

# THE MITCHELL ORATION 1995

## Equal Opportunity: The Next Twenty Years

*(celebrating the 20th anniversary of the  
Sex Discrimination Act 1975 (S.A.))*

by

The Honourable Justice Catherine Branson

6th October, 1995  
Adelaide

On 4 December next it will be 20 years since Sir Mark Oliphant, the then Governor of South Australia gave assent to the Sex Discrimination Act 1975.<sup>1</sup> It was the first Act of its kind in Australia. No speech in opposition to the Bill was made in either House of the S.A. Parliament.

The Parliamentarians were persuaded, it would seem, by the report of the Parliamentary Select Committee which they had established after Dr Tonkin, then the member for Bragg, introduced in 1973 a private members Bill for a Sex Discrimination Act. The Select Committee had been set up, with what one might think was undue caution, to investigate and report on whether there was a need for sex discrimination legislation in South Australia. The Committee reported that it was satisfied that discrimination in employment existed - but not necessarily limited to women. Perhaps surprisingly, it reported that little evidence had been produced alleging discrimination in education and training for employment. It did, however, record that some women were being discriminated against by banks with respect to the provision of credit - in particular by the requirement that female borrowers provide male guarantors of their indebtedness.<sup>2</sup>

The Bill which was eventually passed was not Dr Tonkin's Bill. The then Premier, Mr Dunstan, introduced a Government Bill in June 1975 modelled in large part on the United Kingdom Bill introduced into the U.K. Parliament earlier that year.

I would like to be able to convey to you the general tenor of the 1975 debates on the Sex Discrimination Bill. I can perhaps try to do this by referring to one contribution which seems to me to reflect the mood of nearly all of the contributions. A member noted in the debates in the Upper House that The Advertiser, the States then morning newspaper, had already voluntarily ceased to divide its employment pages into "*Men & Boys*" and "*Women & Girls*". Indeed, as she pointed out, a case had already occurred in which a woman had applied for a job which under the old system would have

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<sup>1</sup>Act No. 120 of 1975 (S.A.) which came into operation on 12 August 1976

<sup>2</sup>Reported in The Advertiser of 17 October 1974 at p8

appeared under *"Men & Boys"* and had actually been selected for appointment! In short, a sense of optimism pervades the reports of the debates on the Sex Discrimination Bill.

The feeling at the time seemed to be that within a few years of the passage of the legislation those women who wanted to or needed to, would be able to participate equally with men in all aspects of public life.

It is, I think, fair to say that the Parliamentary debates on the Bill reflect neither a recognition of the complex forms in which discrimination may come, nor a recognition of the degree of societal change that would be required before women and men would be able to participate equally in the public and economic life of this state and this country. Neither in Parliament, nor in the press reports of the passage of the legislation, nor in general conversation so far as I can remember, was there any consideration of the failure of the Prohibition of Discrimination Act,<sup>3</sup> enacted 9 years earlier, appreciably to ameliorate discrimination against aboriginal Australians or other persons on the ground of race, country of origin or skin colour.

Nor was there any reflection on the apparent failure of the passage of the Adult Suffrage Bill in 1894<sup>4</sup> to empower more than a small number of women to sit in the South Australian Parliament. Indeed Ms Jessie Cooper, who in 1959 (i.e. 65 years after the passage of the Adult Suffrage Bill) became the first woman to be elected as a member of the Legislative Council,<sup>5</sup> was there to participate in the debates on the Sex Discrimination Bill.

Today we are less sanguine about the capacity of legislation, and in particular legislation based on the anti-discrimination model, to achieve structural changes in society. Recent history has shown that it is capable of achieving significantly less than was once hoped and expected; or, more accurately, the equality now aspired to is something more radical, in the true sense of the word, than contemplated by almost anyone in 1975.

It has truly been said that *"one's vision of justice tends to reflect one's experience of oppression"*. Women's experience of oppression in 1975 was of rather crude forms of discrimination - i.e. overt discrimination and prejudice often openly displayed. The subtle barriers now recognised as significant impediments in the way of women sharing social, economic and political power equally with men were not the issues of that time.

I do not mean to suggest that the Sex Discrimination Act 1975 was illconsidered or that, in its present form, it is without ongoing relevance. I wish simply to emphasise that there is a limit to which mere legal change can affect human behaviour: that a legal framework within which change can be achieved is not the same as an agenda for change. The Sex Discrimination Act, I suggest, should be celebrated as perhaps one of the last legislative measures to establish a legal environment within which feminist goals are capable of being achieved. It cannot be seen alone as a driving force for change.

The struggle of the next 20 years will be to utilise the legal framework, of which the Sex Discrimination Act is part, to its full advantage to effect meaningful change to the status of women.

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<sup>3</sup>Act No 82 of 1966 (S.A.)

<sup>4</sup>Act No 613 of 1894 (S.A.)

<sup>5</sup>Mrs Joyce Steele, elected at the same time, was the first woman to sit in the S.A. House of Assembly

I wish to speak tonight of some of the issues that might require consideration if we are to gain the full benefit in this sense of the legislation which many strove hard to achieve. I propose to do this under three broad headings. First, I wish to reflect on the limitations of legal measures, including individual complaint based procedures, as tools for change, and to highlight the need for structural changes.

Secondly I propose to give consideration to the public/private dichotomy which has long been central to much of the feminist debate.

Thirdly, I will suggest that problems relating to the status of women must be seen as inter-related problems: that they need to be addressed in a coherent way and not as isolated issues capable of independent policy resolution.

I will close with a few brief reflections on the forces and attitudes likely to be influential so far as equal opportunity for women is concerned over the next 20 years.

I turn to my first broad heading - the limitations of legal measures as instruments of structural change.

There is a growing recognition in Australia and elsewhere that guarantees of formal equality between members of an advantaged group and members of a group which by and large lacks such advantage will assist some - but will mean little to many. Such guarantees will only in a marginal way attack the root causes of disadvantage. Let me give an example from an area close to me - the law. Women have enjoyed formal equality with men in South Australia as legal practitioners since the enactment of the Female Law Practitioners Act 1911 (S.A.). Yet it has been reported that "*[a]lthough women were eligible to practice [thereafter], in the early years they had difficulty obtaining articles, and were often confined to jobs usually carried out by a junior office girl, with little attempt made to give the woman any legal training.*"<sup>6</sup>

Well before open discrimination against female legal practitioners ceased, some women enjoyed prominence in the law. Her Excellency the Governor, whose achievements this annual Oration honours, was appointed a Queen's Counsel in 1962 and a Justice of the Supreme Court of South Australia in 1965. The significance of these unprecedented appointments may be better appreciated if one recalls that when Her Excellency took up her appointment to the Supreme Court bench, women in South Australia were still legally disqualified from sitting on juries.

It could not sensibly be said in 1965 that because one woman had been appointed to a superior court in Australia there were no impediments in the way of women pursuing careers in the law. I do not think that I need to rehearse to this audience what those impediments were or how they operated.

Similarly, it seems to me, and contrary to what is commonly asserted, the fact that small but increasing numbers of women are now achieving senior positions in the law does not mean that women as a class do not continue to experience disadvantage in the practice of the law. Indeed, to put the case higher - the fact that, as I believe it to be the case, a woman Queen's Counsel in Australia is at the moment more likely than a male Queen's Counsel of equal seniority to be invited to take a judicial appointment, does not mean that women do not continue to be disadvantaged in the practice of the law. This disadvantage is masked, not revealed, by the fact that a few women can succeed in the present legal environment.

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<sup>6</sup>Kok, O'Brien and Teale, "*In the Office and at the Bar*" in Mackinolty and Radi (eds) *In Pursuit of Justice* at p183 - cited in L. Kirk "*Women in the Legal Profession*" in *Law Society Bulletin* August 1994

The important issue is why, approximately 20 years after women commenced to enter Australian law schools in roughly equal numbers with men, achieving academic results equivalent to or better than those achieved by men, so few of them are practicing in the profession at levels of seniority comparable with their male peers? The issue cannot be dismissed by pointing to studies that reveal that poor job satisfaction is the most often given reason for women pulling out of major legal firms.

It is trite, I suggest, to report, as the Victorian Law Foundation has done, that "*[s]atisfied employees will stay with their employer firm and actively contribute to its growth and their own careers.*"<sup>7</sup>

The real issue is, what is it about the way that the judicial system, the law firms and the bar operate that results in women disproportionately to men failing to achieve job satisfaction?

The important distinction between the capacity of individual women to take advantage of formal equality, and the structural disadvantage suffered by women as a class, is one which seems to bedevil debate on equality for women in this country. I suggest, for example, that it was at the heart of the recent clash between the Chancellor of Sydney University, Dame Leonie Kramer, and a senior group of her fellow female academics.<sup>8</sup> The mass of university women who fail to advance beyond the most junior grades of academe will never have the chance to show whether or not they would go "*limp under pressure*"; or to claim that they were passed over for promotion to professor or for appointment as vice-chancellor!

Concentration, in the liberal tradition, on the protection of individuals rather than groups, has the capacity to divert attention from structural inequalities and the need for structural change. Concentration on the individual has the additional disadvantage of placing great pressure on those few women who do hold senior positions - pressure not only to succeed but at the same time to advocate for, and mentor, other women. A gratifying number of senior women do take on this yet further burden. In a perfect system this responsibility would not need to be assumed.

In addition, the individual based complaint system has the regrettable consequence of singling out, for what has proved to be quite undue media attention, those who have been forced to use tribunals and courts in an endeavour to obtain redress for conduct seen by them as unlawfully discriminatory.

I do not want to name any of them here. Most of you, I think, can bring examples to mind of individuals harmed by this experience.

Another difficulty in the way of anti-discrimination legislation achieving structural change of the kind now sought by many women is that it arguably suffers from the same philosophical deficiency as the '*one law, one people, one destiny*' argument put by some in opposition to aboriginal claims for native title.<sup>9</sup> That is, that its underlying philosophy is to give women the opportunity to live their lives like men do rather than to give women equal opportunity to participate in society as women distinct from men. The legitimate claim of women today is to be allowed to participate fully in society without having to live as though they were men.

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<sup>7</sup>Interim Report of Victoria Law Foundation as part of a study on gender, employment and the law - released August 1995

<sup>8</sup>See particularly The Australian - Higher Education Supplement of 5 & 12 July 1995

<sup>9</sup>H.M. Morgan, "Mabo and Australia's Future", Quadrant, December 1993

It may be that the "*indirect discrimination*" aspects of the current equal opportunity legislation in Australia<sup>10</sup> will prove to provide the answer to this perceived limitation in the legislative schemes.

It is, in my view, still too early to say. Some of the signs to be read from recent court decisions, however, have not been promising.<sup>11</sup>

Looking back 20 years, it is I think fair to say that it was widely believed at that time that, biological factors aside, the principal differences between men and women were socially induced. The issue of the time was, in effect, that of the terms upon which women ought to be allowed access to the male controlled centres of power such as higher education, politics, business and the professions.

The issue for the future will be the extent to which, and the manner in which, these centres of power must change their respective structures and manners of operation to provide equality to women as participants in their operations and as consumers of their output.

Over the next 20 years, one would hope to see the results of some serious rethinking about the structure and manner of operation of these centres of power.

Despite promising signs of some initiatives for change, by and large they continue today to reflect not only a male model of operation, but more particularly a model designed to fit the stereotypical male, and a male who lives either with domestic support provided by others, or more or less free of domestic obligations.

I note that a recent study of 580 female accountants revealed that almost 8 in every 10 women employed by accounting firms believe that they are not reaching their potential because of barriers in their career path. It was the macho culture of accounting firms which the study, undertaken by the Victorian branch of the Institute of Chartered Accountants and the Royal Melbourne Institute of Technology, identified as their main obstacle. The lack of female mentors in such firms was also cited as a problem.<sup>12</sup>

Many important institutions have made only the most limited endeavours to address the cultural changes which have plainly been shown to be necessary where women are to work side by side with men. There is no genuine equal opportunity in allowing women to enter traditionally male institutions - but only on the basis that the values of such establishments, and the way that they are run, are to remain unchanged. The freedom to be an honorary man, or alternatively an outsider, is a freedom few women aspire to.

Yet this is what is offered when women enter business organisations which continue to focus their team building and marketing exercises around male sporting events and the pub; when women join courts (I hasten to add not the Federal Court) but the habit of using exclusively male clubs for socialising and for accommodation is maintained; when hospitals fail to provide facilities for female surgeons with the consequence that they are required to share facilities not with their male surgical peers but with another

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<sup>10</sup>See, for example, Equal Opportunity Act 1984 (S.A.) ss29(2)(b), 29(3)(b) and 29(5)(b).

<sup>11</sup>See, for example, the majority views in *Waters and Ors v Public Transport Corporation* (1991) 173 CLR 349; and the majority views in *Commonwealth of Australia v Human Rights and Equal Opportunity Commission and Others* (1993) 119 ALR 133.

<sup>12</sup>Cited in the *Financial Review* 19 September 1995 p5.

professional group, nurses. Even more unsatisfactory, of course, is the organisation which professes to be an equal opportunity employer but does nothing to stop informal messages being conveyed to those responsible for recruiting or promotion to the effect that influential members of the organisation would be discomforted by the selection of a woman to fill a senior position.

As to the absolute dedication to work, which women, and some men, are often criticised for failing to bring to their employment, there is no compelling evidence, of which I am aware, that such dedication is either necessary or desirable.

Under the heading "*How to succeed in business: Get a life*" the Financial Review on 11 September 1995 reported that "[r]esearchers around the world are slowly coming to an extraordinary conclusion: people who put their families first tend to do better in life, and earn more money." The report dealt with the research of 3 academics from Pennsylvania University who had made a long running study of a group of Americans who were in their last years of high school in 1972.

They apparently found no significant link between work orientated personal priorities of the students in 1972 and their later success measured in earnings. The only major link between attitude and later income was amongst the men who had emphasised "*finding the right person to marry and having a happy family life.*"

There is a lot of material, anecdotal and survey based, that indicates that many women, and appreciable numbers of men, find the present way in which politics, business, the universities and the professions operate, to greater and lesser degrees antagonistic to them, and to things that they value - such as the chance to live a balanced life, and where they have family responsibilities, those family responsibilities. There is similar material which indicates that many of the women who leave workplaces dominated by a male ethos to start their own businesses do very well in those businesses.

If the traditional methods of operation of our businesses and institutions can not be justified, as it seems possible that they can not, it will, I suggest, increasingly be seen as discriminatory to maintain them.

It will also, I suggest, become increasingly recognised that true equality can not be achieved under a rule system that requires that everyone is to be treated the same whatever their circumstances.

As Dr Archana Parashan has pointed out in her article "*The Anti-Discrimination Laws and the Illusory Promise of Sex Equality*"<sup>13</sup> if substantive equality is to be achieved it is imperative to recognise that the existing disparities between genders, races or ethnic groups cannot be rectified by pursuing formal equal opportunity. The logic of formal equality requires that endeavours to counterbalance the social or historical disadvantage of one group must be categorised as discrimination against those not so disadvantaged. Under Australian equal opportunity laws, only those steps which can be categorised as '*special measures*'<sup>14</sup> will fall outside this trap. Steps which are categorised as '*special measures*' tend to be seen as paternalistic in a way which ultimately undermines the legitimacy of those who benefit by them.

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<sup>13</sup>(1994) 13 University of Tasmania Law Review 83 at p85.

<sup>14</sup>See, for example, Equal Opportunity Act 1984 (S.A.) s47.

It is widely accepted in legal theory that it is unjust, rather than just, to treat unequals equally.<sup>15</sup> The question necessarily arises of unequal in what regard and measured by what standard? Where measurable inequality between groups is found of a kind which demonstrably leads to inequitable outcomes, logically, and I would suggest, ethically, unequal, in the sense of different, treatment is justified.

Such an approach is the basis of some affirmative action programs - most particularly in the United States of America. Australian affirmative action programs have been considerably more conservative.<sup>16</sup> In the United States it has for some time been recognised that some classification of individuals based on race, gender or other perceived disadvantage may be necessary if certain social objectives are to be achieved. Considerable publicity has recently been given to a decision of the Supreme Court of the United States in which it was held that some such measures may not survive legal challenge.<sup>17</sup>

Contrary to the impression created in our popular press the Supreme Court did not strike down all affirmative action programs: the legitimacy of genuinely remedial race-based programs was expressly recognised. In the words of Justice O'Connor from an earlier case,<sup>18</sup> the validity of which were recognised in the more recent decision:-

*"Absent searching judicial inquiry into the justification for such race-based measures, there is simply no way of determining what classifications are 'benign' or 'remedial' and what classifications are in fact motivated by illegitimate notions of racial inferiority or simple racial politics."*

That is, what the United States Supreme Court now requires is a searching judicial inquiry into the justification for affirmative action programs. Where such programs are an appropriate response to disadvantage they will survive such inquiry.

There has been little pressure in Australia for broadly based affirmative action programs of the United States kind. I expect this situation to continue - at least so long as present economic conditions prevail with relatively high levels of unemployment. There may, however, be hope for more modest programs particularly in areas where the social benefit of such programs is readily apparent. I cite as an example the decision of the council of one of our local universities to amend its rules on the award of personal chairs. Its existing rule was to award no more than one personal chair a year: it was to go to the most meritorious amongst the candidates who could demonstrate a high national and international reputation for research and teaching in their discipline area.

Without in any way compromising the requirement of high national and international reputation, the university has now removed the quota of one - but only where such quota would prevent a female candidate from being appointed as a full professor.

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<sup>15</sup>See, for example, The Hon. Justice Gaudron *"In the Eye of the Law: The Jurisprudence of Equality"* - Mitchell Oration 1990. See also *Gerhardy v Brown* (1985) 159 CLR 70 per Brennan J at pp128-129

<sup>16</sup>See Affirmative Action (Equal Employment Opportunity for Women) Act 1986 (Cth).

<sup>17</sup>*Adavand Constructors Inc v Pena, Secretary of Transportation et al* 1995 U.S. LEXIS 4037; 63 U.S.L.W. 4523

<sup>18</sup>*Richmond v J.A. Croson Co.*, 488 US 469.

The social and educational value of women holding, and being seen to hold, where appropriately qualified, a reasonable proportion of the most senior academic appointments is plain. It can fairly be said, of course, that it is equally, or perhaps more important, to increase the numbers of women who hold positions of a seniority from which they can realistically aspire to top appointments. Yet, however it is to be achieved, it seems to me that there will be growing pressure to devise means to ensure an increase in the numbers of women holding senior positions in areas once regarded as the domains of men. I will deal later with my reasons for concluding that it is imperative that this pressure be met.

I turn to the public/private dichotomy. Historically it was men who took part in public life - politics, business, the professions, higher education. Women were identified with domestic matters and the home.

Women have gradually challenged the notion that they have no real role in public life: they have not been so successful in challenging the notion that domestic burdens should fall largely on them. The notion that the law should concern itself only with public matters and not intrude into the private sphere of citizens' lives left women particularly vulnerable.

Of course it has never been true that the law does not intrude on private decision making. As Professor Rhode<sup>19</sup> has pointed out:-

*"The state determines what counts as private and what forms of intimacy are entitled to public recognition. Policies governing tax, welfare, childcare, family, and workplace issues heavily influence personal relationships. Public opportunities shape private choices just as private burdens constrain public participation. Women's unequal responsibilities in the home limit options in the world outside it. Reduced earning capacity in the market also correlates with reduced power and increased obligations in the family."*

Traditionally physical security has been seen as a citizen's most basic demand from the State - yet only recently has that demand been seen as encompassing a women's right to be safe from her domestic partner. Until about 20 years ago domestic violence was generally categorised as a private matter between the partners to a relationship. Against this background it is probably not surprising that the July 1993 discussion paper of the Australian Law Reform Commission '*Equality before the law*'<sup>20</sup> identified issues concerning violence as the major concern of Australian women with the legal system.

Recent press reports suggest that the S.A. Police handled 1571 domestic violence calls in the first 3 months of this year whilst the Inner Southern Domestic Violence Action Co-ordinator estimated that "*thousands of women*" a week experience abuse but do not report it.<sup>21</sup> The 1991 Census figures indicated that one in eight relationships were affected by violence: this figure has been challenged as conservative.<sup>22</sup>

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<sup>19</sup>Deborah L. Rhode "*Feminism and the State*" (1994) 107 Harvard Law Review 1181 at p1187.

<sup>20</sup>Australian Law Reform Commission, Discussion Paper 54.

<sup>21</sup>The Advertiser 12 September 1995

<sup>22</sup>see note 21.



Plainly the issue of violence against women must be addressed if there is to be real equality for women in our society. Increasing the size of the police and prosecution forces is, I suggest, unlikely to provide a long term answer. I expect that improved social services such as refuge housing and child care and other related services would help. The long term answer, however, lies elsewhere. What is needed is a means of changing attitudes of men and boys towards women and girls. I will return to this theme shortly.

The vulnerability of women to the public/private dichotomy can be seen through issues other than domestic violence and the unequal burden of domestic responsibilities. Among the other ways in which women continue to carry a legacy from the public/private dichotomy is the ongoing undervaluation of the work done by women in the home and other domestic settings. The failure to ascribe real value to the work of caring and nurturing is not only unrealistic in itself, it has had a carryover effect into the public arena where traditionally female areas of work such as nursing and child care remain under-remunerated in comparison with work arguably of equal or lesser value.

Another way in which women continue to carry a legacy from the public/private dichotomy is reflected in attitudes towards childcare. Childcare continues to be seen within families principally as a concern of mothers, either because it is characterised, consciously or unconsciously, as a domestic, and thus a female responsibility, or on grounds of economic pragmatism - the loss of male time from paid employment is likely to be more financially disadvantageous than the loss of female time. In the public policy arena it has also been seen as principally a private responsibility. The availability of suitable childcare at affordable cost remains an important issue for women who wish to be part of the paid workforce.

As Professor Marcia Neave<sup>23</sup> has pointed out, certain recent developments in the law appear to be re-asserting the public/private distinction in ways which have the potential to be disadvantageous to some women. Proposed amendments to the Family Law Act<sup>24</sup> encourage couples to make cohabitation and separation agreements and to mediate rather than litigate disputes over financial matters and custody. Whilst no doubt these are valuable reforms in the case of many couples, such steps may be, as Professor Neave contends, insufficiently sensitive to inequalities in bargaining power - for example, where women need to protect themselves and their children from violence or where they lack full information about their husband's financial position.

Similarly, employment contracts are increasingly being privatised under enterprise bargaining. Professor Neave, and others, have suggested that there may be reason to fear that women's working conditions, which are already less favourable than those of men, will worsen under enterprise bargaining. Whilst it is important against this background that efforts to promote gender equality in the male-dominated occupations should continue, it is equally important that the issue of the devaluation of traditionally female occupations is addressed.

The movement towards equal opportunity for women has necessarily involved challenging the notion that there is no, or limited, public interest in what goes on within families and private workplaces, and where services are provided by private arrangements between parties. Any attempt to reinforce the public/private dichotomy cries out to be examined with care.

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<sup>23</sup>Marcia Neave, *"One Step Forward, Two Steps Back: Law and Gender Bias"*. Conference Proceedings: Women Power and Politics - 8-11 October 1994, Adelaide - at p256

<sup>24</sup>See Family Law Reform Bill 1994

Finally I turn to the need for problems relating to the status of women to be seen as inter-related problems. Whilst recognising that it is easier to articulate than to achieve change, I want to suggest that only a coherent, multi-faceted policy drive will have any real chance of success.

At the moment, women as a class, when compared with men as a class, are under-represented where power is exercised, their capacity to earn income is lower, their burden of domestic responsibilities is higher and they are disproportionately vulnerable to violence. Equity demands that all of these issues be addressed. I doubt that they can be successfully addressed as isolated phenomena.

The clue to appropriate long term solutions may perhaps be found in cross-cultural comparisons which suggest that sexual assault rates are lower in societies in which women have gained greater authority and respect.<sup>25</sup> The results of these studies seem to suggest that initiatives which address the status of women may promise most in terms of long term change.

By contrast initiatives which target isolated symptoms of the unequal position of women, possibly in ways calculated to maintain it, are unlikely to result in longer term structural change.

It is undoubted that power and financial independence correlate closely with status in our society. In a real sense we are all defined by our employment. As a consequence many women are defined either by an absence of paid employment in a context in which domestic duties are held in low esteem, or by low status employment. If my thesis is correct, violence against women is likely to be more effectively addressed in the longer term by policies which assist them in sharing power, encourage their financial independence and widen their access to the full range of employment options, than by policies which merely ameliorate the worst consequences of their dependence. I do not mean to down play by this the absolute necessity for proper welfare support and for adequate policies and procedures to protect women, and others, from violence. My point is simply that something much more is needed in the longer term.

In considering measures which might enhance the status of women, it may be important to bear in mind the results of studies by the Anti-Defamation League and the University of California at Berkeley in the 1960's and 1970's on the subject of prejudice in America. These studies reached the conclusion that by the age of 12 children had already developed a complete set of stereotypes about every ethnic, racial and religious group in society.<sup>26</sup> It is likely that by a similar age Australian children have developed stereotypical views about the roles of women and men in society. The American findings suggest that actions to counteract such prejudices are possible into late adolescence, but thereafter are of limited value. If we accept such findings, they place a heavy burden on those of us whose actions might be influential on young people. I do not mean merely on educators and the popular media, although they may carry a particular responsibility: I mean on all of us.

The need for vigilance with respect to the status of women will not diminish until we can raise generations of children who, male and female, accept women and men as contributors to society equally to be valued.

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<sup>25</sup>Peggy R Sanday, *"Rape and the Silencing of the Feminine"* in RAPE (Sylvana Tomaselli & Roy Porter eds, 1986) cited in Deborah L. Rhode *"Feminism and the State"* - see note 19.

<sup>26</sup>cited by Itiel Bereson in *"Without Prejudice"* - Special Report of the Proceedings of The National Conference *"Without Prejudice": Racism and Antisemitism in Contemporary Australia* - 11-12 June 1994 at p72.

A simple discipline we could all accept as a first step, I suggest, is that of abandoning irrelevant distinctions.

This is an issue which many regard as trivial, and it can certainly be trivialised easily. I want to suggest, however, that it is important, and that the level of our maintenance of artificial and irrelevant distinctions is a measure of the distance we need to travel before equality generally is ingrained in the Australian psyche.<sup>27</sup> I will consider the issue from the perspective of women, although it is of wider significance.

I start from the proposition, which is not original,<sup>28</sup> that it is women in our society who are seen to have gender - not men. This is a parallel phenomenon to that which suggests that only people who are not white have race.

The problem with these phenomena is that they imply a norm and a counter-norm. To use the words of Justice Deidre O'Connor, they imply "*people like us*" and the outsiders.

Every time we hear or read the "*female politician*", the "*woman judge*", the "*policewoman*" and their like, a message of varying subtlety as to the normative position within those occupation groups is being conveyed. Male politicians, the male judges, the male police officers are taken for granted; they are the normative standard. They can be referred to merely as politicians, judges and police officers.

In his Mitchell Oration The Honourable Sir Ronald Wilson repeated the aphorism "*that equal opportunity for women will have arrived when we learn to accept incompetence in senior women with the same ease with which we have always accepted incompetence in senior men.*" I wish to suggest another - "*that equal opportunity for women will have arrived when we hear no more of the female judge, the female politician, the female academic and the female business person.*"

So what of the forces and attitudes likely to be influential over the next 20 years? The first, I suggest, is that there will be increasing recognition of what by now we ought to be able to take for granted - i.e. that equal opportunity for women to exercise choice and to develop their human potential is not a passing fad: it is a human right.

Yet we must remember that to characterise it as a human right is not of itself to demonstrate beyond argument that all other demands must necessarily yield to it. The area of human rights is filled with the potential for conflicts. We see this most commonly in conflicts between rights to pursue religious practices and beliefs, or ethnic or other customs, and rights not to be discriminated against on the grounds of sex or sexuality. It seems likely that conflicts of this kind will become increasingly apparent in our complex and multicultural society. Ultimately the community must make value judgments as to those rights which will predominate when human rights conflict - as they inevitably will.

My hope and belief is that in our society demands for equal opportunity for women will prevail over most, if not all, competing human rights. For this to be achieved, feminist vigilance will need to be maintained well into the next 20 years. This may particularly be the case should demands begin to

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<sup>27</sup>For an early discussion of this issue see M. Wollstonecraft *Vindication of the Rights of Women* 1792, Ch 9 of the *Pernicious Effects which Arise from the Unnatural Distinctions Established in Society*.

<sup>28</sup>See, for example, Marcial Neave "*One Step Forward, Two Steps Back: Law and Gender Bias*" at pp259-260 cited in note 20.

arise for the preservation of certain aspects of the Australian male dominated culture. At the moment such demands are rarely articulated with any clarity. Yet we might be unwise to ignore the possibility that this could change.

We will also be unwise to ignore the trend towards conservatism which appears to be a feature of political life not only nationally but internationally. The increasing capacities of businesses, and to an extent universities, to shift their operations abroad is also a factor to be recognised. For these, and other reasons, a degree of economic pragmatism is, and will continue to be, necessary in respect of all demands for social change.

However, it seems to me to be clear that there is increasing public pressure, from both men and women, for women to hold at least some types of senior positions in our society. Twenty years ago such pressure could barely have been contemplated. The widely expressed desire for a female Governor-General to be appointed was, I suggest, indicative of current attitudes.

The former Chief Justice of the High Court, I believe, accurately read public feeling when he said that the appointment of women as judges in superior courts was crucial to the maintenance of public confidence in the judicial system.<sup>29</sup>

But what of the claims of women to be integrated into public and economic life at all levels? Can significant steps in this regard be made in the next 20 years?

It seems to me that notwithstanding the trend towards political conservatism, the economic advantages of utilising the talents of the workforce fully whilst at the same time addressing other significant social issues such as violence against women, must, especially in an economically pragmatic society, lead to powerful forces for change. Political, corporate, professional and academic leaders of the next 20 years will, I suggest, disregard such forces at their peril.

*Mitchell Oration 1995*  
*The Honourable Justice Catherine Branson*  
*6 October 1995*

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<sup>29</sup>Address to Conference of supreme Court and Federal Court Judges - Adelaide, January 1995.