on any reassessment of the male-female roles within the family unit. Id. at 112.
agenda of Soviet leaders, and it permeates Soviet law. The propaganda has apparently been quite successful. If asked about any alleged sex discrimination, Soviet women respond with protestations that the Soviet Government assures total equality of the sexes, and that any inability to pursue a career results only from a so-called “double-shift,” i.e., because of an underdeveloped economy that denies them such conveniences as dishwashers, food processors, freezers, microwave ovens, washing machines and dryers, Soviet working women must spend an inordinate amount of time on domestic tasks. It is estimated that Soviet women spend up to 40 hours per week on domestic chores which is superimposed on a 41 hour work week. This figure contrasts with an approximate fifteen to twenty hours that males devote to their family. One female attorney explains that, “Man is a freer person; women do not assume higher positions because they do not want to sacrifice their families.” There appears to be little movement today in the Soviet Union towards dividing or socializing household tasks, despite the fact that this was at one time a key platform of the Socialist Revolution.

196. See supra notes 183-89 and accompanying text.

197. See supra notes 112-16 and accompanying text.

198. A 1975 study indicates that only 66% of Soviet households had washing machines and only 50% had refrigerators. Peers, supra note 42, at 123. Although conditions may have improved somewhat over the past decade, in numerous interviews conducted by this author in May 1988 with Soviet women professionals, including attorneys, judges, and scientists, the women expressed great envy for American women who enjoy “miracle” kitchens. They complained that it took them almost two hours to simply do the shopping. Gorbachev has acknowledged that the “social load on women had increased” due to “shortcomings in the consumer services sector and retail trade.” Eaton, supra note 183, at 5, col. 1 (quoting portions of the Secretary General’s address).

199. Peers, supra note 42, at 123. A recent study of 2500 working women in Moscow, where male attitudes are arguably most enlightened, revealed that 67.7% did no cooking, and 65.8% did no housekeeping. Id. at 124. The author comments, “A Soviet man is likely, in married life, to remain a relative parasite within the home, and to further his own education and enjoyment at the expense of his wife’s.” Id.

200. Id. The official Soviet position is that economic problems, not sexist attitudes, have created this dilemma. Id. at 124-25.

201. Interview with Doctor Larissa A. Nezhinkaya, Senior Criminologist with the All-Union Institute for the Study of the Causes of Crime and Elaboration of Preventative Measures (May 1988).

202. See supra notes 26-31 and accompanying text. Buckley writes that there has been no systematic attack on the lack of male participation in domestic chores because such is viewed as a “non-problem.” Buckley, supra note 32, at 47. Buckley also notes that no one is clamoring for the fundamental restructuring of family life that was urged by socialists in the 1920s. Id. A study of Soviet journals devoted to women’s issues confirms this. None appear to challenge the societal structure that assumes that women are responsible for all domestic duties. McAndrew, supra note 37, at 111. Rather, the purpose of the journals is to develop the “superwoman” image of someone who successfully combines family and career. Id. McAndrew, the author, notes that there are no male-only magazines because
Rather, it is simply accepted that Soviet women can achieve prominent positions only by sacrificing family and home life. Thus far the majority of Soviet women appear neither ready to make this sacrifice, nor interested in challenging the sexist attitudes which create their dilemma. They seem instead content to wait until their economy improves, insisting that with Western conveniences they will be able to compete on an equal footing with males.

VI. CONCLUSION

Although the Socialist Revolution began with the radical feminist proclamation that total equality of the sexes would only be achieved by guaranteeing that women be unconstrained by the traditional roles of housewife and mother, the modern Soviet State has determined that this goal must be sacrificed for the current needs of socialism where low birth rates, a depressed economy, rampant divorce, alcoholism, and juvenile delinquency are seen as more pressing problems that may best be ameliorated by exploiting the traditional role of women. Soviet society, as reflected in its laws and its culture, appears to have abandoned the radical feminist ideology of Lenin, Kollontai and Engels and instead has whole-heartedly adopted and perpetuated a very traditionalist attitude toward women. The Soviet viewpoint is reminiscent of a mentality that existed in the United States in the 1950s but which has long since been abandoned.

Although many American women would no doubt welcome the Soviet statutes which guarantee paid maternity leave and which provide childcare centers for working women, they might be less receptive of the Soviet role model of women in the domestic realm. American women may be equally concerned with the demise of the family, the double-shift, and the pregnancy dilemma, but feminists would argue that many of these social issues may be accommodated by enacting gender-neutral laws and exploring gender-neutral solutions, rather than characterizing these problems as women’s issues that may only be remedied by women accepting their biological destiny. Indeed, many of the Soviet protective

Soviet authorities see no need to mold their attitudes. Id.

203. Address by Professor Levinson, Seminar sponsored by the Moscow Women’s Committee (May 1988) (when this author suggested sharing domestic tasks to a group of women professionals, they were taken aback, as though they had never contemplated this idea); see also R. STITES, supra note 11, at 410-12 (commenting on the “double-shift” problem).

204. See supra notes 17-31 and accompanying text.

205. See supra notes 175-81 and accompanying text.

206. See, e.g., Williams, supra note 109, at 353 (arguing that laws that are written in gender-specific terms and that inhibit choice should be replaced by “laws and rules that
labor laws enacted to benefit women would be invalidated under Title VII
of the Civil Rights Act of 1964 as perpetuating a stereotypical view about
women that makes it impossible for them to compete with men in the
marketplace.\footnote{207}

Although there is no consensus in this country as to the meaning of
sexual equality, and even feminists disagree as to how to resolve the
question of biological asymmetry,\footnote{208} little doubt exists that the role of
American women has undergone a significant transformation over the
past two decades and that the meaning of equality will continue to evolve
as feminist groups persist in their challenge of traditionalist beliefs.
Despite \textit{glasnost}, in the Soviet Union there appears to be little, if any,
discussion regarding the problems of female self-determination or the
need to eviscerate popular images of masculinity and femininity.
"Comparable worth" or the potentially detrimental impact of "benign"
discrimination in favor of women are not mentioned. To the contrary,
recent Soviet laws are aimed at reducing women's participation in the
work place through expanded leaves and part-time work options, while
encouraging women to more fully assume and maintain their domestic
role.\footnote{209} The Soviet Union has, in short, reified the traditionalist inter-
pretation of "equality" that assumes that the sexes cannot truly be equal
unless the biological differences between men and women are recognized
and compensated for in the law. At least at the current time it is this
model of sexual equality which pervades Soviet society.

\footnote{207. See supra notes 106-10 and accompanying text.}
\footnote{208. See supra notes 126-31 and accompanying text.}
\footnote{209. See supra notes 142-48 and accompanying text.}